

~~137~~

60.

(16.) (17.)

Reuben B. Edgar
guardian of

vs ~~the~~ appeal

Thomas W. Lutchen

Filed June 25. 1845.

A. L. Bonn CLK

State of Missouri
Washington County

Read in the Circuit Court begun
And held at the Court House
in the Town of Potosi in and for said County of Washington
before the Hon Judge of said Court

Be it remembered that
On the 10th day of October in the year of Our Lord One
Thousand Eight Hundred and Forty Two Thomas M. Cutchins
by his next friend Samuel M. Cutchins filed in the Office
of the Clerk of the Circuit Court his Declaration in writing
Against John Edgar in the words and figures following to wit

Washington County

In the Circuit Court
October Term 1842

Thomas M. Cutchins by his Guardian and next
friend Samuel M. Cutchins complains of John Edgar
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 has always conducted
himself and until the committing the said several Grievances
by the said Defendant as herein after mentioned was
always reputed, esteemed and accepted by and amongst
all his neighbors and others to whom he was in any way
known to be a person of good name, fame and credit to
wit at the County of Washington And whereas also the said
Plaintiff hath not ever been guilty or until the time of
committing the said several Grievances by the said Defendant
as herein after mentioned but suspected to have been guilty of the
offence and misconduct hereafter mentioned to have been imputed
to him, by means of which said premises he the said Plaintiff

before the Committing Of the said Juried Grievance by the said
Defendant as herein after mentioned by the Assembly Obtained the
Good Opinion and Credit Of All his Neighbors and Other Good
and Worthy Subjects Of this State to whom he was in anywise
known; (Yet the said Defendant well knowing the Premises but
greatly envying the said Plaintiff and the said Plaintiff
and continuing and wickedly and maliciously intending to
injure the said Plaintiff in his said Good name, fame and
Credit, and to bring him into Public Scandal, infamy, and
Disgrace with and among his Neighbors and to cause it
to be suspected and believed by those Neighbors that he the said
Plaintiff had been guilty of Wickedness and of the detestable
and Abominable Crime against nature committed with a Beast
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, oppress, injure, and wholly
ruin him the said Plaintiff he therefore on the first day
of May in the year one thousand eight hundred and forty two at
the City of Washington aforesaid in a certain discourse
which he the said Defendant then and there had of and
concerning him the said Plaintiff in the presence and hearing
of Absolam Paton and divers other Good and Worthy Citizens
of this State then and there in the presence and hearing
of the said Absolam Paton and the said divers other
Good and Worthy Citizens the said Defendant John
Edgar maliciously spoke and published of and concerning
the said Plaintiff those false, scandalous, malicious and
defamatory words following that is to say he (the said Defendant
meaning ~~him~~^{say} Thomas M. Cretchlow (the said Plaintiff
meaning) fucking (thereby meaning) having carnal
intercourse with and committing the Abominable and
detestable Crime against nature with (thereby meaning)

meaning the man of the said Defendants Father
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 then had
in the presence and hearing of divers other good and
worthy Citizens in the said Defendant further continuing
and intending as aforesaid then and then in the presence
and hearing of the of the said last mentioned Citizens
falsely and maliciously spoke and published of and
concerning the said Plaintiff these other false scandalous
malicious and defamatory words following that is to say
in (Defendant meaning) ~~that~~ ^{saw} Thomas M. Cutcheon (meaning
Plaintiff) sucking (meaning committing) the abominable
and detestable crime with and having carnal intercourse
with) their mare (meaning) the mare of the said Defen-
dants Father.

And afterwards to wit on the day and
year aforesaid at the County aforesaid in a certain other
discourse which in the said Defendant then and then had
to and with William Hicks of and concerning him the
said Plaintiff in the said Defendant further continuing
and intending as aforesaid then and then in a discourse
with the said William Hicks falsely maliciously spoke
and published of and concerning the said Plaintiff these
other false scandalous malicious and defamatory words
Defendant asked said William what would be his
(William) reply that day, said William replied to
said Defendant that he (William) had plenty of work
to do said Defendant then said to said William to
work you are like Thomas M. Cutcheon did our
Black mare the other day, said William said to
said Defendant how was that? said Defendant replied

whom sucking (Thence meaning) having sexual intercourse with) the Black Man, meaning By means of the committing of which said sexual grievances by the Defendant the said Plaintiff hath been and is greatly injured in his said good name fame and Credit and brought into public Scandal infamy and disgrace with and among all his Neighbors and other good and worthy Citizens of this State to whom the innocence and integrity of the Plaintiff in the premises was unknown have on occasions of the committing of the said sexual Grievances by the said Defendant as aforesaid from thence hitherto suspected and believed and still do suspect and believe the said Plaintiff to be a person guilty of having had sexual intercourse with a Beast and have by reason of the committing of the said Grievances by the said Defendant as aforesaid from thence hitherto wholly refused and still do refuse to have any intercourse with the said Plaintiff as they were before used and accustomed to have and otherwise would have had and the said Plaintiff hath been and is by means of the premises otherwise greatly injured to wit at this County aforesaid to the damage of the said Plaintiff in the sum of Five Thousand Dollars and therefore he sues

W. Frissell Atty for Plaintiff

Upon which the following writ issued

Washington County

The State of Missouri To the Sheriff of said County directing His Command You that you summon John Odgers that he do and appear before the Judge of our Circuit Court at a Court to be held at the Court House in the Town of Potosi in and for said County on the fourth Monday of April next then and there to answer to the Complaint of Thomas M. Cutchens by his next friend Samuel M. Cutchens and here you there then this writ -

Witness Isaac McGrawy Clerk of our said
Court at Office this 30th March 1843
Isaac McGrawy Clk

Upon which the Sheriff returned as follows

Send the within
on John Edgar in Washington County (1/2 p. 1) of the 1843 by
delivering to him a Copy of the within declaration and writ -
Yours Matthew Sheriff
By H. B. Crington Deput Sheriff

And afterwards at the said time the following Order was
made

Now at this day Come the Defendant and move the
Court to appoint him a Guardian ad litem to defend this Cause
and thereupon the Court appoint Reuben Edgar Guardian ad
litem who accepts said appointment and files filed in
the words and figures following to wit -

And the said Defendant
by his said Guardian Come and says that he is not guilty of
the wrongs and grievances in the Plaintiffs Declaration mentioned
in manner and form as there set forth and alleges and of
this he puts himself upon the Country

John Edgar Defendant
by his Guardian Reuben Edgar
Proh Atto

And the Plaintiff doth the like

M. Missell Atty

And afterwards at the April Term of said
Court 1845 the following proceedings were had in said Cause
to wit -

Now at this day Come the Parties by their Attor-
-nies and the jury Come a Jury to wit - Samuel Trotter John

Mildman, Solomon Bill John Huff, Michael W Lynch
Samuel Myers, Samuel Staples, Michael Flynn, Robert Smith,
William A Pawlar, Jonathan Parner and Thomas W. Ford
truly good and lawful men who being duly elected and
and sworn well and truly to try the issues joined between the
parties aforesaid upon their oaths do say. They find the issue
for the Plaintiff and assess the Plaintiffs Damages to the
sum of Five Hundred Dollars. Therefore it is Considered by
the Court that the said Plaintiff recover of the said Defendant
the sum of Five Hundred Dollars the Damages aforesaid
in favor aforesaid assessed also his Costs and Charges in
this behalf expended and that he bear thereof his just and equitable
And afterwards the Defendant by his Attorney Comd
and moved the Court to Arrest the Judgment rendered in this
Cause for the following reasons to wit

1st Because the Declaration is defective

2^d Because the words as charged are not actual

3^d There is no movement that the words used to convey the idea
" of Carnal Knowledge seen by the hearers or by those of
" the neighbourhood when it was used understood to convey
" that idea

4th The available word in the Declaration is an unknown
" to the English Language and the meaning thereof
" should have been averred, and that it was used
" in that sense and the hearers do understand it

J. Colo. Atto for Def-

And afterwards come the parties by their Attorneys
and the motion of the said Defendant in Arrest of Judgment
being submitted to the Court it is Considered by the Court that
the same be overruled and Bill of Exceptions, filed in
the words and figures following to wit.

It is remembered
that the Defendant filed in the above Cause a motion to Arrest the Judgment

referred them, which instead is in the words and figures following:
 (The same hereafter cited) but the Court overruled said motion and
 refused the prayer thereof to which decision the Defendant objected and
 excepted and prays that the same may be laid to him and made
 a part of the Record in this Cause which is signed sealed and
 accordingly done

John H. Stone, Clerk

And afterwards came the Defendants and filed
 his Affidavit in pursuance of the Statute in such Cases made and
 provided and prays an Appeal from the decision of the Court which
 is granted which Affidavit is in the words and figures following:

I personally appeared in Open Court John
 Edgar a Minor and Defendant in the above Cause by his Guardian
 Reuben Edgar duly appointed by the Circuit Court who states
 that the Appeal in this Cause to the Supreme Court is not
 made of vexation or delay but because the Affiant believes that
 the Appellant is aggrieved by the Judgment of the Court
 made in Open Court Reuben C. Edgar Guardian Ad Litem
 May 5th 1845 by Appointment of the Court
 J. McGarry, Clerk

Bill of Cost =

John McGarry Clerk	17.50	John H. Self Attorney	7.00
J. P. Buckley Siff	3.50	Robert Highley "	3.50
Wm. A. Matthews "	1.00	William B. Eaton "	3.50
S. C. Russell "	12.91 1/2	Mark Hughes "	3.40
Henry Hicks Witness	4.50	Clk. Circuit Court	
Wm. D. Marshall "	4.40	This Transcript	3.11
Wm. Hicks "	5.30		
Jos. Chubb "	3.50		

State of Missouri 3
Washington County 3
I, J. H. Mack, Clerk of the
District Court in and for said County
of Washington do Certify that the foregoing is a full true and
Correct Transcript of the Record and Proceedings had in the District
Court of said County in the Case of Thomas M. Catehew Against
John Edgar as the same remains of record in my Office

I am Witness whereof I have subscribed my hand
and affixed my Seal of Office at Office in Potosi
the 10th day of June 1845

J. H. Mack, Clerk
By J. H. Mack, Dep. Clerk

John Edgar
vs
James McCutchen

Appellant
vs
Appellee

Filed July 9. 1845

H. L. Brown clerk



Hermon McLetchum
by his next friend
in
John Edger

In the Supreme
Court
of the United States
at the City of Washington
July
1845

and the said John Edger by his Guardian
Deben Edger, each opposed by the Circuit Court
comes and says that in the record and process
-duces, and also in rendering the judgment
therein set forth by the Circuit Court, there is
an manifest error in this to wit, that by the
record it appears, that the said John Edger
moved the Circuit Court to arrest the judgment
in this cause for reasons filed therein
which the said Circuit refused to do and
there and then overruled said motion, and
an error was committed manifestly even the
said appellant therefore prays that the judgment
set aside, for the reasons aforesaid, and other
errors in the record and proceedings aforesaid being,
may be reversed and that the said John
Edger may be restored in all things done

O. C. Roberts
for ~~appellant~~

Edger
175
M^c Culter

London in
Brook

Filed Jan'y 26. 1846
H. L. Boon MS

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McCutcheon

And the said defendant is sworn by
his attorney comes and says that in the records
and proceedings made in the judgment in that
case there is no error

McFisell atty

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Edgar
vs
McTutchen

Opinion

100th

Affirmed

Filed July 17. 1846.

H. L. Bonn CLK

Reuben B. Edgar

vs.

Thos. Mc Butcher

} Appeal from the Washington
Circuit Court.

Mc Butcher sued Edgar for
slander. The slanderous charge was carnal knowledge
of a mare, and the word "fuck" was used to convey
the imputation. After a verdict for the plaintiff,
a motion was made in arrest of judgment for
the reason that the word used to convey the slander
was unknown to the English language and was
not understood by those to whom it was spoken,
and the case of *Hanna vs. Adams* 3 Mo. Rep. 201, amongst
others was cited. The motion was overruled and Edgar
appeals:

per Curiam: Because the modesty of our
lexicographers restrain them from publishing ob-
scene words or from giving the obscene significa-
tion to words that ^{may be} used without conveying
any obscenity, it does not follow that they are
not English words and not understood by those
who hear them; or that chaste words may
not be applied so as to be understood in an
obscene sense by every one who hears them.

As the judges concurring the judgment is ~~not~~
affirmed. Judgment affirmed

W. J. Pott

John Edgar by
his Grand^{er} appeal

vs
Thomas McCutchen
appellee

Slender
aff. Dec 1845
In the Supreme
Court

Statement

This was an action of Slender brought by Thomas McCutchen against John Edgar in the Circuit Court of Workington County. Verdict and judgment for plaintiff below motion in arrest overruled and decision of the Court excepted to, appeal to the Supreme Court proper, and granted.

The motion in arrest of judgment presents the following points to wit-

1st The declaration is defective.

2^d The words as charged, are not actionable.

3^d There is no averment that the words used to convey the idea of Carnal knowledge, were by the hearers, or those of the neighborhood when they were used, understood to convey that idea.

4th The available word in the declaration is one unknown to the English language, and the meaning thereof should have been averred and that it was used in that sense, and the hearers so understood it.

It is alleged that the Circuit Court erred in overruling the motion in arrest, and the

attention of the supreme Court is respectfully called to the consideration whether there be error or not in that decision. It will be observed that there is no Colloquium in the declaration, and the slandorous word used, or considered as such by the plaintiff, cannot be found in the English Language. If the word was a local one, and had a particular meaning, there should have been a Colloquium, and the necessary admissions to have given it point. I have paid some attention to the case, and the result of my reflections is that the declaration is substantially defective throughout, and in support of this opinion, I will refer the court to the surjoined authorities, and submit the matter without further effort on my part.

J. Cole
Attor for Deft

Edwards vs Hanson 3. M. R. 222.
 Qyer vs Morris 4. M. R. 214.
 Church vs Bridgman 6. M. R. 190.
 Langdon vs Hedges 8. Feb. 109.
 1. Chitty's Plea. 381.
 13 Feb. 1848 48
 1. Cases of Law 347.
 2. Feb. 1848 10
 6. Feb. 1848 82
 18 Feb. 1848 68.

Holt vs Schofield 6. Ter. 1848
 691. 2. 1848 Eic 845.

Submitted by
 Basil
 J. Cole
 Wm. H. W. W. W.
 Wm. H. W. W. W.
 Wm. H. W. W. W.
 Wm. H. W. W. W.

Edgar

v. S.

M^cCutcheon

Defendants brief

M Foxpall atty

for M^c Cutcheon

Edgar plaintiff in error

vs

McCutcheon Defendant in error

On the part of the defendant in error
it is submitted

That the word "jerk" is an orthodox
english word of Saxon origin universally under-
stood in one uniform sense wherever the
english language is understood or spoken, and
is found if not in all at least in some of
the editions of Bailey's english Dictionary.
It is excluded from most dictionaries for obvious
reasons -

M Finsell atty