

No. 11822

Supreme Court of Illinois

Crook

vs.

Taylor

71641  7

*Pionia*  
*George A. Crook*  
*vs*  
*George H. Taylor*

*600*

*11822*

**1851**

*Refused*

Be it remembered that heretofore, to wit, on the fifth day of October in the year of our Lord one thousand eight hundred and forty eight, George H. Taylor filed in the office of the clerk of the circuit court in and for Peoria County in the State of Illinois a precipe and declaration in a suit in his favor against George A. Crook in the words of figures following

Precipe - George H. Taylor } Peoria Circuit Court  
 or } Oct Term Ad 1848  
 George A. Crook } Assumpsit Damages \$600.  
 The Clerk of said Court will please  
 issue summons in above cause returnable to  
 said Term &c Yours &c  
 H. O. & A. M. Minnau

In the Peoria Circuit Court,  
 of the October Term Ad 1848

Declaration - State of Illinois }  
 County of Peoria } vs George H. Taylor  
 plaintiff in this suit complains of George A. Crook  
 defendant in this suit of a plea of Trespass on the  
 case upon promises.  
 For that whereas the said defendant heretofore to wit  
 on the fourth day of May in the year of our Lord  
 one thousand eight hundred and forty seven at  
 the County of Peoria aforesaid, made his promissory  
 note in writing and there delivered the same to said  
 plaintiff & thereby then and then nine months and  
 ten days after the date thereof promised to pay said  
 plaintiff one hundred dollars for Value received  
 which said period had elapsed prior to the commen-  
 cement of this suit, and which said money said,

defendants afterwards to wit, on the day and year  
aforesaid, promised to pay to plaintiff, also for that  
wheras said defendant, on the fourth day of May  
in the year of our lord, one thousand, eight hundred  
and, forty seven at the County of Peoria aforesaid, made  
his certain other promissory note in writing, and ~~then~~  
delivered the same to said plaintiff & thereby then & there  
ten months and, twenty days after the date thereof  
promised, to pay said plaintiff one hundred, dollars  
for value received, which period had elapsed before  
the commencement of this suit, also for that wheras  
the said defendant hertofore to wit on the fourth day  
of May in the year of our lord, one thousand, eight  
hundred and, forty seven at the County of Peoria aforesaid  
made his certain other promissory note in writing  
and delivered the same to said plaintiff and thereby  
then and, there, twelve months after the date thereof  
promised to pay, said plaintiff or order one hundred,  
dollars for value received, which said period had exp-  
ired, prior to the commencement of this suit -

also for that wheras said defendant hertofore to wit  
on the second day of October in the year of our lord,  
one thousand, eight hundred, and forty eight at the  
County of Peoria aforesaid was indebted unto said  
plaintiff in the sum of six hundred, dollars for  
the price and value of divers goods wares and merchan-  
dize before that time sold and delivered by said pla-  
intiff to said defendant at his request, also for the  
further sum of six hundred, dollars for money before  
that time lent and, advanced to and, paid laid out  
and expended for said defendant & at his request  
by said plaintiff, also in the sum of six hundred,  
dollars for money before that time had and, received

by said defendant to & for the use of said plaintiff,  
and in the sum of six hundred dollars for the amo-  
unt found to be due to said plaintiff from said  
defendant upon an account stated between them  
also in the sum of two hundred dollars for interest  
upon and for the loan and forbearance of said  
plaintiff to said defendant of divers large sum-  
s of money for divers long spaces of time before  
the elapsed and due and owing to plaintiff from  
defendant, and in consideration thereof afterwards  
to wit, on the day and year last aforesaid said  
defendant undertook and then and there faith-  
fully promised said plaintiff to pay him the  
said several sums of money in said several coun-  
-ties mentioned when he should be thereunto afterward  
requested.

Yet said defendant has hitherto wholly disregarded  
his said several promises, and has not paid  
said several sums of money in this declaration  
mentioned, or any part thereof although often  
requested to pay the same, but to pay the same has  
hitherto wholly neglected, and refused, and still  
refuses, to the damage of said plaintiff of six  
hundred dollars and, therefore he brings his suit

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HORACE MERRINAN  
Attys for Plffs

And afterwards on the said fifth day of October in the  
year of our Lord one thousand eight hundred and forty eight  
the clerk of said court issued a summons in said cause  
to the Sheriff of Pima County in the words and figures  
following to wit

Summons =

The People of the State of Illinois

To the Sheriff of Peoria County, Gentry

We Command you to Summon

George A. Crook

if he may be found, in your County, to appear before our Circuit Court, on the first day of the term thereof, to be held, at Peoria, within and for the said County of Peoria, on the third Monday of October instant then and there, in our said Court, to answer unto George H. Taylor of a plea of trespass on the case on promise, To his damage six hundred dollars as he says and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held, as aforesaid. Witness, Jacob Gale, Clerk of our said Court, and the seal thereof, at Peoria this fifth day of October in the year of our Lord one thousand eight hundred and forty eight

Seal

Jacob Gale Clerk

And afterwards on the same 5th day of October said summons was returned by said sheriff to said court, endorsed as follows, to wit:

Return =

State of Illinois }  
Peoria County } We served the within writ by reading

the same to the said George A. Crook Oct 5 1848

services \$0

mileage 06 3/4

costs 12 ~

\$ .68 3/4

Wm Coupher Sheriff Pe

Rule to plead - And afterwards on the seventeenth day of October in the year of our Lord one thousand eight hundred and forty eight before the said circuit court came the plaintiff by Morrison his attorney and on his motion, ordered that the defendant

plead to this action by Monday morning next -

And afterwards, to wit, on the 31<sup>st</sup> day of August A.D. 1850, the said George A. Crook filed in the Clerk's office aforesaid, the following pleas, to wit,

pleas -

George H Taylor	Circuit Court Peoria
vs	County August Term
George A Crook	1850

1 And the defendant by L B Knowlton his attorney comes and defends when required, and says he never promised in manner and form as the Plaintiff in his declaration has alleged, and of this he puts himself upon the Country

and plff doth the like &c  
H C + A S Meriman for plff  
Knowlton for deff

2 George H Taylor }  
vs } in Circuit Court of Peoria County  
George A. Crook }

And, for further plea to the three first Counts of the declaration mentioned, the defendant, says that he never signed, or executed the notes in the declaration complained of or authorized any person to sign or execute the for him and of this he puts himself upon the Country

and plff doth the like &c  
H C + A S Meriman G A Crook

3 And, for further plea as to the common money counts in the aforesaid declaration the defendant says they are the same identical accounts for which the notes complained of in the declaration was given and of this he

puts himself upon the country &c

G. A. Crook

George A. Crook being sworn says the two above pleas  
are true in substance and in fact

G. A. Crook

subscribed & sworn to before me  
this 31<sup>st</sup> day of August 1830

Jacob Gale Clerk

And on the same day the plaintiff filed a demurrer in said cause as follows

Demurrer = George W. Taylor } Peoria Circuit Court

George A. Crook } August Term 1830

And said plaintiff comes & answers to the plea  
of said defendant above pleaded, and says that the  
said 3<sup>rd</sup> plea is insufficient in law, and said plain-  
tiff is not bound to reply thereto and that the said plain-  
tiff is ready to verify therefore he prays judgment &c.

W. C. Merriman  
for plff

trial &  
judgment

And afterwards, to wit, on the same day, to wit, the thirty  
first day of August in the year of our Lord one thousand  
eight hundred and fifty before the said circuit court,  
came the plaintiff by Merriman his attorney and the  
defendant by Purple & Knowlton his attorneys and this  
cause came on to be heard on the demurrer of the  
plaintiff to the plea of the defendant by him thirdly  
herein pleaded, on consideration whereof the court  
are of opinion that the plaintiff ought not to  
be barred from having or maintaining his aforesaid

action thereof against the defendant for anything by him in his plea thirdly herein pleaded alleged and the defendant abiding the answer to said third plea, It is ordered by the court that a jury be impanelled to try the issues joined on the other pleas herein, whereupon came a jury of twelve good and lawful men, to wit: John Holmes, Henry A. Sloan, Anson S. Anderson, Cyrus Reed, William L. Cross, Alfred Reeves, Patrick McDonald, Curtis Cady, Albert Cline, Henry Jones, John Magee, and Charles C. Kellogg, who being duly chosen, tried and sworn well and truly to try the issues joined in this cause and a true verdict give according to the evidence, upon their oaths aforesaid do say, we of the jury do find the issues for the plaintiff and do assess his damages by reason of the premises to three hundred and forty three dollars and eighty two cents: Whereupon the defendant made a motion for a new trial in this cause which was overruled by the court: Therefore it is considered that the said George H. Baylor have and recover of the said George A. Brock the sum of three hundred and forty three dollars and eighty two cents his damages aforesaid by the jury aforesaid assessed together with his costs and charges by him about his suit in this behalf expended and that he have execution therefor. The defendant intend a motion to be allowed an appeal in this cause to the Supreme Court of this State.

appeal = And afterwards, to wit, on the twelfth day of September in the year last aforesaid, before the said court came the defendant by his attorney and prayed an appeal in this cause to the Supreme Court of this State, which is allowed on his filing with the clerk of this court in thirty days an appeal bond in this cause payable



to the plaintiff in the pend sum of five hundred dollars with George Holmes or William S. Moss as surety and conditional according to law.

And on the said thursty first day of August in the year last aforesaid the defendant filed his Bill of Exceptions in said cause in the Clerks Office aforesaid duly signed and sealed by the Judge of said Circuit Court in the words and figures following to wit:

Bill of exceptions: George H. Gaylor

<sup>vs</sup>  
George A. Brook Be it remembered that on this day this cause came on for trial and the plaintiff to maintain the issue on his part offered George Spureck as a witness - The said defendant objected to the said Spureck upon the ground of interest in the result of the suit - Said Spureck being sworn touching his interest in the said cause testified that the notes described and set out in the plaintiffs declaration, which said notes were in the words and figures following

"No. 7 - Nine months and ten days after date I promise to pay George H. Gaylor one hundred dollars for value received.  
May 4<sup>th</sup> 1847 - George A. Brook  
for George Spureck."

"No. 8 - Ten months and twenty days after date I promise to pay George H. Gaylor one hundred dollars for value received -  
May 4<sup>th</sup> 1847 - George A. Brook  
for George Spureck."

"No. 9 - Twelve months after date I promise to pay George H. Gaylor or order one hundred dollars for value received -  
May 4<sup>th</sup> 1847 - George A. Brook  
for George Spureck."

were signed by him said witness for said brook and that he had authority to sign said notes - That he was at the time a partner with the said brook in buying and selling merchandise and Real Estate and that said notes were given in part for merchandise and in part for town lots in Peoria. The defendant objected to the competency of this witness upon the ground of interest - The court overruled the objection and the said defendant excepted then and there to the decision of the court. The said witness then testified to the jury substantially as stated above and also that the firm was doing business under the name of George A. brook and that it consisted of said brook and the said witness, also that he said witness had been in the habit of using the name of the said brook in the same manner and that said brook had recognized his acts - The jury found a verdict for the plaintiff. The defendant entered a motion for a new trial because the court permitted improper evidence to be given to the jury -

The court overruled the motion for a new trial and defendant's counsel excepted and requested the court to seal this Bill of exceptions, which is done -

Wm Kellogg <sup>Secy</sup>  
and

And afterwards on the tenth day of October in the year of our Lord one thousand eight hundred and fifty the defendant filed his appeal Bond in the Clerk's Office aforesaid with William S. Moss as his surety, in the words and figures following, to wit.

Appeal Bond - " Know all men by these presents, that we George A. brook as principal and Wm S. Moss as surety are held and firmly bound unto George H. Maylor in the penal sum of five hundred dollars, lawful money

of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these presents - written our hands and seals this twenty fifth day of September A.D. 1850 - The condition of the foregoing obligation is such, that whereas at the August Term of the Circuit Court within and for the County of Florida in the State of Illinois A.D. 1850, viz, on the thirty first day of August A.D. 1850 in a certain action in assumpsit wherein said George W. Taylor is plaintiff and the above bound George A. Brook is defendant a final judgment was rendered in and by said Court in favor of the said George W. Taylor for the sum of three hundred and forty three dollars and eighty two cents damages against the said George A. Brook and the costs of suit, and whereas afterwards at the same term of said Court, to wit, on the 31st day of August A.D. 1850 an appeal was prayed from said judgment by the said George A. Brook to the Supreme Court of the State of Illinois, which appeal was granted by the said Circuit Court: Now therefore if the said George A. Brook shall pay the said judgment, costs & interest and all damages occasioned by said appeal in case said judgment shall be affirmed and also shall duly prosecute his said appeal in the said Supreme Court, then this Bond shall be void, otherwise shall be and remain in full force.

G. A. Brook Seal  
Wm. J. Moss Seal

State of Illinois,  
Peoria County } I Jacob Gale clerk of the circuit  
court in and for the said county do hereby certify  
that the foregoing is a correct transcript from the  
Records of the proceedings in said court in a cause  
therein of George H. Taylor plaintiffs against George  
A. Crook defendant as the same remains of record  
and on file in my office.

In witness whereof I hereto set  
my hand and affix the seal of  
said court at my office in Peoria  
this twenty seventh day of May  
in the year of our Lord one  
thousand eight hundred and  
fifty one -

Jacob Gale. clerk.

George A. Crook } Appellant  
vs }  
George H. Taylor } Appellee } And now comes the  
said Appellant and

says that in the Record and proceedings and  
in the Rendition of the Judgment in the Circuit  
Court there is error in this to wit

- 1st The Court Erred in permitting George A. Crook  
to be sworn as a witness in the case
2. The Court Erred in overruling defendant Crook's  
Motion for a new Trial
3. In giving Judgment for the Plaintiff below  
Wherefore he prays that the said Judgment  
may be reversed set aside & for nothing returned.

June 11<sup>th</sup> 1857

J. J. People  
Ctys Atty

