AHERN, JEREMIAH v. COLLINS, JOHN 1866 COUNTY OF ST. LOUIS 555/B

OLD 648/15

AFFIRMED

INVOLVES:

- PETITION
- MALICIOUS ARREST TO RECOVER DAMAGES
- PLEADING — RIGHT OF RECOVERY
- FALSE IMPRISONMENT
- TRESPASS

1 State of Missouri } ss: Be it remembered
County of St Louis } that heretofore to wit: on the twentieth day of October A D eighteen hundred and sixty four, there was filed in the office of the Clerk of the St Louis Court of Common Pleas within and for the County aforesaid, a Petition which is in the words and figures following to wit:

Style of suit

Jeremiah Ahern, plaintiff
vs
John Collins, defendant

} St Louis Court of Common Pleas November Term 1864.

Petition.

St Louis County, ss:

Plaintiff states that heretofore to wit: on or about the twenty seventh day of September A. D. eighteen hundred and sixty four, the defendant unlawfully, maliciously and without any reasonable or probably cause and with the intent to injure and oppress plaintiff, did cause and procure plaintiff to be arrested at his residence in the City of St Louis by two police officers; and thence to be forcibly conveyed by them through the public streets of the City of St Louis, a long distance, to wit: the distance of one mile, and over to a certain police Station, and unlawfully maliciously and without any probable cause illegally did cause plaintiff to be detained a long space of time, to wit: for half an hour, when

2 plaintiff was fully discharged without trial or legal examination.

Plaintiff states that by reason of said illegal and malicious acts of defendant, done without any reasonable or probable cause therefore and without any right or authority and against the will of plaintiff he suffered great bodily pain and great mental anguish and sustained damage to the amount of one thousand dollars for which he asks judgment.

Wood and Mauro
pltff attys.

Jeremiah Ahern being duly sworn says he believes the foregoing petition and matters therein as stated to be true.

~~Sworn to and subscribed~~ Jeremiah Ahern
before me this 13th Oct }
1864. Leon J. Papin clk

Summons Thereupon the following Summons issued, to wit;

County of St Louis
The State of Missouri
To the Sheriff of St Louis County Greeting...

We command you to summon John Collins to appear before the judge of our Court of Common Pleas on the first day of the next Term, to be held in the City of St Louis, within and for the County of St Louis, on the Third

3 Monday of November 1864, then and there to answer the complaint of Jeremiah Ahern as set forth in the annexed petition and have you then and there this writ.

Witness Leon J. Papin, Clerk of our said Court with the seal thereof hereunto affixed at office in the City of St Louis, this twentieth day of October in the year of our Lord eighteen hundred and sixty four.

Leon J Papin, Clerk

Sheriffs Return Upon the foregoing writ the Sheriff made the following return, to wit:

Executed this writ in the County of St Louis on the twenty sixth day of October 1864 by delivering a copy of the writ and petition as furnished by the Clerk to John Collins

John C. Vogel, Sheriff
by J. L. Wilkins Dy.

Answer. On the twenty eighth day November 1864 the following answer was filed, to wit:

The defendant John Collins for answer to the several allegations of the petition of the plaintiff comes and denies that on or about the twenty seventh day of September A.D. 1864 he said defendant unlawfully, maliciously and without any reasonable or probable cause with intent to injure and oppress plaintiff caused said plaintiff to be arrested as stated in plaintiffs petition, and he

demands strict proof of each and every allegation so made in said petition. And further answering he denies that he said defendant then caused said plaintiff to be forcibly conveyed through the public streets of the city of St Louis a long distance and denies that he said defendant unlawfully, maliciously and without any probble cause illegally did cause plaintiff to be detained a long space of time or any space of time, whatever of each and every of which last allegations he demands strict proof. Defendant therefore further denies that by reason of said acts or any of them done against the will of plaintiff or otherwise, said plaintiff has suffered ~~xxxxx~~ pain, anguish or other damage. ~~and defendant asks judgment.~~

Isaac T. Wise
for John Collins, defendant.

John Collins being duly sworn makes affidavit that the matters stated in the foregoing answer are true to the best of his knowledge and belief.

Sworn to and subscribed before me this 28th day of November 1864.

John his X mark Collins

Leon J Papin, Clk.

Jury sworn trial proceed

And afterwards at the April Term 1865 the following further proceedings were had to wit:

Wednesday May 10th 1865.

5 Now at this day come the parties by their attorneys and thereupon come a jury, to wit: H. W. Graham M. M. Beak, Mr Walbridge, Louis Grate, J. J. Wiebers I. Humburg, Charles Kuhn, Gotfried Kuechler, George Lord, Jacob Hiementy, C. F. Schultz, and August Meinberg, twelve good and lawful men, who being duly elected, tried and sworn the matters issues herein joined well and truly to try, the trial progressed but not being finished at the hour of adjournment, is laid over until to morrow morning.

Thursday May 11th 1865

Trial finished & Judgment for Plaintiff

Jeremiah Ahern vs John Collins } Now again come the parties and jurors aforesaid and thereupon the trial of this cause progressed and being finished, the jurors aforesaid upon their oaths aforesaid say they find for the plaintiff and assess his damages at the sum of Four hundred Dollars. Therefore it is considered by the Court that the plaintiff recover of the defendant the damages aforesaid as assessed together with his costs herein expended and have execution therefor.

And on Monday the 3d day of July 1865 the following further proceedings were had, to wit:

Motion for New Trial overruled

The Court having heard and fully considered the defendants' motion for a new trial herein, doth order that the same be overruled

6 Afterwards on Saturday July 22d 1865 the following further proceedings were had, to wit:

Bill of Ex. & affidavit for appeal filed & allowed Bond filed & approved.

The defendant files a Bill of Exceptions and an affidavit for appeal and on his motion by attorney an appeal is allowed him to the Supreme Court from the judgment herein rendered, he thereupon files an appeal bond conditioned according to law, which is approved by the Court.

Which affidavit for appeal and appeal bond are in the words and figures following, to wit:

Affidavit for appeal & appeal Bond

John Collins the above named defendant, being duly sworn, on his oath says that the appeal in the above named cause is not made for vexation or delay but because the affiant believes that he is agrieved by the judgment of the Court.

Sworn to and subscribed before me this 3d day of July A D 1865.

John his X mark Collins

Lem J Papin, Clk.

Appeal Bond

Know all men by these presents that we John Collins as principal and Richard Daly and Richard Perry Jr as securities, are indebted to Jeremiah Ahern in the sum of Nine hundred Dollars, for the payment whereof we bind ourselves our heirs, executors and administrators, jointly and

7 severally, firmly by these presents. Sealed with our seals and dated at St Louis this seventeenth day of July one thousand eight hundred and sixty five The condition of this obligation is such, that whereas John Collins has appealed from the judgment rendered against him and in favor of Jeremiah Ahern in the St Louis Court of Common Pleas for the sum of Four hundred Dollars and cents, together with costs. Now if the said appellant, shall prosecute his appeal with due diligence to a decision in the Supreme Court and shall perform such judgment as shall be given by the Supreme Court or such as the Supreme Court may direct the St Louis Court of Common Pleas to give and if the judgment of such Court be or any part thereof be affirmed that he will comply with and perform the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation to be void, otherwise to remain in full force.

Approved by the Court
July 22, 1865
Attest: Leon J Papin,
Clk

John his X mark Collins (seal)

Richard Daly (seal)

Richd Terry Jr (seal)

Bill of Exceptions

And the Bill of Exceptions is as follows:
Be it remembered that on the trial of the above entitled cause the plaintiff in support of the

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Testimony Joseph Reilly

allegations of the petition introduced Joseph Reilly who being duly sworn testified in substance; I am and have been for several years past a public officer I know the plaintiff and first saw him at his house when we arested him. The defendant came to the police station house and wanted plaintiff arested and the Capt sent me and another (now dead) with Collins for that purpose Collins went along with us until we got near plaintiffs' house, gave us directions and then turned off We had some difficulty in finding the house and came to where Collins the defendant was at a house that was building near the Reservoir. He then went with us ~~to~~ and a short distance off from pointed out the house of and told us it was the house of plaintiff and to go there and arrest him The defendant did not go in, but remained close by We went in the house and found old man Ahern partly undressed and lying on the bed It was about eleven o'clock. We told him he must get up and go with us, He was loth to go and he was a peaceable and orderly citizen and was unwell and we had no authority to arrest him. We told him that we were going to take him and that he must get up and go with us. He then got up and put on his coat and went with us. He appeared to be quite feeble and seemed to be unwell. It was a very warm day. Collins then joined

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us and we took plaintiff to the police station house. It is about a mile and a half from the plaintiffs house to the station. I think Collins got to the station house before we did as the old man was not able to walk fast. When we got to the station house we turned plaintiff over to the Capt. and some conversation took place between the parties but I dont recollect what it was The plaintiff is quite an old man We arested him at Collins' instance who went with us and pointed out the way. He was with us most all the while. We had no warrant or process of any kind.

We used no force, it was not necessary. I think plaintiff was detained a short time say half an hour

Testimony of Wm Lee.

William Lee, being duly sworn, testified; I am Capt of Police in the City of St Louis I know parties. About middle of September Deft. came to upper police station on my charge He had a note from the City Chief of Police and represented that he wanted plaintiff arested I dont know where that is, it did not command the arrest the plaintiff. Collins represented that he owned a lot and was building a house and plaintiff would not let him proceed. At Collins request I sent Reilly and another officer with Collins after being gone some time the policemen and Collins returned and brought plaintiff. Plaintiff

appeared very feeble and quite fatigued. I heard their statements and then told them we had no jurisdiction in the matter, that another Court must settle who was entitled to the land, Collins wanted me to lock plaintiff up in the calaboose and tried to induce me to do so. But I refused believing there was no cause, Collins had plaintiff arrested and brought down Plaintiff was not delayed long at the station house, say about twenty minutes, The plaintiff then went away and soon after plaintiff left, the defendant went.

Testimony of Philis Conrad

Philis Conrad for plaintiff

I live on Cass avenue, I live in the same house that Ahern does. More than two came to arrest Ahern there were three. One was defendant Collins who built a house on Aherns land. I mean on the land fenced in. Collins came armed and the other men came and they took Ahern away. I cant say that Collins went into the house, Ahern had a cold- The came out of the house and all went off together Ahern had been unwell for some days and was quite feeble, Collins pointed out the house to policemen. The land where the house was being built, was enclosed and Ahern had been cultivating it for a number of years and there was a crop actually on where the house was commenced.

Cross-examined by Deft.

My father is a gardner I live at Herns, I was in

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the yard at the time the men came, I did not go into the house I did not hear what was said inside I was in the yard.

Testimony Capt Lee.

Plaintiff closed. and Capt Lee called for defense. When Ahern came to the police station with the two police officers, Collins (deft) was also there at police station, they all came in and there were conversations there. I inquired into matters Collins said Ahern was trying to drive him (Collins) off from his (Collins') lot that he was building a new house there and wanted Ahern arrested - wanted him put in the Calaboose, Ahern claimed the lot to be his and that Collins had no right to it Both seemed to be in earnest and to think they were each in the right. I understood from what was said there that some threats had been made by Ahern against Collins but but I cannot state the character of those threats, I directed them that they must go to some other Court to settle the matter.

Ahern and Collins both left very soon. Ahern was not detained long. No force used.

Testimony M. L. Lotte.

M. L. Lotte

I know both parties I sold the lot to Collins. I never knew Ahern claimed it Ahern tried once or twice to rent the lot of me but I always refused. Collins is a drayman. I sold it to him two or three years ago, He came

down to my store to see me about some threats of Ahern and sent him to Cozzens, Chief of Police

What did Collins say to you?

What representations did he mention threats made by Ahern?

Did he say that he feared Ahern? That he was afraid Ahern would destroy his house?

All these questions objected to and objections sustained by the Court.

Testimony Kremkman

Mr Kremkman for Deft.

I was building a brick house for Collins on his lot last September, about the middle or last of the month. Was putting up walls, Ahern came there, he wanted Collins to go off said it was his lot, Collins did not go off. I built the house, I know nothing of any arrest.

Testimony of Jas M Carpenter

Jas M. Carpenter for deft.

I know Ahern; he is a tenant of Mrs Octavia Boice Collins' lot is in the same enclosure Ahern has been there several years and has cultivated the land and paid up the rent.

This was all the testimony in the cause

Plaintiffs' Instructions Given

Whereupon the plaintiff offered the following instructions:

If the jury believes from the evidence that the arrest of the plaintiff was made without reasonable or probable cause then the law presumes, in the absence of testimony establishing the contrary, that such arrest was made with malice.

13 2. If the jury is satisfied that the defendant caused
Given the plaintiff to be arested at his residence in the city of St Louis and caused him to be conveyed thence by public officers to the police station and discharged and that such arrest was made without reasonable or probable cause and maliciously, then the jury will find for the plaintiff in such sum as they believe he ought to recover

Given 3d If the Jury find for the plaintiff in estimating the damages sustained by him you are bound by law to consider the jeopardy in which the liberty of plaintiff was placed; the distance that plaintiff was compelled to walk; his age and physical condition at the time of such arest; the bodily suffering and the mental anxiety and pain that were caused thereby, and you are to find for him in such a sum as will reasonably compensate him for all these things

Defendant's Instructions Given And defendant offered instructions
If the jury believe from the evidence that the plaintiff was arested at the instance of the defendant unless they also believe from the evidence that said arrest was caused by the defendant maliciously and unless they also believe from the evidence that the said arrest and the complaint or application to have it made was <u>without probable cause</u> on the part of the defendant, they ought find for the defendant.

which were given by the Court

Plaintiff offered instructions

Plaintiffs' Instructions Refused

5. If the jury believe that the defendant caused the plaintiff to be arrested at his residence by police officer and thence to be conveyed to a police station and that the plaintiff was at such police station discharged and was not further prosecuted on the supposed charge imputed to him, then this evidence tending to show that such arrest was made without any reasonable or probable cause

Refused.

6. The burden of proof lies upon the defence to show that the plaintiff had committed some unlawful act for the commission of which the plaintiff was legally subject to arrest.

Refused

7. Under the pleadings in this case the defence of justification cannot be considered by the jury

Refused.

8. The court instructs the jury that the mere claim of the witness Pottle to the land spoken of is no possession in law, and if the plaintiff or those holding under him occupied the land at the time, then plaintiff was in possession and it is immaterial who held the title to the land.

and defendant offered instructions:

Defendants' Instructions Refused.

9. Unless the jury believe from the evidence that an arrest has been made of the defendant at the instance of the plaintiff, they will find for the defendant and the proof of an arrest cannot be made by such evidence, unless the jury shall be

15 of opinion that it was made during the commission of an offence

10. The jury are instructed that in that case there is no evidence of a want of probable cause for the apprehension, and they will find for the deft.

11. Unless the jury believe that the arrest was made upon a complaint and affidavit made by the defendant upon which a warrant or other process issued, they will find for the defendant.— which were refused by the Court

Whereupon the case being submitted to a jury upon the testimony and instructions aforesaid they returned the following verdict:—

Verdict We the jury find for the plaintiff and assess the damages at four hundred dollars

C. F. Shultz,

St Louis May 11, 1865. Foreman.

Motion for New Trial Whereupon defendant in due time filed his motion for a new trial with his affidavit in support as follows;

Now at this day comes the defendant and moves the Court for a new trial in the above entitled cause, for the following reasons:

1st Because the verdict was against the evidence and the weight of evidence.

2. Because the amount of the verdict was excessive and not warranted by the evidence

3d. Because the Court erred in the law and refused

to grant the instructions of the defendant

4. Because the erred in granting instructions asked by the plaintiff

5. Because the judgment was erroneous and in favor of the plaintiff when it should have been for the defendant.

6. Because the Court improperly excluded evidence which was empetent and in favor of the defendant and admitted evidence for the plaintiff which ought to have been excluded

7. Because the defendant was surprised by his witness Frankman being made to testify as to threats made by plaintiff and which if he had been able to prove them would have made his defence, and which were actually made by plff. (affidavit in support)

8. For other errors both of the law and evidence manifest by which the judgment of was erroneous and for the comp party

Isaac T. Wise

Defendants affidavit for New Trial

The defendant filed on the same day the following affidavit in support of motion for new trial, to wit:

John Collins being duly sworn makes affidavit and states that at the time Mr Frankman was at my house beginning to build it, about the 27th day of last September A D 1864, Jeremiah Ahern came there and made many threats to me which was the reason and cause of affiant's going to the police

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office of the City of St Louis Mo and that he was in a great passion and threatened that he would destroy the building as fast as I would put it up, and many other threats of the same character affiant states that always supposed that Frankman heard the particular threats made but that he never saw him about it and did not know how to examine him about it but he states that when he saw said witness on the morning before the case was called he discovered that said witness did not hear said threats or the most serious of them and affiant states that he thought that said witness was near by and heard the threats but he now believes that one of the workmen who was there was the one instead of said witness, who heard them. said witness being in some other part of the building or in the cellar, as he now believes and understands affiant states that he is informed by Frankman that said witness is in the city of St Louis and affiant states that his evidence can be procured if a new trial is granted him

Sworn to and subscribed before me this 12th day of May 1865 } John his X mark Collins

(L S) Henry S. Lazar, Notary Public

Which said motion being heard by the Court was overruled. To all which defendants excepted and prays the Court that this bill of exceptions be granted

by the Court and made a part of record in said cause which is done this 22d day of July 1865

Sam Reber

State of Missouri } ss: I Leon J Sapin clerk of
County of St Louis } the St Louis Court of Common Pleas within and for the county aforesaid certify the above and foregoing to be a full true and complete transcript of the record and proceedings in the above entitled cause as fully as the same remain in my office

In witness whereof I have hereunto set my hand and affixed the seal of said court at office in the city of St Louis this twenty first day of August A D Eighteen hundred and sixty five

Leon J. Sapin,
Clerk

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1865 Assignment of errors filed
1866 Nov 24th Stmt & Br of Resp filed
" " 20th " " " Appt
" " 21 Arg & Sub by Appt - Sub on Br by Resp
" Dec 3 Affirmed
" " 6. Motion for Rehearing filed
" " 10 " " " over ruled

15 86
Octob[illegible]

No 120 Nov 1864

Jeremiah Ahern
Respondent

vs- Transcript

John Collins
appellant

appeal from St Louis Court
of Common Pleas -

Filed [illegible]
[illegible] 23d 18[illegible]
A. Wil[illegible]
Clerk

Wood & Maurs
attys of Respondent
Isaac T. Wise
atty of appellant.
$9.00 paid by appellant

Jeremiah Ahern appell
v
John Collins Appellee

IN SUPREME COURT,
Oct. TERM, 1866.

AND now comes the said Appellant and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by .....
2. That said Court rejected proper and legal testimony offered by .....
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Appellee
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Plaintiff when it should have been rendered for the Defendant appellee
10. That said Court overruled the motion for a new trial, made by Sd Appellee and thereon Committed Error, in its rulings, on Sd motion

Isaac T. Wise

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

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Ahern

vs

Collins

Assignment of Errors

Filed Nov 3rd 1866

O T Fishback Clk

Per E D McCarty

Jeremiah Ahern
Respdt
vs.
John Collins
Appellant

Supreme Court
October Term
1866.

Brief for Respondent

1st. No exception was taken to the action of the Court in sustaining the objection to questions proposed to the witness D. L. Pottle. The objection was properly sustained. What took place between the defendant and the witness, in the absence of plaintiff could not be competent evidence in the case.

2d. The instructions given on the part of the plaintiff were properly given while those asked for by defendant & refused, were properly refused.

3d. The affidavit of defendant in support of his motion for a new trial, does not show a case of newly discovered evidence, and the motion was properly overruled.

C. G. Dorsey
for Respdt.

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Jeremiah Ahern
Respondent
vs
John Collins
Appellant

Respondent's Brief
O G Monroe
Atty

Filed Nov 14th 1866
O F Fishback Clk
By E McCarty Dept

Jeremiah Ahern
Respondent
vs
John Collins
Appellant

Supreme Court
Oct Term 1866

Statement for Respondent.

The petition alleges that on the 27th day of Sept 1864, the defendant unlawfully maliciously and without probable cause and with the intent to injure & oppress plaintiff did cause & procure plaintiff to be arrested at his residence in the city of St Louis and thence to be forcibly conveyed through the public streets of the city of St Louis a long distance to a police station, and there unlawfully maliciously and without probable cause did cause plaintiff to be detained a long time, when plaintiff was fully discharged without trial or examination, whereby plaintiff suffered great bodily pain and mental anguish and sustained damage in the sum of one thousand dollars &c

The answer simply puts in issue the allegations contained in the petition.

On the trial Joseph Reilly for plaintiff testifies in substance. I am a police officer. First saw plaintiff at his house when we arrested him. Defendant came to the police station, wanted plaintiff arrested, and the police sent me and another officer (since dead) with defendant to arrest him. Defendant went with us until we got near the plaintiff's house, then gave us directions and turned off. We had difficulty in finding the house, went for defendant and found him and he came with us, pointed out the house and told us to go and arrest plaintiff. Defendant remained close by. We went in and found old man Ahern lying down partly undressed. We told him he must go with us. He was loth to go. Said he was a peaceable & orderly citizen and was unwell. We told him he must go, & he then got up, dressed & went with us. He appeared to be quite feeble & unwell. The day was quite warm. Defendant joined us and we took pltff about a mile & a half to the police station. Defendant got to the station first as the old man was not able to walk fast. Plaintiff is quite an old

man. We arrested him at the instance of defendant, who went with us most of the way & gave us directions. We had no process or warrant of any kind. We turned plaintiff over to the captain.

William Lee testified for plaintiff. I am Capt of police. About middle of September defendant came to the upper police station. He had a note from chief of police & wanted plaintiff arrested. The note did not command the arrest. Defendant represented he owned a lot and was building a house and plaintiff would not let him proceed. At defendants request I sent Reilly & another officer with Collins. Some time after the policemen & Collins returned & brought plaintiff, who appeared quite feeble & much fatigued. I then heard their statements and told them we had no jurisdiction in the matter. That another court must settle who had title to the land. Deft wanted me to lock plaintiff up in the calaboose, and tried to induce me to do so. I refused because there was no cause. Deft had plaintiff arrested.

Philis Conrad for plaintiff testified

I live in same house with plaintiff. Three men came to arrest him. Two went in & left remained outside. They came out and all went off together. Ahern had been unwell for some days & was quite feeble. Collins pointed out the house to the officers. The land on which Collins was building a house was enclosed and Ahern had been cultivating it for a number of years, and when the house was commenced there was a crop on the place it was being built. This was the substance of the testimony for plaintiff.

Wm Lee recalled for defense testified. When the officers came to the station with Ahern, Collins was there. I enquired into matters. Collins said Ahern was trying to drive him off his lot. That he was building a new house & wanted Ahern arrested. Ahern claimed the lot to be his, & Collins had no right to it. Both seemed to be in earnest & to think they were in the right. Understood some threats had been made by Ahern, but don't know what they were. Told them they must go to some court to settle the matter.

M. L. Pottle for defendant testified.
I know both parties. Sold the lot to Collins two or three years ago. Never knew Ahern claimed it. He tried once or twice to rent it of me. Collins came to my store to see me about some threats of Ahern & I sent him to Chief of police.
Question What did Collins say to you? What representations did he make? Did he mention threats made by Ahern? Did he say he feared Ahern? That he feared Ahern would destroy his house? To all these questions plaintiff objected & objection was sustained. No exception was taken to this action of the court.

Mr Krinkman for deft testified.
I was building brick house for Collins on his lot. I was putting up the walls & Ahern came there & said he wanted Collins to go off his lot. Collins did not go. I know nothing of the arrest.

James M. Carpenter testified.
I know Ahern. He is the tenant of Octavia Boyce. Collins lot is in the same enclosure. Ahern has been there several years and has

cultivate the land & pay the rent. And this was all the testimony in the cause.

At the request of Plaintiff the Court gave the following instructions -

1st. If the jury believes from the evidence that the arrest of Plaintiff was made without reasonable or probable cause, then the law presumes, in the absence of testimony establishing the contrary, that such arrest was made with malice -

2d. If the jury is satisfied that the defendant caused the Plaintiff to be arrested, at his residence in the City of St Louis, and caused him to be conveyed thence by public police officers, and he was there discharged, and that such arrest was made without reasonable or probable cause and maliciously, then the jury will find for Plaintiff in such sum as they believe he ought to recover -

3. If the jury find for the Plaintiff in estimating the damages sustained by him; they are bound by law to consider the jeopardy in which the liberty of Plaintiff was placed; the distance that Plaintiff was compelled to walk; his age & physical condition at the time of his arrest; the bodily suffering, mental anxiety and pain caused thereby; and they are to find for him in such sum as will reasonably compensate him for all these things -

To the giving these instructions, no exception

appears to have been taken.

Defendant asked the following instruction, which was given.

If the jury believe that the plaintiff was arrested at the instance of defendant, unless they also believe that said arrest was caused by the defendant maliciously, and that said arrest and the complaint or application to have it made was without probable cause on the part of defendant, they ought to find for the defendant.

The defendant also asked the following instructions which were refused.

1. Unless the jury believe from the evidence that an arrest has been made of the defendant at the instance of plaintiff, they will find for the defendant, and the proof of an arrest cannot be made by oral evidence, unless the jury shall be of the opinion that it was made during the commission of an offence.

2. The jury are instructed that in that case there is no evidence of a want of probable cause for the apprehension, and they will find for the defendant.

3d. Unless the jury believe that the arrest was made ~~by the defendant~~ upon a complaint & affidavit made by the defendant, upon which a warrant or other process issued, they will find for the defendant.

No exception appears to have been taken

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Jeremiah Ahern
Respondent
vs
John Collins
Appellant —

Statement for Respondent
G. Mauro
Att.

Filed Novr 14th 1866
O. T. Fishback Clk
By E. McCarty Dpty

to the action of the Court in refusing to give said instructions.

Defendant filed his motion for a new trial which was overruled and he excepted —

Jeremiah Ahern Appellee
vs
John Collins Appellant

In the Supreme Court. Oct T. 1866.

Statement of the Case by the appellant.

Jeremiah Ahern who was plaintiff in the court below brought suit against John Collins for damages for a Malicious arrest, and recovered a Judgment in said suit against Collins for Four Hundred Dollars. All the allegations in the plaintiffs petition were traversed and denied by the defendant Collins in his answer. It appeared from the evidence as adduced by his own witnesses either on direct or cross examination that no legal action was instituted whatsoever - that there was no complaint - filed - no warrant for any arrest, no action taken by any court, no duress of any kind, and not even a seizing or touching or constraint of the person, (so that even an action would lie for assault or false imprisonment) but on the contrary the negative of all these appears from the plaintiffs own testimony.

There having been no arrest it is scarcely necessary to notice the question of "Malice", or the evidence of malice - nor yet the evidence of "want of probable cause" as it is obvious that if there was no arrest at all, the subordinate although indispensible branches of proof ~~of the~~ incumbent on the plaintiff must share the fate of the principal fact - as no such ~~great~~ issues can arise if it appears that the fact ~~of~~ is

that there was no ~~any~~ arrest at all. - It may here proper to mention however that no malice is proved - nor is there any proof of want of probable Cause. although the Court instructed the Jury that malice might be inferred. from the absence of such probable Cause. yet this cust. it is contended was not proven. The Court instructed the Jury that there was an arrest. and the Jury upon that Instruction with others returned the verdict aforesaid.

Isaac T. Rose
for Appellant.

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Ahern
vs
Collins.

Statement of the
Case - by Appellant -

Isaac T Wise
for Appellant.

Filed Nov 20th 1866
O T Fishback Clk
By E O McCarty Deptz

Jeremiah Ahern Appellee
vs
John Collins Appellant

In the Supreme Court. October. 1866
St Louis County.

Appellees Brief.

In this Case Ahern plaintiff brought suit against Collins the defendant. laying his damages at One Thousand Dollars. for "unlawfully maliciously and "without any reasonable or probable cause and with "intent to injure and oppress. plaintiff did procure "plaintiff to be arrested and forcibly conveyed. to the "Police Station and there caused him to be detained "for half an hour" the petition then states that. "he was "then discharged without trial or legal Examination The answer denies every averment. except that he was discharged &c. - denying the whole cause of action. (if any is stated) The court ~~granted~~ gave some instructions to the effect that an arrest was proved. leaving the question of Malice. and want of probable cause to the Jury - and refused instructions to the effect that there had been no arrest. The Jury found a Verdict for $400. against the defendant. upon which on motion for new trial being overruled the deft appeals to this Court.

Points and Authorities.

First: In this Case the plaintiff has mistaken

the nature of his Cause of action (if he has any at all) and on the pleadings. alone ought to be reversed.

The first allegation in an action for a malicious arrest, must be. 1st that plaintiff has been prosecuted by defendant. 2nd. that. the prosecution has been dismissed. or an acquittal of Plaintiff in that prosecution.

This the plaintiff must aver and prove: Yet he could not have done so. on his petition if his Evidence had been at hand.

Starkie on Ev. Vol 2. pg 497.
Greenleaf. " Part IV. §449. §452.

The Petition shows the nature of the action – not the Evidence and a fatal defect. such as no cause of action made out in the petition, is not cured by verdict.

Patrick vs Abeels. 27 Mo 184.
Welch vs Bryan. 28 " 30.
Mooney vs Kennett. 19 " 553.

See pg 555. Sec 6. "Surely the omission to show that "the plaintiff was acquitted of the "prosecution is a fatal objection "to this portion of the Petition –
Scott, Jus.

Second.

If the Petition had ~~been~~ stated the cause of action perfectly, upon issues joined the next indispensible step, on the part of the plaintiff would have been to prove,

1. A Prosecution
2. An acquittal - or at least that the prosecution had ended.

"The gravamen of the action being that plaintiff has" "been made the subject of legal process to his damage" (Greenleaf & Starkie as above), in proof of which it appears that this is the first action of this nature ever in that Court, not so based upon a prosecution or legal process instituted by defendant, the evidence nothing shows,

Hays	vs Walker	Mo Vol 2,	222
Miller	vs Brown	" 3,	127
Stone	vs Powell	" 5,	435
Hickman	vs Griffin	" 6,	37
Wellemins	vs Vanmeter,	8,	339
Remy	vs Valandingham	9	807
Grissell	vs Reff	"	849
Brunt	vs Higgins	10,	728
Mooney	vs Kennett,	19,	551,

Third -.

"The evidence of the plaintiff shows affirmatively that there never was any prosecution, or legal process or proceedings of any kind whatever. - So no question can arise - as to whether ~~it~~ he was "maliciously or without probable cause - "made the subject of legal process" by the defendant.

Buckley vs Smith. 2 Duer. pg. 268.

cases cited. Baldwin vs Weed 17 Wendell 227

Sloan vs Stafford. 4 Wash C.C.R. 79

Davis vs Hurey 6 B & C. 225

"Fourth

"There was no arrest - there being neither warrant issued nor any complaint made. Not even after the plaintiff came to the station with Reilly once another.

An arrest: is defined to be "the beginning of imprisonment "when a man is first restrained of his liberty by the "power of a lawful warrant."

Burrill Law Dict, Vol 1.

Comyn Dig. Vol 4. pg 250.

Bouvier's Law Dic. 130.

Jacob Law Dict Vol 1. 125

Fifth.

If the plaintiff had proceeded with his proof and have proved. the Prosecution – its institution by the defendant. and the acquittal or dismissal. his next step would have been to prove. "its institution without probable Cause malice &c."

But in this Case no prosecution ever Existed. (as stated above)

Greenleaf on Ev. Part IV. § 453.

? How can Cause – be probable or improbable – when no cause Exists, how any issue upon what was never made out – to wit – a cause of arrest

Sixth.

The Policeman Reilley & the other had no power either bested or granted to make an arrest. Even if they had laid hands on Ahern it would have been a trespass on the person an assault. or an imprisonment, or both. for which they would have been liable.

City Ordinances 1856. pg 578. Sec 17.
Const. Mo. Art XIII. § 15.

Seventh

It however appears that not even an assault was committed on Shern, nor was he in any way restrained of his liberty - A threat of an assault does not make one, nor is a threat of arrest ~~even~~ (the officer having no warrant) even duress.

Clafin vs McDonough.
Mo 33. 412.

Eighth -

The defendant in his answer traverses and denies every allegation in the Plaintiffs Petition (except the last. "that there was no trial &c) thereby denying his Cause of action in toto. One taking this position he cannot confess & avoid nor justify - He must rely solely on the Plaintiffs failure of proof; in which case the question of arrest or no arrest is the paramount one in the Cause.

Cable vs McDaniel Mo 27 pg 184
Adams vs Trigg 37 141.

Ninth

The Court gave for the Plaintiff the following Instructions

1st. If the Jury believe from the evidence that the arrest of the plaintiff was made without reasonable or probable cause then the Law presumes in the absence of testimony establishing the Contrary that such arrest was made with malice

2. If the Jury is satisfied that the defendant caused the plaintiff to be arrested at his residence in the City of St Louis and caused him to be conveyed thence by a public officer to the Police Station and discharged and that such arrest was made without reasonable or probable Cause and maliciously then the Jury will find for the plaintiff.

In these Instructions the Court took away from the Jury the question of arrest or no arrest; they both and particularly the 1st. assumed an arrest; the very chief averment denied in the answer; and no proof in the evidence of any arrest but directly the Contrary; and this error of the Court only becomes more strikingly apparent on its refusal of the defendants 9th Instruction. to wit

9th. Unless the Jury believe from the evidence that an arrest has been made of the defendant, at the instance of the plaintiff they will find for the defendant — and the proof of an arrest, cannot be made by oral evidence unless the Jury shall be of

opinion that it was made during the commission of an offence.

Greenleaf on Ev. Vol. 1. pg 101. § 88.
City Ordinances 1856. pg 598.
Const Mo Art XIII. § 13.

An Instruction must not determine an issue of fact.

Kenniman vs Kanefex
Mo Vol. 34. pg 147.

II It was equally error for the Court to leave the question of want of probable cause entirely to the Jury - as that is a matter of law - upon which he committed error not to instruct. as to what constituted it or the want of it - directly or hypothetically - according to the evidence.

Buckley vs Smith 2 Duer. pg 272.
(see opinion of Judge Duer as therein)
Garrison vs Pearce 3 (2 D Smith) N.Y. 255.
Greenwade vs Mills. 31. Miss. 464.

Tenth

It will be seen that there is nothing in the Record and the evidence brings to light no reason or cause why this arrest (so called) was made. If there had been any arrest in fact, could it have spring into life with no legal cause, nothing charged, no offence even named -, the absence of cause - shows that the conclusion that there was an arrest at all to be absurd. (they might have laid hands on Ahern - but it would have been an assault &c - but no arrest)

Eleventh.

If there have been an arrest, in law, then on a complaint, and trial had, now constat, but the evidence of Collins as a prosecuting witness would have resulted successfully in holding them on the proceedings, and in such case Collins would have been justified by the holding over and thus protected by the judgment, in which case, the plaintiff on issue joined, would have been unable to maintain his material averments, "that the prosecution was ended, acquittal &c;" the fact that, such an event was impossible - no complaint existing - makes it evident that what was done, was no arrest, in the legal signification - to maintain this action for if an arrest is "not malicious" and on good probable cause" the party arrested becomes convicted, on the examination complaint &c: the fact that there is no ~~such~~ possibility of any conviction here, by reason of the non-existance of ~~any~~ any legal process, or proceedings, shows either that no legal arrest, could be, or, that the defendant in no event could succeed in no event escape liability - which is absurd, for if an arrest then an alternative - either a conviction or an acquittal; if the former then Collins would be protected by the record - the fact that there was no alternative proves no arrest exists, whatever was done or might have been done no arrest was possible: there being nothing in the nature of a legal proceedure to support whatever may have been done.

Kay vs Keen 18 (B Mon) Ky. 839

Twelfth

The Court erred in not granting a new trial also from the facts, that appear, that Collins sought advice from Bottle who sold him the Lot, that he went to the Chief of Police for aid and protection - that he took a note up from him or his clerk, to the police Station, evidently seeking the protection of the Law, - it appears that Ahern had tried to drive him off his lot, See understood that threats had been made by Ahern (see evidence) Collins was erecting a brick house which while in the course of construction could be easily mined, he was justly alarmed as Ahern lived close by and Collins did not, (no proof that he lived in the neighborhood) He a desperado of ~~small~~ small means, his house easily mined in a night - and no proof possible, it is not to be wondered that he tried to prevent this ~~threatened~~ misfortune before it was too late, See testifies (p. 11), "both seemed to be in earnest and to think they were each in the right" in all this, supposing all the material averments, of the cause of action made out, (and that all material averments had been made in the petition) until the question of malice is reached, It seems as if the whole evidence showed sincerity and not ~~maliciousness~~ in the defendant, and that a new trial ought to have been granted by the Court, and it was error not to ~~so so~~ grant it.

It is the settled rule of the Courts, where the common law prevails not, to favor actions of this sort on the ground of public Policy and no Judgment ought to stand, where there is so much evidence tending to show want of malice and so little tending to prove it.

Thirteenth

It is ~~beyond~~ certain from the evidence of the plaintiffs own witnesses

1st. That no force was used on Ahern by the officers, or restraint.

2. That they had no warrant. or process.

3. That all that took place was "words spoken"

Bare words do not constitute an arrest.

(chittys) Blackstone. Vol III. pg 228.

note 1 Ry & M. C.N.P. pg 26.

Fourteenth

The defendant being unable to confess and avoid or justify. after having denied the Plfs cause of action (so far as every avernment went) in his petition according to authorities cited above, the question of an arrest. if the petition have been proved is the one on which the case depends. If therefore it appears

from the evidence & pleadings, affirmatively, that the plaintiff can have no cause of action the case should be dismissed.

Fifteenth. An action for a malicious arrest — or for a malicious prosecution the same — an arrest is a result of the prosecution merely

See Greenleaf on ev. 431 &.

Case in note there quoted. Mitchell vs Jenkins. 5 B & A. 588. 594.

Isaac T. Wise
Atty for Deft.

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Ahern
vs
Collins

Appellants Brief.

Filed Nov 20th 1866
O. T. Fishback Clk
By E. McCarty Dpty

Isaac T. Wise for Apl.

Supreme Court Oct. Term
1866

Jeremiah Ahern – Res.
vs
John Collins – Appellant

Opinion of the Court

In order that the view taken of this case may be clearly understood it will be necessary first to notice the petition. It has been argued here upon the theory that it was drawn with the intention of setting out a cause of action altogether similar to what under the common law system of practice would have been called an action for malicious arrest or malicious prosecution. The same idea seems to have been entertained in the trial of this cause in the Court below. After averring the fact that the defendant wrongfully and maliciously procured plaintiffs to be arrested by two police officers in the city of St Louis it says "and then to be forcibly conveyed by them through the public streets of the city of St Louis, a long distance

to wit: the distance of one mile and over to a certain police station and unlawfully, maliciously and without any probable cause illegally did cause plaintiff to be detained a long space of time, to wit for half an hour, when plaintiff was fully discharged without trial or legal examination &c wherefore he claims damages &c. The true object is to ascertain not whether this averment would bring it within any one of the different forms of action as they existed at common law because the use of them has been entirely superseded by our own statutes but as to whether it contains a sufficient statement of facts showing a right upon the part of the plaintiff to recovery.

Malicious arrest ought not to be confounded with malicious prosecution. It is true that the mode of proceeding for both previous to the change of practice in this State would have been by an action on the case and it is likewise true that malice and want of probable cause

are necessary ingredients of both.
But the word arrest more properly
applies to the taking of a party
into custody under civil process and the action
for malicious arrest was instituted only where the plaintiff
had been maliciously and without probable cause taken into
custody for debt or where there was a malicious holding of a
party to bail. The essential ground
of an action for malicious prosecution
on the other hand consisting in the fact
that there had been a legal prosecution
against the plaintiff without reasonable or probable cause. This is said
to be the essential ground of the action
because the other necessary ingredient
malice might be inferred from the proof
of want of probable cause. It is very
clear that the facts stated in this case
are not sufficient to have sustained
either of the actions above referred
to but we think that an illegal
imprisonment was sufficiently
averred. It makes no difference
whether the restraint of the person
is caused without process or under color
of process wholly illegal (Chitty's

Prac. Vol. 1 p. 48). It is a trespass against the person for which the plaintiff is entitled to compensation in damages upon the necessary proof of the facts.

The counsel for the appellant insists that there was no arrest in this case or to speak with more accuracy that there was no actual apprehension of the plaintiff by the officers and that nothing but words were used to procure his attendance at the police station. Let us see what the testimony is. Joseph Reilly a police officer says "I know the plaintiff and first saw him at his house when we arrested him. The defendant came to the police station house and wanted plaintiff arrested and the Capt. sent me and another (new man) with Collins for that purpose". Again he says after reaching the house of plaintiff "The defendant did not go in, but remained close by. We went in the house and found old man Ahern partly undressed and lying on the bed. It was about eleven o'clock. We told him he must

get up and go with us. He was loth to go and since he was a peaceable and orderly citizen and was unwell and we had no authority to arrest him. We told him that we were going to take him and that he must get up and go with us. He then got up and put on his coat and went with us. He appeared to be quite feeble and seemed to be unwell. It was a very warm day." &c. It is admitted that bare words will not constitute an arrest or imprisonment but words coupled with a threat of force may be sufficient to place a party in restraint. It was held in the case of Johnson vs Tompkins et al. 1 Bald. 571 that "It is not necessary to constitute false imprisonment that the person restrained of his liberty should be touched or actually arrested if he is ordered to do or not to do the thing to move or not to move against his own free will if it is not left to his own option, to go or stay when he pleases and force is

offered + + + + or there is reasonable ground to apprehend that coercive means will be used if he does not yield" the party under such circumstances need not wait for the actual application of force but will be considered in a state of actual imprisonment. The testimony discloses the fact that the plaintiff was an old man - unwell and very feeble and he is told by the officers (two in number) that they came to take him and "he must get up and go with them". Is there any wonder that he yielded under such circumstances? No clearer case of an actual taking of a person into custody could be made out.

In asking the court to instruct the jury as to the law of the case both parties seem to have gone upon the idea that it was an action either of malicious arrest or malicious prosecution and whilst there was no necessity of saying anything about probable cause still it is not

probable that the jury was misled by the hypothesis upon which the instructions were drawn. The plain matter of fact as to whether there had been such a trespass committed upon the person of the plaintiff as to entitle him to damages commensurate with the wrong and injury done him was sufficiently presented by the trial and we are not disposed to disturb the verdict of the jury.

There are many circumstances of aggravation in this case and no objection can be taken to the ruling of the court below as to the measure of damages

There was no error in the refusal of the instructions asked by the defendant. The judgment of the court below must be affirmed

The other Judges concur

Thos J. C. Hagy

Jeremiah Ahern
— Res.

vs

John Collins — Appte

Opinion of the Court
Fagg

Filed Dec 3d 1866
O F Fishback Clk
by E P McCarty Dept

Affirmed

Ahern
vs
Collins

Now at this day Comes John Collins Appellant in the above Cause and moves the Court for a rehearing in said Cause. for the reasons following.

First: It is stated in the opinion of the Hon Court: "It is very Clear that the facts stated. in this case are not sufficient to have Satisfied either an action for malicious arrest or for a malicious prosecution" "But we think an illegal imprisonment was sufficiently averred" "It is a trespass against the person for which plf is entitled to Compensation". But how can a plaintiff declare on both Causes of action? The defendant can only answer ~~the~~ and deny the allegations of the petition. It is the pleadings not the evidence that determines the Cause of action. Patrick vs Abeels. Mo. ~~28. pg 30.~~ 27. pg 184 Welch vs Bryan 28. pg 30. Moony vs Kennett. 19. 553.

The petition declares the cause of action to be for a malicious arrest - without reasonable or probable cause, procured to be done by deft - there is no other cause of action stated - no cause of action for false imprisonment could even be averred for the same acts. and stand - what was done to Ahern (as disclosed by evidence) was done either under the law. or against law. the act of the persons. going to his house &c - was either arrest or assault. ~~but to~~ giving a cause of action for malicious arrest against Collins for setting legal power in motion without Cause - or for assault & Battery & false imprisonment against those doing this false imprisonm & battery - but both cannot be. The two Causes.

of action are incompatible - ~~they can each~~ either may exist - by reason of the non existance of the other - the arrest - if it is one - however maliciously instigated - is justified in the officer - and it is a true imprisonment. - the ~~false~~ imprisonment & battery - is if not made by legal means - a false imprisonment - by force - by a mere of another man - but it cant be true & false - legal & violent by the same man. & the same act: that is impossible in the very nature of things. In the one case the false imprisonment & violence to the person merges into the legal act of the officer - and the remedy of the sufferer is not against him but against ~~him~~ the complainant who originated the wrong of maliciously setting lawful proceedings in motion. In the other case the same violence against the sufferer if without legal sanction of any kind - makes the officer (if he is one) a mere man ~~guilty of a shameful assault~~ and his act degenerates into a shameful assault upon his victim ~~and his~~ whose remedy must be against the one denying the outrage, compelled it may be with any aiding & abetting - But both causes of action cannot exist. and the petition alone must disclose which one does exist - not the evidence. - they cannot exist both. for an assault and battery & false imprisonment ~~is so~~ are lawless acts. in fact outrages. against all law - an arrest on the other hand (however maliciously instigated) is in direct obedience to law. Can the same act be against all law and be entirely legal at the same time? if not. then neither can the two causes of action exist at the same time for the same act. & if both stated the petition demurrable It is truly said that the necessity of following "forms of action" has been abolished - but causes of action have not been nor cannot be changed - they too exist in the nature of things and spring from all the various wrongs.

mankind inflict upon each other - and must continue till the acts themselves cease to be done. by one against another.

Second. The wrong declared on by a plaintiff in his petition is certainly the only one that the defendant can or ought to be held to defend against. upon common principles of justice. Can it be pretended for an instant that. on all the allegations of the petition - that he has still been sued on another cause of action incompatible with the one stated. "for assault & battery & false imprisonment." not one even of these words in the whole petition? ought he to be held to a verdict of the court below on a case confessedly not sustained - upon a hypothesis that. there is ~~not~~ another cause of action lurking in the petition - not suspected as the record shows of being therein till now - not by the Court below - or by defendants nor even by the plaintiff's counsel. Is it possible to find such a cause of action in the petition "separately stated in such a manner that it may be intelligibly

distinguished" (Stat. pg 657). Is there not danger that the defendant may be held on a cause of action which he has yet had no opportunity to defend against.

Thirdly - Suppose Collins had been sued on such a cause of action. as is contended is not declared on - "false imprisonment - assault" &c. is there not some doubt. (the evidence remaining the same) whether - on occasion of a citizen going to a chief of Police for legal aid - to have a man arrested - being sent away to a more subordinate officer then other subordinates sent after the men named - and then, they, instead of making an arrest (an act of law) proceed to assault maim wound - and outrage - in fact doing every thing against and nothing according to law - is not there some doubt about the citizen being liable for these outrages?. Is a citizen appealing to officers appointed to protect and act under law liable for for their assaults - and if so for any other felonies they commit?. If that is the cause of action - is there not

great danger if the judgment is affirmed that Collins may truly say that he is held in this Court on a cause of action on which until now he never knew he was sued?
("Collins wanted Ashern arrested & the Capt sent me &c. for that purpose")

Fourth: "There are many circumstances of aggravation in this Case" ~~Nothin~~ This is fully admitted by the defense. It was a shameful outrage. But it was done not by Collins. and on action brought against him according to the acts. which make the cause of action (being the identical one mentioned in the opinion of the Hon Court – and also in the brief filed by defendant on trial of the Cause by this Court) why should not Collins have an opportunity to defend. A Citizen calling upon the constituted authorities for legal acts to be done perhaps is not liable for outrages or felonies done by officers of the law contrary to all law or right or justice

Isaac T Wise
for appellant.

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Ahern
vs
Collins

Motion for Rehearing.

Filed Dec 6th 1866
O B Fishback Clk
by E P McCarty Deptg

Overruled

Jeremiah Ahern
v
John Collins,

IN SUPREME COURT,
Oct TERM, 1865.

AND now comes the said Defendant Appellant and says, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Defendant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by
2. That said Court rejected proper and legal testimony offered by
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Defendant Appellant
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Plaintiff when it should have been rendered for the Defendant
10. That said Court overruled the motion for a new trial, made by Defendant Appellant.

Isaac T. Wise
for Defendant,

And now come the Respondent and for joinder in error say, that there is no error in the record and proceedings of said Court of Common Pleas in said cause, as assigned by said Appellant

C G Mann
Att for Respdt

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Ahern
vs
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Assignment of
Errors