

8693

No. \_\_\_\_\_

# Supreme Court of Illinois

Alexander Norton

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vs.

George D. Gordon

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71641  7

Pleas held before the Honorable William  
A. Denning, Judge of the 3<sup>rd</sup> Judicial  
Circuit, and of the Alexander Circuit  
Court, at May Term AD 1852.

George S. Gordon

vs

Trespas on the Case

Alexander Norton

State of Illinois

Alexander County

George S. Gordon

vs

Alexander Norton

Trespas on the Case for Slander

Of the May Term of the  
Alexander County Circuit

in the year of our Lord  
one thousand eight

hundred and fifty two

George S. Gordon complains of  
Alexander Norton being in the Custody &c. of a plea  
of trespas on the case. For that whereas the said  
plaintiff is now a good, true, honest, just and  
faithful Citizen of this State and as such hath  
always behaved and conducted himself, and un-  
til the committing of the several grievances by  
the said defendant as hereinafter mentioned, was  
always reputed, esteemed and accepted, by and among  
all his neighbors and other good and worthy  
Citizens of this State, to whom he was in any wise  
known, to be a person of good name, fame and  
Credit, to wit, at the County of Alexander. And  
whereas, also the said plaintiff hath not even been  
guilty, or until the time of the committing of the said

Several grievances by the said defendant, <sup>as</sup> hereinafter  
mentioned, been suspected to have been guilty of  
perjury or swearing to a lie as hereafter stated to  
have been charged upon and imputed to the said  
plaintiff by the said defendant, or of any other  
such crime or act. By means of which said  
perjuries, the said plaintiff before the committing  
of the several grievances by the said defendant  
as hereafter mentioned, had deservedly obtained  
the good opinion and credit of all his neighbors  
and other good and worthy citizens of this state  
to whom he was in any wise known, to wit of  
the County aforesaid. Yet the said defendant,  
well knowing the perjuries, but greatly envy-  
ing the happy state and condition of the said  
plaintiff, and contriving and wickedly and  
maliciously intending to injure the said plain-  
tiff in his good name, fame and credit, and to  
bring him into public scandal, infamy and  
disgrace, with and amongst all his neighbors  
and other good and worthy citizens of this  
state, and to cause it to be suspected and believed  
by those neighbors and citizens that the said plain-  
tiff had been and was guilty of perjury and  
swearing to a lie, as hereafter stated to have been  
charged upon and imputed to him, and to sub-  
ject him to the pains and penalties by the laws  
of this state made and provided against and  
inflicted upon persons guilty thereof, and to

ver, honor, opprobri, impoverish and wholly ruin  
him. heretofore to wit, on the second day of Janu-  
ary in the year of our Lord one thousand eight  
hundred and fifty two at the County of said. in  
a certain discourse which the said defendant then  
and there had of and concerning the said plain-  
tiff in the presence and hearing of divers  
good and worthy Citizens of this State and  
then and there in the presence and hearing  
of the last mentioned Citizens, falsely and  
maliciously spoke and published of and  
concerning the said plaintiff the ~~the~~ false,  
scandalous, malicious and defamatory  
words following, that is to say "he (meaning the  
said plaintiff) swore to two damned lies" "he  
(meaning the said plaintiff) sworn falsely to  
two things" "he (meaning the said plaintiff)  
swore to two lies" "he (meaning the said plain-  
tiff) sworn to two damned falsehoods" "he  
(meaning the said plaintiff) <sup>swore</sup> to a damned lie"  
"he (meaning the said plaintiff) swore to a lie"

And afterwards, to wit on the day and year  
of said. at the County of said. in a certain  
other discourse which the said defendant  
then and there had in the presence and hear-  
ing of divers other good and worthy Citizens  
of this State the said defendant further con-  
tinuing and intending as of said then and there  
in the presence and hearing of the said last

mentioned Citizens, falsely and maliciously spoke  
and published of and concerning the said plain-  
tiff the false, scandalous, malicious and  
defamatory words following, that is to say-  
"he (meaning the said plaintiff) swam to two  
damned lies" he swam that I (meaning the said  
defendant) was not a Citizen of this State (Mean-  
ing Illinois) and that was a damned lie, he  
swam that I owed him money and that was  
a damned lie," "he (meaning the plaintiff) swam  
that I owed him money and that, was a damned  
lie." "he (meaning the plaintiff) swam that I was  
not a resident of this State and that was a  
damned lie" "he (meaning the said plaintiff)  
swam that I owed him money and that I was  
not a resident of this State and they were  
both lies" "he (meaning the plaintiff) swam  
that I was not a resident (meaning of this  
State), and that was a lie." "he (meaning the plain-  
tiff) swam that I owed him money and was  
not a resident of this State and it was a dan-  
ned lie" By means of the committing of which  
said several grievances by the said defendant as  
aforesaid, the said plaintiff hath been and is  
greatly injured in his good name, fame, and  
credit and brought into public scandal  
infamy and disgrace with and amongst all  
his neighbors and other good and worthy Cit-  
izens of this State, insomuch that divers of

his neighbors and citizens to whom the innocence and integrity of the plaintiff in the premises were unknown, have on account of the committing of the said grievances by the said defendant as aforesaid, from thence hitherto suspected and believed, and still do suspect and believe the said plaintiff to have been and to be a person guilty of having sworn falsely so as aforesaid charged upon and imputed to him by the said defendant, and have by reason of the committing the said grievances by the said defendant aforesaid from thence hitherto refused and still do refuse to have any transaction, acquaintance or discourse with the said plaintiff as they were before used and accustomed to have, and otherwise would have had, and also by means of the premises the said plaintiff hath been and is otherwise greatly injured and damaged to wit at the County aforesaid, to the damage of the said plaintiff of ten thousand dollars and therefore he brings his suit &c.

J. M. Rowling Attorney  
for the Plaintiff.

On Tuesday the second day of said Term the defendant by his Counsel filed the following plea to the declaration in this Cause -

Alexander Circuit Court, May  
Term AD 1852.

Alexander Norton  
vs  
George & Gordon

Juspost on the Case

And the said defendants  
by Ashton & Allen his attorneys comes and argues  
the wrong and injury when do. and says that he  
is not guilty of the said supposed grievances  
or either of them or any part thereof as in said  
plaintiffs declaration mentioned. and of this the  
said defendant puts himself upon the Country  
to who.

Ashton & Allen

Defts Attys -

To which plea is the  
following found in  
" And plea doth the like

Rowlings & Dougherty

for Plffs -

Afterwards on the same day the following order  
was entered of record in this Cause -

George & Gordon

vs

Alexander Norton

Juspost on the Case Stande

Now on this day came the  
plaintiff by Rowlings, Dougherty, Simons and  
Logan his attorneys, and the defendant and by  
Allen, Ashton, Parish & Gost, his Counsel.  
On motion of plaintiffs attorneys, Bailey &  
Honell, a witness for plaintiff called and

made default. Attachment ordered for him returnable instant - Su -

And afterwards, on Saturday the 6<sup>th</sup> day of said June the following order was entered of record to wit,

Now on this day Comes again the plaintiff and by thum attorneys, and the defendant and by his Counsel. Issues joined. let a Jury Come. Therefor Came a jury to wit, Ransom Johnson, Sphronius Delany, David Ruffes, Clinton Davis - Richard Palmer, Isaac Denton, Green B Bantston, John Clatts, Clark Jones - Reason Heater, Washington Short, and Richard Whitaker, Twelve good and lawful Men of the County of Alexandria aforesaid. Who being duly elected tried and sworn a true verdict to give in the premises upon the issues joined. Upon their oaths do say. We the jury find the defendant guilty and assess the plaintiffs damages at Two Thousand dollars -

It is therefor Considered by the Court that the plaintiff recover against the said defendant the said sum of Two Thousand dollars for his damages, also his Costs of Suit, to be taxed, and may have execution therefor -

Afterwards to wit on the same day, on Motion of defendants Counsel for a new trial which was overruled by the Court.



Afterwards to wit, on the same day,

The defendant by his Counsel, prayed an appeal to the Supreme Court which is granted in thirty days upon the defendant entering into bond in the sum of Two thousand five hundred dollars, with Nicholas St Bridgely of Springfield and Muslow Fletcher of Nassau County as his securities - It is further ordered that the bill of exceptions in this case be signed at the next term of the 'Pulaski' Circuit Court -

The following bill of exceptions were afterwards returned and filed in this office.

George D Gordon	}	May Term Alexander
vs		Circuit Court A D 1852
Alexander Norton		Subpoena on the case for slander.

Be it remembered that on the trial of the above cause the plaintiff first introduced as a witness on this behalf Robert Beard, who testified, that he was present on board the Wherryboat Sam Sole of Cairo Illinois about the last of January or first of February 1852, Captain Alexander Norton Commander of the Steamer Western World, had just arrived. Witness heard Norton say that defendant Gordon had sworn two damned lies.. he sworn that he Norton was

a nonresident and that was a damned lie, and  
he swore that he Norton was indebted to him  
Gordon and that was a damned lie. This was  
in the office on said whoriboat. There were  
a good many persons present Citizens of  
Cairo, and officers and passengers of the  
Western World. Norton's tone of voice was  
loud, he seemed <sup>to be</sup> in quite a angry. Witness  
did know of his own knowledge how  
much Norton was worth, had heard that  
he owned the steam boat Western World, which  
witness thinks was worth twenty thousand dol-  
lars, and the two whoriboats at Cairo, Sam-  
Sole, and Louisiana, worth between two and  
three thousand dollars; this he knows from  
common report. Defendants Counsel objected  
to witness stating what he had heard of defen-  
dants Norton's circumstances unless he knew  
the same of his own knowledge, which objection  
was by the Court overruled, and the above  
evidence permitted to go to the jury, to which  
defendants Counsel excepted. On cross ex-  
amination witness said the words used by defen-  
dant Norton in relation to plaintiff Gordon  
of which he had previously spoken were said  
about ten minutes after Norton's arrival at  
Cairo. Norton was speaking at the time of an  
attachment suit, just before that time  
commenced by plaintiff Gordon against

defendant Norton, by virtue of which defendants wharfboats had been attached.

Plaintiff next introduced as a witness on his behalf, Thomas J Wood, who testified that he was present on board the wharfboat Sam Dale at Cairo in January 1852 and heard defendant Norton say that if plaintiff Gordon had sworn out that attachment he had sworn a damned lie. Norton had just arrived and seemed to be in a great rage or passion. This the first time he Norton had been to Cairo after plaintiff Gordon had attached the wharfboats Sam Dale and Louisiana. Witness at the time had charge of said wharfboats as deputy Sheriff. Defendant Norton did not know that said boats had been attached until he arrived at the time last above stated. That he Norton seemed to be greatly surprised that plaintiff Gordon should have attached said wharfboats inasmuch as he Gordon had released them a few weeks previously. On cross examination defendants Counsel asked witness the following questions "What was the conduct of plaintiff Gordon in relation to releasing to defendant Norton the wharfboats of which you have been speaking" to which plaintiffs Counsel objected, which objection the Court sustained. The defendants Counsel excepted,

Witness stated that defendant Norton was in the Office on the Wharf boat Sam Sole. When the Conversation took place there were a good many persons present including some of the Officers and passengers of the Steamer Western World which was lying along side of the Wharf boat Sam Sole. Witness never heard defendant Norton accuse plaintiff Gordon of swearing a lie except at the time before alluded to. On Examination by plaintiff witness stated that he had heard that def<sup>t</sup> Norton owned the Steamboat Western World, and Commanded her and exercised acts of ownership over her which Witness thinks worth \$150,000 or 200,000 def<sup>t</sup>'s Counsel excepted to witness stating any thing about def<sup>t</sup> Norton's property unless he witness knew it of his own knowledge.

Plaintiff next introduced Bailey S. Hamell, who testified that he was present on board the Wharf boat Sam Sole at Cairo Illinois at the time alluded to by the other witnesses. Witness heard def<sup>t</sup> Norton say that pl<sup>ff</sup> Gordon had sworn to two damned lies. One was <sup>that</sup> Gordon had sworn that he <sup>def<sup>t</sup></sup> was not a resident of this State and that was a damned lie, and the other was that he Gordon had sworn that he Norton owed him and that was a damned lie. Witness has understood that

deft Norton is the sole owner of the Steamer Western World, and of the Whorfbots Sam Dale and Louisiana. Witness does not ~~know~~ pretend to be a judge of the value of Steam boats, but supposes the Steamer Western World to be worth something like \$20,000. Witness thinks the whorfbots Sam Dale and Louisiana worth some \$2,500. deft<sup>r</sup> Counsel Excepted, to the ruling of the Court in allowing witness to testify in relation to the property of deft Norton from what he witness had heard. On cross examination witness said that deft Norton appeared to be considerably irritated at the time that he made use of the words in relation to plff Gordon, he was talking in a loud tone of voice apparently excited, he was at the time speaking of an attachment suit commenced by plff Gordon and of the levy of said attachment on the whorfbots Sam Dale and Louisiana. Witness has heard plff Gordon say that a Mr White of Madison Indiana holds a note on deft Norton for \$6,000, and that it had been protested, This statement by plff Gordon was made to witness since the commencement of the attachment suit,

Plaintiff next introduced as a witness Francis M. Howlings, who testified

That he was not on the wharf boat, Sam  
Dole when the Steamer Western World ar-  
rived, at the time spoken of by the other  
witnesses, ~~however~~ witness however went  
down, and found a large crowd of  
Citizens and Officers and passengers of  
the Steamer Western World, and he witness  
thought another Steam boat was laying at  
the Wharf, went on board the Wharfboat  
Sam Dole, on going aboard the Wharf  
boat witness heard some loud talking in  
the office, which is cut off from the main  
storeroom of the Wharfboat by a partition  
with a large window next to the storeroom  
in the partition, at first witness did not  
go sufficiently near to the office when the  
talking was going on to hear what was  
said, but being requested by some of his  
friends he approached near to the office  
and heard deft Norton say that plff  
Gordon had sworn two damned lies, One  
that he Norton owed him Gordon and that  
was a damned lie, and the other that he  
Norton was a nonresident, and that was a  
damned lie, Deft Norton was speaking  
in relation to an attachment suit before  
that time commenced by plff Gordon against  
deft Norton, by virtue of which, witness un-  
derstood the Wharfboats Sam Dole and Louisiana

had been attached.

On cross examination witness said that Deft Norton seemed not to be in a passion but rather to be offended at the time. Witness cannot say how much he was excited as witness takes Deft Norton to be rather a singular genius. Sometimes he raves and storms and in a minute will be laughing. Witness can only say that Deft seemed at the time, offended because plff Gordon had attached the Wharf boats. On examination by plaintiff, witness stated that he had understood from Deft Norton that Deft owned the Steamboat Western World, and the Wharf boats Sam Sole and Louisiana Defts Counsel ~~objected~~ excepted to the ruling of the Court in allowing witness to state any thing in relation to Defts Nortons property, unless witness knew it of his own knowledge. The plaintiffs Counsel then closed their Cause. Whereupon the Defts Counsel, first read in evidence to the jury the following depositions, to wit,

Alexander Norton	}	Alexander Everett	Court
ats	}	At 1852	May Term
George D Gordon	}	Respondent	on the Case

Caused. May 5<sup>th</sup> 1852

*George D Gordon*

Mr George & Gordon or  
J M Howlings Attorney

You will take notice  
That I shall apply to the clerk of the Alex-  
ander Circuit Court on the fifth day of  
May 1852, for a decessus potestatum or  
Commission under the seal of said Court  
directed to James B S Hays a justice  
of the peace in and for the County of Mis-  
sissippi and State of Missouri for the purpose  
of taking the depositions of Thomas Rodney  
Michael S Taylor, Fairpoint W Knowles,  
Frank B Knowles, Wotter B Falls and others  
to be used as evidence on the trial of  
the above entitled suit now pending  
in the said Court wherein <sup>I am</sup> defendant  
and you are plaintiff

Yours &c

Alexander Norton

By Samuel Ashton atty

### Interrogatories

1<sup>st</sup>. What is your name, business, and where  
do you reside.

2<sup>nd</sup> Are you acquainted with the plaintiff  
George & Gordon. If so state how long you  
have known him.

3<sup>rd</sup> Are you acquainted with the general  
character of the plaintiff George & Gordon  
if so state what that general character



is. whether good or bad.

G S Gordon }  
vs } Alexander Circuit Court  
Alexander Norton }

Cross interrogatories to be answered by the witnesses in the notes on the other side of this sheet of the said defendant -

1<sup>st</sup> What enables you to state you are acquainted with said Gordon's general character. Is it from what you have heard his neighbors say of him or is it from certain circumstances or particular instances that you speak or answer -

2<sup>nd</sup> Do you answer from your own opinion, or from said Gordon's general character.

State of Illinois }  
County of Alexander }

The people of the State of Illinois. Do James B S Hayes a Justice of the peace in and for the County of Mississippi and State of Missouri. Truly

Know ye that we <sup>in</sup> confidence of your prudence and fidelity have appointed you and by these presents do give unto you full ~~power~~

unto you full power and authority and  
do hereby authorize and require you that  
at a certain time and place to be designa-  
ted and appointed by you for that pur-  
pose. You do cause the witnesses whose  
names are mentioned in the Caption of the  
enclosed interrogatories as well on the  
part of the said Alexander Norton defen-  
dant as on the part of George & Gordon  
plffs to come before you and then and  
then diligently and faithfully examine  
each of them apart upon the said inter-  
rogatories, on their respective Corporal  
oaths, first taken before you, both on  
the part of the said defendant and plain-  
tiff and now others, and that you do  
take such this examination and cause  
the said interrogatories as they are propoun-  
ded together with the answers of the said  
witnesses thence to be reduced to writing  
in the order in which they shall be  
propounded and answered, and when  
you shall have so taken them you shall  
cause the said witnesses to sign their names  
to the same in their proper places in your  
presence, and then upon you will annex  
at the foot thereof a Certificate subscribed  
by yourself in which you must state that  
they were sworn to and signed by the

deponents and the time and place when and where the same were taken, after which you are to send the said depositions together with this Commission and the enclosed interrogatories carefully enclosed and sealed up to the Clerk of the Circuit Court in and for the County of Alexander and State of Illinois with the names of the said parties litigant endorsed thereon. And this you shall in no wise omit.

Witness Levi Lightner Clerk of our said Circuit Court and the seal thereof affixed at Yeber this 5<sup>th</sup> day of May AD 1832

L. S. Lightner Clerk

Alexander Norton } May Term 1832  
 vs } of the Alexander Cir-  
 George & Gordon } cut Court

Suspos on the case

It is hereby stipulated and agreed by and between the attorneys in the above entitled ~~case~~ suit to waive all objections to the annexed depositions  
 Yeber, May 5<sup>th</sup> 1832

Samuel Ashby  
 H. M. Rowlings

Depositions of Thomas Rodney, Watter W Bryant  
Allen B Howell, Andrew Woodruff, Harpoint  
W Knowles, Elijah Merr, and Andrew J Woodruff  
of Mississippi County in the State of Missouri  
taken before James B. S. Hoyer, a Justice  
of the peace in and for said County in the  
State aforesaid at Ohio City in said County  
on the 13<sup>th</sup> day of May over the annexed di-  
rect and Cross interrogatories, by virtue  
of a Commission issued by the Clerk of  
the Alexander Circuit Court in the State  
of Illinois, to be read as evidence on  
the part of the defendant on a trial now  
pending before the Alexander Circuit  
Court and State aforesaid in which  
George D Gordon is plaintiff and Alexan-  
der Norton is defendant.

<sup>of said</sup>  
The Harpoint W Knowles, Thomas  
Rodney, Watter W Bryant, Allen B Howell  
Andrew Woodruff, Elijah Merr, and  
Andrew J Woodruff, being produced  
sworn and Examined upon the inter-  
rogatories on the part of the defendant  
depose and say as follows -

- 1<sup>st</sup> To the first Interrogatory this deponent  
says, My name is Watter W Bryant, I am  
a farmer, and reside in Mississippi  
County Missouri.
- 2<sup>nd</sup> This deponent says I am acquainted,

with the plaintiff George & Gordon  
and have known him about six  
years.

3<sup>rd</sup> This deponent says I am acquainted  
with the general character of plaintiff  
George & Gordon, and from my knowl-  
edge of his general character, it is bad.

(Signed) Walter W Bryant

1<sup>st</sup> To the first interrogatory, this deponent  
says, My name is Allen B Harvell am  
a tradesman, and reside in Mississippi  
County Missouri.

2<sup>nd</sup> This deponent says I am acquainted  
with the plaintiff, George & Gordon and  
have known him about eight years.

3<sup>rd</sup> This deponent says I am acquainted  
with the general character of the plaintiff  
George & Gordon and from my knowledge  
of his general character it is bad.

(Signed) Allen B. Harvell

1<sup>st</sup> To the first interrogatory this deponent  
says My name is Andrew Woodruff, am  
a tradesman and reside in Mississippi  
County Missouri.

2<sup>nd</sup>. This deponent says I am acquainted  
with the plaintiff, George & Gordon and  
have known him about six years.

3<sup>rd</sup> This deponent says I am acquainted with the general Character of the plaintiff George D Gordon, and from my Knowledge of his general Character it is bad -

(Signed) A. Woodruff

1<sup>st</sup> To the first interrogatory this deponent says my name is Thomas Rodney, and a former reside in Mississippi County Missouri -

2<sup>nd</sup> This deponent says I am acquainted with the plaintiff George D Gordon and have known him about five years.

3<sup>rd</sup> This deponent says I am acquainted with the general Character of the plaintiff George D Gordon, and from my Knowledge of his general Character it is bad -

(Signed) Tho<sup>s</sup> Rodney

1<sup>st</sup> To the first interrogatory this deponent says my name is Elijah Herr and am a tradesman and reside in Mississippi County Missouri

2<sup>nd</sup> This deponent says I am acquainted with the plaintiff George D Gordon and have known him about four years -

3<sup>rd</sup> This deponent says I am acquainted with the general character of the plaintiff George D Gordon, and from my knowledge of his general character it is bad,  
(Signed) Elijah Herr

1<sup>st</sup> To the first interrogatory this deponent says my name is Andrew J Woodruff and a farmer and reside in Mississippi County Missouri

2<sup>nd</sup> This deponent says I am acquainted with plaintiff George D Gordon and have known him about eight years.

3<sup>rd</sup> This deponent says I am acquainted with the general character of the plaintiff George D Gordon and from my knowledge of his general character, it is bad.  
(Signed) Andrew J Woodruff

1<sup>st</sup> To the first interrogatory this deponent says my name is Hanpout W Knowles, am a farmer and reside in Mississippi County Missouri.

2<sup>nd</sup> This deponent says I am acquainted with the plaintiff George D Gordon and have known him about seven years -

3<sup>rd</sup> This deponent says I am acquainted with the general character of the plaintiff

George D Gordon and from my knowledge  
of his general character, it is bad.

(Signed) J W Knowles

The said Fairbank W Knowles, Thomas Rodney  
Walter W Bryant, Allen B Harvell, Andrew  
Woodruff, Elijah Merr, and Andrew J Wood-  
ruff being examined and sworn upon  
this cross interrogatory on the part of  
said plaintiff depose and say as follows.

1<sup>st</sup> To the first cross interrogatory this  
deponent says I speak of said Gordon's  
general character, from what he has  
heard of him through his neighbors  
and circumstances of my own know-  
ledge of his general character,

2<sup>nd</sup>. This deponent says I answer from  
my knowledge of the general character of  
the plaintiff George D Gordon

(Signed) Walter W Bryant

1<sup>st</sup> To the first cross interrogatory this  
deponent says I speak of said George D Gordon's  
general character from what I have heard  
of him through his neighborhood and the  
general estimation of his neighbors and  
not from any circumstances or  
instances

2<sup>nd</sup> This deponent says I answer from

my knowledge of the plaintiff's general  
Character (Signed) Allen B Harvell.



1<sup>st</sup> To the first cross interrogatory this deponent says I speak of said George D Gordon's general Character from what I have heard of him through his neighbors and circumstances of my own knowledge of his general Character

2<sup>nd</sup> This deponent says I answer from my knowledge of the general Character of the plaintiff, George D Gordon.

(Signed) A. Woodruff

1<sup>st</sup> To the first cross interrogatory this deponent says I speak of said Gordon's general Character from what I have heard of him through his neighbors and from my knowledge of his general Character among his neighbors

2<sup>nd</sup> This deponent says I answer from my knowledge of the general Character of plaintiff George D Gordon

(Signed) Thos Rodney

1<sup>st</sup> To the first cross interrogatory this deponent says I speak of said Gordon's general Character, from what I have heard of him through his neighbors and from my knowledge of his general Character among his neighbors -

2<sup>nd</sup> This deponent says I answer from my knowledge of the general Character of the plaintiff George D Gordon among his neighbors  
Elijoh Wren

1<sup>st</sup> To the first cross interrogatory this deponent says I speak of said George D Gordon's general character, from what I have heard of him through his neighbors and from my knowledge of his general character among his neighbors.

2<sup>nd</sup> This deponent says I ~~spoke~~ answer from my knowledge of the general character of the plff Gordon among his neighbors (Signed) Andrew J Woodruff

1<sup>st</sup>

To the first cross interrogatory this deponent says I speak of said Gordon's general character from what I have heard of him through his neighbors and from my knowledge of his general character among his neighbors.

2<sup>nd</sup> This deponent says I answer from my knowledge of the general character of the plaintiff George D Gordon among his neighbors (Signed) J H Knowles

State of Mississippi  
Mississippi County

I James B. Hayer a Justice of the peace and for the County of Mississippi and State of Mississippi, do hereby certify the foregoing depositions on the direct and cross interrogatories of Juror

Knowles, Wotton W Bryant, Thomas Rodney  
Allen B Horrell, Andrew Woodruff, Elijah  
Warr, and Andrew J Woodruff were taken  
by me at the time and place for taking  
the same, that the said witnesses were just  
duly sworn by me and that the same was  
carefully read to said witnesses and signed by  
them &c.

Witness my hand and seal as the said  
Justice this 13<sup>th</sup> day of May AD 1853  
James B S Hoyer J P (Seal)

Alexander Norton of Alexander Circuit Court  
etc } May Term 1852  
George S Gordon } Trespas on the case

Caused, May 5<sup>th</sup> 1852

Mr George S Gordon or  
J M Nowlings, Attorneys

You will take notice that  
I shall apply to the Clerk of the Alexander Circuit  
Court on the fifth day of May 1852  
for a *dedimus potestatem* or Commission  
under the seal of said Court, directed to  
Richard S Blumhageff a Commissioner  
of deeds &c in and for the City of St Louis &  
State of Missouri for the purpose of taking  
the depositions of Noah Ridgely Jr, William  
Penning, John W Morris, Henry Leonard, & A

Roberts Robins, John Harbison, Coonrod  
Mosh, Capt of Jackson, William Patrick  
James Patrick, and others to be used as  
evidence on the trial of the above entitled  
suit now pending in said Court wherein I  
am defendant and you are plaintiff

Yours &c

Alexander Norton

By Samuel Ashton Atty.

Interrogatories,

1<sup>st</sup> What is your name, business, and where  
do you reside,

2<sup>nd</sup> Are you acquainted with the plaintiff George  
& Gordon, if so state how long you have known  
him

3<sup>rd</sup> Are you acquainted with the general char-  
acter of the plaintiff George & Gordon, if so  
state what that general character is whether  
good or bad,

Geo Gordon }  
          us        } Alexander Circuit Court,  
Alex Norton }  
                  }

Cross interrogatories to be  
answered by the witnesses in the notes on the  
other side of this sheet of the said defendant

Jury, 1<sup>st</sup> What enables you to ~~state~~ state you are ac-  
quainted with said Gordon's general character  
is it from what you have heard his neighbors

say of him. or is it not from certain circum-  
stances or particular instances that you speak  
July 2<sup>nd</sup>

Do you speak or answer from your own  
opinion or from said Gordon's general  
character,

Alexander Norton

vs

George D Gordon

Alexander Circuit Court  
May Term 1832

Trusts on the case

It is hereby stipulated and agreed by and  
between the attorneys in the above entitled  
suit to waive all objections to the annexed  
depositions.

This 5<sup>th</sup> May 1832, Samuel Ashlow

J. M. Rowlings.

State of Illinois

Alexander County

To the People of the State of Illinois,  
To Richard S. Blannerhasset

Commissioner appointed in and for the County  
of St Louis and State of Missouri, Genting,

Know ye, that we in conformance of your  
prudence and fidelity have appointed you  
and by these presents do give unto you  
full power and authority, and do hereby  
authorize and require you that at a certain  
time and place to be designated and appointed  
by you for that purpose you do cause the

1120

Witnesses whose names are mentioned in the  
Captions of the enclosed interrogatories as well  
on the part of the said Alexander Norton de-  
fendant, as on the part of George & Gordon  
plaintiffs, to come before you and then and  
then diligently and faithfully examine  
each of them apart upon the said interrogatories  
on their respective Corporal Oaths first  
taken before you, both on the part of the  
said defendant and plaintiff and none  
others, and that you do take such their Exam-  
ination and cause the said interrogatories  
as they are propounded together with the ans-  
wers of the said witnesses to be reduced  
to writing in the order in which be proposed  
and answered, and when you shall have  
so taken them you shall cause the said wit-  
nesses to sign their names to the same in their  
proper places in your presence, and thereupon  
you will annex at the foot thereof a Certifi-  
cate subscribed by yourself, in which you  
must state that they were sworn to and signed  
by the deponents, and the time and place  
when and where the same were taken. After which  
you are to seal said depositions together with  
this Commission and the enclosed interroga-  
tories carefully enclosed and sealed up to the  
Clerk of the Circuit Court in and for the  
County of Alexander and State of Illinois with

the names of the said parties litigant endorsed  
thereon. And this you shall in no wise  
omit. Witness Levi L. Lightner Clerk of our  
said Circuit Court and the seal  
thereof affixed at St. Louis this 5<sup>th</sup> day  
of May AD 1852.

L. L. Lightner Clerk

Alexander Norton

vs  
Alexander Circuit Court  
George D. Gordon May Term 1852

Depositions of Witnesses pro-  
duced sworn and examined by me in the  
above cause in accordance with the di-  
rections contained in deimus or Commission  
issuing from said Court to me.

Noah Ridgely Jr. being first duly  
sworn deposes as follows.

1<sup>st</sup> Interrogatory. What is your name, busi-  
ness, and where do you reside,

Answer. My name is Noah Ridgely Jr.  
My business is that of Clerk on the River  
and I reside in the City of St. Louis, and have  
resided thus for the last 27 years -

2<sup>nd</sup> Interrogatory.

Are you acquainted with the plaintiff  
George D. Gordon if so, state how long you have  
known him -

Answer. I am acquainted with the plaintiff

Gorden and have been acquainted with him about ten years.

3<sup>rd</sup> Interrogatory. Are you acquainted with the general Character of the plaintiff George D Gordon, if so, state what that general Character is whether good or bad.

Answer. I am acquainted with the general Character of plaintiff George D Gordon, as a gentleman and a man, he is a good fellow, but his general Character as a business man is bad, he will hide and cheat,

#### Cross interrogatories

1<sup>st</sup> What enables you to state that you are acquainted with said Gordon's general Character. Is it from what you have heard his neighbors say of him, or is it not from certain circumstances or particular instances that you speak of.

Answer. Because I have been acquainted with him in business transactions for a number of years, I speak of his Character both from what is generally said of by those who know him and also from my own knowledge of dealings with him, he is spoken of as a dishonest man.

2<sup>nd</sup> Cross Interrogatory.

Do you speak or answer from your own opinion or from said Gordon's general Character -



Answer: His general character is bad and  
my own opinion is that it is bad. I  
therefore answer from both his general  
character and my own opinion.

(Signed) Noah Bridgely Jr  
I certify that the above named  
Noah Bridgely Jr subscribed his name  
in my presence to the foregoing depo-  
sitions, having been first duly sworn  
by me at my office on Chestnut Street  
between 3<sup>rd</sup> & 4<sup>th</sup> Streets in the City of St Louis  
on the 11<sup>th</sup> day of May 1852 at 10 o'clock  
A.M. (Signed) Richard Blumhofer  
Commissioner

Conrad Most a witness produced and  
first duly sworn and then examined before  
and by me on the following part of the  
defendant.

1<sup>st</sup> Interrogatory - What is your name  
business, and where do you reside.

Answer - My name is Conrad Most, I  
keep a Meat Cellar on Commercial Alley  
in City of St Louis, and reside in said City.

2<sup>nd</sup> Interrogatory. Are you acquainted  
with the plaintiff George D Gordon if so state  
how long you have known him?

Answer: I am acquainted with the  
plaintiff George D Gordon I have known him

about four years,

3<sup>rd</sup> Interrogatory: Are you acquainted with the general character of the plaintiff George D. Gordon, if so state what that general character is, whether it is good or bad.

Answer, I have heard his character frequently spoken of by stewards of steam boats they say he requires watching so as to make him do what is right that is all I know of his general character?

1<sup>st</sup> Cross Interrogatory,

What enables you to state you are acquainted with said Gordon's general character is it from what you have heard his neighbors say of him or is it not from certain circumstances or particular ~~instances~~ instances that you speak of?

Answer, Because I have heard steam boat stewards talk of him. It is from this alone that I have any thing to say about his character.

2<sup>nd</sup> Cross Interrogatory,

Do you speak or answer from your own opinion or from said Gordon's general character?

Answer, I answer, as I before stated from what I have heard people say of him I also give it as my opinion that his character is not first rate.

(Signed) Conrad Most

I certify that the foregoing deposition was sworn to and subscribed by the witness Conrad Frost in my presence at my office on Chestnut Street between 3<sup>rd</sup> & 4<sup>th</sup> streets in the City of St Louis on the 12<sup>th</sup> day of May 1832, at the hour of two o'clock P<sup>m</sup> less ten minutes. (Signed)

Richard S Blount Esq  
Commissioner

Deposition of John W Morris produced  
just sworn and then examined on the  
part of the defendant.

John W Morris. 1<sup>st</sup> Interrogatory,

What is your name business, & where  
do you reside?

Answer. My name is John W Morris  
I am engaged in the Telegraph Office  
and reside in the City of St Louis -

2<sup>nd</sup> Interrogatory,

Are you acquainted with the plaintiff  
George S Gordon, if so state how long  
you have known him?

Answer. I am acquainted with George  
S Gordon and have known him some  
four years.

3<sup>rd</sup> Interrogatory,

Are you acquainted with the general  
character of the plaintiff George S Gordon  
if so state what that general character  
is whether good or bad?

is whether good or bad.

Answer, I have known him at Cape  
Guardian and was acquainted with his  
general Character then. he was reputed  
then to be a man of bad Character -  
1<sup>st</sup> Cross Interrogatory.

What enables you to ~~state~~ state you are  
acquainted with said Gordon's general  
Character? Is it from what you have  
heard his neighbors say of him or is it  
not from certain circumstances or par-  
ticular instances that you speak?

Answer, I speak of his general char-  
acter as derived from the statements  
of those who speak of him.

2<sup>nd</sup> Cross Interrogatory

Do you speak or answer from your own  
opinion or from said Gordon's general  
Character?

Answer, I speak alone of his general char-  
acter, and not from any opinion of my own.

(Signed) J. W. Morris

I Certify that the foregoing deposition was  
sworn to and subscribed by the witness John  
W. Morris in my presence at my office on  
Chestnut Street between 3<sup>rd</sup> & 4<sup>th</sup> Streets in the  
City of St. Louis on the 14<sup>th</sup> day of May 1852 at  
the hour of 12 o'clock noon.

(Signed) Richard S. Blinn  
Commissioner

deposition of Henry Leonard a witness produced  
first sworn and then Examined on the part  
of the defence.

Henry Leonard being first duly sworn says to  
1<sup>st</sup> Interrogatory. What is your name busi-  
ness, and where do you reside

Answer, My name is Henry Leonard My busi-  
ness is that of dealing in ice to steam boats. I  
reside in the City of St Louis.

2<sup>nd</sup> Interrogatory.

Are you acquainted with the plaintiff  
George D Gordon, if so state how long you have  
known him.

Answer, I am acquainted with the plaintiff  
George D Gordon. I have known him between  
four and five years.

3<sup>rd</sup> Interrogatory, Are you acquaint-  
ed with the general Character of the plaintiff  
George D Gordon, if so state what that general  
Character is whether good or bad.

Answer, I know his general character,  
It is not generally good, as regards  
business transactions, In a business point  
of view it is bad, I would not be willing  
to take his word for anything.

1<sup>st</sup> Cross Interrogatory,

What enables you to state you are ac-  
quainted with said Gordon's general char-  
acter. Is it from what you have heard

110 11  
his neighbors say of him. or is it not from  
certain circumstances in particular in-  
stances that you speak?

Answer, I speak of his general character  
from enquiries that I made about him  
and what was said of him by those who  
knew him, also from certain dealings  
which I have had with him.

2<sup>nd</sup> Cross Interrogatory,  
do you speak or answer from your  
own opinion or from said Gordon's gen-  
eral character.

Answer, I say his general character is  
bad, from the reputation which he has am-  
ong those who know him and from that  
and my dealings with him my opinion is  
that it is bad.

(Signed) Henry Leonard

I certify that the foregoing deposition was  
sworn to and subscribed by the witness Henry  
Leonard in my presence at my office on Ches-  
nut Street between 3<sup>rd</sup> & 4<sup>th</sup> Streets in the City  
of St Louis on the 14<sup>th</sup> day of May 1852 about  
the hour of 3 o'clock P. M. of that day.

(Signed) Richard S Blumhospitt

Commissioner

William T Norton, first sworn and then examined  
on the part of the defendant says:

1<sup>st</sup> Interrogatory, What is your name

business, and when do you reside?

Answer, My name is William T. Norton.

My business is that of a Steam boat man  
I am now however out of business, I  
reside in Steubenville Ohio.

2<sup>nd</sup> Interrogatory,

Are you acquainted with the plaintiff  
George D. Gordon, if so state how long you  
have known him,

Answer, I am acquainted with George  
D. Gordon, I have known him three years,

3<sup>rd</sup> Interrogatory

Are you acquainted with the general  
character of the plaintiff George D. Gordon  
if so state what that general character  
is whether good or bad?

Answer, I am acquainted with the  
general character of the plaintiff  
George D. Gordon, his general character  
is bad.

1<sup>st</sup> Cross Interrogatory,

What enables you to state you are acquaint-  
ed with said Gordon's general character?  
is it from what you have heard his  
neighbors say of him or is it not from  
certain circumstances or particular in-  
stances that you speak -

Answer, I am enabled to speak of his  
general character from being in

business with him. I speak of his character both from what I have heard those who know him say of him and from facts within my own knowledge.

2<sup>nd</sup> Cross Interrogatory.

Do you speak or answer from your own opinion or from said Gordon's general character answer, I speak and answer both from my own opinion and from his general character and reputation,

(Signed) William T. Norton,

I certify that the foregoing depositions was sworn to and subscribed by the witness William T. Norton, in my presence at my office on Chestnut Street between 3<sup>rd</sup> & 4<sup>th</sup> Streets in the City of St. Louis on the 17<sup>th</sup> day of May 1832 about the hour of 10 o'clock A. M.

(Signed) Richard S. Blanninbasset  
Commissioner

I certify that each of the foregoing depositions were taken by me at the time and place when and wherein my Certificate to each deposition they purport to have been taken, that each witness was first by me duly sworn and that neither the parties plaintiff or defendant or either of their Attornies were permitted to interfere with the taking said depositions, but that the interrogatories accompanying the depositions were put and answered as directed by



said de demurs, and in obedience to the directions  
of said de demurs

I herewith transmit said writ, interrogatories  
and depositions as therein commanded to the  
Court from whence said writ issued, In  
witness whereof I herewith subscribe my  
name, this 22<sup>nd</sup> day of May 1852, at the  
City of St Louis, (Signed)

Richard S Blanchelette  
Commissioner.

In p 10. 00

Defendant then introduced as a witness Henry  
Simmons, who testified that he was acquainted  
with plaintiff Gordon, was acquainted  
with his general character, has known him  
for five years. Witness lives in Cairo Ills  
the same place where plaintiff Gordon  
lives. Witness would say that plaintiff  
Gordon's general character is bad.

Isaac Lynch was next introduced  
by defendant as a witness who testified that he  
lived in Cairo Ills, the same place where  
plaintiff Gordon resides. Witness is acqu-  
ainted with plaintiff Gordon has known him  
for ten or twelve years, is acquainted  
with his general character in the neighbor-  
hood where he (Gordon) resides. Witness would  
say that plaintiff Gordon's general character  
in the neighborhood where he resides, is bad.

On Cross Examination witness stated that during the time he had known p[er]ff Gordon, he witness had resided a portion of the time in Missouri opposite Cairo, a portion of the time twelve miles back of Cairo, and witness had lived for the last seven or eight months in Cairo - Deft Norton next introduced as a witness Winfield S. Chopman, witness testified that he lived in Cairo Ill. is acquainted with p[er]ff plaintiff Gordon, and has known him for three years, had done business for him, is acquainted with plaintiff Gordon's general character in the neighborhood in which he lives, his general character is bad.

Deft Thur introduced as a witness S. Statts Taylor, who testified that he lived at Cairo Ill. had known p[er]ff Gordon for about nine months. Witness cannot say that he has ever heard a majority of p[er]ff Gordon's neighbors speak of him at all, has heard some speak well of him and others speak badly of him.

Patriek Morgan was next introduced by deft as a witness who testified that he resided in Cairo Ill. the same town where p[er]ff Gordon lives. witness has been acquainted with plaintiff Gordon and has known him for five years, is acquainted with his general character in the neighborhood in which he lives, his general character

is bad. An cross Examination witness stated that his feelings for plaintiff Gordon were good enough. Witness ~~once~~ had a falling out with plff, but that has long since been made up. Witness ~~has thought~~ don't think he has cursed plaintiff Gordon during this session of Court to John Hodges. Witness thinks he has heard a majority of Gordons neighbors speak badly of him.

Next introduced as a witness John Abercrombie. Witness testified that he was acquainted with plff Gordon, had known him for sixteen ~~years~~ or eighteen years is acquainted with plffs Gordons. general character, it is bad.

Next introduced as a witness Missions Hitches, who testified that he was Pilot on the Steamer Western World, when she landed at Cairn, along side of the Wharf boat Sam Dale, at the time spoken of by the other witnesses. Witness was present and heard Capt Norton say that plff Gordon had sworn two damned lies. Witness thinks Norton was excited at the time but cannot say whether it was because Plff Gordon had attached the Wharfboots or the consequence of drinking too much liquor by Capt Norton. - Capt Norton some-

times gets as witness would say "pretty high" Deft next introduced Bryan Showmeyer, who stated that he is acquainted with plff Gordon and has known him for ten or twelve years - Gordon is a good hearted benevolent man and is so spoken of by his neighbors, but is regarded as rather a ~~bad~~ <sup>hard</sup> customer in business transactions. Witness lives in the same town with Gordon and has for several years. Gordon has his friends and his enemies - witness could not say that Gordons general character in the neighborhood where he lives is either good or bad. Defts Counsel here closed their case.

When upon Plaintiffs Counsel introduced for the purpose of rebutting the testimony, introduced <sup>by defts counsel</sup> Young Garner, who testified that he was acquainted with Plff Gordon had known him for fifteen or sixteen years, was acquainted with his general character. Witness thinks it good.

On cross examination witness stated that he at present resided some twenty five miles from Cairo Ill. the residence of of Plaintiff Gordon. Witness cannot say what plaintiff Gordons character now is in his immediate neighborhood Cairo, though witness at one time several years ago lived in two

miles of plff Gordon, his character was  
then good, witness has heard nothing to  
change his opinion since.

Plff next introduced as a witness  
John Hodges who testified that he was ac-  
quainted with plff Gordon, had known him  
for something like twenty years, is ac-  
quainted with his general character witness  
says it is good, witness heard Patriek Morgan  
during the present term of this Court cur-  
suing plaintiff Gordon. On cross  
Examination witness stated that he resides  
at present in Thebes a distance of forty  
miles by the river and twenty five miles  
by land from Cairo, the residence of  
plaintiff Gordon, witness cannot say  
that he is at present acquainted with  
general character of plff Gordon in the  
immediate neighborhood in which he  
resides - witness supposes that Gordon  
has his enemies like other men -

Plaintiff Counsel next introduced as  
a witness James L. Brown, who testified that he  
was acquainted with plff Gordon, has known  
him for sixteen or eighteen years was ac-  
quainted with his general character, wit-  
ness says it is good, cannot say certainly  
that he has ever heard a majority of Gordon's  
neighbors speak of him either way, but thinks

he had heard more speak well of him than badly of him. An Cross examination witness stated that he resides at present in Thebes some forty miles by water and some twenty five miles by land from Cairo Mr. Whinniff resides - Witness cannot say that he is acquainted with J. J. Gordon general Char- acts in the immediate neighborhood in which he resides. Witness has heard some complain of Gordon in his business trans- actions, but witness supposed that Gordon like other men had his enemies -

Plaintiff's Counsel next introduced as a witness Matthew M. McCallum, who testified that he was acquainted with J. J. Gordon had known him for some sixteen years. When witness first knew Gordon he was sel- ling goods at Sowers near the Union County line and up in the bottom a few miles from witness. Witness then lived some ten or twelve miles from where Gordon was doing busi- ness at Sowers. Witness says at that time plaintiff's Character was good. Since J. J. quit doing business there which has been some years. Witness has not been so well acquainted with him, but has seen him occasionally in the neighborhood where witness resides. So far as witness knows himself, Gordons Character has undergone

no change. Witness of his own knowledge knows nothing against him.

On cross examination witness stated that he resides some thirty miles from Cairns the residence of plaintiff Gordon. Witness does not pretend to state what Gordon's character is in his immediate neighborhood - witness has heard some complaining of Gordon in his business transactions and has heard many speak well of him. Witness cannot say whether he has heard more men speak well than badly of Gordon, has heard talk both ways, but so far as witness's own knowledge is concerned he can say nothing against Gordon.

Plaintiff's atty next introduced as a witness Silas Dexter, who testified that he was acquainted with plaintiff Gordon & had known him for some fifteen years. Witness says he is acquainted with plaintiff Gordon's general character - witness says it is pretty good, has heard some complaint against Gordon not paying his debts, witness thinks Gordon failed some years ago, and supposes that that caused the complaint against him.

On cross examination witness stated that he resides some sixteen miles from Cairns Gordon's residence, witness cannot

say that he is acquainted with Gordon's  
general character in the neighborhood in  
which he now resides has heard some  
persons speak hard of Gordon's business  
transactions. Witness supposes that Gordon  
# like other men has some enemies -

Plaintiff's Counsel next introduced as a  
witness Hugh Craig, who testified that he  
was acquainted with Gordon and had  
known him for ten or twelve years -  
Witness resides in Unity Mo. some fifteen  
miles from Cairo, Gordon's residence - Wit-  
ness says he is acquainted with the general  
character of plaintiff Gordon - Witness would  
say it is good - On cross examination  
witness stated that he was occasionally down  
at Cairo has heard some speak well of  
Gordon and others speak badly of him -  
Witness is of opinion that he has heard more  
of Gordon's neighbors at Cairo speak well  
of him than badly of him -

Plaintiff's Counsel next introduced as  
a witness A. H. Overby, who testified that he  
was acquainted with plaintiff Gordon,  
had known him for ten or twelve years  
and is acquainted with his general character  
Witness cannot say that he has ever heard  
a majority of the people speak of Gordon  
at all - has heard some speak well of him



and others against him. So far as witness  
knows, his character he believes is good.  
Witness has heard some complaint  
against Gordon's business transactions,  
but witness supposed it was because  
Gordon had failed.

On cross examination witness stated  
that he resides in Yebes, a distance of some  
forty miles by the river and twenty five  
by land from Cairo. Gordon resides in  
witness cannot say that he is acquainted  
with Gordon's general character in the  
neighborhood where he now resides.

Pliff next introduced as a witness  
in his behalf, Jefferson Martin Esq. who  
testified that he was acquainted with  
plaintiff Gordon and had known him  
for some twelve years. Witness is not  
much acquainted in the immediate neigh-  
borhood of Cairo Ills, where Gordon now resi-  
des. nor has Gordon ever been much in  
the neighborhood of witness. Witness cannot  
say that he is acquainted with pliff's general  
character. Witness of his own knowledge  
knows nothing against him. He used to  
be acquainted with his general character and  
it was then good.

Plaintiff then introduced as a witness to  
testify in his behalf, John Hurston who testified

that he had known Gordon for some eight-  
teen years - witness lived in eight or ten  
miles of Sours. at the time plaintiff Gordon then  
sold goods there - witness thinks plaintiff's general  
character was then good. this has been some  
fifteen years ago. After Gordon quit selling  
goods there witness has known but little  
of him - has seen him sometimes in the  
neighborhood, but knows nothing himself  
against him,

On cross examination witness stated  
that he resides some thirty miles from  
Coiro. Gordon resides - witness is but  
little acquainted in that part of the County.  
does not know what Gordon's general  
character is in and about Coiro. when he  
resides - witness of his own knowledge  
knows nothing particularly against  
plaintiff -

Plaintiff next introduced <sup>as a witness.</sup> in his  
behalf James E. McClure, who states that he  
has been acquainted with plaintiff Gordon  
for some nineteen years. that he was acquaint-  
ed with his general character then - witness  
thinks as far as <sup>he</sup> ~~knows~~ knew Gordon's  
character was then good. since then he  
has heard but little about him. Gordon  
has occasionally passed through witness's  
neighborhood, trading sometimes with his

the neighbors in stock and the like - witness has heard some complaints against Gordon's business transactions that he could not pay his debts &c. though don't think he has heard a majority of the people in the neighborhood speak of him either way - witness knows nothing of his own knowledge against Gordon, - is not acquainted with Gordon's general character about Cairo when he lives, nor in that immediate neighborhood - witness resides some thirty miles from Cairo. What manner witness thinks Gordon's character is now good is that witness has not heard anything to change his opinion of Gordon's character from what it was some fifteen years ago when Gordon was selling goods at Louisa, near the Union County line, -

Plaintiff then introduced as a witness Alexander C. Hodges, who testified that he resided at Unity, Ills a distance of some fifteen miles from Cairo. The residence of plaintiff witness has known plaintiff Gordon for some seventeen years, is acquainted with his general character, it is good

so far as witness knows - witness has heard some speak unfavorably of plaintiff but has heard a majority speak favorably of him - witness cannot say that he is at this time acquainted with plaintiff's general character in Cairo, when he lives or its immediate vicinity but a majority he heard speak of him ~~thus~~ speak favorably - witness has heard that Gordon failed a few years ago and since has heard some speak of him unfavorably in his business transactions,

Plaintiff next introduced as a witness W. C. Massey who testified that he was somewhat though not intimately acquainted with plaintiff, Gordon - is not acquainted with his general character - so far as witness is concerned knows nothing against him, -

Plaintiff next introduced as a witness Lewis McRaven who testified that he had been acquainted with plaintiff, Gordon for a number of years - say fifteen or twenty - witness is not at present acquainted with Gordon's general character in the neighborhood in which he lives - witness was acquainted with Gordon's character some years ago when he was selling goods some eight or ten miles

from whom witness then heard, Gordon's  
Character was then good -

Plaintiff next introduced as a witness  
Doct M M Cullley, who testified that he  
had known plaintiff Gordon for some  
fifteen years is acquainted with his  
general character, socially and as a neigh-  
bor and charitable man plaintiff is con-  
sidered a good character, but in his business  
transactions there is some complaint  
against him, he has his enemies -

Plaintiff then introduced Richard  
Whitaker who testified that he had known  
plaintiff though not intimately for  
some fifteen years - witness is not acqu-  
ainted with his general character - wit-  
ness lives some sixteen miles from pl-  
aintiff - a few years ago witness knew  
more about Gordon than he now does  
but witness never knew anything  
wrong about him -

Plaintiff then introduced as a  
witness Green Bankston, who testified  
that he is acquainted with plaintiff -  
but not with his general character.

Plaintiff next introduced as a  
witness Dea Geo A. Thurston who testified  
that he was acquainted with plaintiff  
and had been for six years - witness

lived for a while in Cairo the residence of plaintiff Gordon some four years ago - at that time witness was acquainted with his general character, it was good, witness now resides and has for near four years in Thebes some twenty five miles by land and forty by the river from Cairo, and does not know at this time what Gordon's general character is among his neighbors.

Plaintiff next introduced as a witness Henry Johnson, who testified that he had known plaintiff Gordon for eight years, witness has had some dealings with him, plaintiff always treated witness well enough, has heard some speak of him as a clever man but thinks a majority regard plaintiff as a middle-some man - witness knows nothing of his own knowledge against plaintiff though many speak of him as rather a hard case these are mostly river men, witness states that he may be called middle-some and a hard case because he sometimes gets up indictments against those living in Cairo for violations of the law.

Plaintiff then introduced Brown who testified states that he was acquainted with plaintiff, but knows nothing about his general character -

Pltff next introduced as a witness John C  
Garden who testified that he was acquainted  
with pltff and had known him for six or  
seven years - Witness is not acquainted  
with his general character - pltff always  
treated witness well - Witness has heard  
some speak of Garden rather hardly because  
he did not always pay his debts and  
Witness has heard some other speak of  
him as a clever man -

Plaintiff then introduced as a witness  
George Burmgard, who testified that he  
had known pltff for seven years, is  
acquainted with his general character  
has had dealings and law suits with him  
pltff is somewhat contentious and dis-  
posed to low about business matters  
but witness thinks his general character  
good. - Witness resides some twelve  
miles from Cairo pltffs residence  
and does not now know what his gen-  
eral character is in Cairo - The plaintiffs  
Counsel then closed their testimony it  
being all the testimony by them offered  
to the jury -

Plaintiffs Counsel then asked the Court for

the following instructions

1<sup>st</sup> The P<sup>t</sup>ff asks the Court to instruct the jury, that the heat of passion necessary to rebut the presumption of Malice in an action for Slander for words spoken must be of a character to deprive him of his reason to some degree, when that is relied on alone to rebut Malice" which instructions the Court gave to the jury, to the giving of which instruction depts Counsel excepted -

The Court also gave on behalf of the plaintiff the following instructions to the jury -

2<sup>nd</sup> That the only question presented in this case by the pleadings is whether the de<sup>f</sup> spoke and published the words in the declaration or not as thus charged, and if the jury believe from the evidence that the de<sup>f</sup> did speak the words charged in the declaration Maliciously they should find for the plaintiff -

3<sup>rd</sup> That although under the issue in this case proof of the general bad character of p<sup>t</sup>ff is admissible, yet it is admissible only to mitigate or reduce the damages in the case, and when an attempt is made to impeach the general character of a p<sup>t</sup>ff in an action of Slander, and that attempt



failure as the deft does not succeed in impeaching the character of the ptiff. That failure should be weighed by the jury in aggravation of damages -

4<sup>th</sup> That when the speaking of actionable words is proven, the law presumes Malice -

5<sup>th</sup> To say of a man he swore to two damned lies, is actionable under our Statute

Defts Counsel asked the Court for the following instructions which <sup>was</sup> by the Court given to the jury -

1<sup>st</sup> If the jury shall believe from the testimony that the words were spoken, bona-fide and without malice, no action can be supported for the speaking of them, though they be false and actionable in themselves as Malice is the gist of this action -

2<sup>nd</sup> If the jury believe from the evidence that the words were spoken for a justifiable purpose, and not maliciously, nor with a design to defame the plaintiffs character it is a sufficient defence though the words were themselves untrue and the law is for the defendant -

3<sup>rd</sup> If the jury shall believe from the testimony that the plaintiff has ~~not~~ so destroyed his character by his own acts that he could receive no damage

from the speaking of the words alleged -  
 Thus they should find for the defendant -  
 4<sup>th</sup> That if the words were spoken in  
 jest or merriment, or were the result  
 of mere heat of passion, without malice,  
 and the defendant did not intend to  
 impute injury to the plaintiff, the ver-  
 dict must be for the defendant -  
 5<sup>th</sup> That the question of the defendant's  
 malice is a question of fact for the  
 jury upon considerations of all the  
 facts and circumstances of the conversation,  
 and if they believe the words were spoken  
 in heat of and passion and without in-  
 tention to accuse plaintiff of committing  
 injury, they must find for the defendant.

The Defts Counsel also asked  
 the Court to instruct the jury as follows

6<sup>th</sup> Though the words proven are equi-  
 valent to the words charged in the decla-  
 ration, yet not being the same in  
 substance, and though the same idea  
 is conveyed in the words charged and those  
 proved. Yet if they contain substantially  
 the same charge but in different phra-  
 seology the plaintiff is not entitled  
 to recover. - which last mentioned  
 instruction so asked by Defts Counsel the  
 Court refused, and to which refusal Defts

Counsel Excepted -

The foregoing were all the instructions asked by either plaintiff or defendant or given or refused by the Court -

The jury in said case after words returned into Court the following verdict, "We the jury find the defendant guilty, and assess the plaintiffs damages at Less thousand dollars" -

Whereupon the depts Counsel moved for a new trial, and filed in open Court in writing the following reasons for a new trial in said case -

George D Gordon }  
vs } Slender  
Alexander Norton }

The depts Counsel move the Court for a new trial in the above case entitled case for the following reasons -

1<sup>st</sup> The Verdict is against evidence.

2<sup>nd</sup> The Verdict is against law.

3<sup>rd</sup> The jury acted against the law in making up their verdict by adding up the various amounts, which they respectively were for finding, into one aggregate and dividing the same by the number of twelve.

4<sup>th</sup> The jury were permitted to have the

law with them in their retirement, and by  
miscontriving the same, come to an erro-  
neous conclusion -

5<sup>th</sup> The Court gave improper instructions  
to the jury on behalf of the plaintiff -

6<sup>th</sup> The Court refused proper instructions  
asked by the defendant -

7<sup>th</sup> The Court admitted improper testimony  
to go to the jury on behalf of the plaintiff -

8<sup>th</sup> The Court excluded from the jury  
proper testimony offered by the deft -

9<sup>th</sup> The  ~~Court~~ damages assessed by the  
jury are excessive -

Accompanying the foregoing reasons  
for a new trial, the defts Counsel read  
to the Court the following affidavit  
sworn to before the Ct by Alexander  
Norton the deft -

State of Illinois }  
Alexander County } Alexander Circuit Court,  
George D Gordon }  
vs }  
Alexander Norton }

Alexander  
Norton defendant in this suit being  
duly sworn doth depose and say, that since  
this trial he has been informed for the first  
time, by Isaac Lynch and S. S. Taylor, and

That he can prove the same by them, that  
the said plaintiff, Gordon has stated upon  
several occasions, that he Gordon  
had sued the said Norton in Slander, and  
held him to bail, because he wanted  
to force him into a Compromise, and  
that <sup>he</sup> had not been slandered by the said,  
Norton  
nor that the said def<sup>t</sup> Norton could not  
slander him, as he had said the words of  
him in a passion and that it was  
only by the injury of Counsel that  
he expected to get a verdict against  
the said Norton, and that he Gordon would  
use the said def<sup>t</sup> up before he got throug<sup>h</sup>  
with him, and this affidavit has  
been informed and further states, that  
the jury were permitted to have with them  
in their retirement, the law, or a certain  
Volume of Commons reports, Affiant  
further states that he has been informed  
and believes that the jury added up the  
amounts into an aggregate, which they  
respectively were for finding and divid-  
ed the same by the number of twelve  
sworn to & subscribed.

Alex Norton -  
before me this 28<sup>th</sup>

day of May 1852.

L L Lightwell

which motion for a new trial the Court overruled, to which depts Counsel excepted.

I will add that as to the law on a certain volume of Scammon's reports which it is asserted that the jury were permitted to have with them, that the Court permitted them to have no book or any law except the instructions which are embodied in the bill of exceptions. The depts Counsel used to the jury during the argument from a certain volume of Scammon's reports, and if the jury had the volume at all the Court was not advised of it further than is disclosed by the affidavit here copied - The giving of the first instruction for the plff was excepted to, and the refusal to give the last mentioned for deft was also excepted to which was all the exceptions taken to the giving or refusing instructions -

With this explanation the Bill of exceptions is hereby signed, sealed, and made a part of the record -

W. A. Denning (Seal)  
 W. A. Denning

State of Illinois  
 Alexander County

J. Alexander W. Anderson Clerk

of the Circuit Court in and for the said County  
of Alexander in the State of Illinois, hereby  
certify that the foregoing contains a full  
and correct transcript of the declaration and  
only plea filed in said cause, of the record  
and bill of exceptions, in said cause, as  
appears from the files and record now  
in my office.



In testimony whereof I have hereunto  
set my hand and affixed the seal  
of said Circuit Court, at office  
in the City of Thebes, this 15<sup>th</sup> day of June  
A D 1853.

A. W. Anderson, Clerk

State of Illinois  
Alexander County

(Copy of bond filed in this cause, on appeal)

I know all men by their presents that we Alexander  
Norton Winslow Fletcher and Nicholas H. Ridgely  
are held and firmly bound unto George D. Gordon  
the sum of two thousand and five hundred  
dollars Current Money of the United States for the  
payment of which well and truly to be made  
we bind ourselves our heirs executors adminis-  
trators jointly severally and firmly by  
these presents witness our hands and seal  
this the 21<sup>st</sup> day of June A D 1852 The Con-  
dition of the above obligation is  
Such that whereas the said George D. Gordon did

on the 29th day of May AD 1852 in the Circuit Court  
in and for the County of Alexander and State  
of Illinois recover a judgement against the above  
bondsmen Alexander Norton for the sum of Two  
Thousand dollars. Damages and  
Costs of Suit from which said judgement of  
the said Circuit Court the said Alexander  
Norton has prayed an appeal to the Supreme  
Court of the State of Illinois Now if the  
said Alexander Norton shall duly pro-  
" ceute his said appeal with effect and shall  
Moreover pay the Amount of the judgement  
Costs interests and damages rendered and  
to be rendered against him in case the  
said judgement shall be affirmed in the  
said Supreme Court then the above obliga-  
" tion to be void otherwise to remain in  
full force and effect

Alex Norton  
Winslow Fletcher  
S. H. Ridgely

Seal  
Seal  
Seal  
Seal  
Seal

State of Illinois  
Alexander County  
Clerk of the Circuit Court in said County  
and State Certify the above and foregoing  
is a correct Copy of the original bond now  
on file in my office which said bond has  
the following endorsement on the back thereof  
to wit / filed in Circuit Clerk's office  
Alexander Co. June 25th 1852.



S. S. Lightner Clerk &c. (Bond)

In Witness whereof I have hereunto  
set my hand and the seal of  
the said Circuit Court at this  
the 15<sup>th</sup> day of June A.D. 1853  
O. W. Anderson, Clerk



for \$15.00 cents }  
Paid by Dept. }

J. R. Gordon

J. Carter

Thompson

Filed May 25<sup>th</sup> 1853

J. R. Gordon

by J. R. Gordon

prop. to be...

Alexander Norton appellant  
vs  
George P. Gordon appellee  
Richard S. Nelson <sup>& 16<sup>th</sup> J. Allen</sup> for the appellant  
Brief of Appellant

- 1<sup>st</sup> Malice is the gist of this action & the Law implies Malice when actionable words are spoken, tho' no special damage ensue, but Malice in Law may be rebutted by the defendant showing the absence of malice in fact. See *vs* Sugals 4 Dean 32 & *Sturkie on Slander* pages 196, 197, 198, 199, 200 & Note to text. in this case Malice in fact is successfully rebutted
- 2<sup>nd</sup> all the circumstances and facts attending the speaking of the words are to be weighed in ascertaining the intent with which the words were spoken and also the occasion of speaking there may be shown in mitigation of Damages 9<sup>th</sup> Barr 313. 312, & to rebut Malice and the defendant may even show that the words were spoken by him under an error in fact & prove how he came to be mistaken *Petrie vs Rose 5 Watts & Day 364*, *Messier vs Kerr* 9<sup>th</sup> Barr 312
- 3<sup>rd</sup> Heat of passion may be also shown to rebut Malice & it is purely a question for the jury to say whether the words <sup>were spoken</sup> in the heat of passion & without Malice - Malice is a mixed question of Law & fact, but the heat of passion necessary to rebut Malice is purely a question for the jury and not for the Court. *1 Miles 446* - cited *Wharton's Digest Vol 2 - 4<sup>th</sup> Dean 32*, & the 1<sup>st</sup> instruction given by Court was therefore evidently erroneous, improper & calculated to mislead the jury & to operate unfairly to the prejudice of the defendant Norton

5<sup>th</sup> Character - General badness of Character ~~of Defendant~~  
Maybe given in evidence in mitigation of Damages  
Steinman vs Williams & Barr 170, which in this case  
was shown by 17 witnesses on the part of appellants which  
is not rebutted by the ~~Ally~~, but on the contrary is rather  
strengthened by ~~some~~ Gordons own witnesses 1<sup>st</sup> Bowler  
Law Dic like Character

6<sup>th</sup> The jury in this case took a law book with them into their  
retirement & the presumption is that they misunderstood  
the same & were misled by it. & it is ~~therefore~~ <sup>therefore</sup> ~~strong~~  
with the others relied upon <sup>in proceedings</sup> that the jury must have  
labored under some strong delusion in arriving at their  
verdict 5<sup>th</sup> Mass 405. 5<sup>th</sup> Pick 202 & on this ground a new  
trial ought to be granted where the verdict <sup>appears</sup> outrageous, at first blush to any  
impartial juror as in this case. it must. 24 years 273 W.D. vol 3. 566

7<sup>th</sup> The jury in this case from the enormous amount of  
their verdict, must have <sup>been</sup> greatly misled from some cause  
or other & the presumption is that some of the jurors  
must in setting down their figures have been for an amount  
truly outrageous. The jurors in this case set down the respec-  
tive amounts they were for finding & then divided by 12 as  
appears by affidavit of defendant & it is reasonable to suppose  
that the verdict was greatly increased by this means & under  
these circumstances it ought to be set aside 3 Cases Reports 56  
Bacon Abt Vol 9. 599. 5<sup>th</sup> Mass 405. 5 Pick 296 6<sup>th</sup> Pick 206

399 Marshall  
716  
2<sup>nd</sup> Mass 183  
Vol 9<sup>th</sup>  
Bacon Abt 599  
5<sup>th</sup> Mass 405  
2<sup>nd</sup> Pick 163  
12<sup>th</sup> Dick 119

8<sup>th</sup> If Gordon sustained no special damage nor considered  
himself slandered, the verdict is purely outrageous and is  
in fact sought to be set aside - & it appears from notars  
affidavit that he sustained no damage either in his feelings  
or from any other cause from his own statements 9<sup>th</sup> Johnson 264  
4 Kendall 479 (newly discovered evidence)

9<sup>th</sup> The Damages are under all the circumstances exceptive of  
the verdict ought to be set aside 3 Pick 399 - 2 Pen 578 - 179  
Chambers vs Robinson 2<sup>nd</sup> Shange 691 - 2 Wilson 249 2 Greenleaf  
evidence 262 (note 2)

Alexander Norton } appellant  
vs } Error to Alexander  
George D Gordon } appellee  
Abstract

This was an action of trespass on the case brought by the appellee vs the appellant for slander.

The declaration has two counts with the following actionable words viz: "he (meaning the said plff) swore falsely to two things," "he (meaning the said plff) swore to two lies," "he (meaning the said plff) swore to two damned falsehoods," "he (meaning the said plff) swore to a damned falsehood," "he (meaning the plff) swore to a lie," "he meaning the plff swore to two damned lies," "he (meaning the plff) swore that I owed him money and that was a damned lie," "he (meaning the plff) swore that I was not a resident of this state and that was a damned lie," "he (meaning the plff) swore that I owed him money, and that I was not a resident of this state, and they were both lies," "he (meaning the plff) swore that I was not a resident (meaning of this state, and that was a lie," "he (meaning the plff) swore that I was not a resident (meaning of this state) and that was a lie," "he (meaning the plff) swore that I owed him money, and was not a resident of this state and it was a damned lie," The Declaration contained a very special inducement of good character, and a very special allegation of consequential damage which was laid at \$10,000, to which the deft pleaded the general issue, The Cause was submitted to a jury Bond W Adair presiding Judge at the May term AD 1852, of the Alexander Circuit Court who found a

Verdict for the plaintiff for \$2000 damages.

The defendant moved for a new trial, for the reasons filed which motion was overruled. and judgment rendered for \$2000 amt of verdict. The defendant excepted to the opinion of the Court and refusing to grant a new trial, and tendered his bill of exceptions which contains the reasons for a new trial and all the evidence in the cause as well as the instructions of the Court given and refused together with the exceptions of the Counsel during the progress of the trial and of the judgment of the Court in overruling the motion for a new trial.

Robert Beard witness on behalf of plaintiff stated that he heard Norton on the 1<sup>st</sup> January 1852 on board the Wharf boat Sam Dale say that plaintiff Gordon had sworn two damned lies against him, he swore that he Norton was a non-resident & that was a lie, and he swore that he Norton was indebted to him Gordon and that was a damned lie - Norton spoke loud and appeared to be quite angry when he spoke those words. which was all he said about it. Norton was at the time he spoke the words above mentioned, speaking about an attachment, that Gordon had sued out against him by virtue of which defendant's Wharf boats were attached; that Norton was worth some 15 or 20,000\$ which witness does not however know of his own knowledge, but only from report. Another witness for plaintiff Bailey & Herald - stated the same in substance, as the former witness & also that

Norton owned the wharf boats Sam Dale & Louisiana worth some \$2500, beside the western world, which however he did not know of his own knowledge.

Thomas J Wood stated the same in substance as the other witnesses and states beside that Norton stated in the conversation that Gordon had released wharf boats a few weeks before & then attached them again - the foregoing testimony is all spoke of the same conversation -

J M Rawlings the plaintiffs ally was then sworn who stated that upon a certain occasion when there was loud talking upon board the wharf boat Sam Dale, he got up near enough to hear the deft Norton speaking the words mentioned by the other witnesses - he was not in Nortons office when the other witnesses came, he Norton did not seem angry but was offended because Gordon had attached his boats & was speaking in relation to the attachment as stated by the other witnesses, that he witness could not say how much Norton was excited - Norton was a singular genius - sometimes he laughs - sometimes he weeps and stammers - Norton gave witness to understand that he owned the steamer Western World, & the wharf boats Sam Dale & Louisiana.

The pliff Gordon then closed and on the part of deft the depositions of the following witnesses were read viz, Thomas Rodney, Michael F Taylor, Sargent W Knable, Walter B Falls, Elijah Wren, Andrew Woodruff, Walter W Bryant, Allen B Carroll who all stated that they were acquainted with the general character of the pliff Gordon and his general character was bad.

These witnesses were residents of Mississippi's  
Co. West & Davis

The deft. then read the depositions of Noah  
Kidley Jr. William Somers, John W. Morris, Henry  
Leonard, Conrad West, William J. Norton. - who  
stated the same in substance as the other  
witnesses, & all concurred in swearing that  
Gordon's character from general reputation  
was bad; - These witnesses were also residents  
of Missouri & all the foregoing witnesses upon  
their Cross Examination stated that they derived  
their information from the said Gordon's general  
reputation among those who were acquaint-  
-ed with him

The deft then called upon the following witness  
who testified orally before the jury viz, James  
Symon who knew Gordon 10 or 12 years in the  
neighborhood in which he resides - his character  
generally is bad, witness has lived for the last  
8 months in Cairo Ill where Gordon resides  
Murphy Chapman has known Gordon  
for 3 years, has done ~~Gordon~~ business for  
Gordon for 3 years, his general character  
in the neighborhood in which he lives is  
bad

J. Statts Taylor Cant state that he has heard  
a majority speak of Gordon's character, has known  
him 9 months, heard some speak well of him  
and some bad,

Patrick Morgan, has known Gordon five  
years, resides in Cairo where Gordon resides  
- his character is generally bad - denies that  
he cursed Gordon to J. Hodges at this term of  
the Court to the best of his recollection.

John Abercrombie, has been acquainted with Gordon for 16 or 18 years, is acquainted with his general Character & it is bad,  
Bryant Shannery has known Gordon 10 or 12 years, he is a hard Customer in business transactions - witness lives in the same town with Gordon & Cant say whether his Character is good or bad

Winslow Fletcher, was then called by deff who stated, that he was present, when the words were spoken by deff, and states in substance the same as the other witnesses - and closed his Case

The Deff then introduced the following rebutting witnesses viz. Young Garney, lives at Thebes in Alexander Co, 25 miles from Cairo, he knows Gordon 16 or 17 years - general Character good - though he dont know what his Character is now in the neighborhood in which he now lives -

John Hodges - heard Patrick Morgan Cuss Gordon at this term of Court - Character of Gordon is good - he knows Gordon 20 years - Cannot say that he at present knows what his Character is in the neighborhood in which he lives - supposes he has enemies like other men

James L Brown, has known Gordon for 16 or 18 years, & was acquainted with his Character - says it is good, resides at Thebes, 25 miles from Cairo - witness is not acquainted with his Character in his immediate neighborhood, has heard complaints of Gordon in his business transactions - supposes he has his enemies.



Mathew McClure has known Gordon for 16 years, - pl<sup>ty</sup> Gordon lived at Lowe's some five miles from Witup and at that time his character was good. Witup now lives some 30 miles from Cairo where Gordon lives, and don't pretend to state what his character is in his neighborhood - has heard complaints against Gordon & has heard people talk both ways - he himself knows nothing against Gordon

Silas Dexter has known Gordon 15 years - knows his general character - it is fully good, Witup lives 16 miles from Cairo - has heard some complaints against him since he failed in business and supposes, ~~that~~ caused the complaints against him - cannot say he is acquainted with Gordon's character in his immediate neighborhood, supposes that Gordon has his enemies

Hugh Craig has known Gordon 10 or 12 years, <sup>resides</sup> fifteen miles from Cairo - is acquainted with Gordon's general character - has heard some speak badly, some well of Gordon & has been occasionally at Cairo & thinks he has heard more speak well than badly of him

O H Overby is acquainted with general character of Gordon, he has known him for 10 or 12 years, his general character is good, - don't know what he has heard a majority of the people speak of him either way, has heard some speak well and others against him - he resides at Thebes, 40 miles by water and 25 by land from Cairo, he is not acquainted with Gordon's character in the neighbor

-hood in which he lives

Jefferson Martin lives 30 miles from Gordon - he has known him 18 years, Gordon's general Character was good when he lived at Louis some 15 years ago - don't know his Character where he resides -

John Houston lives 30 miles from Gordon, he has known him 18 years, Gordon's general Character was good when he lived at Louis some 15 years ago - don't know his Character about Cairo where he resides!

James McBrite was acquainted with Gordon's general Character some 15 years ago, when he lived at Louis - it was then good - has heard Complaints against him in his business transactions, is not acquainted with Gordon's general Character about Cairo where he lives - thinks, thinks Gordon's Character good because he has heard nothing to change his former opinion of him

Alexander Hodges deposed that he resides 15 miles from Cairo, where Gordon resides, has known Gordon 17 years, and is acquainted with his general Character and it is good - is not acquainted with his Character at Cairo - thinks he has heard a majority of the people at Cairo speak well of him, has heard some speak ill of him since he failed in business

W C Macey, does not know Gordon's general Character

Levin McBraw, stated that he was acquainted with Gordon's general Character when he lived at Louis & was doing business there

it was then good - witness has known Gordon some 15 or 20 years, but is not now acquainted with his general Character in the neighborhood in which he resides

Doctor Culley has known Gordon for sometime - his Character generally is good, there is some Complaint against him in his business transactions - he has his enemies

Richard Whitaker, has known him, Gordon 15 years, but is not acquainted with his general Character -

Green Bankston - known a witness (knows nothing)

Deceatur Atherton, lives at Thebes, 25 miles from Cairo, witness has known Gordon for 6 years - about 4 years ago he lived in Cairo where Gordon resides, his general Character was then good - witness can't say that he is now acquainted with his general Character

Henry Johnson has known Gordon for 8 years - a magistral - regard him as a meddling man, witness has heard many, mostly nice men speak of him as a hard Case, he may be so called because he gets up indictments against men in Cairo for violations of law

Mr Brown knows nothing of Gordon's general Character though acquainted with him -

John O Gordon is acquainted with Gordon the plty but not with his general Character - has known Gordon for some six years - has

9  
heard some speak ill of him for not paying  
his debts - others call him a clever man.

Mr Burford states that he has known  
Gordon for seven years - is acquainted  
with his general Character - Gordon is  
Contentious and disposed to law about busi-  
ness matters, but thinks his general Charac-  
ter good - witness resides some 12 miles  
from Cairo and does not know his general  
Character there - The plaintiff here closed  
the testimony, <sup>which was all the testimony</sup> offered to the jury in the case  
- all exceptions to the depositions on both  
sides were waived

Plaintiff's Counsel asked the Court to instruct  
the jury that the heat of passion necessary  
to rebut the presumption of malice in  
actions of slander for words spoken, must  
be of a character to deprive him of his  
reason to some degree, when that is relied  
on alone to rebut malice, to which instri-  
ction the defendant excepted

The defts Counsel asked the Court for  
several instructions which were given  
excepting the following, which the Court  
refused & to which refusal the defts Counsel  
excepted, "Though the words proven are  
equivocal to the words charged in the dec-  
laration, yet not being the same in sub-  
stance & though the same idea is conveyed  
in those charged and those proven, yet  
if they contain substantially the same charge  
but in different phraseology, the plaintiff



5<sup>th</sup> The Court erred in refusing to set aside  
the verdict of the Jury, because the words spoken  
were spoken in the heat of passion, and on  
the spur of the occasion & without notice

6<sup>th</sup> Because the damages were under all  
the circumstances of the Case, unreasonable  
and excessive

1<sup>st</sup> Because the words charged were spoken  
in the mere heat of passion

2<sup>d</sup> Because the depts Character is successfully  
impeached and at least is so bad, and indis-  
frent in general, that if any verdict at all  
was given, it ought to be merely nominal  
or at least for a very small amount

Richd Nelson &  
Wm Spiller for appellants

Alexander Norton

appellant

vs

error to Alexander

George D. Gordon

appellee

This was an action of trespass on the Case brought by the appellee vs appellant for slander. The declaration ~~by that~~ two Counts, the first Gordon ~~in the~~ <sup>del Gordon</sup> the following actionable words viz "he (meaning the said pleff) sworn falsely to two things" "he (meaning the said pleff) sworn to two lies" "he (meaning the said pleff) sworn to two damned falsehoods" "he (meaning the said pleff) sworn to a damned falsehood" "he (meaning the pleff) sworn to a lie" "he (meaning the pleff) sworn to two damned lies" "he (meaning the pleff) sworn that I owed him money and that was a damned lie" "he (meaning the pleff) sworn that I was not a resident of this state, and that was a damned lie" "he (meaning the pleff) sworn that I owed him money and that I was not a resident of this state, and they were both lies" "he (meaning the pleff) sworn that I was not a resident (meaning of this state) ~~meaning of this state~~ and that was a lie" "he (meaning the pleff) sworn that I was not a resident (meaning of this state) and that was a lie" "he (meaning the pleff) sworn that I owed him money, and was not a resident of this state, & it was a damned lie". The declaration contained a very special inducement of good character to a very special allegation of consequential damages which was laid at \$10,000. to which the deft pleaded ~~in~~ the general issue. The Cause was submitted to a jury South W. A. Deering Presiding Judge at the May Term, AD 1852 of the Alexander Circuit Court who found a verdict for the pleff for \$2,000 damages, the deft moved for a new trial for the reasons filed which motion was overruled.

and Sheriff awarded for \$2000 and of Verdict  
The Deft excepted to the opinion of the Court in refusing  
to grant a new trial, and tendered his Bill of exceptions  
which contains the reasons for a new trial and all  
the evidence in the Cause as well as the instructions  
of the Court given & refused together with the exceptions  
of the Counsel during the progress of the trial and  
to the Judgment of the Court in overruling the  
Motion for a new trial.

Robert Beard a witness on behalf  
of plaintiff stated that he heard Norton on the 1<sup>st</sup> January  
1852 on board the Wharf boat Sam Dale say that  
~~Edw~~ Gordon had sworn two damned lies against  
him, he saw that he Norton was a non resident  
& that was a lie & he saw that he Norton was  
indebted to him Gordon & that was a damned  
lie - Norton spoke loud & appeared to be quite  
raving when he spoke these words, which was  
all he said about it - Norton was at the time he  
spoke the words above mentioned speaking about an  
attachment that Gordon has sued out against him  
by virtue of which Defts Wharf boats were attached the  
Norton ~~was~~ worth some \$15,000 or \$20,000 ~~but~~  
~~not~~ and owns the Steam boat Western World  
which Norton does not however know of his own  
knowledge but only from report - another witness

Baile J. Herald - stated the same in substance as  
the former witness & also that Norton owned the Wharf  
boats Sam Dale & Louisiana worth some \$2500  
besides the Western World which however he did  
know of his own knowledge

Thomas J. Wood stated the same in substance as  
the other witnesses & stated besides that Norton stated  
in the conversation that Gordon had released



the Wharf boats a few weeks before & then attached them again. The preceding witnesses all spoke of the same conversation. — J. M. Kuching the pleff attorney then sworn who stated that upon a certain occasion when there was a loud talking upon board the Wharf boat Sam Dale & got up near enough hear the Deft Norton speaking the words ~~spoken~~ mentioned by the other witnesses — he was out in Norton's office when the other witnesses were — he Norton did not seem ~~offended~~ angry but was offended because Gordon had attacked his boat & was speaking in relation to the attachment as stated by the other witnesses.

That the witnesses could not say how much Norton was excited & Norton is a singular Service sometimes he laughs, sometimes he raves & ~~shouts~~ — Norton saw Wickett, to understand that he owned the Steam Norton world, & the Wharf boats Dale & Louisiana the pleff Gordon then closed & on the part of deft the following depositions of the following witnesses were viz Thos Rodney <sup>1</sup> Michael <sup>2</sup> J. Taylor, Fairpoint <sup>3</sup> W. Newals <sup>4</sup> ~~W. K. K.~~, Walter B. Fuller, Elija <sup>5</sup> Urry, Andrew <sup>6</sup> Woodruff, Walter <sup>7</sup> W. Bryant, ~~Samuel~~ <sup>8</sup> Wm. H. Harrell — who all stated that they were acquainted <sup>with</sup> the general character of the pleff Gordon and his general character was bad — these witnesses were residents of Mississippi to New & St. Louis.

The deft then read the depositions of Walter <sup>1</sup> Hedgely, J. William <sup>2</sup> Pomroy, John <sup>3</sup> W. Morris, Henry <sup>4</sup> Leonard <sup>5</sup> ~~J. W. W.~~ <sup>6</sup> W. J. W. <sup>7</sup> W. J. W. <sup>8</sup> W. J. W. <sup>9</sup> W. J. W. <sup>10</sup> W. J. W. <sup>11</sup> William J. Norton, who stated the same in substance as the other witnesses & all concurred in swearing that Gordon's character was poor general reputation <sup>bad</sup>. These witnesses were also residents

6  
14  
3  
17 witnesses

of Missouri & all the jurving witnesses upon  
their cross examination stated that they derived  
their information from the Indors General Repor-  
-tation among those who were acquainted with  
him.

1 The Deft then called upon the following witnesses  
who testified orally before the jurving Isaac Lynch  
who knew Gordon 10 or 12 years, in the neighborhood  
in which he resides ~~in~~ his Character generally is  
bad witness has lived for the last 8 months in Cairo  
Ills when Gordon resides

2 Wm. Field Chapman has known Gordon for 3 years  
has done business for Gordon for 3 years, his general  
Character in the neighborhood in which he lives  
is bad

Stath Taylor can't state he has heard a neighbor speak  
of Gordon's character has known him 9 years - heard  
some speak well of him & some bad

4 Patrick Menjar has known Gordon five years, resides  
in Cairo when Gordon resides - his Character is  
generally bad - deems that he turned Gordon  
to J. Hodges at this term of Court

John Abbeville has been acquainted with  
Gordon ~~for~~ for 16 or 18 years ~~in~~  
~~at~~ - he is acquainted  
with his general character & it is bad

Bryant Shaver has known Gordon 10 or  
12 years he is a hard customer in business  
transactions - witness lives in the same town with  
Gordon & can't say whether his Character is  
good or bad

6 Winslow Fletcher was then called by deft who  
stated that he present when the words were spoken by  
Deft & states in substance the same as the other witnesses  
& stands his case.

The plaintiff then introduced the following rebutting  
witnesses viz. young Saram lives at Thebes  
in Alexandria Co 25 miles from Cairo has known  
Jordan 16 or 17 years - General Character good - tho'  
he don't know what his Character is <sup>the immediate neighborhood</sup> ~~in~~  
~~the~~ in which he lives

John Hodges heard Patrick Morgan Currier Jordan  
at this term of Court - Character of Jordan is good  
has known Jordan 20 years - Cannot say that  
he <sup>at present</sup> knows what his Character is in the  
neighborhood in which he lives, supposes has  
his enemies like other Men

James J. Brown has known Jordan for 16 or 18 years  
& was acquainted with his Character & says it is  
good resides at Thebes 25 miles from Cairo  
Witness is not acquainted with his Character in  
his immediate neighborhood - has heard  
Complaints of Jordan in his business transactions  
Supposes he has his ~~private~~ enemies

Matthew McQueen knows Jordan for 16 years  
settles ~~at~~ ~~the~~ ~~place~~ ~~where~~ ~~Jordan~~ ~~lives~~ ~~at~~  
Sewers' some few miles from Witness & at  
that time his Character was good - Witness lives  
some 30 miles from Cairo where Jordan lives &  
don't pretend to state what his Character  
is in his neighborhood has heard Complaints  
against Jordan & has heard people talk both  
ways - he himself knows nothing of Jordan  
Judas Dexter has known Jordan 15 years - knows his  
General Character - it is pretty good lives 16 miles  
from Cairo - has heard some Complaints against  
him since he failed in business & supposes that  
caused the Complaints against him - cannot say he  
is acquainted with Jordan's Character in his immediate

neighborhood - supposes that Gordon has his  
enemies

Ralph Craig has known Gordon 10 or 12 years  
resides fifteen miles from Cairo - is acquainted  
with Gordon's general Character - has heard some  
speak badly some well of Gordon & has been  
occasionally at Cairo & thinks he has heard  
some speak well & than badly of him

D. St. Aubly is acquainted with general Character of  
Gordon he has known him for 10 or 12 years  
<sup>his supposal Character is good</sup>  
"Don't know that he has heard a majority of the  
people speak of him at all, has heard some  
speak well & others against him - he resides  
at Hubbs 40 miles by water & 25 by land from  
Cairo - he is not acquainted with Gordon's Charac-  
ter in the neighborhood in which he lives

Jefferson Newton has known Gordon some 10 or 12  
years, is not much acquainted in his neighborhood  
& don't know his general Character, he used to be  
acquainted with his <sup>general</sup> Character it was then good  
John Hurston lives 30 miles from Gordon - he has  
known him 18 years & knows general Character  
was good when he lived at Sowers some 15 years  
ago - don't know his Character about Cairo  
where he resides

James McCrite was acquainted with Gordon's general  
Character some 15 years ago when he lived at  
Sowers it was then good - has heard complaints  
against him in his business transactions, is not ac-  
quainted with Gordon's general Character about  
Cairo where he lives. <sup>Nothing</sup> thinks Gordon's Character  
is good because he has heard nothing to change his  
former opinion of him

Alexander Hodges deposed that he resides fifteen

miles from Cairo where Jordan resides, has known Jordan 17 years & is acquainted with his General Character & it is good - he is not acquainted with his general Character at Cairo - thinks he has heard a Majority of the people at Cairo speak favorably of him - he has heard some speak ill of him since he failed in business -

W. C. Mays - does not know Jordan's general Character

Lewis McRaven stated that he was acquainted with Jordan's general Character, when he lived at Sowers & was doing business there, it was then good - witness has known Jordan some fifteen or 20 years, but is not now acquainted with his general Character in the neighborhood in which he resides

Doctor Pally has known him - his Character generally is good. There is some Complaint against him in his business transactions he has his enemies

Richard Whitaker has known him since 15 years & is not acquainted with his general Character

Sam Banister since as far as witness

Deaton & Thurston live at Thebes 25 miles from Cairo witness has known Jordan for 6 years - about 4 years ago he lived in Cairo where Jordan resides his general Character was then good - witness can't say that he is now acquainted with his general Character.

Henry Johnson has known Jordan for 8 years - a merchant regard him as a Middle some man - witness has heard many things since then speak of him & has heard cases.

In any he is called because he got up indictments  
to men in Cairo for violation of law

Mr. Brown knows nothing of Sordons  
General Character tho' acquainted with him

John O. Gordon is acquainted with Sordons  
the plea but not with his general character  
he has known Sordons for six years - has heard  
some speak ill of him for not paying his  
his debts to others call him clear

Stephen Keeney witness states that he has  
known Sordons for seven years - he is acquainted  
with his general character - Sordons is contentious  
& disposed to quarrel about business matters, but  
thinks his general character good. witness  
resides some 12 miles from Cairo & does not  
know his general character there. The plea  
was closed the testimony which was all the  
testimony, opened to the jury in the case  
all exceptions to the depositions on both sides  
were waived

Pliffs Counsel asked the Court for the following  
instructions amongst others to which there was  
no exception taken -

The plea asks the Court to instruct the jury  
that the want of papers necessary to rebut the  
presumption of Malice in action of Slander  
<sup>papers of papers</sup>  
must be of a character to deprive him of his  
reason to some degree, when that is relied on  
alone to rebut Malice - to which instruction  
the defendant excepted

The deft asked the Court several instructions  
which were given as asked excepting the following  
which the Court refused & to which refusal the  
deft Counsel excepted. Through the books peruse

an equivalent to the words changed in the declaration, yet not being the same in substance, & though the same in ~~substance~~ in idea as conveyed in those changed & those proved, yet if they contain substantially the same charge but in different phraseology the plea is not intitled to answer."

The jury returned then a verdict for £2000 against debt. Whereupon the debtors counsel moved for a new trial for the following reasons stated in the bill of exceptions

The Counsel for the appellant relies upon the following grounds of error in order to reverse the Judgment of the Court below

- 1<sup>st</sup> The Court in refusing to grant a new trial  
1<sup>st</sup> because the verdict of the jury is against evidence  
2<sup>nd</sup> because the verdict of the jury is against Law  
3<sup>rd</sup> because the jury acted against the law in making up their verdict by adding up the various amounts, which they were respectively for finding each one separate and dividing the same by the Number 12  
4<sup>th</sup> because the jury was permitted to hear the Law with them in their retirement, and thus constructing the same Case or vice versa to come to an erroneous Conclusion  
5<sup>th</sup> Because of newly discovered evidence

2 The Court erred in giving <sup>an</sup> improper instruction ~~to the~~ <sup>original instruction No 7</sup> to the Jury on behalf of ~~the~~ and refusing ~~to~~ <sup>an</sup> instruction asked for by ~~the~~ <sup>by</sup> instruction No 6 -

3 The Court erred in admitting <sup>improper</sup> and excluding <sup>improper</sup> testimony from the Jury

4 ~~The~~ Court below erred in refusing to set aside the verdict of the Jury because because the words spoken, were spoken in the heat of passion & on the spur of the occasion & without malice

3 Because the damages were based on all the circumstances of the case <sup>unreasonably & excessive</sup>

1<sup>st</sup> - Because ~~the~~ <sup>the</sup> words charge were spoken in the heat of passion

2<sup>nd</sup> Because the defts character is unacceptably impeached & at least is so bad and indifferent in general that if any verdict at all was given it ought to be ~~very~~ <sup>very</sup> ~~no~~ <sup>no</sup> ~~unusual~~ <sup>unusual</sup> or for at least for a small amount.

Wm & J. Nelson LWS  
Attorneys for  
Appellant



In the Supreme Court 1<sup>st</sup> Grand Division State of Illinois  
November term A.D. 1858

Alexander Norton appellant

v

error to Alexander

Joseph D. Gordon appellee

William J. Allen used now on this day Comes <sup>Alexander Norton</sup> ~~the Plaintiff~~  
by Richard V. Nelson, <sup>his attorney</sup> ~~and~~ and Smith that in  
the record & proceeding, and Judgment aforesaid  
there is manifest error in this, that the Judgment  
~~of~~ of the Court below was made and rendered  
in favor of the said Joseph D. Gordon whereas the Judgment  
aforesaid ought to have been rendered in favor of the said  
Alexander Norton and this by the said Alexander is  
readily confessed

and for assigning special grounds of error  
the said Alexander Smith that the said Judgment  
is erroneous in this

1<sup>st</sup> The Court erred in refusing to grant a new trial

1<sup>st</sup> because the verdict of the Jury is against  
evidence

2<sup>nd</sup> because it is against Law and evidence

3<sup>rd</sup> Because the jury acted against the Law in  
making up their verdict by adding up the  
various amounts, which they respectively were  
for finding into one aggregate and dividing the  
same by the number of 12

4<sup>th</sup> Because the jury were permitted to have the  
Law with them in their retirement and  
misconstruing the same came to an erroneous  
" "

Conclusion

2<sup>nd</sup> <sup>5<sup>th</sup> because of newly discovered evidence.</sup> ~~because~~ The Court erred in giving improper  
instructions to the Jury on behalf the plaintiff & refusing  
one asked for by the defendant

1 - in giving the 1<sup>st</sup> instruction as asked for by  
plff -

2<sup>nd</sup> Refusing the last instruction asked for by  
defendant his instruction (6)

3<sup>d</sup> - The Court erred in admitting and excluding testimony from the Jury

- 1<sup>st</sup> - in admitting improper testimony to go to the jury on behalf of the plaintiff Jordan
- 2<sup>d</sup> in excluding proper evidence from the jury when offered by defendant Norton

4<sup>th</sup> - The Court below erred in refusing to set aside the verdict of the Jury because

1<sup>st</sup> - The words spoken by deft as proven by depts witnesses were spoken in the heat of passion, ~~and~~ without any mixture of deliberation whether on the sudden emergency of the case

3<sup>d</sup> - because the damages assessed by the jury were under all the circumstances of the case unreasonably and excessive first because the words proven were spoken in heat of passion which rebuts the presumption of malice

Secondly because the <sup>Son of D. Jordan</sup> plaintiff's character is successfully impeached and shown to be so bad in general that if any verdict at all was rendered in the case against the d<sup>t</sup> Alexander Norton the verdict ought to have been truly nominal and ought not to have been <sup>for</sup> indicated damages

Wherefore for these and other errors in the record I pray that the d<sup>t</sup> Alexander Norton by his attorneys be allowed to set aside the judgment aforesaid so rendered as herein may be reversed annulled & entirely for nothing entered &c

Wm. H. Allen for appellant  
founder in error  
Dumans & Dwyer atts  
for depts in error.

North  
" "  
Sudon

Brief of dependant authorities

Some of the words at least must be proved  
as laid and must be laid as spoken Fortin vs  
Mall 3 Schustow 138

Equivalent words will not do, and must be  
laid as uttered 2 New 27 Cooper vs Meadow 3  
Meyerson 134

The sense and meaning of speaking them must  
be proven to be the same as used in  
Flower vs Pedley 2 Espinap C 491, Harrison vs  
Stanton 4 Espinap C 218, Wetton vs Man  
2 Barnwell & Ald 756, Lady Chalchipe vs Shubby  
Cro. Elizabeth 224

and the whole context of the words ~~proved~~ proved  
must agree in sense with the words alleged  
2 Starkie 846, 5<sup>th</sup> Cowan 513 Fox vs  
dibelt.

The words which are proved must be  
proved as laid and equivalent words  
will not be sufficient - Fox vs Vanda  
belt 5<sup>th</sup> Cowan page 513 2 Philips  
evidence 97

Words to the same effect are not the same  
words in, 2 East 434, 438. B. N. P. 5  
4<sup>th</sup> Term Thepost 218, 8<sup>th</sup> Term, R. 150.  
2 Starkie on slander 329

It is necessary to prove some of the words  
as laid at the present day in

R. J. Nelson Sol<sup>r</sup>  
for party in  
error

*Newton v. Gardner.*

*Brief of Nelson*

1 Fleet of Tappan may be given in evidence to show want of deliberate malice 1st Miles 146  
Wharton's Digest Vol 2<sup>nd</sup> 4, Scam 32

2 Deft may prove in mitigation of damages what caused him to speak the words  
Munroe vs Kerr 313.  
Siler vs Rose 5 Watt & Leay 364 - 9th Barr 312

3 Character may be given in evidence in Mitigation  
Stearman vs Williams 6th Barr 170.

4 Exception Damages, 1st Washington CCR 132  
3rd Pickering 379.

4 Scam p 32 not to be omitted

Deft in error authorities  
Plaintiff may prove Deft's Circumstances

2<sup>nd</sup> Wharton's Digest 457 609.  
14 Sergeant & Rawley Reps p 562  
Mc Almat vs Mc Leonard, 14 J & R

4th Scammon p 456 Bruce vs Tutton

affidavit for new trial is not of that class that the Court is bound to take as true

13th J. & R. Reports 699. Dupond vs Cropp

When a conflict of evidence appears Court will not disturb the verdict: unless manifestly against the weight of evidence 2d Stark J. p 1057 & 1058

13th J. & R. Reports Gilmer vs Echantas 271

It is no defense under the general issue that depts believed them true or without malice the law presumes Malice which cannot be rebutted under the general issue

Circumstances of Deft

affidavit

New trial

Malice

Gordon  
(M)

Horton  
dependant  
authorities

Sept  
12 1/2 3 30

10 3 33 - sum of the words  
sufficient

5 Common 5-14. you are punished  
& I will put you  
in prison.

12 Espr 491. Case

13 1/2 Mispaid 134

At a Circuit Court begun and held at Thebes in  
and for the County of Alexander and State of  
Illinois on the fourth Monday (24<sup>th</sup> day) of May  
anno Domini One thousand eight hundred and  
fifty two

Present the Hon. William A. Deering, Presiding  
and Sole Judge of the Alexander Circuit Court

The following papers appear on the files of said Court

No. 1. Declaration

State of Illinois }  
Alexander County } Trespass on the Case, Slander.  
George D. Gordon } Of the May Term of the Alexander  
by } County Circuit in the year of our  
Alexander Norton } Lord one thousand eight hundred  
and fifty-two.

George D. Gordon, complains of  
Alexander Norton, being in the Custody &c of a plea  
of trespass on the case. For that whereas the said plaintiff  
is now a good true honest, just and faithful citizen  
of this state and as such hath always behaved and  
conducted himself, and until the committing of the  
several grievances by the said defendant as hereinafter  
mentioned was always reputed, esteemed and accepted  
by and amongst all his neighbors and other good and  
worthy citizens of this state to whom he was in any wise  
known to be a person of good name fame and credit to wit  
at the County of Alexander. And whereas also the said  
plaintiff hath not ever been guilty or until the time of the  
committing of the said several grievances by the said  
defendant as hereinafter mentioned been suspected to have  
been guilty of perjury or swearing to a lie or hereafter stated  
to have been charged upon and imputed to the said plaintiff  
by the said defendant, or of any other such crime or act,  
By means of which said premises the said plaintiff before

the Committing of the several grievances by the said  
defendant as hereafter mentioned had deservedly obtain-  
ed the good opinion and credit of all his neighbors  
and other good and worthy citizens of this State to whom  
he was in any wise known to wit, at the County aforesaid  
Yet the said defendant, well knowing the premises  
but greatly envying the happy state and condition of the  
said plaintiff and contriving and wickedly and malici-  
ously intending to injure the said plaintiff in his good  
name fame and credit and to bring him into public  
scandal, infamy and disgrace with and amongst all  
his neighbors and other good and worthy citizens of this State  
and to cause it to be suspected and believed by those  
neighbors and citizens that the said plaintiff had been and  
was guilty of perjury and swearing to a lie as hereafter  
stated to have been charged upon and imputed to him  
and to subject him to the pains and penalties by the  
laws of this State made and provided against and inflicted  
upon persons guilty thereof and to vex harass, oppress, imprison  
and wholly ruin him heretofore to wit on the second day of  
January in the year of our Lord one thousand eight hundred  
and fifty-two at the County aforesaid in a certain discourse  
which the said defendant then and there had of and concerning  
the said plaintiff in the presence and hearing of divers good  
and worthy citizens of this State and then and there in the  
presence and hearing of the last mentioned citizens falsely  
and maliciously spoke and published of and concerning  
of and concerning the said plaintiff the false, scandalous  
malicious and defamatory words following that is to say  
"he (meaning the said plaintiff) swore to two damned lies"  
"he (meaning the said plaintiff) swore falsely to two things" he  
(meaning the said plaintiff) swore to two lies" he (meaning  
the said plaintiff) swore to two damned falsehoods" he  
meaning the said plaintiff) swore to a damned lie  
he meaning the said plaintiff) swore to a lie.



And afterwards to wit, on the day and year aforesaid at the County aforesaid, in a certain other discourse which the said defendant then and there had in the presence and hearing of divers other good and worthy citizens of this state the said defendant further contending and intending as aforesaid then and there in the presence and hearing of the said last mentioned citizens, falsely and maliciously spoke and published of and concerning the said plaintiff the false scandalous, malicious and defamatory words following, that is to say "he (meaning the said plaintiff) swore to two damned lies, he swore that I (meaning the said defendant) was not a citizen of this state (meaning Illinois) and that was a damned lie, he swore that I owed him money and that was a damned lie" "he (meaning the plaintiff) swore that I was not a resident of this state and that was a damned lie" "he (meaning the said plaintiff) swore that I owed him money and that I was not a resident of this state and they were both lies" "he (meaning the plaintiff) swore that I was not a resident (meaning of this state) and that was a lie" "he (meaning the plaintiff) swore that I owed him money and was not a resident of this state and it was a damned lie" By means of the committing of which said several grievances by the said defendant as aforesaid, the said plaintiff hath been and is greatly injured in his good name fame and credit and brought into public scandal, infamy and disgrace with and amongst all his neighbors and other good and worthy citizens of this state insomuch that divers of his neighbors and citizens to whom the innocence and integrity of the plaintiff in the premises were unknown have on account of the committing of the said grievances by the said defendant as aforesaid from thence hitherto suspected and believing and still do suspect and believe the said plaintiff to have been and to be a person guilty of having sworn falsely so as aforesaid charged upon and

imputed to him by the said defendant and none <sup>by</sup> reason  
of the committing the said grievances by the said defen-  
dant aforesaid from thence hitherto refused and still do  
refuse to have any transaction, acquaintance or discourse  
with the said plaintiff as they were before and are accus-  
-tomed to have, and otherwise would have had and also  
by means of the premises the said plaintiff hath been  
and is otherwise greatly injured and damaged to wit,  
at the County aforesaid. To the damage of the said plaintiff  
of Ten thousand dollars and therefore he brings his Suit &c

H. M. Rawlings, Attorney  
for the plaintiff

Endorsed thereon, Filed Feb 5<sup>th</sup> 1852. L. L. Lightner Clerk

No. 2 Copy of Plea

Alexander Circuit Court  
Alexander Ashton  
vs  
George D Gordon

May Term 1852

Verdict on the Case

And the said defendant by  
Ashton and Allen his attorneys come and defend, the  
wrong and injury when &c and says that he is not  
guilty of the said supposed grievances or rather of them  
or any part thereof as in said plaintiffs declaration  
mentioned and of this the said defendant puts himself  
upon the Country &c

and plaintiffs doth  
the like

Ashton & Allen, Scts Atty

Rawlings & Daugherty, for plffs

endorsed thereon Plea General Issue

Filed May 25<sup>th</sup> 1852. L. L. Lightner Clerk

No. 3. Instructions for juries as given in bill of three  
asked by plaintiff's Counsel

1<sup>st</sup> The plaintiff asks, the Court to instruct  
the jury that the heat of passion necessary to rebut the pre-  
-sumption of malice in an action of slander for words spoken  
must be of a character to deprive him of his reason to some  
degree when that is relied on alone to rebut malice  
Given

2<sup>nd</sup> That the only question presented in this case  
by the pleadings is whether the defendant spoke and  
published the words in the declaration or not as there  
charged and if the jury believe from the evidence that  
the defendant did speak the words charged in the  
declaration maliciously they should find for the plain-  
-tiff  
Given

3<sup>rd</sup> That although under the issue in this case  
proof of the general bad character of plaintiff is admis-  
-sible. It is admissible only to mitigate or reduce  
the damages in the case, and when an attempt is made  
to impeach the general character of a plaintiff in an  
action of slander, and that attempt fails, or the deft  
does not succeed in impeaching the character of the  
plaintiff, that failure should be weighed by the jury  
in aggravation of damages  
Given

4<sup>th</sup> That when the speaking of actionable words  
is proven, the law presumes malice  
Given

5<sup>th</sup> To say of a man he swears to two dam lies is  
actionable under our statutes  
Given

Endorsed thereon. Filed May 28<sup>th</sup>, 1852

L. S. Lightner, Clerk

No. 14. Instructions for defendant

1<sup>st</sup> If the jury shall believe from the testimony that the words were spoken bona fide and without malice no action can be supported for the speaking of them though they may be false and actionable in themselves as malice is the gist of the action

Given

2<sup>nd</sup> If the jury believe from the evidence that the words were spoken for a justifiable purpose and not maliciously nor with a design to defame the plaintiff's character it is a sufficient defence though the words were themselves untrue, and the law is for the defendant

Given

3<sup>rd</sup> If the jury shall believe from the testimony that the plaintiff has so destroyed his character by his own acts that he could receive no damage from the speaking of the words alleged then they should find for the defendant

Given

4<sup>th</sup> That if the words were spoken in jest or merriment or were the result of mere heat of passion without malice and the defendant did not intend to impute perjury to the plaintiff the verdict must be for the defendant

Given

5<sup>th</sup> That 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 were spoken in heat and passion and without intention to accuse of committing perjury they must find for the defendant

Given

6<sup>th</sup> Though the words proved are equivalent to the words charged in the declaration yet not being

the same in substance and though the same Idea is conveyed in the words charged and there proved yet if they contain substantially the same charge, but in different phraseology, the plaintiff is not entitled to recover  
Refused.

Endorsed filed May 28<sup>th</sup> 1852, S. L. Lightman. Clk

No. 5. Verdict as amended by the Court.

We the Jury find the defendant Guilty and assess the plaintiffs damage at Two thousand dollars.

No. 6. Affidavit for New trial

Alexander Circuit Court } George D. Gordon  
State of Illinois Alexander County }  
Alexander Norton

Alexander Norton defendant in this suit being duly sworn doth depose and say that since this trial he has been informed for the first time since this trial by Isaac Lynch and J. S. Taylor and that he can prove the same that the said plaintiff Gordon has stated upon several occasions that he Gordon had sued the said Norton in slander and held him to bail because he wanted to force him into a compromise and that he had not been slandered by the said Norton for that the said defendant Norton could not slander him, as he had said the words of him in papers and that it was only by the ingenuity of Counsel that he expected to get a verdict against the said Norton and that he Gordon would see the said defendant up before he got through with him and this affiant has been informed and further states that the Jury were permitted to have with them in their retirement the law or a certain volume of Scammon's reports. Affiant further states that he has been informed and believing that the Jury added up the amount into an aggregate which they respectively were for finding and decided the

same by the number of Turlow

Alexander Norton

Sworn to & Subscribed before  
me this 29<sup>th</sup> day of May 1852  
L. L. Lighten, C116

Endorsed filed May  
29<sup>th</sup>, 1852  
L. L. Lighten C116

No. 7 George D. Gordon

Alexander Norton

Stander

The defendants Counsel moved  
the Court for a new trial in the above entitled cause  
for the following reasons

1<sup>st</sup> The verdict is against the evidence

2<sup>nd</sup> The verdict is against law.

3<sup>rd</sup> The Jury acted against the law in making  
up this verdict by adding up the various  
amounts which they respectively were for finding  
into an aggregate and dividing the same by the  
number of Turlow

4<sup>th</sup> The Jury were permitted to have the law  
with them in their retirement and by misconstruing  
the same come to an erroneous conclusion

5<sup>th</sup> The Court gave improper instructions to the  
jury on behalf of Plaintiff

6<sup>th</sup> The Court refused proper instructions asked by  
the defendant

7<sup>th</sup> The Court admitted improper testimony to go to  
the jury on behalf of Plaintiff.

8<sup>th</sup> The Court excluded from the jury proper testimony  
offered by the deft

9<sup>th</sup> The damages assessed by the jury are excessive

Endorsed filed May 29<sup>th</sup>, 1852, L. L. Lighten C116



upon the defendant entering into Bond in the Sum  
of Two thousand five hundred dollars with  
Nicholas H. Redgel of Springfield and Winslow  
Fletcher of Massac County as his Securities. It is  
further ordered that the bill of exceptions in this  
case be signed at the next term of the Pulaski  
Circuit Court.

I Levi L. Lightner Clerk of the Circuit Court  
within and for the County of Alexander and State  
of Illinois do hereby certify that the foregoing  
is a correct abstract from the files of this Court  
from Number One to Number Seven inclusive  
also that the foregoing is a correct copy of an  
order in the foregoing cause now on Record  
in my office

In Witness whereof I have hereunto  
set my hand and affixed the seal of  
said Court at Thebes this 6<sup>th</sup> day of  
June A.D. 1852

Levi L. Lightner, Clerk



Alexander Circuit } George H. Gordon } Respects on the  
 Court May 7. 1852 } M } Case  
 } Alexander Anton } Judge for Plaintiff

	Pettr	Deft
Clk Entry Suit July Dec.	" 15	" "
Tally July affidavit & July July Cap. Summons	" 95	" "
July July 4 Subpo. for Pettr	1 60	" "
July dedimus July & July depositions	" "	" 35
July July 4 Subpo. for Deft	" "	1 60
Entry Appearances	" 15	" 15
Tally affidavit July 5 papers	" "	" 35
July 4 papers for Pettr	" 20	" "
Calling & trying Jury & entry verdict	" 60	" "
Entry 3 orders Judge Satisfaction	" 95	" "
July 17 Writings for Pettr & Deft	" 85	" 30
affidavit & making bills	" 45	" 30
	<u>5 90</u>	<u>3 45</u>
Jury fee	3 00	" "
Transcript for Supreme Court	" "	4 00
Shiff Ex 9 Cap. tally bond July & July Summs	2.60	
July Subpo. for Pettr	11.80	
Calling & trying Jury	1.60	15 00 " "
July Subpo. for Deft. &c		" " 11 05
Writings, George Baumgard 1 day May 7. 1852 for	" 50	" "

Recorded Page 237 and Certified  
 G. L. Lightner Clerk

George D. Gordon

vs. M

Alexander Norton

Appeal to the  
Supreme Court

Transcript

Filed the 9<sup>th</sup> day  
of November  
A. D. 1857

A. W. Purton  
Clerk

Continued

Alexander Barton

Plff in error

vs.

George B. Gordon

Defendant in error

Action of Debt for Slaves  
Taken to Alexander

Brief

A new trial cannot be granted on account of excessive damages, unless the jury have mistaken the law which regulate damages, or been guilty of some gross error which shows improper feeling on their part. See *Thurston vs. McArthur* 5. Mason's Rep. 497. *Whipple vs. Cumberland Manufacturing Co.* 2. Story's R. C. Rep. 582. *Allen vs. Blunt* 2. W. & M. 121. *Thompson vs. Mershey* 3<sup>d</sup> Grant. 304. *Woodruff vs. Richardson* 20 Leon. Rep. 238. *Clark vs. Pendleton* 20 Leon. Rep. 495. *Book v. Hill* 3. Sandf. Ct. 341. *McNamara vs. King* 2. Gilman's Rep. 432. *3 Sam. Ann's Rep. 486. Schlenker v. Kisley.*

A motion for new trial is an appeal to the sound discretion of the court, and unless manifest injustice has been done, should not be granted by the judge. Vide *Steinert vs. St. v. Henry* 1<sup>st</sup> D. 254. *McKean R. C. P. Jordan vs. Meredith* 3. G. 318. *Con. v. Charles* 3. S. & R. 9. *Culver vs. Avery & Wendell* Rep. 380. *Baker v. Briggs & Pickering* Rep. 122. *Williams vs. Gilman* 3 Grant 276. *Miller v. Talcott* 2 Root 115. *Baker v. Richardson* 1. Leon. 77. *Harrison vs. Clark* Ct. 1. Leon. 131

There must be a plain mistake of law or fact to justify the interposition of a court, by granting a new trial. Vide *Griffith v. Willing & Kim* 317. *Young vs. Silkenow* 11. Gilman's Reports 86. *McAnn v. Rufel* 11. Gilman's Reports 586. *Danson vs. Robbins* 5. Gilman's Reports 72

Although juries may have sent for and obtained books

and papers without the knowledge of the Court or the defend-  
ant, still for that cause alone, the Court will not grant  
a new trial. See *Latt v. Meacon & Stott* 178.

Although each of the jurors set down the sum which he  
thought the Plaintiff entitled to recover, the aggregate of  
which was divided by Twelve, the answer being agreed  
upon at the Verdict, the Court will not, for that reason,  
set aside the verdict. See *Dana vs Tucker* 4. *Yolander's Rep.*  
487. 16. *Commonwealth Rep.* 346. *Mead vs. Smith et al*

If the Court believe that substantial justice has been  
done, they will not grant a new trial, because im-  
proper evidence has been admitted, or proper evidence re-  
jected, or even misdirection of the Judge who tried the case.  
*Greenup v. Stokes & Kilman* 202. *Leigh v. Hodgetts, Saunders*  
*Rep.* 18. *Killet vs. Sweet & Kilman* 415.

The misconduct of a juror if not occasioned by the pre-  
vailing party, or done on his line, is not ground for a new  
trial. See *Pittibow et al. vs. Phelps et al.* 18. *Commonwealth Rep.* 445  
*Stephens v. Norma Lewis & Child v. Branch* 290. 2 *Commonw.*  
*Rep.* 496.

Courts will not enquire into the process of reasoning by  
which the jury arrive at their verdict, unless they are guilty  
of gross misconduct as *Shepherd vs. Black*, 2. *Blackly* 576

Newton v. Gordon.

Simons' Brief

In the Supreme Court  
November Term A.D. 1853

Alexander Newton  
Plff in error  
vs.

George D. Gordon  
Defn in error

=====  
Brief

This was an action on the case for slander, brought by Gordon against Parker. The words laid in the declaration amounted to the charge of perjury. It was a question on the trial, whether the words were proved as laid. The court refused to give this instruction, asked by the defendant, "though the words proved are equivalent to the words charged in the declaration, yet not being the same in substance, and though the same idea is conveyed in the words charged and those proved, yet if they contain substantially the same charge but in different phraseology, the plaintiff is not entitled to recover". The verdict and judgment were for the plaintiff.

The instruction should have been given. It asserted a plain principle of law, strictly applicable to the case; and the refusal to give it may have seriously prejudiced the defendant. In this kind of action, the allegations and proof must agree. The plaintiff must prove the speaking of the words laid in the declaration, or so many of them as will establish his cause of action. It is not enough to prove the speaking of equivalent words. Proof of the speaking of different words, though of the same import as those alleged, is not sufficient to sustain the action. This question was fully considered in *Sauford v Gads*, 15 Illinois 228, and need not be discussed in this case.

The judgment will be reversed and the cause remanded.

Judgment Reversed;

Arthur v Gordon

Heat

bind

No 3.

November 1857.

Alexander Norton

v

George D Gordon

Case to Alexander

~~8693~~

Opinion by

Just. C. J.

8693

Judgment reversed and

Case remanded.