

1951

# Mathew Foley v. Leroy Mecham : Brief of Appellant

Utah Supreme Court

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George E. Stewart; Attorney for Appellant;

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

MATHEW FOLEY,

*Appellant,*

— vs. —

LEROY MECHAM,

*Respondent.*

Case No.  
7637

APPELLANT'S BRIEF

FILED

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Clerk, Supreme Court, Utah

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## TABLE OF CONTENTS

	PAGE
STATEMENT OF FACTS.....	1
STATEMENT OF POINTS:	
I. The court erred in awarding Respondent \$1,000.00 or any general damages, such judgment being unsupported by the evi- dence .....	2
II. The court erred in awarding Respondent \$100.00 punitive damages, such judgment being unsupported by the evidence.....	3
III. The court erred in failing to award judg- ment for the Appellant on his counter- claim, the evidence indicating that Re- spondent was the aggressor.....	3
ARGUMENT .....	3
CONCLUSION .....	5

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APPELLANT'S BRIEF

STATEMENT OF FACTS

An action was brought by Respondent against the Appellant and Dry Gulch Irrigation Company, a corporation, praying for \$2,500.00 general and \$5,000.00 punitive damages for assault and battery on May 30, 1950 (Tr. 219). Appellant counterclaimed for \$2,500.00 general and \$5,000.00 punitive damages on the same theory (Tr. 226). After demand for jury trial, Respondent waived the jury and both causes were tried to the District Court of Duchesne County, Utah, the Hon. Wm. Stanley Dunford presiding, without a jury, on September 25, 1950. The complaint against Dry Gulch Irrigation Co. was dismissed on motion (Tr. 129).

The Respondent testified, without corroboration from any eyewitness, that Appellant came upon the farm of the former in the capacity of ditch rider for the Dry Gulch Irrigation Company, and without warning struck Respondent on the left side of the head with an unknown instrument, knocking him out near a gate where he had driven some neighbors pigs (Tr. 3-83). Appellant denied this and testified that he approached Respondent for the purpose of issuing him a permit to use water, that he had a conversation with Respondent, walked across a portion of Respondent's land with him, and was attacked by Respondent after the latter had profaned, after which Appellant knocked Respondent down several times (Tr. 151-174). The Appellant's wife, seated in a truck on the highway, testified that she saw Respondent strike the first blow and saw her husband thereafter knock the Respondent down several times (Tr. 130-144). The reputation of Respondent in the community as to peace and quiet was testified as being bad by a number of witnesses (Tr. 144-151; Tr. 174-183; Tr. 183-189; Tr. 190-193). No witness testified that Appellant's reputation in this respect was bad. The Respondent expended \$2.15 for pills and ointment and less than \$40.00 for six different doctors he visited.

## STATEMENT OF POINTS

### I.

THE COURT ERRED IN AWARDING RESPONDENT \$1,000.00 OR ANY GENERAL DAMAGES, SUCH JUDGMENT BEING UNSUPPORTED BY THE EVIDENCE.

### 3

## II.

THE COURT ERRED IN AWARDING RESPONDENT \$100.00 PUNITIVE DAMAGES, SUCH JUDGMENT BEING UNSUPPORTED BY THE EVIDENCE.

## III.

THE COURT ERRED IN FAILING TO AWARD JUDGMENT FOR THE APPELLANT ON HIS COUNTER-CLAIM, THE EVIDENCE INDICATING THAT RESPONDENT WAS THE AGGRESSOR.

## ARGUMENT

### I.

THE COURT ERRED IN AWARDING RESPONDENT \$1,000.00 OR ANY GENERAL DAMAGES, SUCH JUDGMENT BEING UNSUPPORTED BY THE EVIDENCE.

An examination of the whole record in this case points to the Respondent as being a belligerent, troublesome and quarrelsome personality in his community. The record is replete with instances of quarrels and fights with neighbors over water stock, electricity, hay and other subjects. The record is full of testimony of neighbors as to Respondent's bad reputation for peace and quiet. Not one scintilla of evidence brands the Appellant, on the other hand, as being other than a peaceful, quiet person. No eyewitness substantiated Respondent's testimony as to where or how the encounter took place, whereas the fact that Respondent struck the first blow was corroborated by Appellant's wife, who witnessed the encounter (Tr. 133). The Appellant was a small man of 153 pounds, while the Respond-

ent weighed 183. The Respondent had continually quarreled with all of the officials of the Irrigation company and admittedly had indulged in both verbal and physical encounters with his neighbors, including his own brother. It is respectfully submitted that it is difficult to determine how the court possibly could have arrived at its decision, and particularly the \$1,000.00 figure, since there was no evidence of any substantial physical impairment, and no inability to carry out Respondent's daily chores. Assuming, for argument, a technical right of recovery in Respondent, under the evidence the award was grossly excessive, particularly in view of the fact that Respondent expended practically nothing for medicine or medical care. His employment of six doctors, successively abandoning each is highly significant in reflecting Respondent's determination to build a case.

## II.

THE COURT ERRED IN AWARDING RESPONDENT \$100.00 PUNITIVE DAMAGES, SUCH JUDGMENT BEING UNSUPPORTED BY THE EVIDENCE.

It is respectfully submitted hat nowhere in the record can be found any evidence of malice on the part of Appellant toward Respondent, justifying an award of punitive damages. The Respondent himself admitted the Appellant had never given him any occasion to show unfriendliness (Tr. 65). No witness for Respondent attacked the friendly nature of Appellant. Every witness asked about Appellant had a good word to say for him

and nothing can be found to reflect maliciousness on his part. It is believed the court clearly erred in awarding punitive damages in the light of the undisputed evidence negating malice.

### III.

THE COURT ERRED IN FAILING TO AWARD JUDGMENT FOR THE APPELLANT ON HIS COUNTER-CLAIM, THE EVIDENCE INDICATING THAT RESPONDENT WAS THE AGGRESSOR.

For substantially the same reasons set forth in Points I and II, to the effect that the evidence points to Respondent as the aggressor, a quarrelsome, belligerent person, and to the Appellant as one enjoying a good reputation for peace and quiet, together with the fact that an eyewitness attested to the fact that Respondent initiated the encounter, it is submitted that the court completely ignored the weight of the evidence and should have given judgment for the Appellant.

### CONCLUSION

In the light of all the evidence it is submitted that the judgment of the lower court should be reversed and judgment entered for the Appellant, failing which the judgment of the lower court as to general damages



should be modified for excessiveness and the judgment for punitive damages reversed in toto.

Respectfully submitted,

GEORGE E. STEWART,  
*Attorney for Appellant.*

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Received ..... copies of the foregoing brief  
this ..... day of April, 1951.

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*Attorneys for Respondent*