

11837

No. _____

Supreme Court of Illinois

Mosley

vs.

Brooks

71641  7

129-152

George H. Mosley
vs

Francis Brooks

appon

129

11837

1858

Prepared

1.

Monday 14th November 1856
United States of North
America
State of Illinois
County of Cook

Now before the
Honorable George Manis
Judge of the several judicial
Circuits of the State of Illinois
and presiding judge of the Circuit
Court of Cook County in said State
at a trial Term thereof begun
and held at the Court House
in Chicago in said County
on the third Monday (being the
Sabbath day) of November in
the year of Our Lord One Thousand
Eight hundred and fifty six
and of the Independence of the
United States the Eighty first
Year.

Honorable George Manis
Judge of Judicial Circuit
James S Beach, Corner
Acting Sheriff of Cook County
Daniel McElroy State
Attorney
Doctt Louis D Howard

2. Be it Remembered to wit: That
on the 28th day of October AD 1856
there was filed in the Office of
the Clerk of the Circuit Court
of Cook County in the State of
Illinois, a certain process for
Summons which is in the words
and figures following to wit:

Cook County Circuit Court

Francis Books &
Alice Books
vs
Eugene M. Slasky

\$2500.

Clerk please
issue Summons in above cause in an
action on the Case returnable to
November Term Damages being
Five hundred dollars

AD Rich

Atty for Deft

And afterwards to wit: on the
Twenty Eighth day of October AD
1856 there was issued out of the
Office of the Clerk of the Circuit
Court aforesaid a certain Ex parte
Writ Commencing Called Summons
which is in the words and figures
following to wit:

Summons - Circuit Court of
Cook County

State of Illinois }
County of Cook } 23

39 The People of the
State of Illinois to the Corner Es-
-office acting Sheriff of said
County - Greeting:

We command
you that you summon George
H. Wesley if he shall be found in
your County, personally to be and
appear before the Circuit Court
of Cook County on the first day
of the next Term thereof, to be holden
at the Court House in the City of
Chicago in said County on the third
Monday next, to answer
unto Francis Brooks and Alice
Brooks in a plea of trespass
on the case to the damage of the
said Plaintiff as is said in the
sum of twenty five hundred Dollars
And cause you then and there this
Writ with our endorsement therein
in what manner you shall have
executed the same

Witness Louis D. Howard
Clerk of our said Court, and
the Seal thereof at Chicago
Aforesaid, this twenty eighth
day of October A.D. 1856
L. D. Howard
Clerk



4. And on the back of the foregoing and last mentioned writ appears Endorsements which are in the words and figures following to wit:

Served by reading to the within named George W. Hooley the Thirtieth day of October 1856

For 1 Service 50.

2 Miles 10.

1 Return 10.

70.

James S. Beach Coroner & Acting Sheriff By J. M. Bradley Special Deputy

And afterwards to wit on the Seventh day of November A.D. 1856 there was filed in the Office of the Clerk of the Circuit Court aforesaid a certain Declaration which is in the words and figures following to wit:

State of Illinois
Cook County
Cook County Circuit Court
of the November Term
A.D. 1856

Francis Brooks and Cruise Brooks plaintiffs in this Oath
Complain of George W. Hooley
defendant who has been
summoned &c in a plea of trespass

5

on the case For that whereas the
said plaintiffs now are good
true honest just and faithful
Citizens of said State and as such
have always behaved and
Conducted themselves and until
the Committing of the Several
Grievances by the said Defendant
as herein after mentioned were
always reputed and accepted
by and among all their
Neighbors and other good and
worthy Citizens of said State to
whom they were in anywise known
to be persons of good name
fame and credit. to wit at
Chicago in the County and
State aforesaid And whereas
also the said Miss Brooks
wife of the said Francis Brooks
has not ever been guilty or
committed the crime of Committing
of the said Several Grievances
by the said Defendant as
hereinafter mentioned. been
suspected to have been guilty
of adultery or any other such
crime. And whereas also
the said Miss Brooks wife
of the said Francis Brooks
at the time of Committing of
the said Several Grievances
by the said Defendant
hereinafter mentioned and

long before, was a good
(6. true honest just and faithful
wife of the said) Francis Brooks
and did faithfully and
diligently Exercise the household
duties belonging and appertaining
to her as such wife at the time
of Committing of the Several
Grievances hereinafter mentioned
to wit at Chicago in the County
and State aforesaid

That the said Defendant
well knowing the promises and
greatly enjoying the happy state
and condition of the said plaintiff
but contriving and falsely and
maliciously intending to injure and
prejudice the said Annie Brooks
in her good name fame and
credit as such wife and
to be reputed an infamous
unchaste immodest and
improper person and unfaithful
wife heretofore to wit on the
Seventeenth day of October in
the year 1856 to wit at Chicago
in the County and State aforesaid
in a certain discourse and
conversations which he the said
Defendant then and there
had of and concerning the said
Annie Brooks in the presence
and hearing of divers good
and worthy Citizens and then

and there in the presence of
1. and hearing of said last
mentioned Citizens false and
maliciously spoke and
published these several false
malicious scandalous and
defamatory words of and
concerning the said Ulice Brooks
that is to say "I'm (meaning the
said Ulice Brooks) are a
damned whore and I (meaning
the said Defendant) can
prove it (meaning that he the
said Defendant could prove that
she the said Ulice was a whore)

And the said plaintiff
further say that the said
Defendant further contriving
and false and maliciously
intending to injure and
prejudice the said plaintiff
and especially the said Ulice
Brooks in their good name
name and credit and to
cause the said Ulice to be
reported an infamous and
immorally improper and
unfaithful wife to wit at
on the twentieth day of October
in the year Eighteen hundred and
fifty six to wit at Chicago
in the County and State aforesaid
in a certain discourse which
he the said Defendant then

8. and there had of and
Concerning the said Miss
Brooks and of and Concerning
her behavior as wife of
said Francis Brooks false
Scandalously and maliciously
in the presence and hearing of
divers good and worthy citizens
spoke and published these several
false scandalous malicious
and defamatory words of
and Concerning the said
Miss Brooks that is to say
"You (meaning the said Miss
Brooks) are a God damned
bitch of a whore"

And the said plaintiff
further say that the said
Defendant further contumacious
and false and maliciously
intending to injure and prejudice
the said Miss Brooks in her
good name fame and credit
and to cause her to be reputed
and insuring such haste
immoderate and improper persons
and unfaithful wife on the
Trenticks day of October
in the year Eighteen Hundred and
fifty six to wit at Chicago in
the County of and State
of Illinois in a certain discourse
which he the said Defendant
then and there had and of and

and there in the presence of
1. and hearing of said last
mentioned Citizens false and
maliciously spoke and
published these several false
malicious scandalous and
defamatory words of and
concerning the said Miss Brooks
that is to say "You (meaning the
said Miss Brooks) are a
damned whore and I (meaning
the said Defendant) can
prove it (meaning that he the
said Defendant could prove that
she the said Miss was a whore)

And the said plaintiff
further says that the said
Defendant further contriving
and false and maliciously
intending to injure and
prejudice the said plaintiff
and especially the said Miss
Brooks in their good name
name and credit and to
cause the said Miss to be
reported an infamous and
immorally improper and
unfaithful wife to wit at
on the twentieth day of October
in the year Eighteen hundred and
fifty six to wit - at Chicago
in the County and State aforesaid
in a certain discourse which
he the said Defendant then

8. and there had of and
Concerning the said Miss
Brooks and of and Concerning
her behavior as wife of
said Francis Brooks false
scandalously and maliciously
in the presence and hearing of
divers good and worthy citizens
spoke and published these several
false scandalous malicious
and defamatory words of
and concerning the said
Miss Brooks that is to say
"You (meaning the said Miss
Brooks) are a God damned
bitch of a whore"

And the said plaintiff
further say that the said
defendant further contending
and false and maliciously
intending to injure and prejudice
the said Miss Brooks in her
good name fame and credit
and to cause her to be reputed
and inducing such hoste
immodest and improper person
and unfaithful wife on the
Tenth day of October
in the year Eighteen Hundred and
fifty six to visit at Chicago in
the County of and State
aforesaid in a certain discourse
which he the said defendant
then and there had had of and

Concerning the said Ursie
9. Brooks and of and Concerning
her behavior while she
lived with the said Francis
Brooks as his lawful wife
falsely Scandalously & Maliciously
in the presence and hearing of
divers good and worthy Citizens
Spoke and published these several
false Scandalous Malicious and
Defamatory words of and Concerning
the said Ursie Brooks and
of and Concerning her behavior
that is to say "You (meaning
the said Ursie Brooks) are a
whore"

By means of the Committing
of which said several grievances
by the said Defendant The said
Plaintiffs have been greatly
injured in their good name
honor and Credit and brought into
public Scandal, infamy and
disgrace with and amongst all
their neighbors and other good
and worthy Citizens to whom
they were in any wise known
inasmuch that divers of their
neighbors and Citizens to whom
the innocence of the said Ursie
Brooks in the said offenses and
his conduct do as aforesaid
mentioned to have ^{been} charged upon
and imputed to the said Ursie

10 were custom have occasion
after the Committing of the
said Several grievances by the
said Defendant from them
hitherto Suspected and believe
and still do suspect and
believe the said Union to have
been guilty of the Offences and
misconducts so as aforesaid
mentioned to have been charged
upon and imputed to her as
aforesaid and have by reason
of the Committing of the said
Several grievances by the said
Defendant from them hitherto
refused and still do refuse to
have any Acquaintance
intercourse or discourse with
the said Plaintiff and especially
with the said Union and
the said Plaintiff have been
and are by means of the
premises otherwise greatly injured
and Damaged to wit at the
Camp & State aforesaid to
the Damage of the said
Plaintiff of Twenty five
hundred Dollars and
therefore they bring Suit &c

W. D. Bick
Atty for Plaintiff

18 in this behalf, the said
Defendant prays judgment
and that the said Plaintiff
may be barred from having or
maintaining their aforesaid
action thereof against him &c
Brown and Gwynn
Deft atty

And afterwards to wit: On
the 19th day of December AD
1856 it being one of the days of the
Christmas Term of our said Court
for said year the following among
other proceedings were had and
Entered of Record therein to wit:

Francis Brooks }
& Emily Brooks }
1440 vs } Deft
George S. Wesley }
Deft

This day
came the said parties by their
respective Attorneys and by their
Agreement made in open
Court It is Ordered that this
Cause stand continued till
the next Term of this Court

And afterwards to wit: on the
14th day of May AD 1857 there
was filed in the Office of the
Clerk of the Court aforesaid a

13.

Certain Plea which is in the words and figures following to wit:

The Circuit Court in and for the County of Cook Ill. v. ad 1856

George W. Busby
vs
Francis Brooks
vs
Lucia Brooks } Case

And the said Defendant by Brown and Runyon his Attorneys comes and defends the wrong and injury when &c and says that he is not guilty of the said alleged grievances above said to his charge in any or either of them or any part thereof in manner and form as the said plaintiff hath above thereof complained against him and of this he the said Defendant puts himself upon the Country &c

Brown and Runyon
Depts Atty

State of Illinois }
County of Cook } J. G.

Geo W Busby

deft in the above suit being duly sworn says that he has a good defence to interpose at the trial thereof

And afterwards to wit: - On
15th the 12th day of May A.D. 1854
it being one of the days of the
April Term of said Court for
said year, and this cause having
been regularly continued the following
among other proceedings were had
and entered of Record in said
Court to wit:

590 Francis Banks & }
Eunice Banks } Cause
vs }
George H. Bailey }

Ordered, in motion, that
said Defendant have leave to
withdraw his demurrer to the
said plaintiffs declaration, herein

And afterwards to wit. On the
18th day of May A.D. 1854, it being
as yet one of the days of the April Term
of said Court for said year the
following among other proceedings
were had and entered of Record in
said Court, to wit:

590 Francis Banks & }
Eunice Banks } Cause
vs }
George H. Bailey }

16 This day came the said parties
by their Attorneys and issue being
joined herein It is Ordered that
a jury come Whereupon come
the Jurors of a Jury of good and
lawful men to wit:

Spencer Warner C. A. Morse

B. Sandheim W. Briggs

Geo. Stearns A. Blinnton

J. P. Cook A. Fulton

H. Shockley P. Bracken

J. M. Colter G. C. Gibson

Who being duly elected tried
and sworn well and truly to try
the issue joined aforesaid after
hearing the Evidence adduced
Arguments of Counsel and
instructions of the Court retired to
consider of their verdict and
afterwards came into Court &
say "We the Jury find for the
Plaintiffs and assess their damages
herein to the sum of Seven hundred
and fifty Dollars"

Whereupon said
Defendant moves the Court for
a new trial of this cause, and
the Court having heard Counsel
on said motion and being fully
advised in the premises overrules
the same

Therefore it is considered
that said plaintiff do have
and recover of said defendant

May 18 1854 their damages of Seven
17 hundred and fifty dollars
in sum as aforesaid. by the
\$50⁰⁰ Jury assessed together with
their costs and charges by
them in this behalf expended
and have Execution therefor

And afterwards to wit: On the
30th day of May A.D. 1854. it being
as yet of the said April Term
of said Court for said year: the
following among other proceedings
were had and entered of Record in said
Court to wit:

James Brooks }
Carrie Brooks }
890 vs } Case
George S. Husley }

This day
Comes the said defendant and
prays an appeal of this cause to
the Supreme Court of the State
of Illinois which is granted
And seven days given to file
Bill of Exceptions and bond
for sixteen hundred dollars with
La. Doolittle & David C. Kelsey
as Sureties Conditioned according
to law -

18. And afterwards to wit: on
the 30th day of May AD 1854
there was filed in the Office
of the Clerk of the Circuit Court
aforesaid a certain Appeal
Bond which is in the words
and figures following to wit:
"I, James all men by these Presents
that me, George S. Carey and
David C. Hawks and
Lewis A. Doolittle are held
and Jimmy Beard unto
Francis Brooks and Eunice Brooks
in the several sum of Sixteen
dollar and dollars, lawful
money of the United States. for
the payment of which we
and they to be made we bind
ourselves, our heirs and
administrators, jointly and
severally and Jimmy by these
presents witness our hands
and seals this 30th day of May
AD 1854. The Condition of the
above Obligation is Such
that whereas the said Francis
Brooks and Eunice Brooks
did on the 18th day of May
AD 1854. in the Cook County
Circuit Court receive a
judgement in an action on the
Case for an alleged slander
against the above bounden George

19. H. Wesley for Iron Hundred
and J. J. Callers besides
Cuts from which judgement
the said George H. Wesley has
taken an appeal to the
Supreme Court of the State of
Illinois from of the said
George H. Wesley shall diligently
and due prosecute his said
appeal and shall pay the
Judgements, Costs, Interest and
damages which may be
awarded, adjudged and assessed
against him by the ^{said} Supreme
Court in case the judgement
aforesaid of the Cook County
Circuit Court shall be
affirmed in & by the said
Supreme Court then the above
obligation to be void otherwise
to remain in full force and
effect

Geo W Wesley Seal
of Pauline Seal
L A Doolittle Seal
lee

And Afterwards to wit on the
4th day of June A.D. 1857. there
was filed in the Office of the
Clerk of the Circuit Court
aforesaid a certain "Bill of
Exceptions" which are in the
words and figures following
to wit:-

20. The Circuit Court of
Cook County Illinois of

Francis Brooks & }
Marie Brooks }
vs }
George H. Hooley }
}

Be it Remembered
that on the 18th day of May
A.D. 1857 the above entitled
Cause came on to be tried in said
Court held at the City of
Chicago by and before the Hon.
George Manion, Judge of said
Court and a Jury duly
sworn whereupon the plaintiffs
introduced ^{on the said trial} the following named
witnesses in the order hereinafter
named who being duly sworn
respectively testified as follows
viz:-

Frederick Guernsey being
duly sworn testified as follows
viz:-

I am acquainted with the
parties in this suit - The
plaintiffs now live on the
corner of State and Harrison
Streets they lived on Clinton
Street last October, I was
at plaintiffs house last
October when the defendant
Hooley called there, He

21

knocked at the door and Mrs
Banks went and opened it
Harley came in put his
arms around her neck and
kissed her She (Mrs Banks)
then called him a mean dirty
puppy and went into the
back part of the house which
was used as a kitchen to tell
Mr Banks - Harley called
her all manner of names -
a God damned bitch of a whore
She told him to leave the
house - he replied that the
house was his own and he should
not leave till he got ready
- he had a right to say and
do what he pleased in his
own house - He kicked her and
even hit her to strike her
- Banks stepped in between
them Harley called her a
damned rib of a whore - said
he could prove it - said too he
would kill her. His precise words
were "You are a damned bitch
of a whore and I can prove
it" He repeated "He repeated
the language or language to that
effect several times - it was
addressed to Mrs Banks one of
the plaintiffs in this suit Harley
then went up stairs where some
one else lived and came back

22. in about fifteen minutes after
and said "Gentlemen I don't
know what you think but I
think she is a cunning woman
but I can prove all I have
said and if they want to they
can hop on as soon as they
have a mind to" D

My wife and Mr Booth were
present. Mr Brooks was in
the back room out of sight when
Husley first came in;

Camp Examined

I am a Carpenter
by trade have been acquainted
with Mr and Mrs Brooks
sometimes - have seen Husley
before I called that evening
in Doctor Brooks for some
medicine now know what Husley
came there for when he came in
he said "good evening mother
Brooks" and put his arms
round her neck and kissed
her. She called him a mean
her kind puppy. Husley went
through into the kitchen. There
were three rooms in the house
occupied by Mrs Brooks. Husley
came in on the East side or front
side of the house passed through
the front room used for an
office, the middle room and
into the kitchen Mrs Brooks

was a little excited. Doctor
 Brooks was in the kitchen
 heard small talk there
 but could not understand
 what was said. They came
 back out of the kitchen Mrs
 Brooks told him to leave
 the house called him a mean
 dirty puppy and several other
 harsh names. I do not recollect
 of her calling him a bad man
 Wooley was a little excited
 when he used the language
 towards her. He was there
 about half an hour. They
 were trying to get him out
 of the house. She called him a
 puppy before he used the words
 to her. I know Mrs Brooks
 Character —

Matthew Pratt being only
 seven testified as follows viz:
 I have heard the evidence of Mr
 Gurney — about 8 o'clock in the
 evening of which he spoke I was
 at the Office of Doctor Brooks
 Mr Gurney was in the office
 and the Doctor was engaged
 in the back room. I heard voices
 in the back room but could not
 hear what was said — In a
 short time Mrs Brooks came
 to the back door of the office
 I was at the same time talking

24. talking with parties in the kitchen
She went into the kitchen again
Then returned and defendant Healey
and Mr Brooks came in with
her Mrs Brooks ordered Healey
to leave the house Healey said it
was his own house and he had
a right to do as he pleased Healey
said to Mrs Brooks "I'm an a
damned bitch of a whore" He
raised his cane to strike her and
said he had a good reason to
hate her This language was
addressed to Mrs Brooks one of
the plaintiffs in this case Healey
appeared excited Jones too and
went out to call the police
when I returned Healey had gone
up stairs He soon came back
and said "Gentleman that Mrs
Brooks is a dull kind of a
woman Mrs Gurney remarked
that it was hard language
Healey said, yes but I can
swear what I have said and
even more and they may not
if they please" Healey called her
a god damned bitch of a whore
and repeated the language
several times He used words
terious "bitch and bitch" of a whore
Mrs Brooks was the person
addressed - said they might
put on if they pleased he was ready

Camp Examined

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There about a half
a mile from Doctor Brooks I have
had conversation with Doctor
Brooks and his wife about
this matter. There was some
excitement at the time. Hooley
was very much excited. Mrs
Brooks called him a low mean
man and ordered him out doors.
Hooley seemed resolute in his
manner. I think he stated that
the Doctor and him

Elizabeth Gurney being duly
sworn testified as follows

I was present
at Doctor Brooks one time last
October when defendant Hooley was
there. Mr Brooks Post, my husband
and Hooley were in the office, there
was quarrelling when I first
went in. Hooley used the
words "fitch of a woman" towards
Mrs Brooks. I came in on the
words while he was speaking.
He raised his cane to strike her
and swore he would kill her and
tried to hit her. He left
in about half an hour.

Camp Examined

I went there at
about 8 O'clock in the morning.
There was quarrelling when I
went in. Mrs. Brooks used

26 her Tugaw no more than a great
many women would at such a
time she called Herley a
mean puppy they were some
excited I am neighbor to the
Doctor visit there frequently
was conversed with Mr. or
Mrs Brooks about this matter
Mr Herley was some excited
and Mrs Brooks was excited

Charles Sabir being duly sworn
testified as follows, viz:

I am
acquainted with Herley the
defendant here - do not know
what his business is. I know
he is pretty well off. He owns a
lot at Rock Island R.R.
depot owns one back of Doctor
Egan and some lots on Clinton
Street. He owns a farm at
Whiskey point and did own
one at Wheeling. Don't know
that he is worth any thing more

The above testimony was objected
to by the defendant's counsel -
objections overruled and Excepted
to.

William Stillman being duly
sworn testified as follows, viz:

27 I know where the Defendant
Hesley and to see and know
about his Circumstances from
what he has told me I
estimate the value of Hesley
property at fifty or sixty
thousand Dollars

Testimony objected
to and Objections overruled and
Excepted to,

Doctor J. Buchanan being duly
sworn testified as follows viz:

I have been acquainted
with Mr & Mrs Brooks the Plaintiff
about two years, during which
time they have lived together
as husband and wife they
have so recognized each other
and are so reputed to be

Testimony objected to Objections
overruled and Excepted to

Matthew Post recalled
I have known Mr & Mrs Brooks
the Plaintiff about seven
years they are reputed to be
husband and wife and
have lived together as husband
and wife during that time

The testimony objected to, Objections overruled and Exceptions taken
by the Plaintiff's now recalled this case

The Defendant then introduced
upon the stand as a witness
George W. Stamford who being
duly sworn testified as follows

1895

I am acquainted with Mrs Brooks and Dr Brooks have seen them at Justice Grants Office

Defendant here offered to prove by the witness that Dr Brooks one of the plaintiffs had stated that Miss Brooks was a quarrelsome person to the introduction of which evidence the plaintiff objected and the Court sustained the objection and excluded the evidence to which ruling the defendant then and there excepted

The foregoing includes all the evidence in the case

The plaintiff then asked the Court to give the following instructions to the Jury.

Of the Jury believe from the Evidence that the defendant is guilty of uttering the slanderous words charged in the declaration they may take into consideration the pecuniary circumstances of defendant and his position and influence in society in estimating the amount of damages and if they shall also find from the

Evidence that the defendant
obtained himself into plaintiffs
29. house and then appeared under
familiarities to Currie his wife
at the time and on the occasion
of the uttering the words in
question these circumstances may
also be taken into consideration
in fixing damages and the
jury in their discretion may
give damages by way of
punishment to the defendant
proportioned to the circumstances
in evidence as well as for
compensation which was given
and so marked by the Court
to the jury as asked for by
the plaintiffs In which
instructions so given as refused
the defendant then and there
excepted

The defendant then
asked the Court to give the
Eight following instructions to
the jury
1st. Of the Jury should believe
from the evidence that the
defendant Hooper went to
the house of the plaintiffs
Brooks for the purpose of
collecting money and a
dispute arose between the
parties while there and that
Currie Brooks was the aggressor

80 and used the most harsh
Extemporaneous and that the words
spoken by Hooley were a rebuke
to such Extemporaneous they will
find for the Defendant
and if the Jury should find
1st from the Evidence that the
Language used by the Defendant
Hooley to the plaintiff Oliver
Brooks was spoken in jest and
not with malice their verdict
will be for the Defendant
(if they also find that the
Language was so received and
understood by the persons
present at the time)

3rd If the Jury should believe
from the Evidence that the words
were spoken in at least and
sarcasm (and without malice)
then their verdict will be
for the Defendant (if they
also find that the words were
also so understood & regarded
at the time)

4th If the Jury should believe
from the Evidence that there was
no malice at the time the
words were spoken by the
Defendant, but that they were
spoken in the excitement
consequent from the hard words
that had previously passed
between them they will find for

the Defendant

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3^d Of the Jury should find from the Evidence that Anne Brooks one of the plaintiffs in this suit was a quarrelsome person (and so Exhibited herself at the time) and that the Language Alleged and proved to have been used by the Defendant to her was caused by a quarrel between them they will take that fact into Consideration in Considering the Amount of Damages which the plaintiffs are entitled to recover.

4th Of the Jury should find from the Evidence that the words spoken by the Defendant were at another and different time than those Alleged in the Declaration they will find for the Defendant

5th Of the Jury should believe from the Evidence that there is a Conspiracy between the plaintiffs in this suit or between them and others to extort money from the Defendant, they will take that into Consideration in Considering their conduct:—

The question of the defendant's malice is a question of fact for the jury upon consideration of all the facts and conversations and that if they believe the words spoken by the defendant to the plaintiff Miss Brooks were spoken in heat and passion (without malice) and without intention to accuse her of the actual crime which the words imported (and that it was so understood by the parties present at that time) they will find for the defendant.

The Court refused to give and marked them so required the 1st 4th 6th 5th & 7th instructions and gave the 2nd 3rd 5th & 8th after inserting what is included in brackets to which refusing of the Court and the inserting of words in these instructions given to the jury by the Court the defendant then and then excepted

The Jury having found a verdict for the plaintiff and assessed the damages at Seven Hundred and fifty Dollars (\$750 &) the defendant, by his counsel moved the Court for a new trial which motion the Court overruled to which

Calling the said Defendant by
his Counsel then and there
excepted to the Opinion of the
Court and prayed the Court
to sign and seal this his
bill of exceptions which is
accordingly done in due form

George Manum Seal
Judge of 7th Judicial
Circuit Illinois

State of Illinois
County of Cook

I William L Church
Clerk of the Circuit
Court of Cook County
in the State of Illinois
do hereby certify that
the above and foregoing
transcripts is a true and
perfect and complete copy of the
files & proceedings as well as the
Orders had and Entered of Record
in the said Circuit Court in
a certain suit lately pending
therein, wherein Francis Banks
and Annie Brooks were plaintiffs
and George S. Husley was
defendant and of the whole
thereof as appears to us of
Record.

In Witness Whereof I
have hereunto set my hand and

affixed the Seal of our said
Court this 2nd day of
February A.D. 1858

W. Church
Clerk

51837-17

Conf. Wm. C. C.

James B. C. C.

George H. C. C.

Filed April 16. 1858

Ladland
Bless

Com. to Sec. C.

for Supreme C.

For you

Transcript to

Wm. Dallas. 9/11/58

Rec'd 9 Feb 11 1858

for Church
C.

Brown and Morgan

Rec'd City

The Supreme Court of the State of Illinois,

OF THE APRIL TERM, 1858.

GEORGE H. HOSLEY, Plaintiff in Error,

vs.

FRANCIS BROOKS & EUNICE BROOKS, Defendants in Error.

ERROR TO COOK COUNTY CIRCUIT COURT.

7 The declaration is in case for Slander, and comprises three counts.

The first count states that in a colloquium on the 17th of October, 1856, with the Plaintiff, in the hearing of divers good and worthy citizens, the Plaintiff falsely and maliciously spoke and published these several false, malicious, scandalous and defamatory words, of and concerning the said Eunice Brooks, that is to say, "you," meaning the said Eunice Brooks, "are a damned whore, and I," meaning the said Plaintiff, "can prove it," meaning that he the said Plaintiff could prove that she the said Eunice was a whore.

8 The second count states the words to be—"you," meaning the said Eunice Brooks, "are a God damned bitch of a whore."

9 The third count states the words to be—"you," meaning the said Eunice Brooks, "are a whore." Damages \$2,500.

Plea, not guilty.

The trial was had before a jury, in the Circuit Court of Cook County, at the April Term, A. D. 1857, and a verdict of guilty rendered with \$750 damages, and costs.

Hon. GEORGE MANIERRE, Judge presiding.

20 At the trial the Defendants produced Frederick Guernsey, who, on his direct examination, testified that he knew the parties; the Defendants then lived on the corner of Halstead and Harrison Streets; they lived on Clinton Street in October, 1856; he was at Defendants house in October, when the Plaintiff Hosley called there; Hosley knocked at the door, and Mrs. Brooks went and opened it; Hosley came in, put his arms around her neck and kissed her; she (Mrs. Brooks,) then called him a mean dirty puppy, and went into the back part of the house, which was used as a kitchen, to tell Mr. Brooks; Hosley called her all manner of names—a God damned bitch of a whore; she told him to leave the house, he replied that the house was his own, and he should not leave till he got ready; he had a right to say and do what he pleased in his own house; he kicked her and drew his cane to strike her; Brooks stepped in between them; Hosley called her a damned rip of a whore; said he could prove it; said too, he would kill her; his precise words were—"You are a damned bitch of a whore, and I can prove it;" he repeated the language, or language to that effect several times; it was addressed to

21

22 Mrs. Brooks, one of the Defendants in this suit; Hosley then went up stairs where some one else lived, and came back in about fifteen minutes after, and said—"Gentlemen, I don't know what you think, but I think she is a curious woman; but I can prove all I have said, and if they want to, they can hop on as soon as they have a mind to;" my wife and Mr. Pratt were present; Mr. Brooks was in the back room out of sight when Hosley first came in.

22 On cross-examination, the witness testified that he was a carpenter by trade; had been acquainted with Mr. and Mrs. Brooks sometime; had seen Hosley before; he called that evening on Dr. Brooks for some medicine; never knew what Hosley came there for; when he came in he said—"Good evening, mother Brooks," and put his arms around her neck and kissed her: she called him a mean low lived puppy; Hosley went through into the kitchen; there were three rooms in the house occupied by Mr. Brooks; Hosley came in on the east side, or front side of the house, passed through the front room used for an office, the middle room and into the kitchen; Mrs. Brooks was a little excited; Dr. Brooks was in the kitchen; heard hard talk there, but could not understand what was said; they came back out of the kitchen; Mrs. Brooks told him to leave the house; called him a mean dirty puppy, and several other harsh names; he did not recollect of her calling him a bad man; Hosley was a little excited when he used the language towards her; he was there about half an hour; they were trying to get him out of the house; she called him a puppy before he used the words towards her; I know Mrs. Brooks' character.

23 The Defendants also produced Matthew Pratt, who testified that he had heard the evidence of Mr. Guernsey; about 8 o'clock in the evening of which he spoke, he called at the office of Dr. Brooks; Mr. Guernsey was in the office, and the doctor was engaged in the back room; he heard cries in the back room, but could not hear what was said; in a short time Mrs. Brooks came to the back door of the office, and was at the same time talking with parties in the kitchen; she went into the kitchen again, then returned, and Plaintiff, Hosley and Mr. Brooks came in with her; Mrs. Brooks ordered Hosley to leave the house; Hosley said it was his own house, and he had a right to do as he pleased; Hosley said to Mrs. Brooks—"You are a damned bitch of a whore;" he raised his cane to strike her, and said he had a good mind to kill her; this language was addressed to Mrs. Brooks, one of the Defendants in this case; Hosley appeared excited, *he was* excited too, and went out to call the police, when he returned, Hosley had gone up stairs; he soon came back and said—"Gentlemen, that Mrs. Brooks is a droll kind of a woman;" Mrs. Guernsey remarked that it was hard language; Hosley said—"Yes, but I can prove what I have said, and even more, and they may hop on if they please;" Hosley called her a damned rip of a whore, and repeated the language several times; he used both terms, "rip and bitch" of a whore; Mrs. Brooks was the person addressed; said they might put on if they pleased, he was ready.

25 On cross-examination, witness testified that he lived about half a mile from Dr. Brooks; he had had conversation with Dr. Brooks and his wife about this matter; there was some excitement at the time; Hosley was very much excited; Mrs. Brooks called him a low mean man, and or-

dered him out doors; Hosley seemed resolute in his manner; he thought that he stated that the Doctor owed him.

25 The Defendants also produced Mrs. Elizabeth Guernsey, who testified that she was present at Dr. Brooks' one time in October, 1856, when Plaintiff Hosley was there; Mr. Pratt, my husband and Hosley were in the office; there was quarrelling when she first went in; heard Hosley use the words "bitch of a whore" towards Mrs. Brooks; she came in on the words which he was speaking; he raised his cane to strike her, and swore he would kill her, and tried to kick her; he left in about half an hour.

26 On cross-examination, the witness testified that she went there at about 8 o'clock in the evening; there was quarrelling when she went in; Mrs. Brooks used her tongue no more than a great many woman would at such a time; she called Hosley a mean puppy; they were some excited; she was neighbor to the doctor; visited there frequently; never conversed with him or Mrs. Brooks about this matter; Mr. Hosley was some excited, and Mrs. Brooks was excited.

26 The Defendants also produced Charles Sabin, who testified that he was acquainted with Hosley, the Plaintiff here; did not know what his business was; he knew he was pretty well off; he owned a lot at Rock Island Railroad Depot; owned one back of Dr. Egans, and some lots on Clinton Street; he owns a farm at Whisky Point, and had owned one at Wheeling; did not know that he was worth anything then.

Which testimony was objected to by Plaintiff's counsel, and objection overruled by the Court, and exception taken.

26 The Defendants also produced William Skillman, who testified that he knew where the Plaintiff Hosley used to live, and knew about his circumstances; from what he had told him, he estimated the value of Hosley's property at \$50,000 or 60,000.

Which testimony was also objected to by the Plaintiff's counsel, and objection overruled by the Court, and exception taken.

27 The Defendants also produced Dr. H. Buchanan, who testified that he had been acquainted with Mr. and Mrs. Brooks, the Defendants, for about two years, during which time they had lived together as man and wife; they had so recognized each other, and are so reputed to be.

Which testimony was also objected to by the Plaintiff's counsel, and objection overruled by the Court, and excepted to.

27 The Defendants then re-called Matthew Pratt, who testified that he had known Mr. and Mrs. Brooks, the Defendants, about seven years; they were reputed to be husband and wife, and had lived together as husband and wife during that time.

Which testimony was also objected to by the Plaintiff's counsel, and objection overruled by the Court, and exception taken.

On the defence, the Plaintiff in Error produced, as a witness, George W. Stanford, who testified that he was acquainted with Mrs. Brooks and Dr. Brooks; had seen them at Justice Grant's office.

Plaintiff in Error here proposed to prove by the witness, that Dr.

Brooks, one of the Defendants, had stated that Eunice Brooks was a quarrelsome person, and continually in difficulty for the purpose of decreasing the damages which the Defendants might recover, should the Plaintiff be found guilty; to the introduction of which evidence the Defendants by their counsel objected, and the Court sustained the objection and excluded the evidence, to which ruling the Plaintiff excepted.

27 If the Jury believe from the evidence that the Plaintiff is guilty of uttering the slanderous words charged in the declaration, they may take into consideration the pecuniary circumstances of Plaintiff, and his position and influence in society, in estimating the amount of damages; and if they shall also find from the evidence that the Plaintiff obtruded himself into Defendants' house, and there offered undue familiarities to Eunice, his wife, at the time, and on the occasion of the uttering the words in question, these circumstances may also be taken into consideration in fixing damages, and the Jury in their discretion may give damages by way of punishment to the Plaintiff, proportioned to the circumstances in evidence, as well as for compensation.

On the part of the Plaintiff in Error, the following instructions were asked, and the 1st, 4th, 6th and 7th were refused; the 2nd, 3rd, 5th and 8th, after inserting what is included in brackets, were given, to which refusing of the Court, and the inserting of words in those instructions given to the Jury, the Plaintiff excepted.

29 1 If the Jury should believe from the evidence that the Plaintiff Hosley went to the house of the Defendants, Brooks, for the purpose of collecting money, and a dispute arose between the parties while there, and that Eunice Brooks was the aggressor, and used the first harsh expressions, and that the words spoken by Hosley were a retort to such expressions, they will find for the Plaintiff.

30 2 If the Jury should find from the evidence that the language used by the Plaintiff Hosley to the Defendant, Eunice Brooks, was spoken in jest, and not with malice, their verdict will be for the Plaintiff, (if they also find that the language was so received and understood by the persons present at the time.)

30 3 If the Jury shall believe from the evidence that the words were spoken in heat and passion, (and without malice,) then their verdict will be for the Plaintiff, (if they also find that the words were also so understood and regarded at the time.)

30 4 If the Jury should believe from the evidence that there was no malice at the time the words were spoken by the Plaintiff, but that they were spoken in the excitement consequent from the hard words that had previously passed between them, they will find for the Plaintiff.

31 5 If the Jury should find from the evidence that Eunice Brooks, one of the Defendants in this suit was a quarrelsome person, (and so exhibited herself at the time,) and that the language alleged and proved to have been used by the Plaintiff to her, was caused by a quarrel between them, they will take that fact into consideration in considering the amount of damages which the Defendants are entitled to recover.

31 6 If the Jury should find from the evidence that the words spoken by the Plaintiff were at another and different time than those alleged in the declaration, they will find for the Plaintiff.

31 7 If the Jury should believe from the evidence that there is a conspiracy between the Defendants in this suit, or between them and others, to extort money from the Plaintiff, they will take that into consideration in rendering their verdict.

32 8 The question of the Plaintiff's malice is a question of fact for the Jury upon consideration of all the facts and conversations, and that if they believe the words spoken by the Plaintiff to the Defendant, Eunice Brooks, were spoken in heat and passion, (without malice,) and without intention to accuse her of the actual crime which the words import, (and that it was so understood by the parties present at the time,) they will find for the Plaintiff.

Now comes the said George H. Hosley, Plaintiff in Error in this suit, by Brown and Runyan, his attorneys, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this:

28 1st.—The Circuit Court erred in refusing to admit the evidence offered by the Plaintiff.

26 & 27 2nd.—The Circuit Court erred in permitting improper testimony to go before the Jury.

29, 30 & 31 3rd.—The Circuit Court erred in refusing to give the 1st, 4th, 6th and 7th instructions asked for by the Plaintiff.

30, 31 & 32 4th.—The Circuit Court erred in inserting the words included in brackets in the 2nd, 3rd, 5th and 8th instruction asked for by the Plaintiff.

28 5th.—The Circuit Court erred in giving the instruction asked for by the Defendants.

16 6th.—The Circuit Court erred in refusing to grant a new trial.

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Hosley
by
Brooks

Abstract
acct. of Errors

Filed April 16, 1858
S. Leland
Clerk

Supreme Court of the State of Illinois
Of the April Term A.D. 1858

Francis Brooks &

Allice Brooks

Defts in error

vs

George H. Hasley

Plff in error

} Case for Standing

} Brief for Deft in error

Note. The words (in printed abstract on file) in testimony of Matthew Pratt on page 24 of record and italicized in printed abstract "he was" &c refer to witness Pratt & not to Deft Hasley.

The words "continually in difficulty" in abstract do not appear on the record - Page 27.

Errors assigned by plff in error

P. 27
1st in refusing to admit the evidence offered by plaintiff in error, that is, evidence of Matthew Stanford.

The evidence was properly rejected as irrelevant to the issue - The promise of Allice to quarrel if proved could not affect the case unless it was also shown to have contributed to the wrong complained of which was not proposed.

C Besides such evidence is wholly inadmissible

2 Starkie Ev. 469 Note 1.

McAlexander vs Harris 6 Munf. 465

Walker v Wynn 8 Mass. 248

2^d Mor. in permitting improper testimony to go before the jury.

1st in relation to Haslip's wealth or circumstances - the evidence was properly admitted as in all cases where reductive damages may be awarded

Grable v Maynard 3 Scam. 372-3.

McNamara v King 2 Gil. 432.

Reed v Davis 4 Pick 216

Lincoln v S & S. R.R. 23 Wend. 425

Burnett v Hyde 6 Conn. 24-7

Shute v Barnt 7 Pick 86

2^d Greenleaf Ev. par. 269.

2^d in relation to proof of marriage of plaintiffs below. In this case reputation, cohabitation and acknowledgment of parties is competent & sufficient proof of their marriage.

2 Starkie Ev. 510

2 Greenleaf Ev. par. 461

Pruton v Reed 4 John. 52-4

3^d Error in refusing to give 1st 4th 6th & 7th instructions asked by plaintiff *See* error

1st As to 1st 6th & 7th instructions, they were properly refused - there being no evidence whatever on which to base them & they could only tend to mislead the jury
Humphreys v Collins 1 Seam 47
Stout v McAdams 2 Seam 68
Hamilton v Hurst 14 Ill. 472.

2^d as to the 4th instruction. It was properly refused because the state of facts therein supposed if found by the jury would not authorize a "finding for plaintiff" in error, but would only be in mitigation of damages

Whee v Ferris Author 23

Besides the 4th instruction so far as applicable to the case is substantially embodied in the 5th instruction given and it is not error to refuse an instruction when another is given whereby the party asking it has the full benefit of the law, so far as applicable, contained in the instruction refused. He is not prejudiced by such refusal.

Prior v White 12 Ill. 261

4th Error - in modifying the 2^d, 3^d, 5th & 8th
instructions asked by plaintiff in error and
given by Court as modified.

The Circuit Court may and should
modify instructions submitted or asked so
that they will state the law correctly as
applicable to the evidence. This doctrine
has been repeatedly recognized in this Court
& ought to be in any Court.

State of Ill v Wilson 2 Scam 225.

Brown v People 4 Gil 439.

The modifications made by the Circuit
Court were proper:

1st. Words are to be understood in
that sense which the speaker intended to
convey to the minds of the hearers as
governed by the whole circumstances of the
case.

Statute on Slander 44

Selwin Nisi Prius 1272 & cases there
cited -

2^d as to the qualification "without
malice"

The gist of this action is malice.
In this case the words charged to have been
spoken are in themselves actionable & malice
in such case is presumed. Evidence
that the words were spoken in jest or
in heat and passion is only proper
at tending to show the absence of malice
in the speaker.

Merriment or jesting may be malicious and words may be spoken in heat and passion and still with malicious intent and in such cases are actionable, It is only jesting or heat and passion without malice that will defeat the action. This is as far as the law goes in *McKee v. Suggs* 4 Seam. 30.

5th error - in giving instructions asked by plaintiffs below.

The instruction states the law correctly as applicable to the facts in evidence It as to status multo & influence in society.

Grable v. Maygrave 3 Seam 372 & cases cited under the head of "2^d error" clearly show that in actions of this kind, evidence of the preceding circumstances, ^{of the deft. below} is admissible & proper to be considered by the jury in estimating the damages.

3^d as to "obtruding himself & offering under familiarities"

In injuries to the reputation the jury are to consider in the estimate of damages the circumstances of indignity and contumely under which the wrong was done and the consequent public disgrace to the plaintiff together with any other circumstances ^{belonging to} the wrongful act and tending to the plaintiff's discomfort
2 Green. Ev. par. 269. pag 220

Cook v. Barkly 1 Penn 169
Spencer v. McMaster 16 Ill 405.

6th Error - in refusing to grant a new trial
The circuit Court properly refused to
grant a new trial. There is abundant
evidence to warrant the verdict; and
the law applicable ^{there to} was substantially & correctly
stated in the instructions given. The damages
are not excessive. The jury are to
determine from all the circumstances
of the case what damages ought to be
given and unless the damages are
such as to satisfy the court that the
jury acted from prejudice, partiality or
corruption the verdict should not be
disturbed.

Spencer vs McMaster 16 Ill 405 &
cases there cited

The evidence shows that Wesley attacked
himself upon the family of Brooks, and in
the presence of neighbors and friends grossly
insulted Brooks wife; that affecting or
appearing to be excited when his insults
and advances were indignantly repelled
he uttered a foul slander against her
reputation, and repeated it with all the
variations depravity could suggest;
that after an absence of half an hour
he returned and reaffirmed the slander
and stated he could prove all he had said.

If the words were uttered in heat and passion which his own gross insults tended to stir up, they were also fully affirmed by his actions both before and after the utterance of the words and under circumstances showing the highest degree of malice.

When substantial justice has been done, even if errors have been committed on the trial in relation to evidence and instructions judgment will not be reversed, nor for refusal to give instructions unless they correctly state the law or the facts shall require the application of them to enable the jury to arrive at a legal conclusion upon the facts.

Neukirk v Cone 18 Ill 449.

*Rich v Steele
for defects in error*

129

Supreme Court of
State of Illinois

George H. Hasley
Plff. in error

vs

Francis Brooks
et al

Brief for defense
in error

Filed May 21, 1858.
L. Leland
Clk.

Rich v. State
in error

Sup Court

George H. Hooley
vs
Francis Brooks &
Ernie Brooks

And now comes the said plff
by Brown & Runyon his attorney
and says that there is manifest error
in the Record and proceedings aforesaid
and in giving the judgment
aforesaid in this Court

1st The Court erred in refusing competent
evidence offered by the plff in error

2^d The Court erred in permitting incompetent
evidence to go to the jury

3^d The Court erred in giving the
instructions on the part of the depts
in error and in refusing the instructions
asked on the part of the plff
in error

4th The Court erred in amending &
adding to instructions on the part of
plff in error.

The judgment is against law and
evidence and the Court should have
granted a new trial

The judgment was given for the depts

Whereas by law it should have been
given for self, and for the
affairs of the same he prays that
the same may be reversed &c

Brown & Runyan
Attys for self

Sab Cook
George H. H. H.

1219

Francis Brooks
Eunice Brooks

Assignors of Em

Filed April 22, 1834

of Ireland
C. H.

Supreme Court — State of Illinois.

George H. Hosley
vs
Plff in Error

Francis Brooks &
Eunice Brooks depts
in Error

Points for Plff in Error.

II

The Court Erred in giving the instruction on behalf of Plffs below, as to what Circumstances might be considered ^{by the Jury} in Estimating the damages.

1st If the dept did obtrude himself into plffs house and offer undue familiarities to his wife at the time and on the occasion of uttering the words in question, upon what principle of law can the injury be redressed in an action of Slander?

It is stated in 2^d Greenleafs Ev Sec 420, in treating of damages, for Slander, "that no damages can, in any case be recovered except those which are the natural and proximate consequences of the wrongful act complained of."

The wrongful act complained of, in this suit, is the maliciously speaking certain defamatory words. Now will any sane man claim that the committing of other acts, on the same occasion,

Which amount to a trespass, by the deft, could, in any manner be considered as "the natural and proximate consequence" of speaking the words charged?

It is plain that if deft obtruded himself into plffs house, ~~that~~ the act was a trespass and he a trespasser; for, to obtrude into one's house, is to enter it without license or with force. Webster's Dict 765 And for this an action would lie; but it must be brought in the name of the husband alone. Yet by this instruction, the jury are directed to consider this Circumstance in Estimating the damage And thus allow an item of damage in this suit, when none but the injury to the wife alone can legally be recovered, and founded on an injury for which the husband alone could sue.

Lewis & Wife vs Babcock 18 Johns R 444

2^d But if the deft offered undue familiarity to the wife, the law considers it an assault. Besides the evidence the evidence clearly shows that the deft committed an assault and battery upon her, on that occasion.

Bullens
Nisi Prius

15 1 Selw

80 27. 3 Chit

Cr Law 821
Notes (H)

"He kicked her and drew his cane to strike her" - is the evidence. See Rec 21-24
Yph the Court says in this instruction - "the Jury in their discretion may give damages by way of punishment to the deft, proportioned to the Circumstances in Evidence, as well as for compensation."

How many times should this deft, naughty as he was, be punished for this assault upon Mrs Brooks? First, he is punished for assault & battery, in an action for slander. Secondly, he may be sued in a separate civil action for trespass to the person. Thirdly although twice punished in civil actions, he is still amenable to the Criminal Law.

Root & Lowmder
6 Hill 518

The ruling of the Court falls directly against the doctrine of the decision in Greenup vs Stokes 2 Gil 688 and cannot be sustained.

~~Sampson vs Coy 15 Mass R 493~~

Vanderhieu
Newton 4th
Comstock 132
Greenleaf on ev
1 vol sec 254
Sedgwick on Dam
5-69

3^d If such considerations could be allowed in estimating the damages, by way of aggravation, they facts should have been specially set forth in the declaration. None are alleged here
Sampson vs Coy 15 Mass R 493
1 Chit R 388 Butler vs Kent 19 John R 228

But the evidence was not in circumstances of persons and were not proper for any such purpose

II II

Root vs Lowndes, 6 Hill 518
2 Gil 688 4 Const. R. 157

The Court erred in refusing the second instruction asked on behalf of deft below, and in making the addition thereto included in ~~the~~ parenthesis,

The ^{gravamen} gist of the action of slander is malice.

McKee vs Ingalls 4 Scam 30 and Cases then cited.

Now if the gist of the action is the malice of the deft, and the jury should find as a special verdict the speaking of the words, and that they were uttered in a jest and without malice, but that a person was present and he did not regard it as a jest and without malice, would the court render a judgment on the verdict? If judgment could be rendered on that verdict it would ~~make~~ in reality adjudge the deft not upon his malice, but the stupidity of his hearers.

W R M Allister
for Plff in error

Sup Court
George H Hosley
vs
Francis Brooks et al
Brief

W H Wallister
& Brown & Ruyon
for Plff

Supreme Court of Illinois
Francis Brooks et al. vs. D. B. in Error. Of the Office Secy 1858.
vs.
George N. Hartly, Off. in Error.

And the said Francis
Brooks & Eunice Brooks, by their attorneys, Rice &
& Allen come here into Court, and say that
there is no error in the record and proceedings
aforesaid, & they pray that this said Court
before the Justices then & now here, may
proceed to examine as well the record and
proceedings aforesaid, as the writs
aforesaid assigned for error, and that
the judgment aforesaid in form aforesaid
given may be in all things affirmed. do.
Rice & Allen.
Atty. per appellans

Supreme Court

134 Francis Brooks et al
vs
The Erie R.R.

ad.

Geo. N. North
vs
The Erie R.R.

Joinder in Error.

Filed April 22, 1858

L. Leland
Clk

Rich & Stebbins, Attys. for Appellants.

Supreme Court — State of Illinois

George H. Hooley
vs
Plff in error

Francis Brooks &
Emmie Brooks
in error

Points for Plff in Error

II

The Court erred in giving the instruction on behalf of Plffs below as to what circumstances might be considered by the Jury in estimating the damages.

1st If the deft did obtrude himself into plffs home and offer undesired familiarity to his wife at the time and on the occasion of uttering the words in question, upon which principle of law can the injury be redressed in an action of Slander?

It is stated in 2^d Grundle of Ev Sec 420 in treating of damages for Slander, "that no damages can in any case be recovered except those which are the natural and proximate consequences of the wrongful act complained of."

The wrongful act complained of in this Suit is the maliciously speaking certain defamatory words. Now will any sane man claim that the committing of other acts, on the same occasion which amount to a trap, by the

def. could in any manner be considered
as the natural and proximate consequence
of speaking the words charged?

It is plain that if the defendant obtained himself
-self into plff. house, the act was a trespass
and he a trespasser; for to obtain into one's
house is to enter it without license or with
force. *Webster Dic 765* And for this an
action would lie; but it must be brought
in the name of the husband alone. Yet by
this instruction, the jury are directed to
consider this circumstance in estimating
the damage and thus allow an item of
damage in this suit, when none but the
injury to the wife alone can legally be recov-
ered, and founded on an injury for which
the husband alone could sue

Lewis & Wife vs Babcock 18 Johns R 444

^{2nd}
And, But if the def. offered under familiar-
ity to the wife, the law considers it an assa-
ult. Besides the evidence clearly shows that
the def. committed an assault and batt-
ery upon her, on that occasion. "He kicked
her and drew his cane to strike her" - is the

evidence. See Rec 21-24. Yet the Court says in this instruction - "the Jury in their discretion may give damages by way of punishment ^{to} the defendant, proportioned to the circumstances in evidence as well as for compensation"

How many times should this deft. naughty as he was, be punished for this assault upon Mrs Brooks? First, he is punished for assault & battery, in an action for slander. Secondly, he may be sued in a separate civil action for trespass to the person.

Thirdly although twice punished in civil actions, he is still amenable to the criminal law.

The ruling of the Court falls directly against the doctrine of the decision in *Greenup vs Stokes* 2 Gil 688 and cannot be sustained.

3. If the said acts could, by law, be considered by way of aggravation of damages, they should at all events, have been alleged in the declaration.

Sampson vs Coy 15 Meas R 493.

1 *Chitty Pl* ~~826~~³⁹⁶ *Butler vs Kent* 19 Johns R 228

Vanderlin vs Newton 4 Comstock R 182

2 *Greenleaf Ev* Sec 254. *Sedgwick on Dam* 569

But they are not allowable at all.

Book vs Lowndes 6 Hill 578

4 Comstock R 157. 2 Gil 688

II II

The Court erred in refusing the second instruction asked on behalf of deft below. And in making the addition thereto included in parenthesis

The gravamen of the action of Slander is Malice

See Kes vs Ingalls 4 Scam 30 and cases there cited.

Now if the gist of the action is the malice of the deft. and the jury should find as a special verdict the speaking of the words, and that they were uttered in a jest and without malice, but that a person was present and he did not regard it as a jest and without malice, would the Court render a judgment on the verdict? If judgment could be rendered on that verdict it would in reality adjudge the deft not upon his malice but the stupidity of his hearers.

W. K. McAllister
for Plff in error

Supreme Court

George H. Hasley

vs

Francis Brooks et al
Points for Plff in error

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W. K. M. Allister
& Brown & Runyon
for Plffs

Filed April 29, 1858

S. Lechard
Clerk