

13756

No. _____

Supreme Court of Illinois

Fields

vs.

Edwards

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 133.

1860

Pleas before the Hon of Wilson Drury
Judge of the Sixth Judicial district
of the State of Illinois at a term of
the circuit Court begun and held in
the court house in and for the county
of Rock Island and State aforesaid
on the second Monday the twelfth
day of September 1859

Present Hon of Wilson Drury Judge
Moses D Merrill Sheriff
Quincy M Neil Clerk

Arman Field
vs
John H Edwards &
Jacob Frysinger

Assumpsit

Be it remembered that hereto-
fore to wit on the 1st day of April 1859
the plaintiff by W. F. Chadwick his at-
torney sued out of the clerks office of
the circuit court for the County and
State aforesaid his certain summons
in assumpsit which is as follows "to wit,

State of Illinois) The People of the State of Illinois
Rock Island County) To the Sheriff of Rock Island
County Greeting;

We command you to Summon

John A. Edwards & Jacob Fry singer
if to be found in your County personally
to be and appear before the Circuit Court
of said County on the first day of the
next term thereof, to be holden at the Court
House in Rock Island on the second Mon-
day of May next, then and there to answer
unto Herman Field of a plea of tres-
pass on the case upon promise to his
damages in the sum of Three Hundred
Dollars as he says and have you then and
there this writ, and make due return
thereon in what manner you execute the
same.

Witness Quincy McNeil Clerk of our
Circuit Court and the seal thereof
affixed at Rock Island this
1st day of April in the year
of our Lord one thousand
eight hundred and fifty nine
Quincy McNeil Clerk



Which said summons was afterwards
served on the said 4th day of April returned
by the Sheriff into the clerks office aforesaid
with the following endorsement of service
thereon "I have served the within writ by
reading the same to the within Defendant

Jacob Fryfinger this 4th day of April A.D. 1859

M D Merrill Sheriff of Rock Island

By C A McLaughlin deputy

"I cannot in my County find the within
named Defendant John H Edwards April 16th
A.D. 1859

M D Merrill Sheriff of Rock Island
County

By C. A. McLaughlin Deputy

And afterwards to wit on the 16th day of
April aforesaid the said Plaintiff filed his
declaration in the Clerks office of the
Court aforesaid which is in the words
and figures following to wit

State of Illinois } Rock Island County Circuit
Rock Island County } ss Court, Of the May
Term A.D. 1859.

Herman Field plaintiff in this suit by
W. F. Chodwick his attorney complains of
John H Edwards & Jacob Fryfinger late
partners doing business under firm name
& style of John H. Edwards Defendants
in this suit summoned &c of a plea of
trespass on the case on promises. For that
the defendants on the twenty sixth day of
August in the year of our Lord one
thousand eight hundred and fifty eight
at Rock Island to wit: at the County
and State aforesaid by their promissory
note of that date for value received

promised to pay ten days after date of said note to Herman Field or order at the Banking House of N B Buford & Co one Hundred & Fifty five Dollars. By reason whereof the defendants became liable, and then and there in consideration of the premises, promised the plaintiff to pay him the amount of the said note according to the tenor and effect thereof. And also, for that whereas the defendants on the twenty sixth day of August in the year of our Lord one thousand eight hundred and fifty eight at the County of Rock Island aforesaid were indebted to the plaintiff in One hundred & fifty five Dollars for goods bargained and sold by the plaintiff to the defendants at their request. And in One hundred & fifty five Dollars for work done and materials for the same provided by the plaintiff for the defendants at their request. And in one hundred and fifty five Dollars for money paid by the plaintiff for the use of the defendants at their request. And in One hundred & fifty five Dollars for money received by defendants for the use of the plaintiff And in One hundred & fifty five Dollars for money due

from the defendants to the plaintiff
on an account between them

And whereas the defendants afterwards
to wit on the day and year and at the
place last aforesaid in consideration of
the premises respectively promised to
the plaintiff to pay him the said last
mentioned several moneys respectively
on request. Yet the defendants have dis-
regarded their promises and have not
paid to the plaintiff any of the aforesaid
moneys or any part thereof to the plain-
tiff's damage of three hundred Dollars
and thereupon he bring suit &c

W T Chadwick

Plaintiff's Attorney

(Copy of Note)

"\$155.00)

Ten days after date I promise
to pay to Herman Field or order at the
Banking house of N B Buford & Co
One hundred & fifty five ⁰⁰/₁₀₀ Dollars
value recd "

(Dated) "Rock Island Aug 26th 1858"

(Signed) "Jno H Edwards"

John H Edwards &
Jacob Fryszinger

To Herman Field Dr

To money lent & advanced \$ 500

To money paid laid out & expended \$ 500
 To money had & received to & for the use of ^{Said Off} \$ 500
 To goods wares & merchandises sold & delivered \$ 500
 To labor & services \$ 500
 To balance due on account stated \$ 500

And afterwards to wit on the 11th
 day of May 1859 the defendant Fry
 Singer filed in the Clerks office
 aforesaid his plea in abatement which
 is as follows to wit,

State of Illinois } May Term AD 1859
 Rock Island County } of the Rock Island
 County Circuit Court

Jacob Fry Singer }
 Imp with John H Edwards }
 ad }
 Herman Field }

And the said Jacob Fry
 singer one of the defendants in this
 suit by R. M. Marshall his attorney
 comes & defends the wrong & injury
 when he and as to the first count
 prays judgment of the Declaration & writ
 because he says that he was not at the
 time said promissory note in first count
 mentioned was executed a partner of the

said John H Edwards as is alledged
in said Plaintiffs declaration and that
said note in said Declaration mention-
ed was given by said John H Edwards
for himself alone and not as a part
ner of this defendant wherefore for
such misjoinder he prays as of that
the said first count of the said declaration
& writ may be quashed

R M. Marshall

attly for Deft

Jacob Frysiner the above named
Defendant being sworn says that the
above plea is true in substance
& fact

J Frysiner

Subscribed and sworn to before
me this 9th day of May A D 1859

Alex F Swander

J M

And afterwards to wit on the 11th day
of May 1859 the defendant Jacob Frysiner
filed in the clerks office aforesaid, his
plea of non Assumpsit which is in the words
as follows to wit.

State of Illinois } May Term of the Rock Isl
Rock Island County } ss and County Circuit
Court A D 1859

Herman Field
vs
John H Edwards
+
Jacob Frysinger

And now comes the
Defendant Jacob Frysinger by R M
Marshall his atty and defends the
wrong & injury &c when &c and says
that he did not promise in manner &
form as is alleged in the Plaintiffs
Declaration against him and in the com-
mon counts thereof of this he puts
himself on the Country

R M Marshall

Defts atty

And the said Plaintiff cross the
like.

W F Chadwick

Plffs atty

Adam Smith being first sworn
on his oath that he believes the
above plea to be true in substance
& fact

Adam Smith

Sworn & subscribed before me this
11th day of May A D 1859.

Hugh Gilmore

J P L S

And afterwards to wit at the September term 1859 of the circuit Court aforesaid and on the 6th day of October 1859 the following proceedings was had to wit:

Herman Field }
vs } Assumpsit
John A Edwards }
Jacob Frysinger }

This day came the parties by their attorneys and this cause coming on to be tried upon defendants plea in abatement, and issue being joined thereon came a jury to wit Paul Farber, Johnathan Whitman, Wm S Phillips, Benj Weiser, C. B. Braae, Joseph South, J C Seoby, C W Andrews, Wm H Will, C G Addison, Oliver Gummell, Wm Jackson.

And the hour of adjournment having arrived before the conclusion of this case the jury are instructed by the court not to converse with any person upon the subject of this issue and permitted to disperse to meet the Court to morrow morning.

And afterwards to wit on the Seventh day of October aforesaid and at the term of the Court aforesaid the following proceedings was had to wit

A Herman Field
12
John A Edwards &
Jacob Frysinger } Assumpsit

This day again came the parties by their attorneys, as well as the jury hereinbefore impanelled, and the jury having heard the evidence return their verdict which is as follows:

"We the jury find the issue for the plaintiff" Thereupon defendant enters his motion for a new trial, which being argued to the court is overruled to which overruling defendant by his attorney accepts.

Thereupon the court proceeded to assess the damages and find the amount due the plaintiff to be the sum of One hundred and Sixty five dollars and eighty five cents.

It is therefore ordered by the Court that plaintiff have and recover of defendant the said sum of One hundred and Sixty five dollars and eighty five cents together with the costs and that he have execution therefor. Thereupon defendant prays an appeal which is granted.

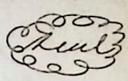
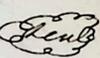
and on condition that he enter into
bond with Frederick Kellerstraus as secu-
rity in the sum of four hundred dol-
lars and file his bill of exceptions
in sixty days

and afterwards took on the 5th day of December 1859
the said defendant filed his bond in appeal in
the clerk's office of the court aforesaid which is as
follows to-wit

Know all men by these presents that we Jacob
Fryszinger as principal and Frederick Kellerstraus
as security are held and firmly bound unto Herman
Field in the sum of four hundred dollars lawful
money of the United States for the payment of which
well and truly to be made, we bind ourselves our heirs
executors and administrators jointly by these presents.

Witness our hands and seals the 5th day of
December A.D. 1859. The condition of the above
obligation is such that whereas the above ~~named~~
Herman Field did on the 7th day of October 1859 in
the circuit court of Rock Island County and State
of Illinois render a judgment against the above
bounden Jacob Fryszinger for the sum of one hundred
and sixty five dollars and eighty five cents and
costs of suit. From which judgment the said
Jacob Fryszinger has prayed for and obtained

an appeal to the Supreme Court of said State
Now if the said Jacob Frysinger shall duly
promote said appeal and shall moreover
pay the amount of the Judgment, and costs
interest and damages rendered and to be rendered
against him the said Jacob Frysinger in
case the said Judgment shall be affirmed
in the said Supreme Court, then this obligation
to be void otherwise to remain in full
force

Jacob Frysinger 
Frederick Kellertanus 

State of Illinois }
Rock Island County } J. Quincy Merrill
Clerk of the Circuit Court in and for
said County do certify that the foregoing
is a true copy of the Record in
the above cause

I further certify that the
defendant has never filed a bill of exceptions
herein.

Witness my hand and the Seal
of said Court this 2nd day
of April 1860.

J. Quincy Merrill etc

Filed April 3rd 1860
Rock Island

18756

Jacob Frysinger
vs
Herman Field