

In the County Court of Yorkshire holden at Ripon

Between Joseph Webb (Plaintiff)

and John William Pearson (Defendant)

Brief for the Defendant

The Defendant John William Pearson is a respectable farmer and resides in Dallowgill near Ripon and his family is much respected in the district.

The Plaintiff Joseph Webb is a Publican and keeps the "Hope Inn" Laverton a hamlet about eight miles from Ripon

He is a Norfolk man and of rather superior education than his equals in this County. The antecedents of the Plaintiff are not of a very bright character and will not bear much looking into. He is much given to drink and is a most confirmed liar.

In the Autumn of 1889 or the Spring of 1890 the Plaintiff purchased from the Executors of the late George Almack of Kirkby Malzeard Cab Proprietor an entire horse called "Young Fireaway" for it is believed £21. Mr Almack worked the horse principally in his Cab Proprietors business and very little (if at all) as an entire horse. As can easily be imagined from the price given for the horse he was not of very great value, he had what is known as "capped hocks" besides other blemishes.

In the Spring of 1890 the plaintiff was in great pecuniary difficulty in fact he was insolvent. The Sheriffs Officer seized the whole of plaintiffs effects under an execution

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and the Landlord at the same time distrained for rent. The plaintiff knowing it would not be safe to keep the horse on his premises at this time, removed him a pig and some household furniture to some neighbours houses till the storm was weathered. The horse going to a farm house occupied by one Ball, and the plaintiff and Ball had a sort of bogus sale of the horse to defeat the claim of the Sheriffs Officer if he had followed and seized the horse.

On the 15th February 1890 the Sheriffs Officer sold by auction the whole of the furniture and effects which he had seized on the plaintiffs premises under the execution and the Landlords distraint for rent. The plaintiffs late wife (Ann Webb) purchased most of the furniture and necessary articles required for carrying on the business of a publican to the amount of £35, and paid for the same with money lent to her by the Defendant, who at her request lent her thirty five pounds, for that purpose and which the defendant paid to her in an upper room of the Plaintiffs house at Laverton. The Defendant wished Plaintiffs wife to give him a Promissory Note for the money lent which she agreed to do after the confusion of the sale was over. After the sale plaintiffs name was expunged from the sign board of the public house and that of his wife painted instead and the business of the Inn was carried on by plaintiffs wife on her own account. Defendant shortly after the sale called at plaintiffs house with two Promissory Notes for the money to be signed by Mrs Webb when he was told that she had died very suddenly in child-bed and was then laying dead in the house. Defendant was much annoyed as he had nothing to show for his money, the plaintiffs wife had directly after the sale told two or three people that he (Defendant) had found her the money to purchase the necessary articles at her husbands (the plaintiff) sale. At the plaintiffs request and suggestion (he well knowing the Defendant had lent his wife the money) his daughter Annie E Webb signed her mother's name to two promissory notes one for £25 and another for £10. Defendant has made frequent applications to plaintiff since the loan for payment of the money, and has been put off by plaintiff that he has never denied his liability. Plaintiffs wife died without a Will and he took over

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all her effects as "Administrator" and Defendant counterclaims against plaintiff in that capacity for the £35 and interest at £4 per cent from the 15th February 1890. Defendant did not inform his Solicitors as to the circumstances attending the making of the Promissory Notes until after the counterclaim was filed or instead of claiming on the Promissory it would have been safer to have claimed for money, lent only, tho? the notes were signed by Plaintiff's daughter at his request and suggestion. Defendant not thinking of the consequences at the time and only wishing to have something to shew for his money. Counsel will however, please concede? this point and as to the advisability of applying to the Judge to amend the counterclaim though it is believed the plaintiff or his daughter have forgotten that the Notes were not signed by Plaintiff's wife.

In the beginning of 1892 it was agreed between the Plaintiff and Defendant that they should go into partnership respecting the entire horse. That the horse should be valued at £30. That Defendant should pay Plaintiff £15 for an equal share in the horse and that all profits (if any) should be shared equally between the parties.

On the 14th January 1892 they went to Mr Whitham, Solicitor, Ripon who prepared a receipt for the £15 paid by the Defendant to Plaintiff for a share in the horse. Plaintiff still kept the horse at his house though Defendant found Plaintiff with food for the horse and at various times paid Plaintiff money, for the horses keep. Defendant is informed and believes that from the date of the commencement of the partnership until within a week or two before the season of 1892 Plaintiff was working the horse regularly leading coals from Ripon and stones on to the high roads for the Surveyor of highways though no account has ever been given to the Defendant of the money received by Plaintiff for that work.

During the season of 1892, on or about the 1st June the horse was taken very ill and Two Veterinary Surgeons were called in to attend him he was suffering from a stoppage of the bowels and had little or anything to eat for sixteen days. The horses illness was brought on by the improper usage of the horse by the Plaintiff (who was his groom and travelled him) and in fact treated him in such a way that would have killed most horses. Plaintiff is a drunkard and has neglected both the horse and his business and such arrangements with farmers and others who used the horse that it is utterly impossible to enforce or recover any

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fees for the horses services. During "Young Fireaway's" illness Defendant was put to very great expense and much inconveniences and annoyance in finding and engaging other horses to take "Young Fireaway's" place besides loss of time going "Young Fireaway's" route with the grooms who were strangers.

At the end of the season 1892 the horse was taken to Defendants farm and was there until Defendant sold him. In July of that year plaintiff, having again got into difficulties (he was suing Mr Richard Garbutt of Ripon, Cornmiller over a £100 and very large accounts to both Mess'rs Hepworth & Co and Mess'rs Wells & Sons of Ripon) agreed to sell his remaining share in the horse to Defendant for £15. A Deed of dissolution of partnership was drawn up with the usual clauses for accounts (copy herewith) and agreed by plaintiff and defendant, defendant paid plaintiff £15 and then became the sole owner of the horse. Before plaintiff would sign the deed he wished for a note from Defendant that he (plaintiff) could have a share in the horse again on payment of £15 on or before the 1st February 1893 and the Defendant agreed to the plaintiffs proposal on the understanding that the horse was in his possession at that time. Defendant gave plaintiff a memorandum to that effect (copy herewith) and that memorandum forms the foundation of the plaintiffs claim.

Defendant has at various times since the dissolution of partnership on the 19th July 1892 collected what fees he could for the services of the horse and has filed in Court an account of his receipts and payments which brings plaintiff debtor to the defendant for £23. 3. 6 (half the deficiency on the defendants accounts) and the defendant has counterclaimed against plaintiff for that sum.

On the 7th December 1892 Defendant sold the horse to his father Mr Henry Pearson bona fide for £30 and gave him a receipt for the price. Some time previously to that date Plaintiff knew of Defendants intention to sell the horse as a man (John Topham) offered Defendant £30 for the horse in plaintiffs house at Laverton which defendant refused as he then wanted £40 for the horse.

On or about the 26th January 1893 plaintiff offered, but did not tender?, defendant £15 in country bank notes for a half share in the horse when defendant informed plaintiff he (defendant) had sold the horse.

Plaintiffs claim is a very original one and may be to his Solicitors mind ingenious, though it is most absurd to ever entertain such a claim.

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The damages are in the first place too remote and besides plaintiff must be put to proof of the damage and has now given particulars of his claim which he cannot well alter. If the partnership was to be carried on in future seasons under the same disastrous management as the season of 1892 was – no doubt it was good for the plaintiff – but the poor unfortunate defendant who had all the money to find to keep the thing going would soon find himself in the Bankruptcy Court and he had that view in his mind when the partnership was dissolved by mutual consent on the 19th July 1892.

It is supposed that the only damage the plaintiff is entitled to - if he can succeed which is doubtful and Counsel must please cross examine plaintiff very closely and if possible break down his case at the outset – is the difference in value of one half share in the horse on the 19th July 1892 and the 1st Feby 1893.

See Chitty on Contracts 12th Edition pp. 854 and 856 and cases there cited, also pp. 718 and 719 and cases there cited.

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Proofs

John William Pearson the Plaintiff saith

I am a farmer and reside in Dallowgill and know and am well acquainted with the Plaintiff. In January 1892 he was the owner of an entire horse called “Young Fireaway”. In that month plaintiff and myself went into partnership in respect of the horse. Plaintiff valued him at £30. On the 14th January 1892 at the Black Horse Inn, in Ripon I paid plaintiff £15 for an equal share in the said horse. Receipt produced.

From the 14th January till the commencement of the season 1892 I provided all the food for the keep of the horse though he was stalled at the plaintiff's. Plaintiff during that time worked the horse regularly leading coals from Ripon and stones for the Surveyor of Highways – and for which I have received no account of the earnings of the horse.

From the 12th January to the 6th April 1892, I paid plaintiff at various times £8.10.0. for the keep of the horse. And it was agreed that plaintiff should have and act as groom for the horse. At the commencement of the season I went with plaintiff at different times to shew him the routes he had to travel the horse. Plaintiff as the groom had to keep an account of all the names of all the persons using the horse which he and I entered into a book for that purpose when he came home every Saturday night which was done correctly so far as I am aware up to the 1st June though I had to depend entirely on plaintiffs honesty as to who had used the horse and what bargains he had made with them

I have since found out whilst collecting fees that he has not told me the truth. On or about 1st June 1892 the horse fell ill and I to engage the services of two Veterinary Surgeons. The horse was so ill I did not expect he would get better and the Veterinary Surgeons gave little hope of his recovery. Young Fireaway was unfit for service till the end of June or the beginning of July

During that time I was put to a very great expense and much annoyance and inconvenience through having to engage other horses to take "Young Fireaway's" place. I had two other horses "Young Elegance" and "Othello". I had to go with the grooms of "Young Elegance" and "Othello" to shew them the different routes taken by "Young Fireaway". At the end of the season the horse went to my house and stayed there till he was sold. On the 19th July 1892 the plaintiff having become embarrassed in his affairs we dissolved partnership and a deed was drawn up to that effect. I paid plaintiff £15 for his share of the horse and an account had to be taken of all moneys received and paid in respect of the partnership and the profits divided in equal shares or the deficiency had to be made up in equal shares between plaintiff and myself. Plaintiff was not at first willing to sign the said deed but wished for some assurance the he could have a future interest in the horse when I told him if the horse was in my possession and my property on the 1st February 1893 and plaintiff paid me £15 he could have a share in him again. As it was I was glad to make the best arrangement. ????? ??? as plaintiff had so mismanaged ????????? I was losing money very fast ??? ??? have ??? ????????? the dissolution of

of the partnership collected what fees I could for the services of the horse. Most people who have used him refuse to pay saying they had to go to other horses. That plaintiff agreed with them for "no foal, no fee" and such like.

I have filed my accounts in Court – And they are a true and correct account of all my receipts and payments in respect of the partnership.

As to the Counterclaim

The £23.3.6 is the plaintiff's share of the deficiency on my accounts in accordance with the Deed of dissolution and I say that that sum is justly and truly owing by plaintiff to me as appears by my said accounts.

In the beginning of the year 1890 the Sheriff's Officer was in possession of plaintiffs effects and his Landlord distrained for rent. At the request of plaintiff's late Wife and with his knowledge and consent I lent her £35 to purchase what furniture and other effects she required at the sale so that she could carry on the business in her name and if possible make a living. I attended the sale and entered for her in a Memorandum book the articles plaintiff's late wife purchased, after the sale I lent her in an upper room the £35 (Mr Walker the Auctioneer and Mr Wilkinson of Ripon were in the same room, but they were busy balancing up their Accounts and I cannot say whether they remember me paying Mrs Webb the £35). I asked her to give me a Promissory Note for the money at the time and she promised to do so when things were a little more settled. Shortly after the sale I called at plaintiffs house and saw plaintiff when he told me his wife had died very suddenly under her confinement

and was then laying dead in the house. I produced the Promissory Notes and told him that his Wife promised to sign them when he suggested his daughter Annie should sign the Notes instead of his Wife and I agreed to that course.

Joseph Hardwick saith

I live at Grassington and am a horse-breaker. I know the entire horse "Young Fireaway" and his groom Webb the plaintiff in this action. Plaintiff asked me to go with and shew him the route we had to travel knowing the plaintiff's financial position I asked him who would pay me – plaintiff said defendant would when we got to Pateley Bridge as the horse belonged to them both. In conversation with plaintiff at Middlesmoor plaintiff told me he (plaintiff) was about spent up and said defendant would be at Pateley Bridge and he (plaintiff) could get some more money – plaintiff also said defendant would pay me when we got to Pateley Bridge. Defendant handed me 17s/6d at Pateley Bridge for shewing plaintiff the route from Grassington.

Plaintiff in my hearing asked for some more money and said the expenses had been heavy and he (plaintiff) was out of money – defendant thereupon gave plaintiff some money. I have been used to and travelled entire horses and in my opinion plaintiff is not a proper person to have anything to do with entire horse and he certainly did not treat "Young Fireaway" properly. I have on several occasions seen plaintiff ride in any conveyance that he could and lead the horse behind and thus heat and make the horse sweat so that when the horse came to stand at Public Houses he got cold and I really wonder the horse

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did not fall ill before he did. I have ??????? plaintiff.....

(too blurred. Will get another copy. Continue down to following pages)

George Parker saith

I am a.....

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and put him to bed. I believe plaintiff had been at Bishop Thornton that day and he had the horse tied to a gate outside the public house for three or four hours.

I understand the horse fell ill the following week. Plaintiff stayed twice at my house and was very drunk both times. I have also seen plaintiff drunk early in a morning. Plaintiff in my opinion was not a proper person to have charge of an entire horse. I know several persons who did not use "Young Fireaway" thro' plaintiff's neglect. Plaintiff was also behind his time on several occasions. One week plaintiff's face was much cut and bruised and plaintiff told me he fallen off the horse whilst riding him across Pateley Bridge Moor the previous Saturday.

Erasmus Buckle saith

I am a farmer and reside at Missis Farm near Laverton. I know plaintiff and also knew his late wife. Plaintiff's late wife asked me to lend her some money to buy furniture at the sale of her husbands effects in February 1890. The plaintiff's wife subsequently told me the defendant had lent her the money.

Christopher Lofthouse saith

I am a farm labourer and live at Azerley Grange in Dallowgill. I was one of the Sheriff's Officers men when he seized plaintiff's effects in February 1890. I remember several articles being placed out of sight and some were taken to an adjoining farm house to avoid sale. I heard plaintiff's late

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wife say that "Defendant had loosed her and and lent the money to purchase what she bought".

Christopher Lofthouse saith

I live at Harper Hill Dallowgill. I remember defendant telling me shortly after plaintiff's wife's death the he (defendant) had lent her £35 when plaintiff was sold up – to buy furniture &c at her husbands sale and that as plaintiff's wife was dead defendant did not know how he should come on.

Mrs Whitwham saith

I am the wife of Thomas Whitwham Farmer and we live in Dallowgill. I knew the late Mrs Webb. Shortly after the sale of her husbands effects she told me "that if it had not been for defendant they would have no sticks in the house".

George Barker saith

I am a farmer and live at Pott Hall near Masham. I bred the entire horse "Young Fireaway" and sold him when he was four or five years for, I think, £25. I knew the horse very well, he is now ten or eleven years old. I should greatly doubt if he is worth more than £20. I keep an entire horse myself and have had great experience with horses.

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John Topham saith

I was in the "Hope Inn" Laverton in company with defendant and (this is blank) Metcalfe when I offered defendant £30 for the horse ("Young Fireaway") in the presence of the plaintiff which he refused. I made this offer to Defendant previously to his selling the horse to Henry Pearson.

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In the County Court of Yorkshire holden at Ripon

Between Joseph Webb (Plaintiff)

and John Thomas Pearson (Defendant)

List of mares served by "Young Fireaway" 1892

Cundall Thomas	10/-	10/-	Harrison Michael	10/-	10/-
Baul John	1/1/-		Simpson James	15/-	10/-
West James	10/-	10/-	Tennant Ja's	10/-	10/-
Lambert Richard	10/-	10/-	Parker Rowland	10/-	10/-
Thackray -	1/-/-		Walker Jacob	1/-/-	
Watson James (Grey)	10/-	10/-	Rhodes Matt'w	10/10/-	
Watson James (Black)	10/-	10/-	Garth Jn'o	10/10/-	
Baul Joseph	10/-	10/-	Swales James	10/-	10/-
Taylor Arthur	10/-	10/-	Hall Wm	10/-	10/-
Richmond W (Winksley)	10/-	10/-	Fawcett Wm	1/-/-	
Nichols James	1/10/-		Johnson Jn'o Wm		
Rathall Robert	1/10/-		Barker Geo	1/-/-	
Mawer James	1/-/-		Simpson Mr	10/-	10/-
Smith Robert	1/10/-		Almack Miss	1/-/-	
Rogers -	10/-	10/-	Mallaby Rob't	10/-	10/-
Penwick W	15/-		Baul Joseph	1/-/-	
Storey Mr	10/-	10/-	Richmond W	10/-	10/-
Pearson J W	10/-	10/-	Metcalfe Thos	10/-	10/-
Hannam W	10/-	10/-	Atkinson Mr	10/-	10/-
Atkinson Mr	10/-	10/-	Holdsworth Thos	1/-/-	
Hattersley Jn'o	10/-	10/-	Ingleby Mr		
Baldwin Henry	10/-	10/-	Simpson Mr		
Nickles Thos	15/-	10/-	Pearson Thos	10/-	10/-
Wilkinson Mr	10/-	10/-	Pickersgill S	10/-	10/-
Smith Wm	1/-/-		Kirkbright Ja's	10/-	10/-
Teale Layfield	10/-	10/-	Horner Geo	10/-	10/-
Layfield J W	1/-/-		Richmond Wm	10/-	10/-
Ingleby Wm	1/-/-				
Richmond Wm	10/-	10/-			
Webster David	1/-/-				
Fryer Wilkinson	10/-	10/-			
Johnson Mr	10/-	10/-			
Down Jn'o	10/-	10/-			
Dunnell Isaac	10/-	10/-			
Almack Miss (Grey)	1/-/-				
Hall Jn'o	10/-	10/-			
Moorhouse B	10/-	10/-			
Leyland Jn'o	10/-	10/-			
Lodge O	10/-	10/-			
Lodge Rob't	10/-	10/-			
Rhodes Mr	10/-	10/-			
Marshall W M	10/-	10/-			
Heaton R	10/-	10/-			
Sayer Jn'o	1/-/-				
Newbold R	1/-/-				
King Jn'o	10/-	10/-			
Pickles Jnothan	1/-/-				