BOWEN *vs.* COOK.

Cook, who was living on a tract of public lands, employed Bowen to labor with him for the year 1848, agreeing to give him a fourth of the crop for his services; in the spring of the year, Cook fell out with Bowen, and drove him off: HELD, That, in an action by Bowen against Cook, for the value of a fourth of the crop made on the place during the year, it was incompetent and irrelevant for Cook to prove that after Bowen had left the place, he entered the land, and sold it to a third person, who was in possession at the time of the trial.

Where the verdict is contrary to all the legal evidence given in a case, and not merely contrary to the weight of evidence, a new trial should be granted.

Writ of Error to Ouachita Circuit Court.

In January, 1849, William T. Bowen sued Charles Cook, before a justice of the peace of Ouachita county, on an account for $100, for one-fourth of crop made by Cook and Bowen in the year 1848. Judgment for defendant before the justice, and appeal by plaintiff to the Circuit Court, where the cause was

determined in April, 1849, before the Hon. JOHN QUILLIN, Judge. Trial by jury in the Circuit Court, and verdict for defendant. Motion for new trial overruled, and bill of exceptions setting out evidence, &c.

On the trial, Mitchell, a witness for Bowen, testified that Cook told him that he and Bowen had agreed to make a crop together during the year 1848—that Bowen went to live with Cook for that purpose about the 1st January, 1848, and Cook was to give him one-fourth part of the crop made. Between the 12th and 16th April, 1848, Cook told witness that he was going to move —"that that d—d young one had come last night, and that he was going to leave the country in seven days, and that he had conditionally sold his improvement to James Ricks for $250." Witness asked Cook how he and Bowen had settled their matters? He replied that Bowen had asked him to compensate him for his labor, and that he told Bowen "the compensation he would give him was the d—d young one that came last night, and that was the only compensation he would give him." Cook made between 10 and 12 bales of cotton, worth $27 or $28 per bale.

Cross examined.—Bowen asked witness, between the 13th and 27th of April, 1848, to loan him a horse, and witness refused. Bowen told witness he could not live with Cook in any peace—that Cook had broke up the farm, and taken the horses, wagon, and farming utensils, and was going to leave the country. About the 27th of April, 1848, Bowen came to the farm which Cook and he were cultivating, when they were rolling logs; Cook ordered Bowen not to come into the field, and advanced toward him with a hand-spike drawn in a striking position, threatening that if he (Bowen) came inside of the field he would kill him—Bowen went into the field, Cook approached him with the hand-spike drawn, and Bowen knocked him down. Witness further testified that the paper hereinafter copied was in Bowen's hand-writing, and that he delivered it to Cook on the 27th April, 1848, and read it to him. Bowen left the service of Cook some ten days previous to that time.

Nelson, witness for Bowen, testified that Cook told him that he and Bowen were cropping together, and that Bowen was to have a fourth of the crop made. That Bowen went to live with Cook 1st January, 1848. About the 14th April, 1848, Cook told witness that he intended to have Bowen away from the place—"that he believed Bowen was guilty of the *act*"—that he had conditionally sold his improvement, and was going to leave the country in a few days, and if he did not sell it he would burn it up; he intended to leave the country any how. About the latter part of the summer 1848, witness told Cook he had done wrong in not settling with Bowen; Cook replied he knew that, and the reason he did so was because he was mad. There were between 10 and 12 bales of cotton raised on the farm Cook and Bowen were cultivating, worth between $25 and $30 per bale. Also some 15 or 16 acres of corn, which produced ten or twelve bushels per acre.

J. C. Moffitt, witness for Bowen, testified that he saw Cook's cotton delivered at the gin, and, after paying toll, there was 10 bales—all, except two, weighing over 500 pounds.

William H. Moffitt, witness for Bowen, testified that, in the year 1848, corn was worth 50 cents per bushel.

Here Bowen closed his evidence.

Floyd, a witness for Cook, testified that Bowen sold and transferred to witness the land which Cook and Bowen were cultivating, about the 13th July, 1848—witness was then (at the time of testifying) in possession of said land—the land witness got of Bowen did not include all the improvements.

Bowen objected to the testimony of Floyd, and moved to exclude it, but the Court overruled the objection, and Bowen excepted.

Cook then read, as evidence, to the jury, the following note, Bowen objecting, and the Court overruling the objection:

STATE OF ARKANSAS, Washita Co., *April* 26, *A. D.* 1849.

To *Charles Cook*—SIR: I take the opportunity to inform you that I have entered the land whereon you reside, because you

would not pay me for the work, &c. And now, sir, if you please to make me satisfaction for my work, damages and expenses, and entry money, you can do so; and if you do, I will make you a title to it, and if not, and you remain on the said land, do not give me any chance, you *kneade* not to think that I will pay you a single cent.

I am, most, &c., W. T. BOWEN."

The above was all the evidence. Bowen brought error.

WATKINS & CURRAN, for the plaintiff, contended that the verdict was clearly against evidence: because the plaintiff, having performed the work according to contract for a part of the time stipulated, and being ready and willing to contiue, but prevented by the act of the defendant, was entitled to a verdict; and that the Court erred in admitting the testimony offered by the defendant, because it was irrelevant, and did not affect the previous independent contract between the parties.

Mr. Justice SCOTT delivered the opinion of the Court.

Neither the testimony of the witness, Floyd, nor the written instrument read in evidence, should have been permitted, by the Court, to go to the jury, as none of the matters touching the entry, sale, and the then possession of the land, had the least relevancy to the issues, and in no way demonstrated, or had any tendency to make clear or ascertain any legitimate point in the case. And, as this testimony was of facts in their nature tending to prejudice the minds of the jury, and to divert them from the legitimate questions before them, it doubtless had a mischievous effect in inducing a verdict for the defendant in the face of all the relevant testimony adduced in the case.

Inasmuch, then, as the Court erred in permitting this testimony to go to the jury, and the verdict is contrary not to the weight of the testimony, but to all the legitimate evidence in the case, and injustice was done, the motion for a new trial should have been granted. It is, therefore, that the judgment must be reversed, and the cause remanded to be proceeded in.