

12708

No. _____

Supreme Court of Illinois

Anderson, et al,

vs.

Richards et al

272-21

John Richardson et al.

4

G. Richardson et al.

John Richardson et al.

12708

859

ag. 207- Qu. to 272.

John Anderson et al

vs

George Richards et al

Argument for
appellants

Andersson et al

Richardson et al

Certified copy of
amended appeal
bond

Filed May 9. 1839
L. Leland
Clerk

Pleas before the Hon John Wilson Drury Judge
of the 6th Judicial Circuit in the State of Illinois
at a term of the Circuit Court begun and held
at the Court house in Cambridge within and for
the County of Henry and State of Illinois on
Monday the 4th day of October A.D. 1858

Present Hon J Wilson Drury Judge

" Justus H Dresser Sheriff

" Thomas Wiley & clerk

Know ye that on the 21 day of September A.D. 1858
Geo. Richards & Paul Sweeney, by their attorney
George A Hobbs filed in said court their petition
for a summons in the following words
and in words and figures following to wit

State of Illinois	}	Henry Circuit Court
Henry County		October Term 1858
George Richards	}	
Paul A Sweeney		

vs

John Anderson	}	Assumpsit
William Anderson		Damages \$6000.00
Andrew W Anderson		

The Clerk of said court will please issue sum-
mons to the defendants in the above entitled suit
returnable to said term of said Court

Geo A Hobbs Attorney for Plaintiff
And on the filing of which precept, a summons
issued out of said court in said cause in

words and figures following to wit

State of Illinois }
 Henry County } ss

The People of the State of Illinois
 to the Sheriff of said County Greeting, You are hereby
 commanded to summon John Anderson William
 Anderson Andrew M Anderson to appear before
 the circuit court of Henry County on the first day
 of the next term thereof to be holden at Cambridge
 on the 1st Monday of October next to answer
 the complaint of George Richards and Paul A
 Sweeney in a plea of Assumpsit Damages \$6000.
 And have you then & there this writ

Witness Myself & clerk of said court and the
 seal thereof this 21 day of Sept 1838

{ Seal }

J. Wiley & Clerk

And afterwards to wit on the day and
 last aforesaid came the said plaintiff
 atty and filed in said court their declaration
 said cause in words and figures following to wit

State of Illinois }
 County of Henry } ss

Henry Circuit Court
 of the October Term AD 1838

George Richards and Paul A Sweeney Plaintiffs
 in suit by Geo A Hobbs attorney complain
 of John Anderson William Anderson Andrew
 M Anderson Defendants of a plea of trespass
 on the case on promises, for that whereas the
 said Defendant heretofore to wit on or about

the twelfth day of March in the year of our Lord
one thousand eight hundred and fifty seven at
Genesee to wit at said county of Henry made a
certain promissory note in writing bearing date the day and
year aforesaid and then and there delivered the same
to George Richards & Paul A Sweeney in and
by which said note said defendants by the name
style and description of John Anderson W Anderson
& A W Anderson promised to pay to the said
George Richards & Paul A Sweeney by the name of
Richards & Sweeney or bearer one year after
date of said note the sum of two thousand
one dollars & twenty six cents for value
By means whereof and by force of the statute
case made and provided the said defendants
liable to pay said plaintiff said sum of money
mentioned in said note and being so liable
in consideration thereof then and there
undertook and promised to pay the same
to the said plaintiff according to the tenor
and effect of the said note and of the endorse-
ment aforesaid to wit at the place aforesaid

Also for that whereas the said defendants
heretofore to wit on or about the twelfth day of
March in the year of our Lord one thousand
eight hundred and fifty seven at Genesee
to wit at said county of Henry made a
certain promissory note in writing bearing

date the day and year aforesaid and then &
 there delivered the same to George Richards and
 Paul A Sweeney in and by which said notes said
 defendants by the name and style & description of
 John Anderson W Anderson & A M Anderson
 promised to pay to the said George Richards &
 Paul A Sweeney by the name firm and style of
 Richards & Sweeney or bearer Eighteen months after
 date the sum of two thousand & sixty one dollars
 & twenty six cents. By means whereof and by
 force of the statute in such case made and provided
 the said defendant became liable to pay said
 Plaintiff. said sum of money mentioned in said
 note and being so liable in consideration thereof
 and there understood and promised to pay the same
 to the said Plaintiff according to the tenor and
 effect of the said note to wit at the place of payment
 And whereas also the said Defendant appeared
 to wit on the first day of September in the year
 of our Lord one thousand eight hundred and fifty
 eight to wit at said county became and was
 indebted unto the Plaintiff in a large sum of
 money to wit six thousand dollars for money
 before that time lent and advanced to said
 Defendants by said Plaintiffs at said Defendants
 request and also in the like sum for money
 before that time paid laid out and expended for
 said Defendants by the said Plaintiffs at the

like special request of said Defendants and
in the like sum for money before that time
had and received by said Defendants to and for
the use of said Plaintiffs and also in the like sum
for goods wares and merchandise before that time
sold and delivered by said Plaintiffs to said
Defendants at their like special instance
and request and also in the like sum for
the labor care and diligence of said Plaintiff
before that time done and performed by said
Plaintiff for said Defendants and at the
like instance and request of said Defendants
and also in the like sum that and that is due
to be due and owing to said Plaintiff on account
stated between them and being so indebted
said Defendants in consideration thereof and
and there undertook and promised to pay said plain-
tiff said several sums of money above
mentioned when heretofore afterwards re-
quested Yet the said Defendants not ob-
serving their said promises and undertakings but
contriving &c although often requested so to
do have not paid said Plaintiff either of said
sums of money above mentioned or any part
thereof but so to do has hitherto wholly neglected
and refused and still do neglect and refuse
to the damage of said Plaintiffs of six
Thousand dollars and therefore

They bring suit &c

Geo & Hobbs Plaintiffs

Copy of instrument and account due on

" Genesee March 12 1837

\$2061.26 One year after date we jointly
 & severally promise to pay Richards &
 Sweeney or bearer two thousand six
 hundred & one $\frac{26}{100}$ dollars value received

John Anderson

W Anderson

" W Anderson "

Genesee March 12 1837

\$2061.26 Eighteen Months after date
 we jointly & severally promise to pay
 Richards & Sweeney or bearer two thousand
 six hundred & one $\frac{26}{100}$ dollars value received

John Anderson William Anderson & Anderson
 W Anderson

To Richards & Sweeney Dr

To Money lent & advanced \$6000

To Money paid out and expended \$6000

To Money had & rec^d to and for the use of said Plaintiff \$6000

To goods Wares and merchandise sold and delivered \$6000

To labor and services \$6000

To balance due on account stated \$6000

And afterwards to wit on the 24th day of
September 1838, the Sheriff returned into Court
the summons issued as aforesaid, with his
return endorsed thereon in words & figures
following to wit

'I have served the within summons by reading
the same to the within named John Anderson
William Anderson, Andrew M Anderson
this 21st day of September AD 1838

J H Dresser Sheriff of Henry Co Mo
by S A Davison Deputy Sheriff

And afterwards to wit, at the
the court aforesaid, and on the 7th day
thereof the following proceedings
had in said cause to wit

George Richards

Paul A Sweeney

vs

John Anderson

William Anderson

Andrew M Anderson

} Assumpsit

At this day came the said Plain-
tiffs herein by Hobbs & Beardsley their attorneys
and the defendants by E N Gates their attorney
and this cause now coming on to be heard
The defendants by their said attorney
file their demurrer to said Plaintiffs

declarations, which said Demurres is in words & figures following to wit,

" And the said John Anderson William Anderson
 " Andrew M Anderson Defendants in this suit
 " by E N Gates their attorney come and defend
 " the wrong and injury when he and says that the
 " said declaration and the matters therein contained
 " in manner and form as the same are there
 " stated and set forth are not sufficient in law
 " for the Plaintiffs to have or maintain their
 " aforesaid action thereof against the said
 " defendants And that they said defendants
 " are not bound by law to answer the same
 " and this they are ready to verify wherefore
 " for want of a sufficient declaration
 " this behalf the said defendants pray
 " judgment And that the said Plaintiffs
 " may be barred from having, or maintaining,
 " their aforesaid action thereof against them
 " &c

" And the said defendants according to
 " the form of the statute in such case made
 " and provided state and show to the court
 " here the following causes of demurres to the
 " said declaration that is to say that it is
 " not alleged or shown in the said declar-
 " ation or in either of the two Special Counts
 " thereof on what day or at what time the

"defendants were indebted to the plaintiffs or
"promised them as therein alleged nor is it al-
"leged in either of said Special Counts of said
"declaration that either of the supposed notes
"therein declared on was executed on any certain
"day or that they or either of them became
"due on any day certain
"Also for that it is alleged in the said sec-
"ond count of said declaration that the
"said note in writing bearing date on or about
"the twelfth day of March One thousand
"hundred and fifty seven in and by which
"said note said defendants by the name of
"and style and description of John
"W Anderson & C M Anderson pro
"to pay to the said George Richards
"Paul Sweeney by the name firm and
"style of Richards & Sweeney or bearer
"Eighteen months after date the sum of
"two thousand & sixty one dollars and
"twenty six cents. And it is afterwards
"alleged the defendant or defendants on
"the first day of September in the year of our
"Lord one thousand eight hundred and fifty
"eight promised to pay the said sum in said
"note specified. Although the said eighteen
"months from the ^{date of} said note as alleged
"had not expired and consequently said

"not at that time due
" Also that it is stated in the first count of
" said declaration that George Richards and
" Paul A Sweeney Plaintiffs complaining John
" Anderson William Anderson Andrew M
" Anderson defendants &c And yet it is
" afterwards alleged in the same count that
" Whereas the said defendant to wit &c
" And yet again in the same count it
" is alleged by means whereof and by force
" of the statute in such case made and pro-
" vided the said defendant became liable
" to pay said Plaintiff said sum of money
" &c And being so liable that and there
" promised the same to said Plaintiff
" And also for that it is averred and
" in the said second count of said declaration
" that said George Richards and Paul A
" Sweeney are Plaintiffs (using the plural
" number) And also that they are Plaintiff
" (using the singular number) And also
" that the said John Anderson W. Anderson
" And A M Anderson are defendants use-
" ing the plural number number) and
" also that they are defendant (using the
" singular number) And also that it is
" stated and repeated in the common counts
" and in the concluding clause of said

" declaration that the plaintiffs are plain
" tiff and that the defendants are defendant
" And also for that the said declaration is
" in other respects uncertain informal and
" insufficient &c E. V. Gates atty for Defendants
And the Court having heard the demurrer
and the reasons therefor and being now
fully advised herein Orders that said de-
murrer be and the same is hereby overruled

And afterwards to wit on the 14th day of
the term aforesaid, it being the 12th day
of the month of Oct. the following persons
were had in said cause

George Richards	}	Assumpsit
Paul A Sweeney		
vs		
John Anderson		
William Anderson	}	"
Andrew M Anderson		

At this day this cause being
again called for a further hearing And it
appearing to the Court that the defendants
have failed to plead or further demur herein
It is thereupon ordered by the Court that
judgment be rendered in favor of the
plaintiffs and against the defendants
on demurrer for want of plea for the

Amount of their damages herein sustained by reason of the nonperformance by the defendants of their certain promises and undertakings herein lately made. And as those damages are unknown to and not in contemplation by the court, And as this suit was brought on a promissory note for the payment of money only, It is therefore ordered by the court that the clerk assess the damages and report the same to this court. And the clerk having assessed the damages and reported the same at \$3064.44 the same is by the court approved. Wherefore it is considered ordered and adjudged by the court that the plaintiffs have and recover of the defendants the said sum of three thousand six hundred and four dollars and forty four cents damages assessed as aforesaid together with the costs in this behalf expended and that they have execution therefor.

And afterwards to wit at the day last aforesaid comes the said defendants by their attorney and pray an appeal from the judgment of this court to the Supreme court of the State of Illinois, which said prayer is granted by the court and an appeal allowed on the defendants executing and filing their bond herein in

thirty days from the entry of this rule
with Frederick P Brown as security in the
sum of six thousand two hundred dollars

And afterwards to wit on the 18th day
of November AD 1838 came the said defendants
and file their ^{Appeal} Bond in the above cause,
in words & figures following to wit
" Know all men by these presents that we
" John Anderson William Anderson Andrew
" M Anderson and Frederick P Brown of
" the County of Henry and state of Illinois
" are held and firmly bound unto George
" Richards and Paul A Sweeney of the County of
" and State aforesaid in the penal sum
" of Sixty two hundred dollars the payment
" of which well and truly to be made we jointly
" and severally hereby bind ourselves our
" heirs executors and administrators sealed
" with our seals and dated this 17th day of
" November AD 1838
" The condition of the above obligation is
" such that whereas the said John Anderson
" William Anderson And Andrew M Ander
" son have taken an appeal from a certain
" judgment rendered against the said
" John Anderson William Anderson and
" Andrew M Anderson for the sum of

"Three thousand and sixty four dollars and
 "forty four cents damages and costs of suit
 "by the Circuit Court within and for the County
 "of Henry and State of Illinois on the nineteenth
 "day of October AD 1838 to the Supreme Court
 "Now if the said John Anderson William
 "Anderson and Andrew Mc Anderson shall
 "pay the said Judgment costs and costs
 "that may accrue interest and damages
 "in case the said Judgment of the said Circuit
 "Court shall be affirmed by the Supreme
 "Court and shall also duly prosecute their
 "said appeal then the above obligation shall
 "be void otherwise in full force in law
 "Allest } "John Anderson
 "James Anderson } "William Anderson
 "A M Anderson
 "Frederick P Brown

State of Illinois }
 Henry County } ss J. Thomas Wiley & clerk
 of the Circuit Court for said county do
 hereby certify that the foregoing is a true &
 correct transcript of the proceedings in
 the above entitled cause, and also of
 the judgment, as appears from the record
 and files in my office. Given under my
 hand and seal of court at Cambridge this
 13th day of April AD 1839,

J. Wiley & clk
 By Mc Darynple Dep.

State of Illinois - Supreme Court
3rd Grand Division

April term 1859.

John Anderson } appellants

William Anderson & }

Andrew M. Anderson }

vs

George Richards & } appellees.

Paul A. Sweeney }

Appeal from Henry.

And now come the said
appellants by W. H. Wallace
Jas Smith their counsel
state and show to the court
in the record and judgment
aforesaid, there is manifest
error in this, to wit

First - The court below erred in overruling
appellants demurrer to the
declaration -

Second - The court below erred in not
sustaining appellants demurrer to
the declaration and to each
count thereof

Third - The court erred in rendering
the judgment aforesaid in
manner and form aforesaid

Wherefore for these errors and
others apparent on the face

if said record appellants say
that said judgment may be
reversed &c

W H Wallace
& Wm Smith
Council for appellants.

And now come the said Appellants
by Cook their Atty and say that
in the record & judgment aforesaid
there is no error

R. B. Cook
Counsel pro Appellants

272

John Dickinson et al

vs

George Richards et al

Appellants from

Worcester, Mass

~~Record & Judgment~~

Filed April 21. 1859

at the Court
House

Henry at Court

Clerk of Record

John Dickinson et al

vs
George Richards et al

John Anderson & al
appellants
vs
Geo. Richards & al
appellees

In the Sup. Court
at Ottawa Apl.
Term Apr. 1859.

Brudley & Smith
for Appellees,

All the question arising in
this case is presented by the
denumer of the defendant
below, to the plaintiffs decla-
ration -

The denumer is to the
whole declaration, alleging
"that the declaration and the
matters therein contained, in
manner & form &c are not
sufficient"; &c; followed by
an assignment of special
counts of denumer -

The declaration contains
two special counts, and the
common counts in the usual
form, and the only objection
urged to the entire declaration,
is, that the words "plaintiff" and
"plaintiffs"; "defendant" and "defendants,"

are used as description of the parties plaintiffs and defendant, in some instances in the several counts of the declaration - In no instance however in the words plaintiffs or plaintiff, defendant or defendants, applied to the wrong party - The complaint is that the singular number has ^{sometimes} been employed when the plural should have been -

We look upon the objection as frivolous, and unworthy of serious attention, but we take leave to refer the court to, Long & al. vs. Sutton, 4. Moore & Scott, 417. Same Case 30. Conn. Law, 353.

The demurrer being to the whole declaration, if any of the counts are good, it should be overruled - Such has been the determination of this court in repeated instances -

We think the Special counts in the declaration are not obnoxious to demurrer, as will appear to the court upon inspection of the record -

We claim also that an inspection of the record will convince the court that this appeal has been taken for delay, and that the appellants are entitled to damages for such delay.

272 - 207
Appellus Prich
John Anderson + ab

G. Richards ⁹ + ab

Filed May 14, 1839
L. Leland
Clerk

John Anderson & al. } In the Supreme
 vs } Court at Ottawa
 or } Sp. Term A.D. 1859
 Geo. Rickover & al }
 appellants }
 Respondents & Smith
 for appellants -

All the question arising in
 this case is presented by the
 demurrer of the defendant below
 to the plaintiffs declaration -

The demurrer is to the entire
 declaration, alleging "That the
 said declaration and the matters
 therein contained, in manner
 and form, &c, are not sufficient";
 & followed by an assignment of
 special causes of demurrer.

The declaration contains
 two special counts, and the
 common counts in the ordinary
 form, and the only objection
 urged to the entire declaration is
 that the words "plaintiffs" and
 "plaintiffs"; "defendant" and "defendants";
 are used as description of the
 parties plaintiff and defendant,

in some instances in the several
counts of the declaration - In no
instance however is the word
Plaintiffs or Plaintiffs, Defendant
or Defendants, applied to the
wrong party - The complaint is
that the singular number has
sometimes been employed, when the plural
should have been -

We look upon the objection
as frivolous, and unworthy of
notice; but we take leave to
refer the Court to,

Long & al vs Sutton 4,
Moore & Scott 417
S. C. 30th Conn. Law 353.

The demurrer being to the whole
declaration, if any of the counts
are good, it should be overruled.
Such has been the determination of
this court in repeated instances -

We think the Special Counts
in the declaration are not exposed
to demurrer, as will appear to the
Court upon inspection of the
record -

We claim also that an
inspection of the record will

will convince the Court, that
this appeal has been taken
for delay, and that the
appellants are entitled to damages
for such delay.

John Anderson
G. Richardson

Filed May 14, 1839
L. Leburn
Clerk

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

JOHN ANDERSON,
WILLIAM ANDERSON, &
ANDREW M. ANDERSON,
vs.
GEORGE RICHARDS and
PAUL A. SWEENEY.

Appeal from Henry.

ABSTRACT.

1 X This was an action of assumpsit commenced by appellees against the appellants, at the October term, 1858, of the Henry County Circuit Court.

The declaration is as follows :

2 X State of Illinois, } *Henry Circuit Court, of the October term,*
County of Henry. } *A. D., 1858.*

3 George Richards and Paul A. Sweeney, plaintiffs, in suit, by Geo. A. Hobbs, attorney, complain of John Anderson, William Anderson, Andrew M. Anderson, defendants of a plea of trespass on the case on promises. X For that whereas the said *defendant* heretofore, to wit: on or about the twelfth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, at Geneseo, to wit: at said county of Henry, made a certain promisory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to George Richards and Paul A. Sweeney, in and by which said note said defendants by the name, style and description of John Anderson, W. Anderson, and A. M. Anderson, promised to pay to the said George Richards, and Paul A. Sweeney, by the name of Richards & Sweeney or bearer, one year after date, of said note, the sum of two thousand sixty-one dollars and twenty-six cents for value received. By means whereof and by force of the Statute in such case made and provided the said *defendant* became liable to pay said *plaintiff* said sum of money mentioned in said note, and being so liable in consideration thereof, then and there undertook and promised to pay the same to the said *plaintiff* according to the tenor and effect of the said note and of the endorsement aforesaid, to wit: at the place aforesaid, also for that whereas the said defendants heretofore, to wit: on or about the twelfth day of March, in the year of our Lord, one thousand eight hundred and fifty-seven, at Geneseo, to wit: at said county of Henry, made a certain promisory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to George Richards and Paul A. Sweeney, in and by which said notes said defendants by the name and style and description of John Anderson, W. Anderson, and A. M. Anderson, promised to pay to the said George

Richards and Paul A. Sweeney, by the name firm and style of Richards & Sweeney or bearer, eighteen months after date, the sum of two thousand and sixty-one dollars and twenty-six cents, by means whereof and by force of the statute in such case made and provided, the said *defendant* became liable to pay said *plaintiff* said sum of money mentioned in said note, and being so liable in consideration thereof, then and there undertook and promised to pay the same to the said *plaintiff*, according to the tenor and effect of the said note, to wit: at the place aforesaid) and whereas, also the said *defendant* afterwards to wit: on the first day of September, in the year of our Lord, one thousand eight hundred and fifty-eight, to wit: at said county became and was indebted unto the *plaintiff* in a large sum of money, to wit: six thousand dollars for money before that time lent and advanced to said defendants by said plaintiffs, at said defendants' request, and also in the like sum for money before that time paid, laid out and expended for said defendants, by the said plaintiffs, at the like special request of said defendants, and in the like sum for money before that time had and received by said defendants to and for the use of said plaintiffs, and also in the like sum for goods, wares and merchandise before that time sold and delivered by said plaintiffs to said defendants, at their like special instance and request, and also in the like sum for the labor, care and diligence of said plaintiffs, before that time done and performed by said *plaintiff* for said defendants, and at the like instance and request of said defendants. And also in the like sum, then and there found to be due and owing to said *plaintiff*, on an account stated between them, and being so indebted, said defendants in consideration, thereof then and there undertook and promised to pay said *plaintiff* said several sums of money above mentioned, when thereunto afterwards requested. Yet the said defendants not regarding their said promises and undertakings, but contriving &c., although often requested so to do, have not paid said *plaintiff* either of said sums of money above mentioned, or any part thereof; but so to do has hitherto wholly neglected and refused, and still do neglect and refuse to the damage of said plaintiffs of six thousand dollars, and therefore they bring suit, &c.

GEO. A. HOBBS,
Plaintiffs' Attorney.

Copy of instruments and account sued on.

Geneseo, March 12, 1857.

(\$2,061 26.)

One year after date, we jointly and severally promise to pay Richards & Sweeney or bearer, two thousand sixty-one and 26-100 dollars, value received.

JOHN ANDERSON.
W. ANDERSON.
A. M. ANDERSON.

Geneseo, March 12, 1857.

(\$2,061 26.) Eighteen months after date, we jointly and severally promise to pay Richards & Sweeney or bearer, two thousand sixty-one and 26-100 dollars, value received.

John Anderson, William Anderson and Andrew M. Anderson,

To Richards & Sweeney, Dr.

To money lent and advanced,-----	\$6,000
" money paid, laid out and expended,-----	\$6,000
" money had and received to and for the use of said plaintiffs,---	\$6,000
" goods, wares and merchandise sold and delivered,-----	\$6,000

" labor and services,-----\$6,000
 " balance due on account stated,-----\$6,000

page

8

At the aforesaid October Term of Henry County Circuit Court, the defendants by E. N. Gates, their attorney, filed a general demurrer to the plaintiffs said declaration, and set out the following special causes, to wit:

page

9

That it is not alleged or shown in the said declaration or in either of the two special counts thereof, on what day or at what time the defendants were indebted to the plaintiffs or promised them as therein alleged, nor is it alleged in either of said special counts of said declaration that either of the supposed notes therein declared, or was executed on any certain day or that they or either of them became due on any day certain.

Also for that it is alleged in the said second count of said declaration, that the said note in writing, bearing date on or about the twelfth day of March, one thousand eight hundred and fifty-seven, in and by which said note, said defendants, by the name and style and description of John Anderson, W. Anderson, and A. M. Anderson, promised to pay to the said George Richards and Paul Sweeney, by the name firm and style of Richards & Sweeney, or bearer, eighteen months after date the sum of two thousand and sixty-one dollars and twenty-six cents. And it is afterwards alleged the defendant or defendants, on the first day of September in the year of our Lord, one thousand eight hundred and fifty-eight, promised to pay the said sum in said note specified. Although the said eighteen months from the date of said note as alleged, had not expired and consequently said note not at that time due.

page

10

Also, that it is stated in the first count of said declaration, that George Richards and Paul A. Sweeney, plaintiffs, complain of John Anderson, William Anderson, Andrew M. Anderson, defendants, &c.; and yet it is afterwards alleged in the same count that, whereas the said defendant to wit, &c.

And yet again in the same count it is alleged by means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money &c., and being so liable, then and there promised the same to said plaintiff, &c.

page

11

And also for that it is averred and stated in the second count of said declaration that said George Richards and Paul A. Sweeney are plaintiffs (using the plural number), and also that they plaintiff, (using the singular number,) and also that the said John Anderson, W. Anderson and A. M. Anderson, are defendants, (using the plural number,) and also that they are defendant, (using the singular number,) and also that it is stated and repeated in the common counts, and in the concluding clause of said declaration, that the plaintiffs are plaintiff, and that the defendants are defendant. And also for that the said declaration is in other respects uncertain, informal and insufficient, &c.

E. N. GATES,
 Attorney for Defendants.

12

And the court having heard the demurrer, and the reasons thereof, ordered that the said demurrer be overruled.

And the appellants abided by the demurrer.

The Court rendered judgment against the appellants and ordered the clerk to assess.

13

The clerk having assessed the damages and reported the same at \$3,064 44,

The court rendered judgment against said appellants for the sum of three thousand sixty-four dollars and forty-four cents, damages, together with the costs, from which judgment the appellants appealed.

ERRORS ASSIGNED.

That the court erred in overruling appellants demurrer to the declaration.

That the court erred in rendering judgment against appellants.

W. H. L. WALLACE and Wm. SMITH,
Counsel for Appellants.

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

JOHN ANDERSON *et al.* }
 vs. } *Appeal from Henry.*
GEORGE RICHARDS *et al.* }

POINTS FOR APPELLANTS.

The demurrer (which is general and special) ought to have been sustained—

1st. Because in each of the counts of the declaration it is alleged that *defendant* promised, when more than one are sued, and that the promise was made to *plaintiff*, when more than one sue.

Chitty on Pleading, vol. 1st, page 256.

3. Dowl., page 2.

2nd. Because in neither of the special counts is there any specific allegation of a *time* when the promise was made. "On or about" is not sufficient. All the authorities on pleading require the *allegation* of a time certain, though it need not always be proven as laid.

Chitty on Pleading, vol. 1 page 256 and 257;

10 Modern Reports, 313;

5 Barber S. C. Report, 375;

4 Denio " 80;

2 Kelley, 92;

Stephen's Pleadings, 290.

Journal 11 90. 200 67

3d. The special counts on the notes are each defective, in not alleging that the notes were due at the commencement of the suit. By the description of the notes given in these counts, one was payable a year and the other eighteen months after date, and there is no allegation in either of the counts that the "period had elapsed."

Chitty's Pleadings 1, 320.

The time when they were made is alleged, under a *videlicet*, to have been "on or about" a certain day; so that if this court were disposed to go into a computation to ascertain whether the notes were due, they could not do so, as no *certain time* is alleged from which to commence the computation.

27 May 1859
Endless

no

Richards & Co
Abstract & Brief of
Appellants

Filed May 12. 1859
L. Leland
Clerk

Witness, all men by these presents that we
John Anderson William Anderson Andrew
M. Anderson and Frederick P Brown
of the county of Henry in the state of Illinois
are held and firmly bound unto George Rich-
ards and Paul A Sweeney of the county
and state aforesaid in the penal sum of
six thousand and two hundred dollars law-
ful money to the payment of which sum
well and truly to be made we do bind our
selves our heirs executors and administra-
tors jointly and severally ^{firmly} by these presents
witness our hands and seals this
seventh day of May A.D. 1839.

The condition of the above obligation
is such that whereas the said George
Richards and Paul A Sweeney did at
the October term A.D. 1838 of the Circuit
court of said county by the consideration
and judgment of said court recover a
judgment against the above bounden
John Anderson William Anderson and
Andrew M Anderson for the sum of three
thousand and sixty four dollars and
forty four cents besides costs from which
judgment the said John Anderson William
Anderson and Andrew M Anderson
prayed an appeal to the Supreme court of
said state and gave bond thereon and
presented said appeal in said Supreme
court and whereas said Supreme
court did at the April term thereof

AD 1839 adjudge said bond to be in
sufficient and required an amended
appeal bond to be filed in said cause
now of the said John Anderson William
Anderson and Andrew McAnderson
shall pay the said judgment costs in
interest and damages in case said judg-
ment shall be affirmed and shall
duly prosecute said appeal. When the
above obligation shall be void otherwise
to be and remain of full force and effect

John Anderson *Ed*

W Anderson *Ed*

A McAnderson *Ed*

Fredrick P Brown *Ed*

State of Illinois

Heery County } I Thomas Wiley & clerk
clerk of the circuit court of said county
do hereby certify that the foregoing is a
true and correct copy of an amended
appeal bond filed this day in my office
in the case of George Richards & Paul, A
Sweeney vs John Anderson Wm Anderson &
A McAnderson in an appeal to the
Supreme court of said State

Witness Thomas Wiley & clerk of said
court and the seal thereof at Cambridge
this 11th day of May AD 1839

Thomas Wiley & clk.

By Wm L. Dalrymple
Deputy

Supreme court - 3rd Grand Division - April 7, 1859

John Anderson et al
vs
George Richards et al } Appeal from Henry.

Additional points for appellants

The demurrer in this case is general and special, and the special causes set out in the demurrer challenge each of the counts and points out defects in each of the counts of the declaration. An examination of the demurrer on page 9 of the record will show that although the demurrer is not perhaps drawn with as much legal precision as might have been employed, yet it is substantially a demurrer to each count of the declaration and special points defects in each of the counts -

This being the case, if there is a single defective count then it was error to overrule the demurrer -

We insist that not only was there one defective count

in the declaration, but that each
and all of the counts were
defective when brought to the
test of a special demurrer.

The first special count is
defective in these particulars
1st After the statement of the
parties to the suit, showing that
there were two plaintiffs and
three defendants, the count
alleges that defendant (in
the singular) made the promise
without showing that the parties
sued, or which of them had
promised. And this same defect

~~2nd This count~~ appears after
wards in the same count in
the statement of the liability
as the consideration for
the super se assumption, and
in the statement of the promise
which is the gist of the action.

2nd This first count also after
showing that two plaintiffs sue,
alleges a liability and promise
to "the plaintiff (in the singular)"
without stating any where a
liability or promise to the persons
who sue. / Chitty on pldg. 256.

3rd This count does not
allege any certain time when
the note was made and delivered

It says "on or about the 12 day of March" &c - and this is alleged under a videlicet - and every date in this count has reference to this date thus alleged - All the authorities on pleading require certainty in the allegation of time - 1 Chitty 256-7 and the authorities cited on the printed brief -

4th This first count does not show that the note on which it is founded was due at the time the suit was commenced. It is alleged that the note was payable one year after date - but the date is no where positively alleged, and there is no allegation that the year had elapsed -

The second special count ~~is~~ is open to the same objections above stated in regard to the first count - a promise by defendant (in the singular) to pay plaintiff (in the singular) - note made on or about the 12 March - payable sixteen months after date & no allegation that it was due, or that the sixteen months had elapsed -

The common counts are also each and all liable to the same objection already pointed out as applicable to the special counts - they allege that defendant (in the singular) was indebted to plaintiff (in the singular) and promised to pay plaintiff (in the singular)

The authorities cited in appellants printed brief attached to the abstract show that each and all of these objections are well taken, especially when raised by special demurrer as was done in this case - and consequently no one of the counts of the declaration were good -

It is suggested by appellers counsel that these objections are technical and frivolous. I admit that they ^{some of them} are technical but deny that ^{any of them} ~~they~~ are frivolous. If there is any propriety ^{in force} in the rules of pleading which have been established and have received

the sanction of the greatest legal minds during hundreds of years than this declaration, tested as it is in this case, by a special demurrer, must fall to the ground. The charge of frivolity is evidently a flourish of the counsel, ^{intended} to ~~to~~ distract the attention from the little defects of his pleading, and betrays a consciousness on his part of the force of the objections.

But the objections ~~in regard~~ to the special counts in regard to the notes, and the want of any allegation showing that they were due, I submit ~~are~~ not even technical - but ^{are} meritorious. Surely in these times of pecuniary tightness it is hard enough for a man to be sued on notes already due, without being compelled to pay notes which for aught that appears are not yet due.

N H Wallace
counsel for appellants

1. Because in the condition of the bond filed herein in the Court below, by said appellants, as and for an appeal bond, it is not recited or mentioned that the said appellants had recovered a judgment against said appellants, nor is it a condition of said bond that said appellants shall pay the judgment interest costs and damages in case the judgment of the Court below shall be affirmed, inasmuch as no mention is made therein of any judgment recovered by these appellants against said appellants -

2 Because no sufficient appeal bond was filed by said appellants in the Court below -

Reedley & Smith
Atty for Appellants

272

John Anderson & al

7

G. Richards & al

Motion to dismiss
Appeal

Filed April 23 1837

Leland
clerk

State of Illinois In the Supreme
Third Grand Division Court in & for
the Decisions and State of Missouri
at the Apl. Term thereof, at St. Louis,
John Anderson & co

A.D. 1859

Appellants

^{vs}
George Richards & al
Appellees

And now comes
the said Appellants in the above
entitled suit by Pearson & Smith
their Attorneys, and move said
Court to dismiss the appeal
herein for the following reasons: