

No. 8729

Supreme Court of Illinois

Ezra Baker

vs.

W. B. Prichill

71641  7

State of Illinois Crawford County Sch
Crawford Circuit Court
March Term AD 1854

At Pleas held at the Court House in Robinson
within and for the County of Crawford his Hon
Justin Karlar Sole Judge of the 4th Judicial
District presiding

Cyza Baker
vs
Wright B. Pritchett Assumpsit Dam \$1000.

Be it Remembered that on the 6th day of
February AD 1854 the said Plaintiff filed in the
Office of the Clerk of said Court the following
transcript in said cause from the Circuit Court
of Lawrence County

State of Illinois Lawrence County Sch.
Lawrence Circuit Court
March Term AD 1851

At Pleas held at the Court House in
Lawrenceville within and for the County of Lawrence
his Hon Justin Karlar Sole Judge of the 4th Judicial
District presiding

A Declaration of which the following is a
literal copy was filed in the above entitled
suit 27th day of February AD 1851.

Cyza Baker complains of
Wright B. Pritchett Defendant of a plea of Trespass
on the case in promises. For that whereas the said
Defendant heretofore to wit on the first day of
January AD 1848 at the County aforesaid was indebted
to the said Plaintiff in the sum of One thousand
Dollars for so much money by the said Defendant
before that time had and received to wit for the use
of the said Plaintiff and being so indebted he the
said Defendant in consideration thereof afterwards to
wit on the day and year aforesaid at the County
aforesaid undertook and then and there faithfully
promised the said Plaintiff to pay him the said
sum of money. When he the said Defendant
should be therunto afterwards requested. And whereas

Also the said Defendant afterwards to wit on the day and year aforesaid at the County aforesaid accounted to and with the said Plaintiff of and concerning divers sums of money from the defendant to the Plaintiff before that time and had owing and in arrear and unpaid and upon such accounting the Defendant was then found to be in arrear and indebted to the said Plaintiff in the further sum of One thousand Dollars and being so in arrear and indebted he the said defendant in consideration thereof afterwards to wit on the day and year aforesaid at the County aforesaid undertook and then and there faithfully promised the Plaintiff to pay him the said sum of money when he should be thereunto afterwards requested. And whereas also the said Defendant afterwards to wit on the day and year aforesaid at the County aforesaid was indebted to the said Plaintiff in the further sum of One thousand Dollars for divers goods wares Merchandize & Chattels by the said Plaintiff before that time sold & delivered to the said Defendant and at his special instance and request and being so indebted he the said Defendant in consideration thereof afterwards to wit on the day and year aforesaid at the County aforesaid undertook and then and there faithfully promised the said Plaintiff to pay him the said last mentioned sum of money when he the said Defendant should be afterwards thereunto requested.

Yet the said Defendant not regarding his said promises and undertakings &c hath not as yet paid the said several sums of money in the above counts mentioned nor either of them nor any of either although often requested. But the said Defendant to pay the same hath hitherto wholly neglected and refused to the damage of said Plaintiff of One thousand Dollars and therefore he brings his suit

Bowman & Roberts
Attys for Plff.

Rob. Wright B. Prichett

To	Money had and Received	\$1,000
"	Amount due on settlement	1,000
"	Goods wares Merchandize & Chattels	1,000
		<u>\$3,000</u>

And thereupon issued the writ of summons following that is to say,

The People of the State of Illinois
to the Sheriff of Lawrence County greeting
We command you to summons Wright B Pritchett if he can be found in your county to be and appear before the judge of our Circuit Court on the first day of the next term thereof to be holden at the Court house in Lawrenceville within and for the County of Lawrence on the second Monday of March, to wit to answer unto Ezra Baker of a plea of trespass ~~on the case~~ ^{on the case} or promises to the damage of the said Ezra Baker one thousand Dollars as he saith and of the writ make legal service and due return at the time and place aforesaid

Witness Frederick A Thomas clerk of our said Court at Lawrenceville this 21st day of February 1857

(seal)

F A Thomas Clerk

And thereupon the same was returned Endorsed

" Executed March 1st 1857 on the defendant Wright B Pritchett by his acceptancy of the service of the writ within writ.

Just Johnson

And thereupon at the ^{said} March term A D 1857 to which said writ of summons was returnable is entered of record the following order that is to say,

Coroner officio Sheriff

" On Motion of Plaintiffs attorneys this cause is Continued "

And thereupon afterwards at the September term A. D. 1857 of said Court was entered the additional order following.

Now at this day comes the parties by their Attorneys and on motion of Plaintiffs attorney it is ordered by the Court that the depositions filed herein by defendant be rejected and it is further ordered that this cause be Continued at Defendants cost and that execution issue

And thereupon afterwards at the March term A D 1852 was Entered the following order,

On Motion this cause was Continued at the Costs of Plaintiff

And thereupon afterwards at the September term A D 1852 was Entered the following order in said cause.

And now at this day come the attorneys of the

Defendant and on their motion ordered that this cause be continued at Defendants cost,

And thereupon afterwards ~~to~~ at the March term A D 1853 of said Court was entered the following order in ~~said~~ cause

On Motion of Plaintiffs attorneys Joseph G. Bowman ordered that this cause be Continued,

And thereupon afterwards at the September term A D 1853 was entered the following order in said cause

Ezra Baker vs Wright B Pritchett

The Plaintiff ~~upon~~ in this cause upon his oath states that he fears he will not receive a fair trial in the Court in which this action is pending for the reason that the adverse party has an undue influence over the minds of the inhabitants of Lawrence County as he is informed and believes, he further states that was wholly ignorant of said influence until the present term of the Court, he prays the Court to change the venue to some other County

Ezra Baker

Subscribed + sworn to before me this 12th day of September A D 1853

John C Ruby Clerk

Ezra Baker vs Col Wright B Pritchett

Now comes the Plaintiffs Counsel and presented his plea verified by affidavit for a change of venue in this cause which was considered good by the Court. Therefore ordered that the venue in this cause be changed to the County of Crawford

Recapitulation, Papers accompanying

Declaration	Marked	A
Affidavit for change of venue "		B
Writ of Summons		No 1

State of Illinois }
County of Lawrence } ss

I John C Reily Clerk of said Court of Lawrence Certify that the within foregoing and attached papers contain a literal transcript of all orders Entered of Record in this Court in the above entitled cause, and the papers accompanying are the original papers filed in said suit

(Seal of Court)

Witness my hand & seal of said Court at Lawrenceville this 30th day of January AD 1854
John C Reily

At the March Term AD 1854

And on the same day first aforementioned the said Plaintiff filed in said office of the said Clerk of the Crawford Circuit Court the Declaration summons & return of the Sheriff endorsed thereon in said case true copies of which are above set forth.

At the March term AD 1854 the Defendant filed the following plea:

Col Wright B Pritchett }
 ats }
Ezra Baker } Asst.

now said Def^t by Shaw his Atty comes and for plea says he did not undertake and promise in manner and form as the said Plaintiff hath herein above complained against him and this he pray may be enquired of by the Country
Shaw Atty

And said Plff doth the like &c

Bowman for Plff

And in further plea in this behalf said Defendant by his Atty comes and defends & heretofore to wit on &c at &c aforesaid the said Plff was indebted to the defendant in the sum of \$1,000 for his work & labor & special services done and performed & bestowed by said Def^t for the use of said Plff in and about the business of said Plff and at his request to wit on & at &c also for further plea said pl^{ff} was to wit on & at &c aforesaid indebted to sd Def^t in

the sum of \$1000 for so much before that time paid laid out and expended by sd Defdt for the use of sd plff and at the special request of sd Plff. to wit on & at &c afore said also further plea in that behalf the sd plff says on & at &c says that sd Plff is indebted to sd Defdt in the further sum of \$1000 for goods wares & merchandize before that time sold and delivered by sd Defdt to sd plff at his request which sd several sums of money the sd Defdt offers to offset against any demands which the said plaintiff may have against the said Defdt to wit on & at &c aforesd and this he is ready to verify when &c where &c
shew

Whereupon the Plaintiff filed the following replication

And as to the plea of the said Defendant secondly above pleaded the said Plaintiff says preclude now because he says that he the said Plaintiff was not nor is indebted to the said in manner and form as the said Defendant hath above in his plea in that behalf alleged and of this the Plff puts himself upon the Country &c

And the Defdt doth the like
Bowman for Plff

And thereupon at the March term A D 1854 was entered the following order in said cause, on Wednesday the 8th day of March

Erza Baker }
vs } Assumpt on change of venue from
Wright B Pritchett } Lawrence County
And now at this day comes the parties by their attorneys, whereupon it is ordered that this cause be continued until tomorrow morning at 8 o'clock at the cost of ^{the} said defendant &c

And thereupon at the March term A D 1854 was entered the following order in said cause on Thursday the 9 day of March

advised and satisfied in the premises, It is therefore considered that the said Defendant recover of the said Plaintiff his damages to the sum of Two Hundred and Eighty two Dollars and forty three cent with his costs and charges in and about this suit in this behalf laid out and expended.

And in the same the Plaintiff filed in said Court the following motion for a new trial

Ezra Baker
vs
W B Pritchett

The defendant by his atty comes & moves the Court for a new trial in the above cause for the following causes -

- 1st The verdict of the jury was contrary to the evidence in the case
- 2nd The receipts & offsets offered by the defendant were improperly allowed by the jury being excluded from investigation by the settlement previous between the parties
- 3rd The verdict of the jury was contrary to the Law & the evidence &c

Kitchell
for Plff

Crawford Circuit Court March term 1854

Ezra Baker }
vs } Assumpsit
Wright B Pritchett }

for filing papers on Change of Venue	50
" Docketing suit for trial	10
" Issuing summons & filing	40
" Sheriffs fees on same	10
" Filing Plea &c	20
" Filing Answer	05-
" Entering Order continuing	20
" Making Bill of costs	30

Sept term 1854

" Filing one paper	05-
" Issuing detimus Greene Co. Ind ^y	50

3. 80-

To Postage on same.	10
" Docketing suit for trial	10
" Postage on depositions from Mr Barnes	10
" Entering app Piffs atty	10
Deft Wit. John Shepherd 1 day 22 miles	160
" Affidavit same & filing	10
" Calling and swearing a jury	15
" Jury fee	300
" Entering verdict same	10
" Entering order opening depositions	20
" Entering Judgment	25
" Swearing 6 Witnesses	30
" Filing 4 Papers	20
" Transcript of Proceedings	385
" Certificate & Seal	25
" Making bill of Costs	30
	<u>1310</u>

State of Illinois }
 Crawford County } to Wit as

I John S Cox Clerk of the Circuit Court of said County do hereby certify that the above and foregoing are true and perfect copies of the judgment and proceedings in the above entitled cause as appears upon the records and files in my office and that the document hereto annexed marked A is the Original bill of exceptions filed in said cause In testimony whereof I have hereunto set my hand and affixed the official seal of said Court, at Robinson this 22 day of Nov A D 1834

J. Cox. Clerk.

E Baker

vs

W. B. Pritchard

The following is the testimony
offered on said trial to wit -

By P[ro]ff -

1st The Depositions of Edwin S. Baker & Thomas

Itam which were read without objection.

By E. S. Baker

Question 1st - Are you acquainted with the parties to this
suit, and how long have you known the defendant?

Answer - I am acquainted with them and have known the
defendant since the first of year 1847.

Question 2^d - Do you know whether the defendant was at any
time in the employ of the plaintiff, if so, what did he do,
how long was he so employed, and what were his services
reasonably worth?

Answer - So far as I know, the defendant was in the employ
of the plaintiff, a part of the month of ~~September~~ December
1846 - and the months of March, April, May and June in
the year 1847 - say not exceeding two thirds of said months.
And when so employed was purchasing corn, shelling,
and loading - some in flat boats - in general I should
think that his services were, ^{not} worth more than one dollar
and fifty cents per day.

Question 3^d - Were you present at a settlement between the
plaintiff and defendant in the fall of 1847, if so when
was that settlement had?

Answer - I was present at a settlement between the
parties in September at Lawrenceville.

Question 4th - Will you state what matters of account were
embraced in that settlement, and in whose favor the
balance was found, and how much that balance was?

Answer - They had a settlement between them of all

accounts up to that time, except the defendant's services, and there was an acknowledged balance in favor of the plaintiff of six hundred and seventy dollars, exclusive of those services - as I think -

Question 5th - Was any memorandum made of that balance, if so give the terms of it, and by whom it was signed?

Answer - I wrote out the obligation at the request of the parties which was in substance as near as I can recollect in the following words - viz. "In a settlement of all accounts between Wright. B. Pritchett and Ezra Baker, there is due said Ezra Baker the sum of six hundred and seventy dollars, except an undetermined amount due the said Wright. B. Pritchett for his services in said Baker's corn speculation of 1847, and signed by Wright. B. Pritchett in my presence.

Question 6th - Did the defendant in that settlement pretend that plaintiff had promised him any specified sum per day as his wages for the services rendered? -

Answer - The defendant contended that the plaintiff when he first hired him for a few days to purchase a certain amount of corn promise him two dollars per day for the services of himself and horse - the plaintiff acknowledged that, but contended that after that first service was rendered occupying some three weeks, that the defendant continued without any specified agreement as to his services in a different and less valuable capacity, and it being for a much longer time than was first contemplated the compensation for his services should be less.

Question 7th - Do you know whether the plff & defendant agreed to leave it to some third person to determine what his wages were should be, if so, who was that third person, and did he fix the price or compensation?

Answer - They agreed to leave it to Joseph G. Bowman

to fix the compensation for the defendant's services who declined to act in fixing the compensation.

Question 8th - Are you acquainted with Thomas J. Ham, and was he in the employ of your father the plaintiff about the same time that the defendant was in his employ, and in the same kind of business, and which of the two do you regard as having been most efficient and faithful?

Answer - I am acquainted with Thomas J. Ham - he was employed about the same time, and in the same business by my father except three weeks in first of defendant's employment - and for these first services in purchasing corn, he was entitled to a higher compensation than said Thomas J. Ham, but in all other respects, I think his. The defendant's services were worth less than Mr Ham's.

Edwin S. Baker.

By J. J. Ham.

Thomas J. Ham after being duly sworn deposes and saith.

Question on part of the plaintiff.

Question 1st - Are you acquainted with the plaintiff in this suit?

Answer - I am acquainted with him.

Question 2^d - Were you in his employ in the spring or summer of 1847, if so what business did you transact with him?

Answer - I was in his employ in the Spring and Summer of 1847. I was engaged in shelling corn, superintending the loading of flat boats with corn for the

Southern market.

Question 3^d - Did you work any during the night time in loading or watching flat boats? -

Answer - I did attend to pumping and taking care of the boats, and considerable work in loading in the night time.

Question 4th - What compensation did you receive per day for your services, and do you consider that compensation a fair remuneration for the services you rendered?

Answer - I received one dollar per day, which I consider a fair compensation for the services rendered at that time. I did not charge any thing for extra service at night -

J. J. Allen.

2 Joseph G. Bowman, being duly sworn stated that in last of November 1846, plaintiff came to his house and said he wished to employ some person to buy corn for him, Defendant recommended Defendant & went with Pffy to see Deft. Pffy then engaged Defendant and agreed to give him \$2 per day for his services including use of his horse, Defendant was engaged about ~~three~~ ^{one month} ~~xxxx~~ in service of Pffy. Defendant was absent at Spring field during the winter ^{about tenth or fifteenth} and on his return ~~in latter~~ ~~part~~ of February Defendant was again engaged in the service of Pffy, Deft continued in the employ and service of Pffy until about 15th of June, and during said time was engaged in buying corn, receiving, loading into flatboats, & shipping the same to the south. In September 1847, the Pffy and Deft, and the two sons of Pffy (Edwin & Orace) ^{the sons of} ~~attorneys~~ the Laurence Circuit Court, were engaged in making a settlement between Pffy and Defendant, and they occupied the Law office of Defendant, Defendant was not present much of the time but the Pffy & Deft both told him they had settled all their affairs except an unadjusted amount due to Deft for his services, and that they had both agreed to leave that question to him to decide, and that they would both submit to whatever allowance he should make for Deft's services, but which question Defendant refused to decide and so told the parties, Defendant understood from both the parties that no agreement had ever been made between them about the price of Defendants wages except for the engagement in November, ~~after the parties had settled~~

During the settlement duplicate Schedules or

accounts were made by the parties, and after the settlement the Plaintiff gave me his copy of the schedule, by which they had settled, and also a memorandum signed by Defendant at the conclusion of said settlement, which memorandum as near as Deponent can recollect was as follows - viz "Due Ezra Baker six hundred and seventy dollars on settlement of all accounts, except my unadjusted compensation for services (signed) W. B. Pritchard", at the bottom of which Deponent thinks were the following letter e.o.o. standing as Deponent supposed such letters usually do for errors & omissions, excepted.

Deponent says that on bringing suit against Deft for Pff, he filed the said memorandum signed by Pritchard Deft, and Pffs copy of schedule with the declaration in office of the Clerk of the Circuit Court at Lammunville, and that the same are lost or mislaid so they cannot be found, that he has diligently searched for them himself and ^{has} the Clerk of said Court to search.

Deponent further stated that some time after the settlement Deft was complaining of a mistake made against him in the settlement, and stated that he had found a note for about \$200, given by Pff for hogs, which was not embraced in the settlement.

And Deponent shortly afterwards examined Pffs schedule to see if the said note had been settled and he found it upon said schedule duly allowed and settled set down as one of the items in said schedule, and that on again seeing Defendants he told him he had examined the schedule and found that the ~~disputed~~ note was embraced in the schedule and settled with the other things

and that Defendant then admitted that the note had been settled, that he Defendant when he first found the note thought it had not been embraced in the settlement, but upon examining his schedule afterwards he found it was. Upon cross examination Deponent further stated that Defendant was actively engaged in the service of Plaintiff, and seeming to be attentive about his business. Could not say how much of the time he was away from Plegg business, saw him on several occasions at Laurencott & at home, but don't know how long (if at all) that Deft was absent or not attending to Plegg business.

Some time after Deft's second engagement he called on Deponent and said to him that he would like to know what he was to get for his services. That he had no agreement with Plegg and that he could not afford to work for \$3 or \$3 per day. Deponent told him that he had no authority to make any agreement with him about his wages, but to go ahead & Plegg would pay him well. Deponent says he was Plegg's atty and had a general agency and supervision over his law business and property, but had nothing to do ^{anything} in the Corn operations.

The following receipts and papers were submitted to Deponent by Deft's counsel and he was asked if they were embraced in the schedule, to which he answered he knew nothing about the receipts or papers, he had never examined the schedule to see if they were in it, and had never heard of them until after the ~~schedule was put~~ suit was commenced. The following are the receipts viz:

1st "Received of W. B. Pritchett One Hundred and twenty six dollars and forty cents, in full for four hundred and seventy seven bushels of corn at twenty six and a half cents per bushel, for E Baker 22 loads received by Thomas Bailey, The balance at the lower ferry Feb 21, 1847. (Wilson Carpenter)"

2^d Rec^d. Lawrence County March 23^d 1847 of W. B. Pritchett the sum of four hundred and three dollars and 60 cents in full for corn delivered at Bellgrave on the Wabash River on acct of Geo Baker
L. W. Butts."

3^d "January 14th 1847. rec^d. of W. B. Pritchett for E Baker, four dollars and 75 for hauling rails at Bellgrave to receive corn.
Geo X Green"

4th "Rec^d. of W. B. Pritchett one dollar and fifty cents for services in receiving corn for E Baker at Hills Creek July 2^d 1847, Montgomery Long"

5th Russellville Ills. June 10th 1847. On settlement of ac^t between Pritchett & E Baker from 16th April to this date of all accounts, in the corn business excepting perhaps the Hollett's corn & for all other expenses, the sum due Pritchett is thirty five dollars, & fifty eight cents, E. S. Baker exclusive of the pay which is due him for his ~~services~~ daily services E. S. B."

Upon the back of which is the following viz June the 26th 1847, rec^d of W. B. Pritchett for E Baker \$3, 50 for putting Hogs in Boat, \$2 for bat cable, Daniel Benedict"

for identification

depts covered also exhibited, to defendant a
note given by Giff to deft for \$200. which defendant
stated he believed to be the same note given for hogg
and which defendant had once admitted was
untraced in the schedule, as before stated by
deponent. ~~the note was traced with~~
~~XX~~

By Defendant,

1st. The disposition of John Kane which was admitted objection as follows

Question by the defendant. Are you acquainted with the Ezra Baker the plaintiff and W. B. Pitsett the Defendant?

Answer - I am

Question - Were you present when a conversation took place between them at Russellville, concerning a sunken boat load of corn, belonging to said Baker?

Ans - I was -

Question - What was the conversation?

Ans - Baker told Pitsett that he must set up at night and watch the boat, for he was paying him at the rates of five dollars per day, and if he would set up and watch the boat that night he would pay him extra wages for it. Pitsett answered I do not like to do it, but I will -

Question - How many nights did Pitsett watch the boat after Baker agreed to give him extra pay?

Answer - To the best of my knowledge from fifteen to twenty nights.

Question - Were you present when a conversation took place between Pitsett and Edwin Baker concerning Edwin Baker going into partnership with his father in the corn speculation -

Ans - I was -

Quest - What was the conversation?

Answer - Edwin Baker said he was sorry he had gone in partnership with his father in the corn speculation, for he was afraid it would break them up.

Question - Who was present at the time of the conversation.

Answer - I think Captain James and Wm
Raney.

Cross Examination -

Question - What do you think Pitcutt's services were worth
per day.

Answer - I think should think not less than five
dollars per day.

Quest - Did Pitcutt pretend that he was doing business
for Baker, or that Baker was doing business for
him?

Answer - Pitcutt said he was doing business for
Baker as agent.

Question - Which do you think is the greatest man
~~was~~ Pitcutt or General Jackson.

Answer - For flat boating I think Pitcutt is greater

Deft also called the following witness. viz -

1st A. Kitchell being sworn testified that he never had heard anything of Edwin Baker being in partnership with his father in the Corn speculation, but always understood he was not. That Edwin Baker was engaged as witness thinks during part of the same season in boating for himself, but of the Embarrass, but that ^{he} was engaged also for his father as agent in attending to his Corn operations. He had a Mill property near Chouliston in Coly, but witness did not know whether the title was then in Edwin Baker or his father, or to whom it then really belonged but it was occupied by said Edwin & has since, if not before become his property & disposed of by him.

Deponent is acquainted with Edwin Baker, said with and believes the receipt presented (and copied above) to be in his hand write and signed by him.

2 John Shepherd testified.

John Shepherd, a witness for Defendant, being sworn
testifies, that he saw Defendant actively engaged in
the the winter and Spring of 1847, in ~~receiving~~ buying and
receiving corn for ~~Plff~~ at the town of Russellville in
Lawrence County Mo, that ~~Def~~ was very actively
engaged early and late, that he purchased boats
for the shipment of the corn seed, that on one
occasion he went to Terre Haute and pur-
-chased flat boats and loaded them with
corn purchased by him on the Wabash river
at divers points, that several of the boats
purchased by ~~Plff~~ and sent to ~~Def~~ for load-
-ing, were pine boats and in a very leaky
condition, that ~~Def~~ had the care and control
of ~~Plff~~'s boats at Russellville, that before he could
load them he had to cork several of them, and
that many of them leaked so badly, that they
required much pumping, and in one or two
instances, the boats had to be partially unloaded
that ~~Def~~ was engaged from the 10th or 15th of
February to the 10th or 15th of June following, that
~~Def~~, gave close attention to his business, and
appeared to be active and energetic, in buy-
-ing, receiving and shipping corn, that he
~~was~~ could not tell how many boats ~~Def~~
loaded, but that he loaded a considerable
number, that he saw seven loading at one
time, that ~~Def~~, was ~~often~~ engaged in loading,
pumping, and attending to the boats during sev-
-eral nights, that ~~Def~~ did not stop ~~stop~~
for bad weather, but pushed ahead in all
kinds of weather good or bad, that he thinks
the services of ~~Def~~ were very low at five dollars
per day, ~~and that if his services were worth more than five~~
per day, that he would not have performed

the same labor for ten dollars per day - That he knew of Deft working on the boats during several nights, and that night services were worth more or that more pay should be given for night services, That witness had been employ^d during about two months of the winter & spring of 1846 purchasing and shipping corn at Russellville Ill for a company without any contract for his services & that the company paid him one thousand dollars for his services - That he lives in Russellville Ill and ship^d the corn purchased by him from that point, That Deft lived about seven miles from the Town, and was necessarily from home during the time aforesaid -

Witness is a merchant & resides at Russellville Ill - That Deft ~~had~~ handled a large amount of money in purchasing corn for plaintiff and that an allowance should be made for the risk of handling ~~the~~ receipts & paying out the same -

James Dunlap, Being called as a witness for Deft, testified, that he was employed by Deft for about one month during the time ^{of Deft} was engaged in the corn business for Plaintiff, that Defendant was very persevering in his efforts to buy & ship corn that he & witness often rode in the night. ^{Deft} That he did not stop for bad weather and underwent much exposure and that he believes his services worth at least five dollars per day and that he himself would not have done the same amount of labor for that ~~amount~~ ^{sum} that he had a large amount of money with him and purchased and paid for a large amount of corn, That in load-

ing and bailing the boats Defendant was often necessarily in the water in very cold weather - Deft was frequently engaged a large portion of the night & sometime all night, that he would not have performed the night service at ten dollars.

Pierre Compagnon, being call^d. Testified that he work^d part of the time on corn boats of Plaintiff, under direction of defendant, knows that defendant work^d, at least twenty nights, in watching the leaking boats, pumping out water & unloading corn that very frequently Deft was compell^d to work in the water, that he recollects that on one occasion Plaintiff came to where Deft was engaged in taking care of the corn boats at Bushville; that P^l said to Deft, these boats are in a sinking condition and you must watch ~~watch~~ ^{yourself} these boats, ^{this night}; Deft said he had watched them several nights already, and that he was worn out with sitting up and working nights, and was quite unwell, P^l said to Deft, you must watch to night, Deft answered, that he was too unwell but he supposed he would have to do it. P^l said yes I am paying you extra ^{for night service} and you must do it -

This is all the evidence submitted in the case whereupon the jury retired and after deliberating ~~and~~ returned into court the following verdict, We the jury find for the defendant and assess his days at the sum of two hundred (\$200) and eighty three dollars, whereupon Plaintiff moved for a new trial, which was overruled by the court, to which overruling the Plaintiff, excepts and prays that this his Bill of exceptions may be signed and sealed, which is done

J. H. Hulan Seal

Ezra Baker

vs
Wm. B. Fitchell } Error to Crawford
Now comes the said Pff by
his Atty as says there is manifest error in the
foregoing proceedings of this cause whereby he is greatly
prejudiced in the following particulars to wit

1. The Circuit Court erred in refusing to the Pff a new trial in said cause. The
2. The Court erred in rendering the judgment given upon the verdict of the jury, the same being contrary to the law and evidence in the cause, all of which said Pff is ready to verify by the record therein & he therefore prays the judgment of this court accordingly.

A. Fitchell

Joined in Error vs Pff
constable for Dist in Error

No 46
Ezra Baker

vs
W. B. Fitchell

Manuscript from
Crawford

Filed 23d Sept 1857

Henry D. Packer, Clerk
By A. Johnson, S. C.

Error to Crawford

(A)

~~Butcher~~ Baker

Baker v
Pritchett

Opinion by Eaton J.

There could be no ~~set of~~ doubt that the jury fell into some gross Error in regard to the law or the evidence in making up their verdict. In September 1847 the parties had an accounting & settlement together of all demands except for the defendant's services, at which the defendant was found indebted to the plaintiff in the sum of \$670. for which a due bill was given containing a memorandum of the settlement and a schedule ~~was made~~ of the items of that settlement of which each party took a copy. The copy of the schedule and the due bill were filed with the declaration in the case which at the time of the trial were lost from the files and could not be found. The contents of the due bill was proved at the ~~time of~~ trial, but the witness could not recollect the items embraced in the schedule. As a set off the defendant proved one month's service in November at two dollars per day and also services from the 15th of February to the 10th of June upon the value of which several witnesses were examined who varied in their opinions from one to five dollars per day. This is all the set off of which there is the least particle of evidence in the record except services for twenty nights during the time watching the boats which one of the witnesses thinks was worth five dollars per night. Allowing the highest price set upon these services by any of the witnesses and the amount does not exceed, say hundred and forty seven dollars which set off against that amount due upon the settlement leaves a balance due the plaintiff of twenty three dollars, without reckoning interest upon the due bill. The jury however rendered a verdict in favor of the defendant for \$283.00

During the trial certain receipts were shown to one of the witnesses purporting to be signed for their

persons acknowledging the payment of several hundred dollars from the defendant on account of the plaintiff, but the witness testified that he knew nothing about them in any way and they were not even offered in evidence to the jury. They were all dated previous to the settlement and there was no pretence or effort to show that they were not included in the settlement. It is impossible to account for so extraordinary a verdict except upon the supposition that these receipts in some way got before the jury and were allowed by them to the defendant. Be this as it may the verdict is unquestionably wrong and should have been set aside by the Circuit Court and a new trial granted.

The judgment must be reversed and the cause remanded.

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Opinion of
Caton

Copied

and

No 47

November 1854

Egva Babu
v

W. B. Pritchell

Error to Crawford

Opinion by
Caton. J.

Judgment reversed &
Case remanded

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