

8562

No. _____

Supreme Court of Illinois

Joseph Barber

vs.

Aron R. Crowley

71641  7

Of the April Term of the
Washington Circuit Court,
A. D. 1861.

State of Illinois,

Washington County

To wit: - Aaron H. Crosby
by Stoker & Bates his Atty:
complains of Joseph Barber being Summoned of
a plea of Trespass on the case on promises.

For that whereas the said Defendant heretofore,
to wit: on the Sixth day of February in the year
of our Lord one Thousand eight Hundred and Sixty,
at Centralia, Illinois. That is to say at the Coun-
ty of of Washington, in the State of Illinois, made
his certain promissory Note in writing ^{having}
date a certain day and year therein mentioned, to
wit: the day and year aforesaid, and thereby
then and there promised to pay One Hundred and
fifty Days after the date thereof to the order of the
said Plff. by the abbreviation of A. H. Crosby
the Sum of Five Hundred and Eighty-four Dollars,
and Eighty-four Cents, with ten per cent interest
from maturity thereof until paid, for value received
and then and there delivered the said promissory
Note to the said Plff., by means whereof, and by force
of the Statute in such case made and provided the
said defendant then and there became liable to pay
to the said Plff. the said Sum of Money in the said prom-
issory Note specified according to the tenor and effect of
the said promissory Note, and being so liable, he the

said defendant in consideration thereof afterwards, to wit: on the day and year aforesaid at the County of Washington aforesaid, undertook and then & there faithfully promised the said Plff. to pay him the said sum of Money in the said promissory Note specified according to the tenor and effect thereof.

And for that whereas the said defendant heretofore to wit: on the Sixth day of February in the year of our Lord One Thousand Eight Hundred and Sixty at Centralia, Illinois, made his certain other promissory Note in writing bearing date a certain day & year therein mentioned to wit: the day and year aforesaid, and thereby then and there promised to pay One Hundred and Eighty days after the date thereof to the order of the said Plff. (by the abbreviation of A. C. Crosby,) the sum of Five Hundred and Eighty-four Dollars, and Eighty-four Cents, with ten per Cent Interest from maturity thereof until paid for value received, and then and there delivered the said promissory Note to the said Plff. by means whereof and by force of the Statute in such case made and provided the said defendant then and there became liable to pay to the said Plff. the said sum of Money in the said promissory Note specified according to the tenor and effect of the said promissory Note and being so liable he the said defendant in consideration thereof afterwards to wit: on the day and year aforesaid at the County of Washington aforesaid undertook and then and there faithfully

promised the said Plff. to pay him the said Sum of Money in the said promissory Note Specified according to the tenor and effect thereof.

And for that whereas the said defendant heretofore, to wit: on the Sixth day of February, in the year of our Lord One Thousand Eight Hundred and Sixty at Centerville, Illinois, that is to say at the County of Washington aforesaid, made his certain other promissory Note in writing ^{bearing} ~~bearing~~ date a certain day and year therein mentioned to wit: the day and year aforesaid, and thereby then and there promised to pay Two Hundred and ten days after the date thereof, to the order of the said Plff. by the abbreviation of A. C. Crosby the sum of Five Hundred and Eighty four Dollars, and Eighty four Cents, with ten percent interest from maturity thereof until paid, for value received, and then and there delivered the said promissory Note to the said Plff. by means whereof and by force of the Statute in such case made and provided, the said defendant then and there became liable to pay to the said Plff. the said Sum of Money in the said promissory Note Specified according to the tenor and effect of the said promissory Note, and being so liable he the said defendant in Consideration thereof afterwards to wit: on the day and year aforesaid at the County of Washington aforesaid, undertook then and there faithfully promised the said Plff. to pay him the said Sum of Money in the said promissory Note Specified according to the tenor and effect thereof.

And for that whereas the said defendant heretofore, to wit: on the sixth day of February in the year of our Lord One Thousand Eight Hundred and Sixty, at Centralia, Illinois, that is to say at the County of Washington aforesaid, made his certain other promissory Note in Writing, ~~having~~^{having} date a certain day and year therein mentioned, to wit: the day and year aforesaid, and thereby then and there promised to pay, Two hundred and forty days after the date thereof to the order of of the said Plff. by the abbreviation of A. H. Crosby, the sum of Five Hundred and Eighty four Dollars, and Eighty four Cents with ten per Cent interest from maturity thereof until paid for value received, and then and there delivered the said promissory Note to the said Plff. by means whereof and by force of the Statute in such case made and provided, the said defendant then and there became liable to pay to the said Plff. the said sum of Money in the said promissory Note specified according to the tenor and effect of the said promissory Note and being so liable he the said defendant in consideration thereof afterwards, to wit: on the day and year aforesaid at the County of Washington aforesaid undertook & then and there ^{faithfully} promised the said Plff to pay him the said sum of Money in the said promissory Note specified according to the tenor and effect thereof.

And for that whereas the said defendant

heretofore to wit ⁽⁵⁾ on the sixth day of February in
the year of our Lord one thousand eight hundred and sixty
at Centralia, Illinois, that is to say at the County of
Washington aforesaid made his certain other prom-
issory note in writing bearing date a certain day and
year therein mentioned to wit: the day and year
aforesaid and thereby then and there promised to pay
One hundred and twenty days after the date thereof
to the Order of the said Plff. by the abbreviation of A. H.
Crosby, the sum of five hundred and eighty four
Dollars, and eighty four Cents with ten per cent
interest from maturity thereof untill paid for
value received, and then and there delivered the
said promissory Note to the said Plff. by means
whereof, and by force of the Statute in such case
made and provided, the said defendant then and
there became liable to pay to the said Plff. the said sum
of Money in the said promissory Note specified accord-
ing to the tenor and effect of the said promissory Note,
and being so liable he the said defendant in consid-
eration thereof afterwards to wit on the day and
year aforesaid at the County of Washington aforesaid
undertook, and then and there faithfully promised the
said Plff. to pay him the said sum of Money in the said
promissory Note specified according to the tenor and effect
thereof.

Nevertheless, the said defendant not regarding his
said several promises and undertakings, but contriving
and fraudulently intending crafty and subtilly to

(6)
deceive and defraud the said Plff. in this behalf but
not as yet paid the said several sum of Money, or
any or either of them or any part thereof to the said
Plff., although often requested so to do, but the said
defendant to pay him the same hath hitherto wholly
neglected and refused, and still doth neglect & refuse
to the damage of the said Plff. of Three Thousand Dollars
& therefore he brings his suit &c.

Stoker & Bates, attys
for Plff.

Copy of the Notes sued on.

\$ 584.84. Centralia, Ills. Feby 6th A.D. 1860.

No. 1. - One hundred and fifty days after date for value
received I promise to pay to the Order of A. H. Crosby the
sum of Five hundred and Eighty four Dollars and Eighty four
Cents, with ten per cent interest from maturity until paid.

Attest.

Joseph Barber.

W. Stoker.

\$ 584.84. Centralia, Illinois Feby 6th A.D. 1860.

No. 2. - One Hundred and eighty days after date for value
received, I promise to pay to the Order of A. H. Crosby
the sum of Five hundred and Eighty four Dollars and
Eighty four Cents with ten per cent interest from maturity
until paid.

Joseph Barber.

Attest W. Stoker.

\$ 584.84. Centralia, Ills. Feby. 6th A.D. 1860.

Two hundred and ten days after date for value

received, I promise to pay to the order of A. H. Crosby
the sum of Five hundred and Eighty four dollars, and Eighty
four cents with ten per cent interest from Maturity
until paid. Joseph Barber.
Attest W. Stoker.

\$ 584.84. Centralia, Ills. Feb. 6th A.D. 1860
No. 4. Two hundred and forty days after date for value
received, I promise to pay to the order of A. H. Crosby the
sum of Five hundred and eighty four Dollars, and eighty four cents
with ten per cent ^{interest} from maturity until paid.
attest. W. Stoker. } Joseph Barber.

\$ 584.84. Centralia, Ills. Feb. 6th A.D. 1860.
No. 5. One hundred and twenty days after date for
value received, I promised to pay to the order of
A. H. Crosby the sum of Five hundred and eighty
four Dollars, and Eighty four Cents, with ten per cent
interest from maturity until paid.
attest. W. Stoker. } Joseph Barber.

Aaron Crosby }
vs. }
Joseph Barber }

Assumpsit.

and the said defendant
by Nelson his attorney comes & defends the
~~sante~~ ^{wrong} & says that the plffs. declarations
is not sufficient in Law, & this he is
ready to verify &c

Whereupon he prays Injst.

R. S. Nelson pr. Deft.

1138

F. Crosby

-B-

vs.
Seph Barber

Demurrer

10 April 1861.

J. N. Kernor, Clerk

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Aaron W. Crosby

vs.

Assumpsit

Joseph Barber

and the ^{said} defendant by Nelson
his attorney comes and defends

the wrong & injury When &c & for plea says action Non
because he says that he did not promise and undertake
in manner and form as in P^lffs. declarations set forth
& of this he puts himself upon the County &c.

And the said P^lffs. doth the
like - Stoker & Bates, atty for P^lffs.

Rob. Nelson aty for Def^t.

And for further plea in this behalf the s^d
defendant, as to \$ 1250 ^{part} ~~amount~~ of the damages in P^lffs
declarations mentioned, ^{defendant} further says Actio Non be-
cause he says that after the making of the promise
say notes in the said plaintiffs declarations mentioned
to wit - on the 11th day of February A.D. 1860 at the County
afore said. the said plaintiff by W^m Stoker his agent and
attorney in that behalf in consideration that he the said
defendant would transfer to him the said plaintiffs 5
promissory notes then and there received by the said
plaintiffs of the said defendant, three of said notes
executed by A. J. Crosby, one by W^m J. Whiteside and one
by W^m J. Whiteside and John Stones cipher payable to said
Barber all of said notes amounting in the aggre-
gate to the sum of \$ 1050 principal with interest at
the rate of ten percent from date, amounting with the
interest to a large sum of money to wit. \$ 1250
and bearing date the 28th day of October 1859. which
s^d notes he the said plaintiff held as collateral security

to secure the payment in part of 7 promissory notes
^{executed} accepted by the s^d defendant to the said plaintiff on
 the 6th day of February, 1860 for the sum of \$584.84
 cents each and falling due in 60, 90, 120, 150,
 180, 210, & 240 days after date - he the said Plff.
 then and there agreed that if the said last mentioned
 notes were paid at their respective Maturities then and
 in that case the said promissory notes first above
 mentioned were to be surrendered given up & returned
 by him the said Plff. to him the said defendant other-
 wise they were to be collected, and applied upon the said
 notes so made by him the said defendant in favor
 of him the said Plff. on such of them as might
 remain unpaid, and the said defendant avers
 that pursuant to said agreement he the said defendant
 did then and there transfer ~~transfer~~ and deliver to him
 the s^d plaintiff the s^d promissory notes in the introductory
 part of this Plea mentioned, and that divers of the said
 promissory notes made by the s^d deft. in favor of
 the s^d plff. to wit: the promissory notes in plaintiff's
 declarations mentioned, were not discharged at their res-
 pective Maturities, and that according to the true intent
 meaning and effect of the s^d agreement he the s^d plff.
 was bound to return the s^d notes so transferred by him
 the said deft. to him the said plaintiff or give him the
 s^d defend. a credit for the said remaining notes and
 interest, and deft. avers that s^d notes so transferred by
 s^d deft. to s^d plaintiff was not returned to the s^d deft.

Aaron H. Crosby
 Joseph Barber.

Plas.

Filed April 11th 1861.
 J. N. Warner, Clerk.

by him the said plaintiff according to the true intent
meaning and effect of the s^d agreement, and the s^d
deft. further avers that by reason thereof he the said
defendant has become, and is entitled to a credit on
the said notes sued on to the amount of said notes, so
transferred by him the said defendant to him the said
plaintiff, to wit: the sum of \$1050 with the interest
due thereon as afore said according to the true intent,
meaning and effect of the s^d agreement of him the s^d
plff. and this he is ready to verify, whereupon
he prays judgement

R. S. Nelson atty
for plff.

And for further plea in this behalf the said defendant
says actio non because he says that before the
commencement of this suit, to wit: at the time
when &c. in plaintiffs declaration mentioned, he the
said plaintiff was indebted to him the said defendant
in a large sum of money, to wit: in the sum of \$5000.
being for divers promissory notes for money on divers
persons before that time by him the said defendant sold
transferred and delivered to him the said plff. at his request
and also in the further sum of \$1250, being for so
much ~~much~~ money paid and advanced by him
the s^d defendant, to him the s^d plff. at his the s^d plffs.
request which s^d several sums of money he the defendant
is ready and willing to set off and allow and his the said
plffs. damages aforesaid, and prays judgement for the excess,
and this the said defendant is ready to verify wherefore &c.

he prays judgement &c. (15)

Ref'd Nelson for deft.

Aaron H. Crosby

1861

to Joseph Barber Dr

To Cash paid

\$ 5000.00

" Notes transferred to you & credited }
on the notes you hold on me

1250.00

(1387)

Filed April 12th 1861.

J. N. Vernon, C. K.

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A. H. Crosby
vs.
Joseph Barber

Of the April Term 1861
of Washington County
Circuit Court.

And the said Plff. as to the said plea of the said Deft. 3^{rdly} above pleaded, saith that the same & the matters therein contained & manner & form as the same are above pleaded & set forth are not sufficient in Law to bar or preclude him the said Plff. from &c. and this he is ready &c.

And Plff. sets down & assigns the following causes of demurrer.

1st Because Plea alleges the trading & delivering of \$5,000 of Note without averring that the said Notes was not paid for, and also because there is no averment that there was any agreement to pay that sum for said Notes, nor does said plea aver that said Notes were of any value

2nd said plea is repugnant in this that it states an indebtedness of \$5,000. & avers that indebtedness to be for notes on divers men, and also that said indebtedness was for \$1,250. paid and advanced to Plff. by deft. and therefore repugnant. And for this & many other reasons said plea is insufficient & uncertain and therefore Plff. is not bound to answer, &c.

Stoker & Bates, attys.
for Plff.

A. H. Crosby

vs

Joseph Barber.

Demurrer to
3rd Plea



Filed April 18th 1861.

J. N. Vernon clk.

(17)

Know all Men by these presents that We Joseph Barber and Dewit C. Barber are held and firmly bound unto A. H. Crosby in the penal sum of Thirty five Hundred Dollars, lawful Money of the United States for the payment of which and well and truly to be made we bind ourselves our heirs, executors and administrators jointly severally and firmly by these presents, witness our hands and Seals this 7th day of May, A. D. 1861.

The condition of the above obligation is as follows to wit: Whereas the above named A. H. Crosby as aforesaid did at the April Term A. D. 1861. of the Washington Circuit Court to wit: on the 15 day of April A. D. 1861 recover a judgement against the above bounden Joseph Barber in an action of Assumpsit, and costs of suit, from which judgement the said Joseph Barber has prayed ^{an appeal} unto the Supreme Court of the State of Illinois. Now therefore if the above Joseph Barber shall prosecute said appeal with effect and shall pay said judgement with all interest and cost and Damages in case said judgement shall be affirmed by said Supreme Court, then the above obligation to be void, otherwise to remain in full force and effect.

Joseph Barber 
D. C. Barber 

Approved May 7th 1861
J. N. Vernor, Clerk.

A. H. Crosby

vs.

Joseph Barber.

Appeal Bond

No. 138

Filed May 7th 1861.

J. N. Vernon Clk.

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Crosby vs Barber

Wanted. A copy of Declarations & pleas
and Order of Court & Certificate. Also
Copy of Appeal bond

to come in according to
their Order and file marks.

Aaron H. Crosby.

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vs.

Assumpsit.

Joseph Barber.

And now at this day to wit. April 10th comes the Plaintiff by Stokes & Bates his attys. and the Defendant by R. S. Nelson his atty. And the Defendant moves a demurrer to declarations, but afterwards withdraws his Motion with leave to plead by tomorrow Morning. And now again at this day to wit April 15th Comes the said Parties by their said Attorneys. And the Plaintiff moves the Court to strike the Defendants third plea from file, and demurs to Second plea. The said Demurrer is sustained, and leave granted by the Court for the Defendant to amend his third Plea. The 1st & 3rd Pleas answered to. The Plaintiff ^{files his} Demurrer to third plea, upon which the Issue is joined, and the Cause is tried by the Court. After proper investigation, and the Court being sufficient advised in the premises, Verdict is rendered for Plaintiff for Amount of five Notes less the Credits endorsed on Notes, leaving the sum of Two Thousand Eight Hundred and Ninety Seven Dollars and Nine Cents (\$2897.09.) It is therefore Ordered by the Court that the said Plaintiff have and recover of and from the said Defendant, Joseph Barber, the full sum of \$2897.09. his Damages, together with all his proper costs and charges in and about this their Suit in that behalf expended, and that he the said, A. H. Crosby, the Plaintiff, have Execution therefor, &c.

And now again comes the said Defendant -

moves the Court for a New Trial, which Motion is overruled by the Court. The said Defendant by his atty. then moves for an Appeal to the Supreme Court of the State of Illinois, which Motion is allowed, by defendant being ruled by the Court, to execute an Appeal Bond with Security, in the sum of \$3500.00, with the approval of the Clerk of this Court. Bond to be filed within Thirty days from the date of this Judgement, and Bill of Exceptions to be presented by the 20th of May, next, during the vacation of the sittings of this Court.

A. R. Crosby

Joseph Barber

Copy of Order, of Court.

J. Barber

vs

A. R. Crosby

Appeal from Washington

State of Illinois ²³

Washington County } Washington County
Circuit Court.

Aaron H. Crosby

vs. Assumpsit.

Joseph Barber

I, John N. Vermor, Clerk
of the Circuit Court within and for said
County of Washington, and State of Illinois,
do certify that the above is a true, correct,
and full copy of the Declarations, Pleas, Orders
of the Court, Appeal Bond, and Appellants
Precipe in the above intitled Cause on File
and of Record in my Office, in their proper
order.

In Testimony whereof I have here
unto set my hand, and affixed
the Judicial Seal of said Court
at Office in Nashville, Washington
County, State of Illinois, This
8th day June, A.D. 1861.

John N. Vermor, Clerk.

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In the Supreme Court of the State of Illinois
1st Grand Division at Mt Vernon West
town 1861

Joseph P. Bader } appellants
vs } appeal from Washington
Carson H. Cosby } appellee
cause this the appellant by, Nelson

his attorney & says therein is error in the record
& proceedings aforesaid because he says that
that the Judgment of the Circuit Court of
Washington Co ought to have been
for the appellant where as it was
rendered in favor of appellee; &
that this is ready to verify;

and in assigning errors specially on
the record appellant says that the
Court erred 1st in sustaining the ~~appellee~~
Demurrer to the 2nd plea of appellant
2nd. The Court erred in trying Cause
on Demurrer to the 3rd plea of
appellant without deciding the Demurrer
1st & allowing the appellant to plead
or plead over in case the Judgment
was against him on Demurrer

3 The Judgment of the Court below
is on its face absurd & so uncertain
as to render it unintelligible without adding
transposing material words & parts of sentences.
Therefore for these & other errors in the
record & proceedings, appearing appellant prays
that the said Judgment be reversed & the
Court the said doft doth instruct the
join in error of Stoker for
Appellant

Charles C. Cook

April Term, A. D., 1861

Number 138

STATE OF ILLINOIS, } CIRCUIT COURT.
Washington County.

In the Matter of

Amos M. Crosby

VS.

Joseph Barber

PLAINTIFF'S COSTS.

Clerk's Fees.

Appearance and Attorney, 15c; Docketing uit, *10*; Filing Pre. and Narr, 19c; Bond for Costs and Filing 15c; Filing Note, 5c; Summons and Filing, 40c; Entering Default, 20c; Order for Judgment, 20c; Order for Clerk to Assess, 20c; Order to Report, 20c; Assessing and Reporting, 20c; Order for Confirming, 20c; Order for Damages, 20c; Order for Costs, 20c; Docketing Judgment, 25c; Order for Execution, 2c; Execution 40c; Filing and Docketing, 15c; Order Taxing Costs, 20c; Bill Costs, 30c; Copying do. 20; Certificate and Seal 35c; Entering Sheriff's Return, 10c; Satisfaction, 15c; Taking Bond, 50c; Calling and Swearing Jury, 15c; Swearing witnesses, c; Swearing to affidavits c; Receiving Verdict of Jury, 10c; Entering Report of Commissioners, c; Recording Master's Report, c; Entering order for continuance c; Entering Decree, c; Entering final report, *Transcript & Copy of Papers reverse*

TOTAL.

1 85
1 20
80
85
1 25
60
7 50

Shuff Goodman fees

1 15

STATE OF ILLINOIS, } SS.
Washington County.

I do hereby certify that the foregoing is a true and correct transcript of Fee Bill in the above entitled cause, as taken from my Fee Book, at Office in Nashville. Given under my hand this, *10* day of *June* 1861

John A. Perry Clerk.

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Joseph Barber

my

Arden R. Crossley-

Appeal from
Washington -

8562

Filed Nov. 11. 1861.

N. Johnston Clk

Paid by Barber \$5.00

In the Supreme Court 1st Grand
Division November term AD 1861

Joseph Barber appellant

vs
Aaron H. Crosby } appeal from

Motion for Certiorari

The appellant moves this
Honorable Court for a writ of
Certiorari to the Circuit Clerk
of Washington County to send up
a complete record in the above
Cause - the Demurrer ^{answer to 3^d} and plea
not appearing in the record
& it appearing from the record
that after the 3^d plea was
answered a demurrer was
filed, which is ^{& the Cause tried on the Demurrer} virtually so stated
on the record - and the
record is got up in so loose
a manner as under it is
possible to make out a correct
abstract

H. Nelson for appellant

Joseph Barber

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Adm^r H. Crosby

Teacher for
Cuthbert

Writ from Supreme Court A.D. 1861

Joseph Barber

appellant

"

appeal from Washington

Carson, H. Crosby,

appellee

This appellant Joseph Barber
being first duly sworn according to Law deposes
and says, that there are several important
papers not copied into the record in
the above Cause viz the Demurrer
to the 2nd plea of this appellant in the
Court below, also an article of agreement
in writing, filed with said ^{in the Court below} plea; this
appellant further states that an important
word viz the word "returned" is ^{erased} ~~omitted~~
from said 2nd plea. on the last line
of said 2nd plea on the page; which
papers ^{and word erased} ~~are omitted~~ are important parts of
this appellant's Case inasmuch as he
relied upon the 2nd plea & the 3rd
plea in the Court below and assigns
for error in this Court the Judgment of the
Court below on a Demurrer. This appellant
further states that the record shows that
that the 1st & 3rd pleas were answered
but does not show the answer to the 2nd
plea, and also shows that a Demurrer
was filed to the 3rd plea after it was
answered, and ^{that} issue was joined upon

Demurrer & the Cause tried on D. Demurrer
which affiant believes does not appear
from the records in the Court below, and
this affiant is advised that this record
is drawn up in ^{no} loose ~~shape~~ a
manner that his Counsel cannot draw
upon a ~~abstract~~ of the Case as it is presented
by the record sent up from the Circuit Court
of Washington he therefore prays that a
Writ of Certiorari be awarded to the
Clerk of Washington Circuit Court
requiring him to send up an amended
or complete record in the above Cause.

Witness my hand

at New York this 12th November 1861
Joseph Barber
Wm Johnston C.M.

J. Barber
124 1/2 Broadway
N.Y.

Julien Nov. 13-1861
Wm Johnston C.M.