

11869

No. _____

Supreme Court of Illinois

Dutcher.

vs.

Crowell.

71641  7

No. 28.

Edward F. Dutcher

vs.
Moses T. Crowell

1849

11869

State of Illinois
County of Ogle And Circuit Court thereof of May Term D 1849

Edward F. Dutcher

vs

Moses T. Crowell Attachment in and of a suit at Law

Be it remembered that on the 28th day of April D 1848 upon the application of Edward F. Dutcher a summons was issued by the Clerk of the Circuit Court of said Ogle County against the said Moses T. Crowell at the suit of the said Edward F. Dutcher in an action of Assumpsit that the damage claimed in said writ amounted to five hundred dollars which summons was in due form of Law and was duly served upon said Crowell on the day of _____ by the Sheriff of said County and that a declaration was filed in said suit in said Clerks office on the 28th day of April D 1848 which declaration was in due form of Law in assumpsit and that on the 7th day of May D 1848 at the Term aforesaid said Moses T. Crowell filed a plea of the general issue to said declaration in said Court and that on the 13th day of September D 1848 the suit aforesaid being then pending & undisposed of said Edward F. Dutcher filed in the Office of the Clerk of said Court an affidavit in the words and figures following to wit

Edward F. Dutcher

vs

Moses T. Crowell Affidant to obtain a attachment in and of a suit at Law commenced in the Ogle County Circuit Court & now pending in which Edward F. Dutcher is Plaintiff and Moses T. Crowell is defendant

State of Illinois

County of Ogle

Edward F. Dutcher above named plaintiff being duly sworn doth depose and say that deponent heretofore commenced a suit in Ogle Circuit Court by summons in which Edward F. Dutcher was Plaintiff and Moses

T Crowell was defendant for a sum of Money due and owing
to this deponent on a certain Promissory note made by said Moses
T. Crowell That deponent has been wholly unable to get service of said
Process on said Moses T. Crowell That said Moses T. Crowell is justly
indebted to this deponent in a sum Exceeding twenty dollars to wit
in the sum of one hundred & thirty two dollars and twenty three cents
by his certain instrument in writing signed by him That said
Moses T. Crowell conceals himself so that process cannot be served
upon him all which is true according to deponents best Knowledge
-information and belief

Subscribed and sworn before me E. J. Dutcher

in my office this 13th day of

September D. 1848 Henry Roberts Clerk

by Chancy Dyer

and that upon the filing of said affidavit the said Edward
J. Dutcher prayed for a writ of Attachment against the goods and
Chattels lands and Tenements and Estate of the said Moses T.
Crowell and then filed in the office of the Clerk of said Circuit
Court his bond in the penal sum of four hundred and twenty
five dollars with William More & Elias Etzard as security which
bond was in due form as provided by the statute in attachment cases
and said Clerk then issued a writ of Attachment in due form
of law at the suit of said Edward J. Dutcher against the goods
& Chattels Lands & Tenements & Estate of said Moses T. Crowell in
and of the suit in assumpsit between the same parties above
mentioned which writ of Attachment was then & there delivered to
the Sheriff of said County to execute and was by said Sheriff
returned duly executed by laying upon the property of the said
Moses T. Crowell


by reading the same to said Crowell on the
18th day of September D. 1848 as by said Sheriffs Return Endorsed
upon said Attachment appears and at a term of the
Circuit Court in and for said County of Ogle begun and held
on the 7th day of May D. 1849 at Oregon in said County the said
Moses T. Crowell by his attorneys entered his motion to quash

said writ of attachment which motion was entered on said
7th day of May. And the reasons filed in pursuance of the rules
& practice of said Court in support of said Motion was as
follows because said writ of Attachment was issued in
and of a suit at law and was sued out in vacation ~~time~~
and not during the session of any term of the said Circuit Court
of Ogle County and on the 8th day of May 1848 at the Term aforesaid
of said Court the Hon Hugh Henderson Judge of the Eleventh
Judicial Circuit of said State of Illinois presiding by Exchange
with the Hon J. L. Dickey Judge of the 9th Judicial Circuit of said
State said Motion came on to be heard and it appeared to said
Court that said writ of attachment was sued out in and of
the suit in assumpsit heretofore mentioned and that said suit
in assumpsit is still pending in said Court and Judgment
not yet rendered therein and that said writ of attachment was
issued during the vacation of the Circuit Court of said Ogle County
and not during any term thereof. The said Edward F. Dutcher
Plaintiff admitted that said writ of attachment was issued in
and of said suit at Law and that the said writ of attachment was
issued in vacation of said Court and not during the session of any
term thereof and made his Cross motion for leave to file an amended
affidavit if there be any just Exception to the affidavit now on file
but not affirming to show by such amended affidavit that some
writ of attachment was issued in or during any term of said Circuit Court
And after consideration it was considered and ordered by the said
Court that said writ of attachment be quashed and the proceedings
thereon dismissed for the reason that said writ of attachment in
and of said suit of assumpsit was applied for and issued
in vacation and not during the session of any term of
the Circuit Court of said County and for that Reason only to
which decision of the Court the said Edward F. Dutcher Excepted it was
thereupon considered by the Court that the said Moses L. Cornell had &
Recover from the said Edward F. Dutcher his Costs by him Expended in the
defense of said writ of attachment Expended and that he have
Execution therefor

It is agreed by the parties in the above entitled cause that the foregoing statement of facts shall stand in the place of a bill of exceptions of those papers on file & parts of the record therein referred to and the Parties shall have all their rights of Appeal & to assign Errors upon the record of all proceedings the same as if the facts and records & papers had been presented in a bill of Exceptions

P. C. Cook Atty for Plff
Peters & Mies " " Dft

This certifies that the foregoing written statement & agreement of Parties was agreed upon duly signed & is made part of the Record in the cause entitled therein and I also certify by the agreement of the Parties herein that the decision within Excepted to dismissing the writ of Attachment was made by said Circuit Court of Ogden County for the reasons stated in the Cause made signed & sealed this 12th day of January 1849

Hugh Henderson 
Judge of the Eleventh Judicial
Circuit

State of Illinois }
Ogden County }
do

I Robert B. Sigler Clerk of
the the Circuit Court of Ogden County do
hereby certify that the above is a perfect copy
of the ^{statement of the} agreed case made in the case of Edwold
H. Culthris vs. Moses Herowill and of the certificate
of the decision made by said Court in said
Case as certified by the Hon. Hugh Henderson
who presided in said Court at the May Term 1849
which agreed case statement & certificate
are now on file in my office

Witness my hand and the seal of said
Court ^{at Orange} this 12th day of May A.D. 1849
R. B. Light Clerk

And now comes ^{the said} Edward H. Hatcher by C. W. his
att'y and assigns for ever the following
Assignment of the Court upon the non
aporsaid

1st. The Court erred in granting the writ
of attachment and dismissing the pro
ceedings as stated in said decree for
the reason therein assigned

2^d The Court erred in rendering the judgment
aporsaid in manner & form aporsaid
H. W. & C. W.
attys for Plaintiff

28.

Edward F. Dutcher
vs
Moses T. Crowell

Quard

Filed June 11. 1849.
Melan Clk.

State of Illinois, Oct.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of *Ogle* — Greeting :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Ogle* — county, before the Judge thereof, between *Edward F. Dutcher* —

plaintiff and *Moses T. Corwell*

defendant it is said manifest error hath intervened to the injury of the aforesaid *plaintiff*

as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the *second Monday of June inst.* ~~next~~, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. *Samuel A. Treat*
Chief Justice of our said Court, and the
seal thereof at Ottawa, this *11th* day of
June — in the year of our Lord
one thousand eight hundred and forty-*nine*.

S. Island

Clerk of the Supreme Court.

Dutcher vs Crowell

with p error

Clerk of the Supreme Court
 One thousand eight hundred and forty-
 nine, in the Year of our Lord
 1849
 WITNESS the Hon. *James W. Alderson*
 Chief Justice of our said Court, and the

Filed June 11. 1849.
H. C. Clark

the Judge thereof, between
 judgment of a case which was in the Circuit Court of
 BECAUSE in the record and proceedings as also in the rendition of the
 The Judge of the County of *Albany*
 State of *Illinois*, etc.