

No. 13383

# Supreme Court of Illinois

Hackett

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vs.

Jeffery<sup>S</sup>~~x~~

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# Supreme Court, Second Grand Division.

JANUARY TERM, 1861.

MUCHMORE & HACKETT, Appellants, }  
vs. } Appeal from Crawford Co.  
GEO. W. JEFFERS, Appellee.

## BRIEF OF APPELLANTS.

The first error assigned questions the correctness of the ruling of the Court below, in refusing to allow the witness McDowell to testify.

McDowell, upon his *voir dire*, testified, "that if judgment was rendered against the *defendants* in this suit, and they came up to their contract, he expected to be liable to them for the value of the hogs in controversy, and if the *Plaintiff* failed in this suit, he expected to be liable to him for the value of the hogs in controversy."

The witness was introduced by the defendants below, who are the appellants in this Court.

If the interest of the witness was greater or more direct, in favor of one party than the other, it was in favor of the appellee and against the appellants who introduced him. His liability to the appellee was determined by the verdict in this case, whilst his liability to the appellants was dependent upon the additional contingency, that they had come up to their contract with him. He was therefore competent. Greenleaf on evidence, vol. 1, Sec. 410.

But conceding that he was equally liable to either of the parties, then his interest was balanced, and he was a competent witness. He purchased the hogs in controversy, and was liable for their value. This must have been the same whether the liability was to the one or to the other of the parties.

In cases of this kind the rule is thus laid down, in Greenleaf on evidence, vol. 1st, sec. 420: "Where the witness, though interested in the event of the cause, is so situated, that the event is to him a matter of indifference, he is still a competent witness. This arises where he is *equally interested on both sides* of the cause, so that his interest on one side is counterbalanced by his interest on the other." See also Phillips on evidence, vol. 1st p 54, chap. 5; Caldwell vs. Meeks, 17th Ills. 220; Cushman vs. Loker, 2nd Mass 108; Roberts vs. Whiting, 16th Mass. 186; Rice vs. Austin 17th Mass. 197; Prince vs. Shepherd, 9th Pickering, 176.

The remaining errors will be determined by an inspection of the record.

JOHN SCHOLFIELD,  
Atty for Appellants.

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Appellants Brief

Filed June 18-1861

L. Leland

Clark

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Appellants Brief

Filed Jan 8/67  
Wm A Curney  
clerk

# SUPREME COURT—SECOND GRAND DIVISION,

JANUARY TERM, A. D. 1861.

BENJAMIN P. MUCHMORE and

SAUL HACKETT,

vs.

GEORGE W. JEFFERS,

Appellants,

Appellee.

Appeal from Crawford Co.

## ABSTRACT.

Pages 1, 2, 3 and 4 of  
Record.

This was an action commenced by the appellee against the appellants before a justice of the peace. Judgment was rendered by the justice in favor of the appellants for costs of suit. Appellee appealed to the Circuit Court of Crawford county. Cause came on for trial at the April Term, A. D. 1861 thereof, before the Hon. A. Kitchell, Judge, and a jury.

## EVIDENCE.

Page 7.

RICHARD BONHAM, witness for plaintiff in said court testified, in December, A. D. 1857, defendants were at Granville in Jasper county, receiving and weighing a large lot of hogs, which they had previously purchased of different persons in that neighborhood; a quantity of such hogs defendants had purchased of witness; defendants had re-sold all these hogs to one Benjamin McDowell. All the hogs then received by the defendants were over a certain weight; many persons who had sold defendants hogs and brought them there for delivery, had light hogs, which were not received by defendants on the original contracts; witness had some of these light hogs and sold them to defendant, Hackett, who said to witness, "we have bought Jeffers" (meaning plaintiff's) "light hogs". Defendant, Muchmore, at a time subsequent, produced a book to witness and said that he had the amount of plaintiff's light hogs in it, and that they came to \$93 80. The heavy hogs bought by defendants of witness and others, were not re-weighed to McDowell; on being weighed out to defendants by the parties who drive them there, they were turned into a lot by themselves, and they were not again weighed before they were driven off; it was after heavy hogs were weighed that the light hogs were sold; McDowell came upon the ground about the time the weighing of the hogs was concluded. Parties who had sold heavy hogs to defendants were compelled to wait until McDowell came, before they could receive their pay for them. Witness understood, and it was a matter of general and common conversation on the ground at the time of the weighing of the heavy hogs, that defendants had re-sold them to McDowell. When the light hogs were weighed as they were bought after parties who had drove them there, they were turned into the pen containing the heavy hogs previously weighed; plaintiff's light hogs were weighed out the next morning after heavy hogs were weighed.

Page 8.

James B. Skidmore, witness for plaintiff, testified that on the morning plaintiff's light hogs were weighed out, defendant, Hackett, came to witness and told witness that they had to help drive the hogs about ten miles for McDowell, and he, (Hackett) wanted some whiskey for the boys; witness aided in driving the hogs about that distance; defendants and McDowell were each engaged in driving them; defendants seemed to take the lead; McDowell paid witness for his services in driving the hogs.

Page 9.

Charles B. Barron, witness for plaintiff, testified, that in conversation about a year before, at Newton, defendant, Hackett, said, that he had *non-suited* Jeffers in the suit, because he, Hackett, and Muchmore were partners in the matter; that in a conversation, shortly thereafter, between defendant Muchmore and plaintiff, plaintiff said to defendant Muchmore, that he, (Muchmore) was a partner with Hackett in the purchase of the light hogs, and that Muchmore made no denial of the fact; that Muchmore said in that conversation, that it would be hard to have to pay for the hogs when they got nothing for them.

Plaintiff then closed his case.

Defendants thereupon recalled.

Page 9.

Richard Bonham, who testified farther, that in a conversation with plaintiff after the sale of plaintiff's light hogs, plaintiff said to witness that McDowell had paid him (plaintiff) for those light hogs in "Gosport bills," or "pictures," but that they did not do him any good, and he did not consider it any payment, or as good as no payment.

Page 10.

Caleb Harter, witness for defendants, testified that in the spring of 1858, plaintiff came to defendant, Hackett's house, and had conversation about some hogs; Hackett asked plaintiff if he did not know that the hogs were bought for McDowell; plaintiff said he did; Hackett asked plaintiff if he had not got his pay for the hogs; plaintiff replied that he had, but that the money was not very good; Hackett called upon witness at the time to remember these statements of plaintiff's; witness did not know what lot of hogs was alluded to.

Page 10.

Michael Grow, a witness for the plaintiff, was then introduced, who testified that he was at Granville when heavy hogs were weighed and delivered to Hackett and McDowell by Bonham; Skidmore weighed and Muchmore took the weights; Muchmore and Hackett were in frequent conversation; witness and plaintiff were standing by the fence; Hackett and Muchmore were standing a short distance off, talking; Hackett turned from Muchmore and came to where witness and plaintiff were standing and said to plaintiff, "we will take those light hogs at your figures;" witness saw hogs weighed; Muchmore took the weights; this was directly after dinner; McDowell had not come yet; he came when the sun was about two hours high.

Page 11.

The defendants then introduced Benjamin McDowell, and offered to have him sworn to testify as a witness on their behalf, and to prove by him,

That he, (McDowell) had paid plaintiff for the hogs, to recover the price of which this suit was brought by the plaintiff against the defendants—that he (McDowell) himself, in fact, purchased the hogs for the price of which this suit is brought, through defendant, Hackett, as his agent, and that he, witness, had paid plaintiff for the same; that the purchase was not made by the defendants, and that before and at the time the hogs were purchased, plaintiff knew that defendant, Hackett was merely the agent of witness in the transaction; to which the plaintiff objected on the ground of interest, and the said witness, "McDowell, being sworn upon his *voir dire*, stated that if judgment was rendered in this suit against the defendants, and they came up to their contract, he expected to be liable to them for the value of the hogs in controversy, and if the plaintiff failed in this suit, he expected to be liable to him for the value of the hogs in controversy; that when he, witness, went to Granville to get the heavy hogs which he had bought of Muchmore and Hackett, spoken of by other witnesses in this case, defendant, Hackett, told him there were a good many light hogs on the ground that would not come in on the contract for heavy hogs, that could be bought cheap; witness then told Hackett that he was not acquainted with the men who had them, and asked Hackett to buy these light hogs for him, and that Hackett did so; that plaintiff, (Jeffers,) must have known that Hackett was buying the light hogs for witness, because, while Hackett was buying them, plaintiff came to witness and wanted him to give him 12½ cents per hundred more for them than he was giving others; that Hackett did buy the light hogs of plaintiff and others, as the agent of witness, and thereupon the court sustained the plaintiff's objection to the competency of such witness, and refused to allow him to testify before the jury, to which ruling of the court, in so doing, the defendants at the time excepted, and the exception was allowed by the court, and made a part of the record in the case.

Page 12.

The foregoing was all the evidence in the case.

The court, at the instance of the plaintiff, instructed the jury,

Page 13.

1st. The plaintiff brings his suit for the price or value of hogs sold to the defendants, and if the jury believe, from the evidence, that the defendants got hogs from plaintiff for which they have not paid plaintiff, the jury will find for the plaintiff the amount so owing.

2d. Although the defendants may have been agents for McDowell, and bought the hogs for McDowell, yet if in the contract with plaintiff they did not advise him of their agency, and that they were buying them as agents, then the plaintiff may hold the defendants liable for the hogs.

3d. If the defendants were in partnership in the purchase of hogs, and one of them in pursuance of their partnership purchased the hogs of plaintiff, his contract will bind both parties.

4th. If the defendants purchased the hogs from plaintiff, and have not paid for them, then the plaintiff is entitled to recover for the price or value thereof.

5th. In determining the questions as to whether the defendants, in the purchase of hogs from plaintiff, if any such purchase was made, the defendants were in partnership, or were joint contractors, as to whether the contract was with them or with McDowell, or as to whom the credit was given, or any other question before them, the jury will take into consideration all the circumstances and the evidence in proof before them, and find their verdict according to the weight of the evidence.

Page 15.

The defendants, at the time they were given, excepted to the giving of these instructions, and the exception was allowed by the court.

The court, at the instance of the defendants, gave the following instructions.

Page 16.

1st. The court instructs the jury that if it has been proven that the hogs in question were paid for in uncurrent money, yet they will find for the defendants, unless it has also been proven that the plaintiff offered to return the money to the defendants within a reasonable time after receiving it.

2d. The court instructs the jury that if they believe from the evidence that the contract was made by the plaintiff with Hackett alone, and not with Hackett and Muchmore both, they will find a verdict in favor of both the defendants.

3d. The court instructs the jury that if they believe from the evidence that the defendants or either of them were acting as agents in buying the hogs for McDowell, and that fact was known to the plaintiff at the time he sold the hogs, they will find for the defendants.

4th. If the jury believe that Jeffers received his pay for the hogs, either from defendants or either of them, or from any other person for defendants, in broken bank bills, and that Jeffers did not return those bills within a reasonable time after he discovered that they were worthless to the person from whom he received them or to the defendants, then the jury must find a verdict for defendants.

Page 16.

The jury returned into court a verdict for plaintiff for \$98, 80

Upon the rendition of the verdict by the jury, the defendants moved the court for a new trial, and assigned as causes therefor,

That the verdict found by the jury is contrary to law.

Said verdict is contrary to the evidence.

Page 17 and 18.

The court erred in refusing to permit the witness, McDowell to testify.

Said verdict is contrary to the instruction of the court. The motion for new trial was overruled; defendants at the time excepted, and their exception was allowed by the court. The court rendered judgment upon the verdict of the jury for \$98 80.

The errors assigned are,

1st. The court erred in refusing to allow witness, McDowell to testify.

2d. The court erred in giving instructions asked by plaintiff.

3d. The court erred in overruling motion for a new trial, and entering judgment upon the verdict of the jury.

JOHN SCHOLFIELD, Attorney for Appellants.

From the record of the jury.

81. The court asked the jury whether or not the defendant, John Scholfield, had been guilty of the crime charged in the indictment, to-wit: of being a false witness, and the jury returned a verdict in favor of the defendant.

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McIntire & Hackett  
vs  
George W. Jeffers

Ans vs

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Clark  
Filed Jan 8/64  
Wm. K. Curney  
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