(1)

David Baily, appellant, v. Wm. Cromwell et al., administrators of William Cromwell, deceased, appellees.

Cause heard in the court below - Sept 1839. (Tazewell Co)

A Lincoln for the appellant. cites: 10 John, 198; 10 Wend. 384; 3 Caines; Ordinance of Congress Art. VI.; R. L. (Revised Laws?) 57; Gale's Stat. 44; Const. of Ill., Art VI.; 14 Johns, 188; 2 Bibb. 238; 2 Scalkeld 444.

S. T. Logan for the appellees.

The administrators of Cromwell brought an action of assumpsit in the Tazewell Circuit Court, against Baily, upon a

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(2) laws of this state,
said title papers were not
produced, though demanded
by the defendant. Issues of
fact were made up on
the first & second pleas
and of law upon the 3d &
4th, & determined in favor of
the plaintiffs. The defendant
stood by the 4th plea &
took leave to amend the 3d
The 3d plea, as amended,
states that the consideration
has wholly failed, in this,
that the said note was
given in consideration of
the purchase of a certain
black or negro girl or woman
named Nance by the
def'd't. of the said C. de-
ceased, and which he
falsely & fraudulently war-
ranted to said defendant
to be his property slave &
servant, & lawfully bound

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(3) by the laws of the
Illinois, to serve him the
such slave or servant
when, in truth & in fact,
she was free, and not
the property or slave of
said C. at the time of
said pretended sale.- con-
cluding with a verification.
To this plea there was a
replication & issue to the
country. The cause was
tried, by consent, by the
Court. The Court found
for the plaintiffs, & as-
sessed their damages to
$431.97, for which judge-
ment was rendered. &
an appeal taken to this
Court, the judgment of
the Court having been ex-
cepted to, by the defend-
ant under the statute.
The errors assigned are

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(4) promissory note, ...

in his life time. The defendant pleaded, first, non assumpsit; secondly, no good or valuable consideration; thirdly, that the consideration had wholly failed in this, that the note was given for the purchase of a negro girl sold by Cromwell to Bailey, and who was represented to B. at the time of the purchase, to be a slave and servant. When, in fact, she was free; & fourthly, that the consideration had wholly failed in this, that the note was given for the purchase of a negro girl and that it was agreed at the time, between the parties, that before payment was to be demanded of the note, Cromwell was to produce the necessary papers & indentures to show & prove that the said girl was a slave or servant, & bound to servitude under the

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(5) it in substance
demurrer to the 4th plea,
2 ndly in giving judg-
ment for the plaintiff
in the issues & evidence
submitted.

The fourth plea it will
be observed, sets up a con-
tract in the part of Crom-
well, to procure the neces-
sary papers & indenture
to show that the negro girl
was legally held by him
in servitude; & that the
payment of the note was
not to be demanded
until those papers were
furnished.

This note & agreement
made at the same time
must be taken together
as forming one entire con-
tract. The plaintiff being
the payee of the note &

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(6) had a right to sw[illegible]
payment should not be
demanded until he had
furnished to the defen-
dant the evidence of the
negro
girls obligation to serve,
without such evidence the
defendant would be un-
able to compel her to
serve him, & the purchase
would be of no benefit
to him. The agreement
shows the condition upon
which the note was given
which was binding on C.
& after his death upon
his administrators, & if
not complied with as annexed
in the plea, would defeat the
action. We think therefore
the 1st error is well assigned.

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(1) In regard to the
Web questions the correct-
ness of the decisions of
the Court, sitting as a
jury, upon the whole
case, we are inclined to
the opinion, that the
evidence fully sustains
the issues on the part of
the defendant. & that
the Court should have so
found, particularly upon
the 2nd plea.
It was proved as appears
from the bill of ~~objections~~
exceptions, that the consid-
eration of the note sued
on was the negro girl; that
at the time of the purchase
by an agent of the defen-
dant C. represented her to be
his servant bound by inden-
ture to serve him. 7 or 9 yrs
and that he had a right to
sell her as his property

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(8) and that in a [illegible]
he would produce the
title papers showing that
she was his property;
that the note declared
on was to be destroyed at
the time the title papers
should be produced by C,
and a new note given, &
a title was made to
the girl by C; that the
title papers never were
produced by C; that they
had been demanded of his
administrator who stated
that he had none in his
possession; that he had
examined & could find
none, that when the pur-
chase was made C. was on
the eve of his departure for
Texas & died at St Louis
on his way there. It was
further proved that the girl

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(9) was in the possession
defendant abt 6 mos, at
the expiration of wch time she
left his service, & never
since returned' - she
asserting & declaring all
the time that she was free.
It was also proved that
she was over 21 yrs of age
and had been a resident
of this state for several
yrs before the purchase
& that she had been in
the possession of C. since 1831.
It was also proved that
while girl was living with
defd't she purchased goods
at a store & a regular acct
was kept agst her.

Judgment reversed.

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(1) Ill. Reports. Vol 17 –

I. C. R. R. agst McLean Co.,

Brayman, J. H. Joy & A. Lincoln for R.R.

S. T. Logan, Stuart, & Edwards for McLean Co.

This is a suit in chancery, from McLean Co., to enjoin the collection of a tax, assessed by the county assessor of McLean Co, upon the money & property of the Ill. Central R. Co.. It comes to this court by appeal from a decree of dismissal, entered pro forma. The decree contains a stipulation, that the only question to be made in the supreme court is, whether the property & franchise attempted to be taxed by the defendants or any part of them is, in law, liable to county taxation. In

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(2) Case of revocal of
of the C.C. the injunction is
to be made perpetual.

Scales. The question is one
of the power of the legisla-
ture, under the second sec-
tion of the 9th article of the
present constitution, to exempt
or rather to commute, by
payment of a gross sum, to
be ascertained by a fixed
rule of computation, the proper-
ty of the corporation from the
payment of any portion of the
taxes authorized to be levied
for county purposes.

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