

1955

# Ralph Thompson v. Grant M. Aldrich and Dale V. Bowles : Brief of Respondent

Utah Supreme Court

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J. Royal Andreasen; Attorney for Plaintiff and Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

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UTAH

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RALPH THOMPSON,

FILED

Plaintiff and Respondent

vs.

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Clerk, Supreme Court,

GRANT M. ALDRICH and  
DALE V. BOWLES,

Defendants and Appellants.  
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Appeal from the District Court of the  
Third Judicial District, in and for  
Salt Lake County, State of Utah.

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BRIEF OF RESPONDENT  
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J. Royal Andreasen  
Attorney for Plaintiff  
and Respondent

No. 8387

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BRIEF OF RESPONDENT

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J. Royal Andreasen  
Attorney for Plaintiff  
and Respondent

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## STATEMENT OF FACTS

Because the facts as shown by the transcript are set forth only briefly and very inaccurately by the appellants' brief, and for the further reason that the facts as set forth in the record completely answer and refute the points set out in the appellants' brief, the respondent will summarize the facts in more detail.

Plaintiff and respondent Ralph Thompson recovered a judgment against appellants and defendants Grant Aldrich and Dale V. Bowles after a trial in the District Court of Salt Lake County, Judge Joseph G. Jeppson presiding without a jury. Plaintiff was awarded \$674.95 special damages, \$1000.00 general damages and \$2000.00 punitive damages, a total of \$3674.95 for his damages sustained as a result of an assault and battery upon the plaintiff by the defendants on the evening

of October 30, 1954 on Exchange Place in Salt Lake City, between Main Street and State Street.

The transcript of the trial indicates the following to be the facts of the incident. Plaintiff Ralph Thompson at the time the defendants beat him, was 42 years of age, 5 feet 5 inches tall and weighed approximately 175 pounds. He was without wrestling or boxing experience (R 181). A carpenter by trade in good health and steadily employed at the time of his injury, he had lived in Salt Lake City for 9 years, (R 154, 155, 189, 190) 7 years at his present address (R 153). On the day of his injury, a Saturday, plaintiff had picked up his paycheck about noon and had stayed home listening to the football game on the radio during the afternoon.

At the time of the assault and battery defendant Aldrich was a large

athletic man in the prime of life, physically. He was 6 feet 1 inch tall, weighed 190 pounds and was 26 years old (R 254).

Defendant Bowles was 27 years old. A former football player and boxing participant, he was 5 feet 11 inches tall, and weighed 160 pounds (R 237). He was employed by a finance company (R 226) and had a part-time job as bouncer at a night club or beer joint, where he "worked the door" (R 236, 238).

Plaintiff and defendants were strangers to each other and plaintiff had never met either defendant until the time of the assault and battery.

Plaintiff was employed by a motion picture distributor and drove uptown from his home after dinner to attend a movie on a pass given by his employer (R155, 156). After circling the block



looking for a parking space he found one at the south side of Exchange Place (R 189) near the east end of the Newhouse Building at about 7:30 p.m. Plaintiff backed his automobile into the parking space, parked it parallel, locked his car, got out the driver's side and walked around the back of his car trying the door handles to see that it was locked (R 157, 158). It was then that plaintiff was accosted by the defendants.

Defendants Aldrich and Bowles had attended a football game at the University of Utah during the afternoon of October 30, 1954, where they had a bottle of whiskey and drank several drinks during the game (R 234, 235). Leaving the football game at 5:00 or 5:30 p.m., the defendants went directly to theardi Gras Lounge, a beer parlor on Main Street between Exchange Place and 4th South, where they continued drinking whiskey

(R 242, 243). They drank at the Mardi Gras Lounge for an hour or an hour and a half (R 229). Bowles estimated he drank four or five drinks at the football game (R 238) and another two or three drinks at the Mardi Gras (R 238). At about 7:30 p.m. defendants Aldrich and Bowles left the Mardi Gras, going north on Main Street to Exchange Place and then headed east on Exchange to purchase more whiskey at the liquor store on Exchange Place just west of State Street (R 230).

As the defendants accosted the plaintiff they placed themselves on each side of Thompson, pretended to be police officers, questioned plaintiff and informed plaintiff that they were taking him into custody. Plaintiff stated he had not done anything but he would go along with them (R 9, 43, 156, 159). Defendants then placed the plaintiff between them with Bowles on his right and defendant Aldrich on his left and the three

began walking eastward on the sidewalk at the south side of Exchange Place (R 158, 159). At that time plaintiff and defendants did not know anyone was watching them (R 158).

After walking a short distance, defendant Aldrich without any warning struck the plaintiff a hard blow on the back of his neck just below the base of the skull. At about the same time defendant Bowles struck the plaintiff in the mouth with his fist, breaking plaintiff's teeth (R 159, 160). The unexpected blows knocked the plaintiff down and made him groggy (R 160, 197). Plaintiff tried to elude the defendants and in his dazed condition remembers falling to the street several times as the defendants continued to abuse him (R 92, 199, 200, 201). Defendants asked plaintiff for a drink but he was unable to give them one (R 15, 271, 105). Over the plaintiff's opposition the defendants

tried to pull him into the darkened doorway of the building at 12 Exchange Place. (§ 92, 93, 73, 74, 13, 14) Ralph Thompson tried to get away from defendants and one of the defendants kneeled down behind him while the other hit or shoved the plaintiff over backwards, causing money to fall out of the plaintiff's pocket, and one of the defendants picked up the plaintiff's money (§ 9, 11, 12, 93, 94, 103, 49, 71, 84, 85, 65, 66, 110, 111). Defendants continued to abuse the plaintiff until they reached the east side of Cactus Place, where an unidentified stranger asked the defendants why they were trying to kill the plaintiff (§ 161). Defendant Aldrich threatened to hit the stranger and the stranger left (§ 162, 201, 202, 206). One of the defendants stepped on the plaintiff's hand while he was down in the street (§ 207, 164, 155).

At this point the plaintiff had sustained injuries from the blow to the back of his neck, had his lip cut, teeth broken, was cut over the eye, had his thumb cut so that the nail came off, and was cut on the ring finger of the right hand, and had the ring on that finger bent half double (R 163, 164). Defendants Aldrich and Bowles then entered the liquor store betweenactus Place and State Street. Plaintiff did not know where the defendants were and while defendants were in the liquor store plaintiff talked to Richard Titus in the neighborhood of the liquor store (R 211, 212). The plaintiff had not harmed or even dirtied the defendants in any way (R 17, 18, 54). While the defendants were in the liquor store the plaintiff Ralph Thompson was standing at the curb on Exchange Place west of the liquor store, bleeding and trying to bind up his injured

thumb with his handkerchief. (R 62, 95, 96).

Because of the plaintiff's apparent need for assistance Mr. Titus gave his wife some change and she went over to State Street and telephoned the police (R 61, 96, 97). Aldrich and Bowles came out of the liquor store and started down the street, Aldrich carrying a bottle of liquor (R 55, 56). Aldrich handed the bottle of liquor to Bowles and they came back about 15 feet and crossed the sidewalk to where the plaintiff was standing by a parked car (R 217, 18, 19). Thompson was wearing glasses (R 18, 19) and did not cross the sidewalk to meet Aldrich. Aldrich crossed the sidewalk toward Thompson (R 72). Aldrich himself testified that he was then aware that Thompson was wearing glasses. (R 254) Aldrich then hit Thompson in the right eye with his fist, cutting the right eye, breaking the glasses Thompson was

wearing (Exhibit 5), and spattering blood on Mr. Titus who was standing four feet away (R 18, 19, 162, 75, 80, 81). As Aldrich was about to hit the plaintiff the plaintiff kicked at Aldrich (R 81, 82, 72). The kick did not connect and Aldrich stated he did not "pay too much attention to it" as about all it did was dirty Aldrich's trousers (R 234, 77, 78). Thompson never hit Aldrich or Bowles at any time during the evening (R 169, 170). Defendants left the scene and were apprehended by police on 4th South.

Fortunately for the plaintiff much of the assault and battery was witnessed by Richard Titus and his wife Iola, disinterested persons by who were not acquainted with either plaintiff or defendants, and who testified at length at the trial. Street lights and other lights were on at the scene of the beating (R 8, 38, 157, 100, 101) and



Mr. and Mrs. Titus were able to see and hear many of the important details of the earlier part of the beating (R 44-46, 49, 63, 75, 76). The weather was clear. (R 14). Both Mr. and Mrs. Titus observed the first part of the beating near 32 Exchange Place where the defendants pretended to be policemen, tried to drag the plaintiff into a dark doorway, knocked the plaintiff down and took the money which fell from his pockets. (R 9, 41, 42, 98, 99, 103) During the latter part of the beating in the vicinity of the liquor store Richard Titus witnessed defendants beating the plaintiff at closer range.

Plaintiff had been employed as a carpenter steadily for six months by the Intermountain Theatres Supply Company at five days per week eight hours per day at \$14.00 per day before the accident (R 154). His work had been satisfactory and he had



not had complaints about his work prior to the beating he received (R 155). As a carpenter plaintiff used his left thumb for picking up nails and many other operations essential to his work. The left thumb which had been stomped by the defendants had to be kept in bandages for about 6 to 8 weeks (R 184). Even after the bandages were removed at the end of 6-8 weeks the left thumb felt numb and the plaintiff could not hold such with it (R 184). Returning to work temporarily about two and a half weeks after the accident, the plaintiff did his best to carry on with the work but he could not use the thumb very well and the thumb hurt him every time he picked up a nail (R 184, 222, 223). His work suffered and his employer complained about his slowness and the quality of his work and discharged plaintiff (R 222). The thumb

did not feel well enough for plaintiff to try to find other employment until six weeks to two months after the injury (# 22). He was then unable to find employment. The thumb bothered him during this six to eight weeks period very much (# 224, 225). A couple of days after being laid off the plaintiff returned to his former employer's place of business. A new man had been hired to do the work Mr. Thompson had been successfully doing for six months before the injury by the defendants (# 185, 186). After the plaintiff's discharge the employer kept about the same crew he had formerly, but had a new carpenter in the plaintiff's former place (# 189). As of the date of the trial about five and one-half months after the injury plaintiff's thumb still caused him pain. As of the date of trial in April, 1955 plaintiff had been unable to find steady employment.

Plaintiff's condition was accurately shown by photographs in Exhibits 1, 2 and 3 (E 140, 142, 85, 86, 87, 141, 142, 116). The cut over the plaintiff's right eye took about three weeks to heal and left a scar (E 187). The cut around the plaintiff's mouth took about three weeks to heal and left an irregular scar on the inside of the lip (E 187). As of the date of the trial five and one half months after the beating the left thumb of the plaintiff cut when defendants stepped on it pained the plaintiff, and there was still a lump on the back of the plaintiff's neck where the first, unexpected blow was struck (E 185). Dr. Masuro testified that the blow on the back of the neck was capable of causing death and likely to cause loss of consciousness (E 135). The blows to the head were capable of producing rupture of blood vessels inside the skull. Plaintiff received

blows ruled out of boxing as a threat to life (R 122, 123). The beating was the possible and likely cause of the headaches, irritability, sleeplessness and nervousness experienced by the plaintiff (R 123, 124). At the time of trial the condition showed signs of being permanent rather than being temporary (R 127, 128).

Prior to the fight plaintiff slept well (R 175). He did not have headaches or have to take medicine (R 124). Since the fight the plaintiff has one or two headaches a day on the average of four or five days a week up to and including the time of the trial and had prescriptions for drugs which he took constantly. He became jumpy and irritable (R 24, 176, 177, 152, 120). The injuries and the ensuing headaches and nervousness caused a substantial change in the personality of the plaintiff. Instead of being calm, pleasant and easy going he was so irritable

nervous and changed in disposition that the lady to whom he was engaged to be married broke off the engagement (E 151, 162, 163, 22, 23, 24, 216, 218, 219, 220, 221, 26).

STATEMENT OF POINTS

1. Record on appeal is to be viewed in the light most favorable to the plaintiff and respondent.

2. The award of general damages is supported by the evidence.

3. The award of special damages is supported by the evidence.

4. The award of punitive damages is supported by the evidence.

5. Punitive damages as awarded are not excessive.

6. The findings of fact are supported by the evidence.

## ARGUMENT

### Point 1.

The record on appeal is to be viewed in the light most favorable to the plaintiff and respondent. *Gibbs vs. Blue Cab, Inc.* 249 P.2d 213, 259 P. 2d 294. The findings and judgment of the trial court will not be disturbed unless clearly erroneous, or unsupported by competent evidence.

Plaintiff's testimony is thoroughly corroborated by disinterested witnesses, and adopted by the court as true. The court found the defendants lacking in veracity. Defendants on apprehension by police denied having encountered plaintiff (§ 34) but later admitted having beaten plaintiff. On cross-examination defendant Bowles was forced to admit he lied under oath in his deposition (§ 239).

### Point 2.

The award of general damages is

supported by the evidence. The statement

of facts refers briefly to some of the facts which amply support the award of \$1000.00 general damages: the unprovoked and sadistic invasion of his right to be free from violent personal harm, a dangerous blow to the base of the skull which still left a lump on Thompson's neck five and one half months after the attack, two front teeth broken, cut leaving permanent scar over the eye, permanent scar from cut lip, headaches, sleeplessness, irritability and pain apparently permanent five and one half months after the beating, washed and cut thumb disabling plaintiff in his trade, humiliation, pain and suffering, personality changes flowing from his injuries which disrupted his marriage plans.

**Point 3.**

The award of special damages is supported by the evidence.

In appellants' argument of their point 1 (b) the appellants misrepresent



the contents of the transcript in a most irresponsible, misleading and inaccurate manner. For example, the appellants state "With respect to the special damages allowed herein, it is respectfully submitted that there is no evidence in the transcript to show payment to or the need for a dentist...." Reference to the transcript will reveal the following: Plaintiff's teeth were not broken before the beating (R 159 lines 17-19), plaintiff's teeth were injured before he crossed Cactus Place (R 158 lines 20-22), Bowles hit plaintiff in the mouth (R 155, lines 6-11, R 195, lines 5-13), plaintiff's mouth was bleeding from the blow (R 160 line 10), plaintiff had his two front teeth repaired (R 172 lines 15-24), Dr. Erickson repaired plaintiff's two front teeth and charged him \$27.50; repair bill, Exhibit 7, admitted in evidence (R 173 lines 4 to R 174 line 4), appellants' counsel cross-examines plaintiff on damage to teeth (R 203 lines 12-15),



plaintiff's teeth were injured west of  
Cactus Street (R 203 line 4).

Appellants say the record contains  
nothing regarding damage to clothing but  
see Exhibits 1, 2 and 3 admitted in evidence  
(R 175 line 7 to R 176 line 6, R 203 lines  
16-19, R 210 line 27 to R 211 line 12,  
R 221 lines 17-19).

Likewise each item of special damage  
is amply supported by evidence. The state-  
ment of facts in respondent's brief cites  
particulars supporting the award to plaintiff  
for loss of wages.

#### Point 4.

The award of punitive damages is  
supported by the evidence. Where a  
tortious injury results from a malicious  
act punitive damages are appropriate. A  
malicious act is "a wrongful act intentionally  
done without legal justification or excuse;  
an unlawful act done wilfully or purposely  
to injure another." Black's Law Dictionary,

supports the court's finding that defendants had no legal justification for beating plaintiff and that their acts were malicious.

Punitive damages are awarded as a punishment to defendants for malicious or wilful conduct and as a warning to defendants, and others, not to engage in similar malicious conduct. *Evans vs. Gaisford*, 247 P.2d 431; *Egg vs. Tolcan* 117 P. 54, 39 Utah 295.

#### Point 5.

Punitive damages as awarded are not excessive.

Appellant apparently contends that punitive damages must bear a mathematical ratio to compensatory damages, and not exceed compensatory damages. The Supreme Court of Utah rejected such a contention in *Falkenburg vs. Haff*, 72 Utah 255, 269 P. 1006 and approved punitive damages of \$1500.00 where actual damage was \$362.50. The court cited cases from other jurisdictions

approving punitive damages much larger than actual damages. Other examples include: *Livesey vs. Stock*, 208 Calif. 315, 281 P. 70 where court allowed \$10,000.00 punitive damages to \$750.00 actual damages; *Seenan vs. Dexter*, 96 Conn. 334, 114 A 75, \$5,000.00 punitive to \$318.00 actual damages; *Polton vs. O M & C*, 139 Ore. 198, 7 P.2d 263, 9 P.2d 128, \$5,000.00 punitive to \$225.00 actual damages.

Indeed, cases cited by the appellants in their brief support the plaintiff's position that punitive damages do not need to be mathematically equated to compensatory damages. The case of *Evans vs. Hall*, 6 SW(2d) 180 cited by defendants held that an award of \$1250.00 exemplary damages was not excessive where the actual damages were only \$500.00. *Butler vs. Wells*, 241 SW 664, cited by defendants, affirmed an award of \$1000.00 punitive damages and \$500.00 actual damages against one defendant who

had blacked the plaintiff's eye and given plaintiff bruised and swollen lips and cuts and bruises about the face.

The case of *Murphy vs. Booth*, 103 P. 768, cited by appellant does not support the contention of appellant. The only question there was the propriety of the award of \$500.00 for punitive damages. At page 771 the court held that the facts fully warranted the jury in awarding exemplary damages and that the court did not err in submitting the question to the jury. The case is not authority for the contention of the appellant that punitive damages should not exceed the actual.

Significantly, appellants do not point out anything in the record in defense, excuse or mitigation of their offense. The record supports the inference that defendants, impersonating officers, were engaged in a plan to forcibly and violently beat and rob Ralph Thompson, that they ganged upon him and attacked him without warning or

provocation, tried to pull him into a dark doorway, and took money by force. In original law such acts could constitute robbery bearing punishment more drastic than that of which defendants complain. The trial court cannot be said to have acted unreasonably in assessing \$2000.00 punitive damages against the two defendants. They have a good deal of the brutal, sadistic and bully in their personalities, and richly deserve their punishment to teach them to respect the dignity and rights of fellow citizens.

**Point 6.**

The findings of fact are supported by the evidence. Appellants complain of the trial court's finding that their acts were "unprovoked, inexcusable, brutal and malicious." A reading of the record will readily disclose ample basis for their finding.

**Respectfully submitted,**

**J. Royal Anderson  
Attorney for Plaintiff**