

NOTRE DAME CIRCUIT COURT

CAUSE NO. 18.

Charles Dressler

vs.

Nellie Cranford and
Walter CranfordArchibald Duncan and
Alden J. Cusick,

Attorneys for Plaintiff.

James L. O'Toole and

Joseph L. Rafter,

Attorneys for Defendants.

FACTS.

On August 1, 1920, Nellie Cranford and Walter Cranford were married. While spending their honeymoon at the country home of Nellie Cranford's father, Andrew Rater, the plaintiff and divers other persons, men, women and children of the neighborhood, came to the Rater home for a charivari party on the defendants. Guns were fired in the air, bells were rung, cans dinned, etc., (bedlam noises). Rough house tactics ensued when the defendants refused to "come out" and "come across."

Plaintiff contends that, as he stood in the yard near the house, the defendant, Nellie Cranford, stuck the barrel of a shotgun out the bed room window and fired, the shot striking him in the hand and forearm, breaking the arm and badly lacerating the hand and forearm; that he was at the time and ever since a farmer of moderate means and compelled to depend upon his work on the farm for a livelihood for himself and family of wife and small children; that he was rendered sick and unable to perform his work for a period of two months; in-

curred costs and expenses of physician, surgeon and nurse; that he suffered bodily and mental pain; that he is permanently injured in this: that his hand and forearm are left stiff or rather inflexible to a degree making use of them awkward and difficult. He demands \$1,000. Plaintiff alleges that Nellie Cranford was in the presence of her husband, Walter Cranford, and fired the shot with his knowledge and consent. Walter Cranford was in the Rater home at the time of the shooting, but his exact location is in dispute.

Defendants contend that the crowd had been ordered off the premises by Mr. Rater; that the crowd remained and continued their serenade of the defendants; that plaintiff at the time he was shot had raised the window of the bed room in which Nellie Cranford and her little four-year-old niece were hiding; Nellie Cranford alleges that she shot in self-defence and in defence of her niece. Plaintiff denies that he pushed his gun through the window at any time, as alleged by Nellie Cranford.

Walter Cranford claims to have been in another part of the house at the time of the shooting, and denies having knowledge of or giving consent to the shooting.

TRIAL RECORD.

Plaintiff files complaint that Nellie Cranford injured him by perpetrating an assault and battery upon him, in the presence of and at the direction of her husband, Walter Cranford.

Defendants file motion to strike out certain parts of complaint, which motion is sustained.

Plaintiff files amended complaint in two paragraphs.

Defendants file separate and several demurrer to complaint, which the court overrules, defendants separately and severally excepting to the rulings.

Defendants file answer in four paragraphs, 1st, general denial, 2nd, *son assault demesne*, 3rd, defence of property, and 4th, plaintiff engaged in unlawful act, *charavari*.

Plaintiff files reply in general denial to the 2nd, 3rd and 4th paragraphs of answer.

Jury empanelled, and cause submitted and tried.

Plaintiff and defendants tender certain instructions, some of which are given and some refused, to which rulings they take their respective exceptions.

Arguments by counsel after which the court instructs the jury in writing, ordering the instructions filed and made part of the record without bill of exceptions.

Jury return verdict for plaintiff against both defendants for \$1,000.

Defendants file separate motions for new trial which are overruled and exceptions taken.

Defendants separate motions in arrest of judgment overruled to which rulings they except.

Judgment rendered on the verdict to which defendants separately take exception.

Defendants pray appeal to the Supreme Court of Notre Dame which is granted upon the filing of appeal bond in the sum of \$500 with the Great Northern Surety Company as surety. Ten days are given in which to file general bill of exceptions.

Defendants file the appeal bond prescribed and approved.

CAUSE NO. 19.

John Wagner
vs.
Nathan Parker

Charles P. J. Mooney and
Gerald Craugh,
Attorneys for Appellant
Walter A. Rice and
Charles M. Dunn,
Attorneys for Appellants.

FACTS.

On the 1st day of August, 1920, Nathan Parker owned a retail grocery store consisting of stock and fixtures, located in a ground-floor room on the corner of ——— and ——— streets in the city of Niles, Michigan. John Wagner owned an equity in a certain tract of land, to-wit: a contract for the purchase of (Here insert legal description of any forty-acre tract of land in St. Joseph County, Indiana). Parker and Wagner reside in South Bend, Indiana, and, on the first day of August, 1920, entered into the following written contract for the sale and exchange of their said properties, to-wit:

“Contract of Sale and Exchange.”

This agreement, made and executed this 1st day of August, 1920, at South Bend, Indiana, between Nathan Parker, party of the first part, and John Wagner, party of the second part, WITNESSETH: That, that the party of the first part does hereby sell, assign, transfer, exchange, set over and deliver unto the party of the second part his grocery store consisting of stock and fixtures located on the ground-floor room of the building, on the corner of ——— and ——— streets, in Niles, Michigan, said grocery store and its con-

tents being more particularly described in the inventory thereof just completed which is hereto attached, referred to and made part of this instrument. And the said party of the first part, for himself, his heirs, executors and administrators, does covenant and agree to warrant the sale of said property and the title thereof to the said party of the second part, his heirs, executors, administrators and assigns; and agrees to pay all debts against said property and said party of the first part on account thereof, up to the day, which debts now amount to about \$1000. In consideration of which, the party of the second part does hereby sell, assign, transfer and deliver over to the party of the first part, all his right, title and interest in a certain tract of land situated in St. Joseph County, Indiana, as evidenced by the contract of purchase held by the said party of the second part and this day assigned and delivered by written assignment endorsed thereon, signed, sealed and acknowledged and delivered by the said second party unto the party of the first part, which said contract together with said assignment endorsed thereon is attached hereto referred to and made part of this instrument. And as a further consideration the party of the second part hereby executes and delivers to the party of the first part his promissory note, of this date, for \$400, payable in one year, with interest at 6 per cent per annum from date, and attorneys fees, which note is hereby referred to, attached to this instrument and made part thereof.

Executed in duplicate by the parties this 1st day of August, 1920, at South Bend, Indiana, each party retaining a copy as the original contract.

(Signed) Nathan Parker,
(Signed) John Wagner.

Pursuant to the foregoing instrument John Wagner, after delivering the assigned contract and promissory note, went into possession of the store at Niles, Michigan.

In Michigan the Bulk Sales Law was in force but was entirely ignored by the parties in their contract, no attempt at compliance with its provisions being made by the parties. After going into possession of the store, the National Grocery Company, the Great Atlantic & Pacific Tea Company and the South Bend Wholesale Grocery Company, as creditors having claims against the first party to the contract, Nathan Parker, brought action in the Michigan Court under the Bulk Sales Law and took possession of the stock, placed it in the hands of a Receiver and sold the entire stock and fixtures to satisfy the claims of the creditors, these claims aggregating \$1100. Parker and Wagner were made defendants to this proceeding in the Michigan court. Parker has paid no part of these claims.

Plaintiff brings action in the Notre Dame Circuit Court against Parker to secure the reassignment of the land contract back to him, and the cancellation of the note given to Parker under the contract.

TRIAL RECORD

Plaintiff files complaint in one paragraph for rescission of assignment of his land contract and for cancellation of his note on ground of total failure of consideration.

Defendant files answer in two paragraphs, 1st, general denial and 2nd, that contract between parties is illegal and that both parties are in *pari delicto*.

Plaintiff files demurrer to the 2nd paragraph of answer which is sustained.

Defendant files amended 2nd paragraph of answer, to which plaintiff files demurrer, court overruling demurrer and plaintiff taking exception.

Plaintiff files reply in two paragraphs to the amended 2nd paragraph of answer, 1st, general denial, 2nd, fraud of defendant.

Defendant files demurrer to 2nd paragraph of reply on ground of departure. Court sustains the demurrer to which plaintiff excepts.

Plaintiff files amended 2nd paragraph of reply, and an additional paragraph alleging facts in confession and avoidance.

Defendant files motion to strike out the 3rd paragraph of reply, which court overrules and to which ruling defendant excepts.

Defendant files several demurrer to the amended 2nd and the 3rd paragraphs of reply. Court sustains demurrer to the amended 2nd paragraph of reply to which plaintiff excepts, and overrules demurrer to the 3rd paragraph, to which defendant excepts.

Defendant files general denial to the 3rd paragraph of answer.

Cause is submitted to the court for trial.

At close of plaintiff's case in chief, defendant moves for non suit, which is overruled, defendant taking exception.

Trial is concluded and arguments of counsel heard.

Finding for defendant that plaintiff take nothing by his suit and that defendant recover his costs.

Plaintiff files motion and causes for a new trial, which motion is overruled by the court, plaintiff excepting.

Plaintiff files motion in arrest of judgment which also is overruled and exception to the ruling taken.

Judgment rendered on the finding to which plaintiff takes his exception.

Plaintiff prays appeal to the Supreme Court of Notre Dame which is granted, plaintiff filing his appeal bond in the sum of \$200 with Globe Surety Company as surety, which bond is approved. Ten days are given in which to file general bill of exceptions.