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Supreme Court of Illinois

Thomas Gill, Appellant,
v.
James Caldwell, Appellee.

December Term, 1822
APPEAL FROM CRAWFORD.
Opinion of the Court by Chief Justice **REYNOLDS**.

This was an action of slander commenced by the plaintiff here, against the defendant, in the court below for charging him with swearing false in a certain judicial proceeding before one Thomas Kennedy, a justice of the peace.

The declaration avers that said Gill "was sworn regularly and legally by the said justice, and then and there took his corporal oath." From the bill of exceptions taken in the cause, it appears that on the trial below, the justice of the peace, Kennedy, testified, "that there was before him the trial mentioned in the declaration, that he administered to said Gill what he conceived to be an oath, that Gill swore by an uplifted hand, that no bible was used, and that Gill was not asked how he took his oath." The defendant's counsel then moved to exclude the testimony of Kennedy, it not proving a legal oath administered, nor such an one as would support the averment in the declaration, which motion the court below sustained, and excluded the testimony, and this we are called upon to correct. If the said Gill was sworn by an uplifted hand, it surely can not be said to be a departure from the declaration; the only question to be settled is, is it that kind of oath which the law recognizes? The pure principle of common law is, that oaths are to be administered **[*54]** to all persons according to their own opinions, and as it most affects their consciences.

This certianly is the best test of truth, and it was upon this ground the legislature enacted the statute which is supposed to govern this case. By their act of 1807, after authorizing oaths by uplifted hands, they declare that oaths "so taken by persons who conscientiously refuse to take an oath in the common form, shall be deemed and taken in law to have the same effect with an oath taken in the common form." We conceive that the man who swears by an uplifted hand, elects to do so, and the ceremony of refusing to swear upon the testament, or in the usual form, is perfectly idle. The statute does not vary the common law in this respect, and we conceive that the oath taken as set out in the bill of exceptions is valid, legal, and comports with the averments in the declaration. The judgment below must therefore be reversed, the plaintiff recover his costs, and the cause remanded for new proceedings to be had not inconsistent with this opinion. [(a)] [(1)]

Judgment reversed.

fn (a) By the common law, every witness is sworn according to the form which he holds to be the most solemn, and which is sanctified by the usage of the country or the sect to which he belongs.

It was formerly doubted whether the oath must not be taken on the Old or New Testament, but it is now settled that it need not. 1 Wilson, 84. Cowper, 390.

A Jew is sworn upon the Pentateuch, and a Turk upon the Koran; and in France, anciently, the witness, if a layman, raised his right hand, or if a priest, placed it upon his breast. Phil. Ev., 20.

Vide Rev. Laws of 1827, page 308

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fn (1) Affirmed in the case of *McKinney v. The People*, 2 Gilm. Rep., 540.

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