

Smith v. Summerlin Teaching Resources

**Excerpts from trial record of archival case file of *Smith v. Summerlin*, 48 Ga. 425 (1873).
The full archival case file is located in the Georgia Archives, Morrow, Georgia.**

Moses Summerlin (Plaintiff) introduced by Plaintiff, testified that he worked for defendant upon defendant's farm during the year 1870 that he cultivated Seventy five or eighty acres of land partly in corn and partly in cotton that in the cultivation of said land were engaged himself and five or six hands employed by himself; upon said land he produced eight 8 Bales of Cotton weighing from four hundred and fifty to five hundred pounds and one hundred and forty Barrels of Corn and twenty three hundred Bundles of fodder weighing from one and a quarter to one & a half pounds each that one half of said produce belonged to plaintiff and the other half to defendant, that defendant had kept all the produce and had not divided with plaintiff, but had kept the half belonging to plaintiff except the shucks plaintiff had made a demand for his portion of said produce from defendant and that defendant refused the demand plaintiff owed defendant as near as he knew Sixty dollars for provisions furnished him by defendant during the year 1870.

Cross examined: Witness testified: That he cultivated Said land in a farm like manner except about three weeks, where it fell back a little owing to the fact of the death of plaintiff's wife: that he was then troubled, and could not well tend to the farm he plowed the corn three times and the cotton three times, that he not only plowed the corn three times but broke up the stalks besides, that a portion of the corn made was destroyed by the stock of defendant; that defendant turned eleven head of mules and horses in the field worked by plaintiff, that said Stock together with a number of Cows and cattle run upon said field constantly for two months, that the Corn was torn down in many places, and in fall came up like wheat; that the land cultivated by plaintiff was all under one fence, and that defendant had a pasture on the opposite side of the ditch from the land cultivated by plaintiff and said ditch could be crossed by cattle in two or more places: knew that there were eight bales of cotton made because it takes Sixteen hundred pounds seed cotton to make a bale, that he had a bale at his house and two at an other place and in an other pile more than four bags, because he had weighed the cotton in the last pile and there were forty two

hundred pounds in it, that two loads were hauled from the last pile and about half bale left the loads were two bales each.”

Toby Summerlin introduced testified he was the Son of plaintiff and worked with him during the year 1870; there were eight stacks of fodder, there were ten or eleven head of mules and horses on the corn and cattle, they belonged to defendant.

Cross examined. helped to pick the cotton and gather the crop, picked about one hundred pounds a day, and corroborated the statements made generally by the plaintiff.

...Plaintiff introduced the written contract between the parties, which is in the words and figures as follows to wit: Georgia Coweta County Know all men by these presents that I William A. Smith have contracted with Mose Summerlin this day I William A Smith do hereby agree to furnish (Stock) three mules and feed for the mules and (75) seventy five acres of land to be laid off by said W. A. Smith being left to his discretion, he also agrees to furnish wagon and team for gathering and hauling on the farm and tools necessary to prepare and cultivate the land Moses Summerlin (Cold) agrees to furnish the hands and do all the labor necessary to making safe and cultivating well the said No of acres of land to be gathered in time corn to be gathered and hauled up to Mr. Smiths and Shucked and measured Summerlin Freedman to have one half and Smith the other and Shucks the same way: the cotton to be hauled to my gin and ginned at the customary rates of ginning then hauled to town and a division of the cotton or money as we may think proper, the hauling to be equally paid by both the Bacon to be furnished to Mose at (26) twenty six cents per pound, directions in cultivating to be given by W A Smith, this agreement agreed and entered into this Janury 22nd 1870.

WA Smith, Moses Summerlin (his mark)

William A. Smith (Defendant) Sworn testified: that he furnished the Stock and feed for the Stock according to contract that plaintiff did not cultivate the land in a farm like manner, that he broke out the stalks in the corn after the corn was up: and plowed the corn twice afterwards with an interval of five weeks, the cotton was not more than one half cultivated: the plaintiff neglected his work by Stalkingn about and failing to attend the business: he furnished plaintiff provisions and other things to the amount of

one hundred and twenty seven dollars, he did the ginning and paid for ties & bagging which together with hauling the cotton to market was worth forty five dollars, the cotton was greatly damaged by reason of the failure of plaintiff to pick it out in due Season which he could have done it was beat out of the bolls by rain and became black and dirty, it was thrown in piles in the field and was rained upon and otherwise damaged. defendant had the cotton ginned some time in January 1871 and tried two markets Sharpsburg and Newnan and the most he could get offered for it was eight cents per pound: there were only six light bales made, they were light plaintiff has receipts for the bales sold the aggregate twenty seven hundred and fifty (2750) pounds: there were two hundred and sixty bushels of corn made, defendant was greatly damaged by Plaintiff by reason of the non performance of his contract plaintiff cultivated in cotton some twenty seven or eight acres, and in corn about twenty four acres, the reason plaintiff did not cultivate more was he was satisfied with the amount he did not cultivate this in a farm like manner twelve acres of the corn were as good bottom as there is in the country which if properly cultivated would have made fifty bushels to the acre, Similar land produced this amount when well cultivated the land in cotton was good & level one acre in bottom the remainder in level upland, which had been lying idle for several years this land is peculiarly adapted to the raising of cotton and is as good or better than any up land owned by defendant on a farm of some twelve hundred acres the bottom land in corn as cultivated by Plff made about fifteen bushels the upland about ten bushels per acre Stock did not destroy more than about twelve or fifteen bushels of corn. Defendant, for his part was damaged by plaintiffs failure to cultivate well and properly the land in cotton for defendants share of the same, at least three bales of cotton weighing each five hundred pounds, in like manner he was damaged in the corn crop one hundred and twenty bushels. the cotton at eight cents, would have been worth one hundred and twenty dollars and the corn would have been worth one hundred and twenty dollars.

Cross examined. Testified that he never refused to let Plff have a wagon to haul up corn, that plaintiff applied for wagon on one occasion to haul cotton and defendants wagon was engaged and he told him he could get it next day plaintiff wagon to haul up cotton each night from the field defendant refused to allow him a wagon to haul about one hundred and fifty pounds of cotton and gave this as a reason for the

refusal. Plaintiff and son applied twice for wagon to haul up corn he told them he would have the corn hauled when it suited him. the corn was gathered by middle of October and the cotton by middle of December. Defendant had a pasture on the East Side of the ditch which separated it from the land cultivated by Plaintiff, this ditch was broad and deep and could ~~not~~ be crossed by Cattle at any one place he notified Plff that he intended to turn Stock in the pasture and to fix the ditch at the crossing, he failed to fix, Defendant sent a hand and had it fixed it was done poorly and defendant then went in person and had the same fix securely, but the Stock broke through again, defendant never turned his Stock in field cultivated by plaintiff, the land cultivated by plaintiff in cotton had been being idle for several years had grown up partially in brrom straw oak and hickory bushes never told plaintiff he had Seventy five acres in cultivation. plaintiff commenced to pull corn before notifying Defendant, and defendant told him to stop he did Stop, defendant had the corn made hauled to his crib except the first gathering...Plaintiff did demand of Defendant one half of the corn, but never did demand any part of the cotton he left before the same was ginned or even hauled to the gin...Defendant never told Plaintiff to leave his year, and that if he came back he would kill him, Defendant never refused to let Plaintiff have a wagon to haul with sent him word he could get it Defendant Sent Several times when the hands of plaintiff were picking Cotton they were idling don't think they picked all together more than seventy five or one hundred pounds of Cotton per day. raised several of their baskets in which they were picking and could give a pretty accurate guess how much there was in each basket this he could do because he has weighed so much cotton. Defendant entirely fulfilled his part of the contract.

Moses Summerlin (recalled) Testified that he asked Defendant three times for a wagon to haul cotton and defendant refused and that he asked several times for a wagon to haul corn and was refused: Defendant only came once to the field when the hands were picking he never raised a basket then Plaintiff was ordered out of the yard by Defendant and defendant told plaintiff if he came back he would kill him.

Witness did not pick cotton regularly averaged one hundred and fifty per day for at least twenty days, and Plaintiff says the way defendant came to make the threat to shoot him he plaintiff applied to him to divide

the corn after the same was hauled up into the lot, where Defendant made the threat referred to and this was Plaintiff's reason for failing to help Shuck and crib the corn.

Toby Summerlin (recalled): Defendant was asked three times by Plaintiff for his wagon to haul cotton and was refused. Defendant ordered father (Plaintiff) out of the lot, and told him if he came back he would kill him. Defendant never came to where hands were picking cotton but once and then he came on a mule and never picked up a basket, never got off the mule; Witness picked out one hundred pounds of cotton per day picked some three months.

B.M. Hackney introduced for Plaintiff. Testified that as Sheriff he levied the Sum fi fa in this Suit; Defendant showed him the corn it was in two different cribs Defendant said it was the corn raised by Summerlin, Witness noticed that some of the corn seemed to have been bitten. Saw the ends of several ears in this condition noticed around the cribs a pile or two of rotten and short corn, some of the corn was as fine as witness ever saw...