

8485

No. \_\_\_\_\_

Supreme Court of Illinois

Wm. Brown

---

*Crews*

vs.

~~Crews~~ & Straight

---

Pleas had before the Honorable  
Downing Beach, Judge of  
the Circuit Court, of the 12<sup>th</sup>  
Judicial Circuit, comprising  
among others, the County of Wayne  
in the State of Illinois.

At a Circuit Court, begun and held in  
and for the said County of Wayne at the  
Court house in Fairfield in said County  
on the fourth Monday of April 1855.

Be it remembered, that on the 4<sup>th</sup> day  
of April 1855, Jesse Crews, and Leysus  
Straight filed in the Clerk's Office of said  
Circuit Court, the following transcript viz:

" J<sup>ms</sup> Brown  
vs  
Crews & Straight } Judgment.

This day came the  
Parties, Jury called, after hearing the  
testimony, brought in the following verdict,  
Ordered that the Plaintiff recover of the  
defendants the sum of \$47.00. debt,  
with cost of suit, this 23<sup>rd</sup> day of March  
1855. Wiley Hooper J<sup>r</sup>.

State of Illinois }  
Wayne County } I hereby certify that the  
above transcript is a correct copy of  
the Proceedings before me

Wiley Hooper J<sup>r</sup>.

And also on the 31<sup>st</sup> day of March  
1855, the said Crews & Straight filed  
in the said Clerk's Office, the following  
Bond. viz:

"Know all men by these Presents, that  
we Jesse Crows, Cyrus Straight & James  
R. Carter are held and firmly bound unto  
William Brown in the penal sum of Ten  
hundred dollars lawful Money of the United  
States, for the payment of which well and  
truly to be made, we bind ourselves  
our heirs and administrators jointly sev-  
erally and family by these presents,  
Witness our hands and seals this day  
of March A.D. 1855.

"The Condition of the above Obligation  
is such, that whereas the said William  
Brown did on the 25<sup>th</sup> day of March  
A.D. 1855. before Wiley Hooper a Justice  
of the Peace for County of Wayne recover a  
Judgment against the above bounden Strai-  
ght & Jesse Crows for the sum of Forty  
seven dollars and 66 cents & cost, from  
which Judgment the said Crows & Straight  
has taken an appeal to the Circuit Court  
of the said County of Wayne, of the said  
and State of Illinois, Now if the said  
Straight and Crows shall prosecute their  
appeal with effect, and shall pay what-  
ever Judgment, may be rendered by the  
Court upon dismissal or trial of said  
Appeal, then the above Obligation to be  
void, otherwise to remain in full force  
and effect.

Jesse Crows *J.S.*

Cyrus Straight *J.S.*

James R. Carter *J.S.*

Approved by me at my Office this 31<sup>st</sup>  
day of March A.D. 1855.

J. H. Buckley *clerk.*

And afterwards to wit on the 27<sup>th</sup> day of April  
1853, the following Order was made by said  
Court to wit:

"William Brown.

vs

Lem Brown & Cyrus Straight

} Appeal.

At this day came the  
parties by their Attorneys, and on agreement  
submit this cause to the Court, and after  
hearing the testimony the Court finds for the  
defendants. Therefore it is considered by the  
Court that the said defendants recover of  
the said Plaintiff their costs as well before  
the Justice of the Peace as in this Court in their  
behalf expended. And there is here Execution &c."

And afterwards to wit on the 27<sup>th</sup> day  
of April 1853, the following Bill of exceptions  
were filed in said cause, to wit

"State of Illinois, Wayne County & Circuit Court<sup>53</sup>

April Term 1853.

William Brown.

vs

Cyrus Straight & Lem Brown

} Appeal.

Be it remembered  
that on the trial of this cause the Plaintiff  
introduced W. Borah as a witness who testified  
that he heard Straight say they owed Collins  
\$60. or \$65. of Brown had not paid it  
with \$50. in money. Brown said at another  
time he had not paid it, and if Straight  
had not paid it, it was not paid. He  
presumed Straight had settled it in a claim  
of damages. It was for a Mill they had  
bought of Collins and they defendants were  
Partners in the Mill.

S. J. R. Wilson testified that Straight said they owed Collins of defendant Bros had not paid it, but that John Brown said it was paid and John would not lie. Plaintiff asked Straight if they had not paid it, whether they would pay it to him, his debt, he said he would or leave pay them as any one else, if it had not been paid to Collins. He heard a conversation between Straight and said Collins, Collins asked if they had settled with Brown (the Plaintiff) and Edmondson. Straight replied they had not, but would. The amount he he said they would pay to Plaintiff was over \$40. The last named conversation was before said Collins left this State, and the other afterwards. In a conversation with said Plaintiff he said that he (Plaintiff) knew nothing of the agreement, of defendants to pay this sum to him either from said Collins or either debts.

Holly Hodge testified that in a conversation with said defendant Bros, said Bros stated that they had bought Collins Mill. He stated over certain payments they had made to Collins, and that they were to pay to Plaintiff \$42.50, and to W. Edmondson \$22.50.

This was all the evidence in the case, whereupon the court gave a Judgment in favour of said defendants, and against said Plaintiff pro lists. From which Opinion of the court, in rendering a Judgment against said Plaintiff et al, and in favor of said Defendants the said Plaintiff

at the <sup>time</sup> excepts, and pray that this list  
bill of exceptions may be signed and sealed  
and made a part of the record, which is  
done.

April 27<sup>th</sup> 1855.

D. Baugh <sup>Esq</sup>  
Judge in Court

State of Illinois } ss.

Wayne County }

I, Joseph G. Bartley, Clerk  
of the Circuit Court, in and for the County  
of Wayne, do hereby certify, that the  
following is a true copy, of the papers and  
records in the foregoing Cause, as appears  
from the papers, and records in my Office.

Given under my hand and  
the seal of said Circuit Court,

at Fairfield this 13<sup>th</sup> July 1855.

J. G. Bartley Clerk.

William Brown

vs.

Levi Green & Cyrus Straight

Supreme Court.

Nov. Term 1857.

Error to Wayne.

### Assignment of Errors

And the said plaintiff in Error comes and says  
there was manifest error in the decision of the court, and  
for causes of error assigns the following:

- 1<sup>st</sup> The Court erred in rendering a judgment in favor of defendant.
- 2<sup>d</sup> Said judgment was contrary to law and the evidence.

E. Beecher, Atty  
for Plff. in Error.

Found in error  
Nature of Johnson  
in the 1<sup>st</sup> error

no 30

William Brown

vs-

Wrens & Straights

Filed Sept. 1857.

North Johnston clk

Prepared by Judge Beecher \$5.00

Winfield, Illinois,  
Sept. 3. 1837.

Noah Johnson Esq.

Dear Sir,

Enclosed I send a record  
which please file and issue a writ upon.  
Send it to me and I will see to the service. The  
abstract I will have printed here. The other fees  
I will see paid when I come over to you Court.

Truly Yours,

Edwin Beecher.



William Brown

of

Crews & Straight

Prespr

Filed Sept. 7. 1857

N. Johnston Clerk

Wm Brown  
vs.  
Creese & Straight.

Supreme Court.

Nov. Term 1837.

A Brief for Plff. in Error.

The only error relied on is that the verdict is contrary to law and the evidence. It was assumed by the court below that the promise in this case was within the provisions of the statute of *fraudus perjuris*, and upon that hypothesis the case was decided.

The doctrine is well settled that a promise to a debtor to pay his debt to the creditor is not within the statute; it is only the promise of a third person to the creditor, that is void unless in writing. *Eastwood vs. Keegan*, 11 Adolphus & Ellis 438. *Alger v. Scoville*, 1 Grays (Mass.) Rep. 371. *Goldes Sill v. Philips*, 10 Johns. R. 412. *Barker v. Bucklin*, 2 Denio Rep. 45. *Nelson v. Kennedy*, 7 Porter (Ind.) Rep. 368. *Eddy et al. v. Roberts*, 17 Ill. Rep. 505, and cases there cited.

It is contended that the person to whom the promise is made should sue, and not Brown for whose benefit it was made. In 1 Ch. Pl. p 5, the rule is stated to be that, if the contract is under seal the suit must be brought in the name of the one to whom the promise was made - if not under seal the one for whose benefit it was made may sue. And such is the decision in the case above referred to of *Eddy et al. v. Roberts*, 17 Ill. R. 505. Stated more fully on page 308.

This doctrine was first advanced in the case of *Dutton v. Poole*, 1 Vent. 318. 332. And has ever since with few exceptions been recognized as the correct one. See *Cooper* 443. *Schemahorn v. Vanderheyden* 1 Johns. Rep. 137. *Hall v. Marston* 17 Mass. R. 374. And the cases above.

Nor is it necessary that any consideration

should move from pl<sup>ttf</sup>. Nelson v. Handy 7 Porter 368.  
and the other cases cited above. In the cases of Dutton v.  
Poole, and Schemmhorn v. Vanderhoyden it appeared  
there was no such consideration.

The cases of Barker v. Bucklin, 2 Dennis 45.  
Gold et al. v. Philips 10 J. R. 412. Alger v. Scoville 1 Gray  
Mass. R. 391. are almost identical with this case  
and are certainly decisive of the plaintiffs right  
to recover; but if any doubt existed on the question the  
case in this Court of Eddy et al. v. Roberts 17 W. R. 575 is  
full and conclusive.

E. Beecher,  
for Pl<sup>ttf</sup> in Error.

No 30  
Wm Brown  
v.

Cross Straight

Briffa pl<sup>ttf</sup>.

Submitter

Filed 23 Nov. 1857.

W. S. Johnston Clk

William Brown,  
vs.  
Cyrus Strait,  
Jesse Crews.

Supreme Court, Mt. Vernon; November  
Term, 1857.  
Error to Wayne.  
Abstract.

Page 1-

This suit was instituted by Plaintiff in error against Defendants before a Justice of the Peace. In the Circuit Court it was tried without a Jury, and judgment rendered for Defendants for Costs.

Page 2&3.

The record shows the following facts: One Collins was indebted to Plaintiff in the sum of \$40. Collins owned a mill which he sold to Defendants, for which they paid him some money, and promised him to pay his debt to Plaintiff. Plaintiff was not present when the contract was made, but afterwards repeatedly called on them for money. This was all the evidence.

on them for money. This was all the evidence.

It was not known when the contract was made, but afterwards a party called  
and said that some money had been paid him to buy his debt to Plaintiff. This  
was the sum of \$40. Collins owned a mill which he sold to Defendant for which

Page 242

The record shows the following facts: One Collins was indebted to Plaintiff in  
reference to Defendant for Cash.

of the same. In the Circuit Court it was held against a party called  
Plaintiff was indebted to Plaintiff in cash against Defendant for a just  
account.

Page 1

1850 Clev.

Collins owned

Mill

Mill

Plaintiff's Court, Mr. A. J. ...

Prover

by

Crossed Straight

Abstract

8485

filed 23<sup>rd</sup> Nov. 1857.

A. Johnston, Clerk

Officer

No 30

STATE OF ILLINOIS  
SUPREME COURT,

{ SS.

THE PEOPLE OF THE STATE OF ILLINOIS;

WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of *Wayne*

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 *Wayne* county, before the Judge thereof, between

*William Brown*

plaintiff, and

*Jesse Barnes and Cyrus Straight*

defendant's it is said manifest error hath intervened, to the injury of the aforesaid

*William Brown*

as we are informed by *his*

complaint, and we being willing that error, should be corrected if any there be, 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 plea, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of jefferson, on the *1<sup>st</sup> Tuesday after the 2<sup>d</sup> Monday of*  
*November* 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. WALTER B. SCATES Chief Justice of our said court, and the seal thereof, at Mount Vernon this

*seventh* day of *September*  
in the year of Our Lord One Thousand Eight Hundred  
and Fifty- *Seven*.

*Noah Johnston*  
Clerk Supreme Court.

William Brown  
No 3 Mt of Enn  
Jesse Coates and  
Cyrus Straight

Issued and filed  
September 7<sup>th</sup> 1857  
A. Johnston Ck

Page 1.

William Brown,  
vs.  
Cyrus Strait,  
Jesse Crews.

Supreme Court, Mt. Vernon; November  
Term, 1857.  
Error to Wayne.  
Abstract.

This suit was instituted by Plaintiff in error against Defendants before a Justice of the Peace. In the Circuit Court it was tried without a Jury, and judgment rendered for Defendants for Costs.

Page 2&3.

The record shows the following facts: One Collins was indebted to Plaintiff in the sum of \$40. Collins owned a mill which he sold to Defendants, for which they paid him some money, and promised him to pay his debt to Plaintiff. Plaintiff was not present when the contract was made, but afterwards repeatedly called on them for money. This was all the evidence.



Brown

becomes a Straight

Abstract

E. Beecher  
for debt  
Nelson & Johnson  
for Debt

Filed 28. Nov. 1857.

N. Johnston Clerk

en them for money. This was all the evidence  
and was not present when the contract was made, but afterwards reported that  
they had paid some money, and promised him to pay his debt to Bunker. Bunker  
the sum of \$40. Collins owned and would he sell to Bunker, or which  
the money was intended to Bunker in

Page 32  
Page 1  
Page 2  
Page 3  
Page 4  
Page 5  
Page 6  
Page 7  
Page 8  
Page 9  
Page 10  
Page 11  
Page 12  
Page 13  
Page 14  
Page 15  
Page 16  
Page 17  
Page 18  
Page 19  
Page 20  
Page 21  
Page 22  
Page 23  
Page 24  
Page 25  
Page 26  
Page 27  
Page 28  
Page 29  
Page 30  
Page 31  
Page 32

STATE OF ILLINOIS, }  
SUPREME COURT. } ss.

*1<sup>st</sup> Grand Division*

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Wayne* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Wayne* County, before the judge thereof, between *William Brown* ~~Plff.~~

*vs. Jesse Crews and Cyrus Straight*

defendant, it is said that manifest error hath intervened to the injury of said *William Brown*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Jesse Crews and*

*Cyrus Straight*

that ~~they~~ and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the ~~Second Monday~~ *first Tuesday after the* in November next, to hear the records and proceedings aforesaid, and the errors assigned, if ~~they~~ shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Jesse Crews and Cyrus Straight* notice, together with this writ.

*Walter B. Scott*

Witness, the Hon. ~~Samuel H. Taylor~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *Seventh* day of *September* in the year of our Lord, one thousand eight hundred and fifty-*seven*.

*Josh Johnston*

Clerk of Supreme Court.

These served the within upon the within named  
Lynns Street and Jesse Lewis by reading  
this 27<sup>th</sup> day of October A.D. 1857

STATE OF ILLINOIS,  
SUPREME COURT,  
C. S. Carter, Sheriff, Wayne Co. Ill.

To the Sheriff of  
County  
because in the record and proceedings, and also in the exhibition of the  
judgment of a plea which was in the Circuit Court of

William Proctor  
Wm E. Lee  
John Brown, and  
Lynns Street  
Sheriff Carter  
Jennings  
Mills  
Bostwick  
\$100  
50  
\$190  
Sheriff

36

Witness the hand of the Sheriff of the County of Wayne, Illinois, this 27th day of October, 1857.  
C. S. Carter, Sheriff

No 30

Apr. 1854

William Brown

my

Crews & Straight

Error to Myne

8485

Revenue and  
Remittance