

8739


No. _____

Supreme Court of Illinois

Andrew Crens^w

vs.

Isabella Bleakley

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Pleas before the Circuit Court,
within and for the county of
Wayne and State of Illinois,
begun and held on the 11th day
of September in the year of
our Lord one thousand eight
hundred and fifty four, before
the Hon. Rowing Bough, Judge.


Be it remembered, that heretofore to wit, on
the 27th day of May A. D. 1854, there was filed in the
Clerks office of said Court, the following papers, viz:

State of Illinois } Wayne County } Isabella Bleakley }	April 13 th A. D. 1854. Justice's Court before the undersigned,
vs. } Andrew Crews, }	Plea of Debt. The amount claimed to be due \$99.00 on an unsettled account. April 13 th Summons issued - Defendant cited to trial on 21 st inst at one o'clock P. M. April 20 th Summons legally served and returned by Nathan Walker Const. 20 th Subpoena issued to W ^m Crews 20 th Subpoena issued to Francis Henderson, 21 st Subpoena issued to Jas. Crews. - All legally served and returned by Nathan Walker Const. 21 st Jury ordered by plaintiff. Warrant issued served and returned by Nathan Walker Const, and the following jurors summoned, Samuel Walker, W ^m M. Collins, Andrew Dunbar, John Porterfield, Charles Uukler, A. S. Wall - 21 st at one o'clock parties appeared, and after an investigation of

the case verdict was brought in or rendered against defendant for the sum of fifty dollars and $\frac{75}{100}$ cent and cost of suit.

W. H. Porterfield, J. P."

"State of Illinois.

Wayne County } S. J. W. H. Porterfield Justice of the
peace in and for the county of Wayne and State of Illinois,
do hereby certify that the foregoing transcript and judgment
of Isabel Bleakley vs. Andrew Crews is truly copied
from my docket. Given under my hand and seal
this 10th day of May A. D. 1854. W. H. Porterfield J. P. 

And afterwards, to wit, at the September Term in the year 1854,
of the Circuit Court of said county, said cause came on for trial,
when such proceedings were had that the following order was
made by said court, viz:

"Isabella Bleakley

vs.

Andrew Crews.

} Appeal.

At this day came the parties
by their counsel and issue being joined, therefore let a
jury come and thereupon came a jury, to wit, Jacob
Baker, Jefferson Murphy, Malulel Lick, John G. Marks,
Wiley Galbraith, Michael Book, John W. Atteberry, Robert
Minroe, Absalom C. Owens, Thomas H. Puckett, Pradi
S. Meeks, & Robert S. Harris, twelve good and lawful
men who being duly elected, tried and sworn
the truth to speak upon the issue joined, upon their
oaths do say, 'We the jury find for the plaintiff \$45.33
cents.' Whereupon the defendant by his counsel entered
his motion for a new trial, and in arrest of judgment,

which motion is overruled by the court. Therefore it is considered and adjudged by the court that the said plaintiff recover of the said defendant the said sum of forty five dollars and thirty three cents, so found as aforesaid, together with her cost about her suit as well before the Justice of the Peace as in this court in this behalf expended, and thereof have execution, &c."

The following Bill of exceptions was taken in said cause and ordered to be filed as a part of the record, viz:

State of Illinois, Wayne County Circuit Court.

September Term 1854.

Isabella Blahely

v.

Andrew Crews.

} Appeal.

De't. remembered

that on the trial of this cause, the plaintiff introduced Mrs. Laine as a witness, who testified as follows, - that plaintiff was at witnesses house when James Crews came there and wanted plaintiffs son Thomas to go and work for defendant, and said defendant would give her what the boy was worth. Plaintiff consented, and the boy went. The boy staid with defendant about two years and a month, and left two years ago.

James Crews was then called who testified that he was sent by defendant to get plaintiffs boy to live with him. He went and plaintiff said she would not bind her son, - that defendants wife had been very kind to her, and he might go, and she and defendant

would fix it afterwards. Afterwards witness took the boy to the plaintiff and told her defendant had heard she wanted to hire the boy out at \$5.00 per month, and if so defendant would give her that during the cropping season. Plaintiff replied that she wanted the boy to go back to defendant and live as he had done. Said the boy was going to school and she wanted him to continue. Witness stated that the boy lived with defendant about two years, and during that time he was sent to school ^{by defendant} six months or more.

George Laird was introduced who stated that in a conversation with defendant during the time said boy was living with him, defendant said the boy was worth more than a boy he was paying \$9. a \$11. per month.

Leander King said he was acquainted with the boy when he lived with defendant, and was a good boy. - had seen him clearing brush & ploughing - he was worth \$8. per month in crop time.

P. H. Gillespie said the boy was a good boy. Defendant said he would rather have him than Mr. Harlow - that defendant complained of said Harlow. On cross-examination defendant asked witness "whether during the time the boy was with defendant, his clothes, boarding & schooling were worth as much as his work," which question was objected to by plaintiff, the objection was sustained by the Court, and the question not allowed to be answered - to which opinion of the Court in overruling said question the defendant excepted at the time.

On the cross-examination of said witness James Crews defendant asked, 'What was the condition of the boys clothing at the time he went to defendant?'; to which question the plaintiff objected, which objection was sustained by the court, and to the opinion of the court in sustaining said objection the defendant excepted. Defendant further asked said witness, "Do you know of defendant furnishing cloths to said boy while he was living with defendant?" which question was objected to by plaintiff and rejected by the court, to which opinion in sustaining said objection and refusing to allow said question to be answered the defendant excepted.

The defendant then introduced J. Vanclaver who testified that he had repeatedly heard plaintiff say during the time the boy was living with defendant that he was living with defendant as a member of his family and she wanted him to continue so. She thought defendant would send him to school as he would his own children, and would do right by the boy.

W^m Crews testified that he was acquainted with the boy when he lived with defendant. Was a good boy. Defendant sent him to every school taught in that neighborhood during the time the boy lived with him - clothed him - took care of him when sick, and treated him in all respects like his own child. The boy was sick a number of times during the time - had the ague the fall

after he went to defendants, and was not able to work much for some time.

This was all the evidence in the case. After retiring the jury returned a verdict in favor of plaintiff for \$45.33. whereupon the defendant moved the court for a new trial for the reason that the verdict was contrary to evidence and the law, which motion was overruled by the court. To which opinion of the Court in overruling said motion, and in refusing to grant a new trial the defendant by his counsel excepted at the time, and prays that this his bill of exceptions may be signed and sealed by the Court, which is done.

D. Daugh (Seal)
Judge of the 12th Ind. Circuit.

Cost Bill.

Clerks fees	\$4.03
Sheriff do.	2.50
Witness do.	3.00
Cost before J. P.	<u>7.15</u>
	\$ 18.70

State of Illinois,

Wayne County, Ill.

J. Joseph G. Parkley
Clerk of the Circuit Court in and for said county
of Wayne do hereby certify that the above and

foregoing is a correct transcript of the records and papers in the above entitled cause of Isabella Bleakley vs. Andrew Crews decided at the September Term 1854 of said Court, as appears by the papers and records now on file in my office.

Given under my hand and the Seal of said Court at Fairfield this 21st day of October A.D. 1854
J. G. Bartley Clerk

Andrew Crews. }
vs. } Error to Wayne,
Isabella Bleakley }

And the said plaintiff in Error by his counsel came and says that there is manifest error in the aforesaid order and judgments of the said circuit Court, & for causes of error says,

1st. The Court erred in refusing to permit the witness P. A. Gillison to answer whether the boarding, clothing & schooling of the boy were worth as much as his labor.

2nd. The Court erred in refusing to permit the witness James Crews to answer as to the condition of the boys clothes at the time he went to plaintiff in Error.

3rd. The Court erred in refusing to permit the witness James Crews to answer whether he knew of plaintiff in Error furnishing clothing to said boy during the time he was living with plaintiff in Error.

4th. The Court erred in overruling the motion of P^lff in error for a new trial.

5th. The Court erred in not dividing the cost between the parties, and in giving judgment against p^lff in error for the whole. And said judgments are otherwise erroneous, whereon said p^lntiff prays the same may be set aside, reversed and made void.

Edwin Beecher

Atty for P^lff in Error

Reversed in Error

A. L. Freeman

Atty for def^t in Error

~~Isabella Blackley~~

~~vs~~
Andrew Cross

Record.

Andrew Cross

vs

Isabella Blackley

Filed Nov. 2^d 1854

J. D. Prouty clk

By at Christina SB

Paid \$5.00

Crews vs Blakely

Patron Justice — This action was brought by the plaintiff below for the work and labor of her son — The evidences ^{show} that the son of the plaintiff lived with and served the defendant about two years; that he was sent to school by the defendant about six months; ~~and~~ that he was sick several times, and nursed by the defendant ~~when~~ when unwell; that he was a member of the defendant's family, and treated by him like one of his own ~~family~~ children; and that he was a good boy, and could earn from five to eight dollars per month during the ~~trapping~~ ^{cropping} season. When the boy went to live with the defendant he told the plaintiff he would ^{her} give the boy ~~what~~ ^{what} he was worth. No terms were agreed upon, but the plaintiff remarked at the time that she and defendant would fix it afterwards — Subsequently, the defendant proposed that if the plaintiff wished to hire the boy out by the month to give her five dollars per month during the ~~trapping~~ ^{cropping} season; but the plaintiff replied that she wanted the boy to go back to the defendant and live as he had done — It is unnecessary ^{now} to enquire ~~not~~ whether this evidence shows that it was the intention of the parties that wages were to be paid for the services of the boy, or whether it was their intention that he should be adopted into and form a part of the defendant's family, to be provided for, taken care of, and ~~should~~ ^{should} by him as a compensation for his services, for in either event the Court unquestionably ^{should} have permitted

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The defendant to have proved, as he offered to do, that the clothes, boarding, and schooling of the boy were worth as much as his services, what was the condition of the boys clothes at the time he went to live with the defendant, and also that the defendant furnished him clothes while he was living with him. This evidence would legitimately have tended to establish payment for the services rendered in the event it should be found that the plaintiff was entitled to wages for those services. Evidence tending to prove payment may be given in evidence under the general issue; besides, the action was commenced before a justice of the Peace where no special pleas are required.

The judgment of the Circuit Court must be reversed and the cause remanded.

Judgment Reversed

Crews & Blakely

Spencer

Paton. f. —

Andrew Crews

vs

Isabella Fleckley

Error to Wayne.

Abstract.

This suit was brought by defendant in error, before a Justice of the Peace for the work of her son, & received a judgment for \$50.75. Deft. appealed to the circuit court where a judgment was rendered against him for \$15.33 & all cost. The defence was that the boy was living with defendant as a member of his family and not for wages.

Plegg, proved by M^r Lane that James Crews came to witness house where plegg was & wanted her son Thomas to go & work for deft. and said defendant would give her what he was worth. She consented and boy went. Stayed two years & some months.

James Crews testified that he was sent by defendant to get plegg, boy to live with him. She said she would not bind her son - defendant's wife had been very kind to her, & she might go, and she & defendant would fix it afterwards. Witness afterwards told plegg that defendant heard she wanted to hire the boy at \$5. per month, and if so deft. would give her that clearing the cropping season. Plegg replied she wanted the boy to live with deft. as he had done. Said boy was going to school & she wanted him to continue so. Lived with deft. two years - and was sent to school by him six months or more.

George Sand stated deft. said the boy was worth more than one he was giving \$8. a month.

L. King said boy was worth \$4 a month in crop time.

P. N. Gillison said boy was a good boy. On cross-ex. he was asked, "Whether during the time boy was living with deft. his clothes, boarding & schooling were worth as much as his work?" which was ruled out by the Court.

On cross-ex. of said James Crews deft. asked, "What was the condition of the boy's clothing at the time he went to defendant?" which was not allowed to be answered by court.

Defendant proved by F. Vanclaver that he had repeatedly heard
Pliff say he was living with deft, as a member of his family,
and she wanted him to continue so. - thought defendant
would send him to school as he would his own children,
and would do right by him,

W^m. Green said defendant sent boy to ^{every} school
taught in the neighborhood while he was living with
defendant - deft, clothed him - took care of when
sick, and treated him in all respects like his own
child. - Was sick a number of times.

This was all the evidence, Deft. moved for
a new trial which was overruled. Judgment entered
against defendant for all costs.

Edwin Beecher
for Pliff in Error,

Green }
vs. }
Bleakley }
 } Sum. to Mag.

Abstract.

Andrew Greco.

vs.

Isabella Bleahley

Erra to Wayne.

Points and authorities relied on by the Plaintiff in Erra.

- 1st The Court ought to have permitted the witness J. Greco to answer what the condition of the boys cloths was at the time he went to defendants. 7 Carr. & Payne 94. top pages.
- 2nd The Court ought to have permitted the witness Gillison to answer whether the clothing, boarding & schooling were worth as much as the boys work. Same.
- 3rd If at the time the services were rendered, it was the understanding of the parties that defendant was not to pay for them, but that the boy was living with defendant as a member of his family, then the plaintiff below is not entitled to recover. Davis v. Davis 7 Carr. & Payne 37. original paging. Livingston v. Achutein 5 Cowen 531. DeFrance vs. Austin 7 Perm. St. R. 309. Sevier vs. Parsons 3 N. & S. 358. Little vs. Deaconson 4 Dall. 111. U. S. Dig. Sup^m. Vol. 1. p. 187. Sect 275-8.
- 4th The Statute is imperative that the court shall divide the cost. R. L. 1845. p. 128. Sec. 17.
- 5th Courts sometimes construe the word "May" to mean "shall", but the converse is not true that "shall" means "may". Davidson et al vs. Gell. 1 East 47. top pages.
- 6th If the words of a Statute are clear and not obscure, the court must give them their literal meaning, unless great injustice will be done thereby. 7 Bac. Ab. 238. 240. - 7 Mass. R. 524 - 13 Mo. 343. - 4 M. & Leam Rep. 413.
See Wilson vs. Osceola et al 6 English's (Georgia) R. 44.

Andrew Crews,

vs.

Isabella Bleakley,

Point, & Leithcutts
for Puff.

No 43

November 1854

Andrew Green

vs

Isabella Bleakley

Error to Wayne

Opinion by Cotter. J.

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Judgment Reversed and
Cause remanded