

8559

No. _____

Supreme Court of Illinois

John G. Crabtree

vs.

Joseph Wells

71641  7

No 10

Nov. 1857

John G. Crabtree

vs

Joseph Wells

Appl. from Washington

8559

Affirmed

John G. Crabtree Appellant — Appeal from Wash-
vs ington.

Joseph Wells Appellee } And now on this day
Comes Appellant by

Amos Watts his Attorney and says that in the Record and proceedings in the above cause there is manifest Error in this to wit,

1 That the former trial and judgement upon the merits, wherein the same parties were Plaintiff and Defendant tried before John C. Vernon a Justice of the Peace on the 27th day of October 1854 is a full and complete bar against the maintainance of this suit,

2 The Court Erred in allowing a juror to testify what the adjudication was and the cause of the jury Rendering the verdict they did Render in the former suit between the same parties

3 The Court Erred in Refusing the instructions asked for by Defendant

4 The Court Erred in giving the instructions which were given voluntarily without being asked for by Appellee

5 The Appellee had no Right to Recover until he had tendered the battle as proven by his own Witnesses, he was to ~~have~~ done,

6 The Court Erred in overruling the motion for new trial

Wherefore he prays that the judgement be

held for Nought and be reversed with Costs &c
Amos Watts for Appellant

And the said Jcft saith that there is no error
in the above & foregoing record

P. E. Hasner for Appellee

At a Circuit Court held at the Court House
in and for the County of Washington and
State of Illinois on Wednesday the 17th day
of October A.D. 1855 the following proceedings
were had and the following Order made in
the following case to wit

Joseph Wells

vs

John G. Crabtree

Appeal

On this day comes said Plaintiff
by Hosmer his Atty & said Def't by C. Melvany &
Watts his Atty's - issue being joined there comes
a Jury to wit - James Gorham, Andrew Hooper,
Amos Burnett, Minorit Franklin, C. A. Harbours,
John Seawell, Presley Walker, J. L. Setton, Robert
Hughes, John Carter, John D. Wood, & C. Matthews
twelve good and lawful Men of said County, who
first being duly sworn and after hearing the
evidence and Argument of Counsel retire to
consider of their Verdict - And the said Jury
returned into Court the following Verdict "We
the Jury find for the Plaintiff fifty Dollars"
It is therefore considered by the Court that said Plaintiff
have and recover of and from said Def't the sum
of fifty Dollars as well as his Costs and charges
about this suit by him in that behalf expended
Execution is awarded therefor &c

2 Appeal prayed by Def't - Appeal Granted on Def't's
executing Bond with Amos Watts as security in the
sum of \$100.00 conditioned according to Law

Copy of Bill of Exceptions

State of Illinois

Washington County

Joseph Wells

vs

John G. Crashee

In Washington County

Circuit Court Oct Term 1855

Appeal from H H Factor J.P.

Be it remembered that at said Term of said Court the above case came on for trial before a Jury on an account filed by Plff (here insert said account and a Plea in bar filed before the Justice of the Peace of a former adjudication in the same cause of Action between the same Parties in a suit tried before John W Vernor a Justice of the Peace, which suit before said Vernor is plead in bar by the Deft in this suit was tried by said Vernor J.P. on the 27th day of October 1854. The Plff introduces Witnesses & proves the payment of \$50, to Deft by Plff on or about January 1854 on a verbal agreement between the Parties that Deft's Wife should convey to Plaintiff a tract of Land belonging to Plff's Wife upon payment by Plff to Deft of an additional sum of one hundred Dollars in cattle and calling at Deft's House for a Deed. Plff also proves a tender of \$100, in gold to Deft and demand of a deed at Deft's House & the refusal of Deft to make the deed all before the commencement of this suit & after the determination of the suit before said Vernor above plead in bar. The Plf here closes. Deft then called John W Vernor said Justice of the Peace identified his Docket & Papers presented by said Vernor J.P. as the docket kept by him as J.P. & the account & Papers as being the account & Papers in a suit before said J.P. wherein the same

persons were Parties as those who are Parties to this
 suit as follows (here insert a full copy of the
 account & the entry in the docket of Justice Vernor
 in the case of Joseph Wells against John G Crabtree
 tried before him & offered in evidence by Defd't
 in this suit. Defd't then calls same Witnesses
 by whom Bluff proved the payment of the Money
 to Defd't & proves that this item of account of \$80
 claimed by Bluff in this suit is one of the same
 items & accounts that was claimed by Wells from
 Crabtree in the suit before Vernor the copy of
 which Judgment is herein above set forth. Defd't then
 closed. Plf then calls calls one of the Jury in the
 trial before Vernor and proves that the Judgment
 before Vernor herein above set forth was only given
 for the balance of Wells' account in that suit
 except this now sued for that the Jury in the
 trial before said Vernor did not allow Wells
 this Item because Defd't plead and they considered
 that he Wells had not complied with his contract
 with Crabtree he Wells not having tendered &
 proved the balance of the purchase of the purchase
 Money demanded a deed at Defd't House before
 commencement of said suit before said Vernor.
 Defd't then proves by same Witness that there was
 nothing said about asking leave to strike out
 this item or take a non suit as to said Item
 but that the Jury passed upon said Item with
 the other items but rejected it for the cause aforesaid.
 To the introduction of the Testimony of said
 Jurymen said Defd't objected at the time which
 objection was overruled by the Court & Defd't
 excepted at the time. - This was all the Testimony
 Defd't then asked the following instructions

(here insert said instructions) which instructions were refused, To which decision Sept^r excepted at the time The Jury found for Pl^{ff} \$50,00 & Costs Sept^r moved for a new trial which was overruled to which decision Sept^r excepted
Sidney Dorsee Esq

Copy of Judgment offered in evidence by Sept^r in support of Plea in Bar
Joseph Wells
vs
John G Cratree } Demand for debt \$99.95

Fees
Summons 15³/₄
Returning 12¹/₂
4 Subpoenas 75
Jury Warrant 25
Returning the Jury 37¹/₂
8 Oaths 20
Returning verdict of Jury 10¹/₂
Judgment 25
2.56¹/₄
Fees 25
\$281¹/₂
Unstable Dues fees
Returning summons 25
100 Writs 90
Returning subpoenas 87¹/₂
70 Writs 350
Returning Jury 50
Waiting on Jury 25
6.27¹/₂
Returning verdict 50
Paid \$6.77
Witness Fees
Wm Hoffman 5.50
Wm Hodgkins 50
Mary Burgess 50
Moby Shelton 50
Leland A Taylor 50
Jester Holmes 50
Jury fees advanced by the defendant 1.50

Summons issued on the 18th day of October 1854 and put in the hands of John C Burns Const, and made returnable on the 27th day of October 1854 at 1 O'clock P.M. also Subpoena for Wm Hoffman M Shelton and others October 27th 1854. 1 O'clock P.M. The Parties and Witness appeared and the Defendant called for a Jury - whereupon a Jury Warrant issued & Const Burns returned into Court the names of the following Viz James Sawyer, Thomas Reed, J D Hilliard and Jenkins, A C Hazans, & James Davis The Jury was sworn and the Parties being ready for trial. The Witnesses sworn & examined by the Counsels of the Parties & the case being argued by Hosmer for the Pl^{ff} & Watts for Defendant The Jury returned & returned into Court the following Verdict Viz Oct 27th 1854 Joseph Wells vs J G Cratree. We the Jury find for the Plaintiff \$15,00 signed by all the Jury Whereupon Judgment is rendered against the

Defendant for fifteen Dollars and Cost of suit as stated in the Margin given under my hand and seal this 27th day of October A.D. 1854

John A. Vernor J.P. *Seal*

Rec'd 125000 May 17th 1855 Etc issued May 19th 1855 & delivered to J. C. Burns Const. J. A. Vernor J.P., July 2nd 1855 Etc returned satisfied in full by J. C. Burns Const. J. A. Vernor J.P. *Seal*
Paid to Plaintiff July 2nd 1855 J. A. Vernor J.P.

Copy of Account sued on in the above cause before John A. Vernor J.P.

John G. Crabtree Dr to Joseph Wells	
Oct 16th 1854 To Money paid for Land which said Crabtree has failed to convey to me	\$50.00
" " " To Board of self & Wife 5 weeks @ \$4	20.00
" " " To Keeping Horse 5 Weeks @ \$1	5.00
Total	\$75.00

Copy of Account sued on in the above cause before Harry H. Talbot J.P.

John G. Crabtree Dr to Joseph Wells	
1st June 1855 To Money paid him in February 1854 for Land which he failed to convey	\$50.00
" " To 16 Months interest thereon @ 6	4.00
Amount	\$54.00

Copy of Plea referred to in Bill of Exceptions

Joseph Wells	{	Before H. H. Talbot Justice of the Peace
To		July 2nd 1855, Demand \$60.00
John G. Crabtree		And the said Defendant comes

I defend &c and says that the said Plaintiff right not to have or maintain his aforesaid action against him, because he says that the cause of action upon which this suit is brought was adjudged of and a verdict of a Jury rendered thereon in a certain suit tried before one John A. Tamm JP wherein the said Joseph Wells was Plaintiff and the said John G. Crabtree was Defendant, which was decided before the commencement of this suit, which Judgment has been paid in full by said John G. Crabtree Defendant, and this said Dep't is ready to verify &c Wherefore he prays Judgment &c

John G. Crabtree per
Watts his Atty

State of Illinois } Harry H. Taltot
Washington County } Clerk of the Circuit
Court in and for said County hereby certify
that the foregoing is truly and correctly copied
from the Records & from the Papers on file
in my Office in the foregoing entitled cause
Given under my hand
And the seal of said Court
This November 12th 1855
Harry H. Taltot Atty

Clerks Fee \$3.50

Joseph Wells
vs

John G. Crabtree

Appeal

7

The Court is requested to
instruct the Jury for Deft.

- 1st That if the Jury believe from the evidence that the demand sued for in this case was in another & former suit between the same Parties submitted to a Jury among other items, and passed upon by the Jury, they must find for Deft (Refused)
- 2 That if the Jury believe from the evidence that the Plffs demand now sued for was litigated in a former suit between the Parties they must find for the Deft (Refused)
- 2 The Court instructed the Jury if they believe from the evidence that the contested item, was not allowed by the Jury because the same was not due at the time of the then Trial the verdict & Judgment in that suit is no bar to a recovery in this

State of Illinois }
Washington County } I Harry H Talbot Clerk
of the Circuit Court in and
for said County do certify that the above is a true
copy of the instructions as asked for & that the same
were ordered by the Court to be made a Part of the
Record in the Case of exceptions

Given under my hand and
the seal of said Court This
7th day of November A.D. 1856
H H Talbot Clerk

10
10
John G. Crocker

or
Joseph Wells.

Apprec from
Washington

Julien Nov. 10. 1856

A. Johnston CM

Received \$5.00

Received

John H. Crabtree Appellant; Appeal from Washington County.
 vs Novr. Term 1856 continued to Novr.
 Joseph Wells Appellee } Term 1857, Supreme Court of Illinois.
 First Grand Division.

The Record on file in this cause, shows that in the month of January 1854, Appellant sold to Appellee, a tract of land for \$150. Fifty dollars of which was paid down, & \$100. was to be paid in Cattle, delivered at Appellants house, in February 1854, when & where Appellant & wife were to make & deliver deed to Appellee for the land, the contract being by parol only. On 18th Oct 1854 Appellee sued Appellant on an Account, amounting to \$75. fifty dollars of which was for money paid on an agreement to sell land. On the trial of that Cause Oct 27th 1854 Appellee obtained judgment against Appellant for \$15. & Cost which was paid off by Appellant. After 27th Oct 1854 & previous to June 1st 1855 Appellee tendered \$100. in Gold to Appellant, demanded a deed, which was refused by Appellant, when Wells sued again for the \$50. Appellant plead general issue & Special plea in bar of former Recovery; proved the identity of this item as the same contained in Appellants account, which submitted to, & passed upon, by the jury, in the former suit before J. N. Vernon J.P. Oct 27 1854; that the adjudication was upon the merits & included all the items in Appellants acct. then sued on.

It is a principle of law, well settled, by the decisions, that "a former recovery in a court having general or special jurisdiction, will conclude the same parties from another trial of the same Cause of action or ground of defence" See *Zimmerman vs Zimmerman* P 848 *Gray Et al vs Killian Et al* P 453. 15 Ill. *Vallandigham vs Ryan* 17th Ill P 25. & Cases there referred to, ² *Erasmus Digest* 87223. ~~Illine~~ 2 *Gilman* 355. 6 *Hec*

That principle being well settled by the decisions of this Court, the identity of this item being established & its submission to be passed upon by a jury on its merits, the first suit was an effectual bar Against the maintainance of this suit, and no act of the Appellant, of tendering Money ~~seven~~ Cattle, according to the terms of the original ^{after the termination of the first suit,} Contract, Could Charge the demand or Cause of action so as to avoid the effect of the 1st submission to a jury & trial on the merits.

If Appellee can maintain this suit & avoid the plea of former recovery, when finally beaten on the merits, on account of not having tendered Cattle as originally stipulated, he can upon the same principle, tender \$100 worth of Cattle, demand a deed, & upon Appellants refusal to make the deed, maintain a third suit for the recovery of this ~~interest~~ same \$50, and so on ad infinitum.

The production of Vernors docket & papers under the general issue, was sufficient to make good Appellants ~~plea~~ defence of former recovery. See Le Guen vs Houveneur 1 Johns Cas 492 Felter vs Mulliner 2 Johns R 481. Approved by this Court in Gray Et al vs Killilan Et al 15 Ill 487 & 8, & Appellee admitted it established thereby, by attempting to avoid that defence, by calling one of the jurors in the former suit, to explain the verdict.

The Court erred in permitting the juror to testify, as parol testimony is not admissible to vary or contradict a written Contract or instrument, and a fortiori a verdict of a jury or Record of a judgement. See Zimmerman vs Zimmerman 9 Ill & Gray Et al vs Killilan Et al

A condition precedent must be specifically performed, by the

party upon whom the obligation of performance rests, before the opposite party, can be compelled to part with his property &c
See Chitty's Contracts 737 to 738. Scott vs Shepherd 3 Kil 483 Chitty's Cont. 727 to 729 & note 1 & authorities there cited

A tender of one hundred dollars in Gold is not a compliance specifically, with the terms of a contract to deliver \$100. worth of Cattle. and such tender made between Oct 1854 & June 1855 will not satisfy or discharge an agreement to deliver \$100. worth of Cattle in February 1857. See Authorities last above cited

The Court erred in Refusing the instructions asked by Appellant for the Reasons set forth herein first above, and erred in giving instructions given, for the Reasons
Amos Watts atty for appelt.

STATE OF ILLINOIS, SUPREME COURT, To November Term, 1856.

JOHN G. CRABTREE, Appellant } Appeal from Washington County.
vs }
JOSEPH WELLS, Appellee } Abstract of Record filed in the office of the
Clerk of the Supreme Court.

Page 1.

1 Copy of the judgement rendered in this cause by the Washington Circuit Court at the October Term 1855.

2 Appeal prayed and granted by the Court.

" 2.

Copy of Bill of exceptions :

1 Plea of former adjudications between same partes.

2 Proof of payment of fifty dollars by plaintiff to defendant, on an agreement to sell Land.

3 Proof of tender of \$100 by plaintiff to defendant.

4 Introduction by defendant of Justice Vernor and his Docket in support of plea in bar.

" 3.

1 Proof by defendant, of identity of the item of account in this suit, and one adjudicated between same parties in former suit.

2 Plaintiff proves by a juror, that in former suit the jury did not allow this item and why they did not.

3 Defendant proves that this item was passed upon by the jury in former trial between same parties, and not withdrawn.

4 Defendant objected to introduction of jurymen; objection over-ruled by the Court.

5 Instructions asked by defendant and refused by the Court and exceptions of defendant to said refusal.

" 4.

1 Copy of Judgement plead in bar by defendant.

" 5.

1 Copy of account sued on in former trial between same parties.

2 Copy of account sued on in this cause.

3 Copy of plea in bar filed.

1 Instructions asked by defendant and refused by the Court.

Instructions given by the Court.

JOHN G. CRABTREE

100

JOSEPH WELLS.

FROM WASHINGTON.

~~Wm. Kirby, Esq. of New York, New York, Kirby
and his wife, Esq. of New York, New York, Kirby~~

~~Wm. H. Chittenden Defendants~~

in Error

NOTES

RECEIVED

For Plaintiffs in Error.

Abstract, full

Recd \$1-00 to Parker
of West on the account
of Parker's share

John S. Crabtree } In Supreme Court
 vs. } Nov. Term AD 1857
 Joseph Wells }

When the account ~~for~~ sue for in
 this case was included in the items of account
 in a former trial it was not due & recoverable
 & was not a cause of action because Deft. in
 error had not tendered the balance of purchase
 & demanded a deed according to contract
 Chitty's Contracts Page 623, note 1 & 307 note 2
 & Whitney vs. Cochrane 1 Scam. 210

There is a difference between items of account
 & Cause of action. The causes of action
 must be the same 3^d Chit Plead. 928 note a
 Brog et al. vs. Lilliman et al. XV Ills. 458

Parol evidence is admissible to show what was
 adjudicated upon but not what that adjudication
 was Zimmerman vs. Zimmerman 15 Ills. 84. apply that
 rule here ~~for~~ witness states that in the 1st trial
 a payment by Wells to Crabtree of \$50, in a land trade
 without a tender of balance due & demand & deed
 was sued for & was adjudicated upon in the 1st trial
 the said Crabtree pleading that no tender & demand as aforesaid
 had been up to that time made & the justices
 docket shows that the jury disallowed the \$50 item

at time of 1st trial Sept. in error had no cause
of action as for as this \$50. item because no tender &
demand as aforesaid had been made; at the 2^d trial
he had a cause of action for the 1st time; how can
it be said to be same as in the 1st trial when
at the 1st trial he had none at all

John G. Leavitt

vs.

Joseph Wells

Sept's Brief

John G. Crabtree Appellant $\approx$ Appeal from Washington County
vs

Joseph Wells Appellee $\approx$ Abstract of Record filed in
the office of Clerk of Supreme Court

Page 1 1 Copy of the judgement Rendered in this Cause by the Washington
Circuit Court at the October Term 1855

2 Appeal prayed and granted by the Court.

2 Copy of Bill of exceptions.

1 Plea of former adjudication between same parties.

2 Proof of payment of fifty dollars by plaintiff to defendant, on an
agreement to sell Land

3 Proof of tender of \$100. by plaintiff to defendant

4 Introduction by ^{Defendant of} Justice Vernor and his docket in support
of plea in bar.

3 1 Proof by Defendant, of identity of the item of account in this
suit, and one adjudicated between same parties in former suit.

2 Plaintiff proves by a juror, that in former suit the jury
did not allow this item and why they did not.

3 Defendant proves that this item was passed upon by the
jury in former trial between same parties, and not withdrawn.

4 Defendant objected to introduction of juror, objection
over ruled by the Court.

5 Instructions asked by defendant and refused by the Court
and exceptions of Defendant to said Refusal

4 1 Copy of judgement plead in bar by Defendant

5 1 Copy of Account sued on in former trial between same parties

2 Copy of Account sued on in this Cause.

3 Copy of plea in bar filed

7 Instructions asked by Defendant and Refused by the Court

8 Instructions given by the Court

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John G. Leavelle

vs

Joseph Wells

Abstract of Record

Nov 12 - \$1.00 paid

STATE OF ILLINOIS, SUPREME COURT, To November Term, 1856.

JOHN G. CRABTREE, Appellant } Appeal from Washington County.
vs }
JOSEPH WELLS, Appellee } Abstract of Record filed in the office of the
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1. Plea of former adjudications between same parties.

2. Proof of payment of fifty dollars by plaintiff to defendant, on an agreement to sell Land.

3. Proof of tender of \$100 by plaintiff to defendant.

4. Introduction by defendant of Justice Vernor and his Docket in support of plea in bar.

1. Proof by defendant, of identity of the item of account in this suit, and one adjudicated between same parties in former suit.

2. Plaintiff proves by a juror, that in former suit the jury did not allow this item and why they did not.

3. Defendant proves that this item was passed upon by the jury in former trial between same parties, and not withdrawn.

4. Defendant objected to introduction of jurymen; objection over-ruled by the Court.

5. Instructions asked by defendant and refused by the Court and exceptions of defendant to said refusal.

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1. Copy of account sued on in former trial between same parties.

2. Copy of account sued on in this cause.

3. Copy of plea in bar filed.

1. Instructions asked by defendant and refused by the Court.

Instructions given by the Court.

Miles

15 Ill 84. That was a

" " 453 bar

17 " 255

2 Idem 355

Chit. Court 737-8

3 Idem 727-9

3 Idem 483

The piff had not

Complied with the paff.

Hasmer.

There was no cause

of action when the piff

suit was tried over till

the \$100 was tendered.

Parole Court voidable only.

Chit Court 623

" " 317

1 Idem 210

15 Ill 458

16

JOHN G. CRABTREE

vs

JOSEPH WELLS.

ERROR FROM WASHINGTON.

~~PER NELSON,~~

~~For District in Error.~~

~~WELLS, JOSEPH WELLS.~~

~~VS~~

~~WELLS, JOSEPH WELLS.~~

~~WELLS, JOSEPH WELLS.~~