

13225

No. 13225

Supreme Court of Illinois

Evans

vs.

Edwards

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

13225
No. 124.

Engel
vs
Edwards

Prepared

United States of America
State of Illinois
Sangamon County

At a regular term
of the Sangamon County Court began and held
at the Court House in Pontiac in said County on
Monday the 7th Day of December 1857

Present Hon Henry Jones Judge
J. S. Saul Esq Clerk
J. W. Remick Sheriff

Court opened by proclamation

Tuesday December 15th A.D. 1857

Benjamin A Evans

vs

Action of Debt

Almon J Smothery &

Amos Edwards

And now this day comes
the plaintiff by C. J. Beattie his Attorney also
come the Defendants by their Attorneys and the
Defendant files herein his Answer to the
Plaintiffs Declaration and the matter of Law arising
being heard by the Court it is Ordered by the Court
that the Answer be sustained And now again
comes the plaintiff by his Attorney and files his
Exceptions herein to the ruling of the Court and it
is further Ordered by the Court that the Defendants
have and receive from the Plaintiff his proper costs
and charges in this behalf and that they have Execution
therefor

At a Regular Term of the Springston County
Court began and held at the Court House in Pontiac
in said County on Monday the first day of March A.D.
1858 sitting for the transaction of judicial business

Present Henry Jones County Judge
Samuel J. Saul " Clerk
J. W. Remick Sheriff

Court opened by proclamation

Benjamin J. Evans

vs

Action of Debt

Almon Summerville

Amos Edwards

On this day comes the Plaintiff
by his Attorney C. J. Beattie and is appearing by
Affidavit of the Clerk of this Court filed herewith
by the said Plaintiffs Attorney that the declaration
filed herein has been lost on motion of the said
Attorney It is ordered that he be allowed to file
with the papers in this case a copy of said declaration

At a Regular Term of the Springston County Court
began and held at the Court House in Pontiac
in said County on Monday the second day of December
A.D. 1858

Present Hon. Jonathan Duff County Judge
R. B. Harrington Esq County Clerk
C. R. Meekles Esq Sheriff

Court opened by proclamation

Thurs Day December 5th 1861
B. J. Evans vs Action of Debt
Almon J. Samsberry &
Amos Edwards

On this day comes the plain-
tiff by C. J. Beattie Esq his Attorney upon the writ
from the Supreme Court reversing the prior Judgment
in this Cause and it appearing to the Court that
there is an amount of Debt and Damages due unknown
to the Court It is Ordered that the Clerk make an
assessment thereof And now the Clerk having
made an assessment thereof in writing to the Plaintiff
of Jns Amos and Jnty Six Dollars and Eighty Six
cents Debt & Sixty Three Dollars & Jnty one cents
Damages Ordered by the Court that the said assessment
be affirmed & it is Ordered by the Court that Judgment
be entered against the said Defendants upon the
Demurrer for the said sum of Jns Amos & Jnty
Six Dollars & Eighty Six cents Debt & Sixty
Three Dollars and Jnty one cents Damages and
Costs of Suit herein and further Ordered that
Execution issue therefor

State of Illinois
Sangamon County J. R. B. Harrington Clerk of the
County Court in & for said County do hereby certify that the
 foregoing is a true and correct Transcript of the Record in
said Cause as the same appears in my office

Witness my hand and official Seal this 7th
Day of January 1862 J. R. B. Harrington Clk
B. J. Samsberry

Evans

8^o

Scunoberry
wings to me

And now comes the said Defendant by
Glover Cook Campbell their attorneys
and say, that in the Record and proceedings
aforesaid, and in the rendition of judgment
as aforesaid there is manifest error in this
to wit;

- 1st The Court erred in allowing copy of declaration
to be filed, and allowing this cause to be
tried without any declaration -
- 2^d The Court erred in not allowing Plaintiff no error
to plead
- 3^d The Court erred in ordering the Clerk to assess
the damages in this cause,
- 4th The Court erred in rendering the judgment in
manner and form aforesaid -

Glover Cook Campbell
Att for Pltff no error

Let a superceding issue. Bond \$500.
Surety Pely Edwards
January 29. 1862
J. Blanton

John Edwards
in pl. of \$500

107
Barnes
Benjamin F. Edwards

Transcript of Record

Filed January 30th 1862
J. L. Edwards
J. L. Edwards

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

BENJAMIN F. EVANS, Plff. in Error,
vs.
AMOS EDWARDS, impleaded with
ALMON J. LOUNSBURY, Deft. in Error. } *Error to Livingston
County Court.*

ABSTRACT OF RECCRD.

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Præcipe filed Nov. 12, 1857, and summons issued same day.

3 Summons served on said Edwards on the 17th day of Nov., 1857; Lounsbury not served.

The declaration was filed on the 26th day of Nov., 1857, and is in the words and figures following, to wit:

STATE OF ILLINOIS, } *ss.* In the County Court thereof, of the
LIVINGSTON COUNTY. } December Term, A. D. 1857.

BENJAMIN F. EVANS
vs.
ALMON J. LOUNSBURY and } *Action of Debt.*
AMOS EDWARDS. }

Benjamin F. Evans, the plaintiff in this suit, by C. J. Beattie, his attorney, complains of Almon J. Lounsbury and Amos Edwards, the defendants in this suit, in a plea that the said defendants render to the said plaintiff the sum of two hundred and forty-eight dollars and eighty-six cents, which they owe to and unjustly detain from him. For that whereas the said defendants, heretofore, to wit: on the third day of August, in the year of our Lord one thousand eight hundred and fifty-seven, at the County of Livingston and State of Illinois, by their certain writing obligatory, sealed with their seals, and now shown to the Court here, the date whereof is the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiff in the sum of two hundred and forty-eight dollars and eighty-six cents, above demanded to be paid to the said plaintiff. And the said plaintiff according to the form of the Statute in such case made and provided says that the said writing obligatory was and is subject to certain conditions thereunder written whereby it is provided, That the condition of the above obligation is such that whereas the above bounden A. J. Lounsbury and the aforesaid B. F. Evans did on the 21st day of July, 1857, buy of one Geo. W. King, of La Salle, in the State of Illinois, jointly a stock of

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CHARLES J. BEATTIE,
Attorney for Plaintiff.

Copy of the Writing Obligatory.

Know all men by these presents, that we, Almon J. Lounsbury and Amos Edwards, of the county of Livingston and state of Illinois, are held and firmly bound unto Benjamin F. Evans, of the county and state aforesaid, in the sum of two hundred and forty-eight dollars and eighty-six cents, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs and executors, jointly, severally, and firmly by these presents. Witness our hands and seals, this 3d day of August, A. D. 1857.

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CHARLES J. BEATTIE,
Attorney for Plaintiff.

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Know all men by these presents, that we, Almon J. Lounsbury and Amos Edwards, of the county of Livingston and state of Illinois, are held and firmly bound unto Benjamin F. Evans, of the county and state aforesaid, in the sum of two hundred and forty-eight dollars and eighty-six cents, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs and executors, jointly, severally, and firmly by these presents. Witness our hands and seals, this 3d day of August, A. D. 1857.

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The condition of the above obligation is such, that, whereas the above bounden A. J. Lounsbury and the aforesaid B. F. Evans did, on the 21st day of July, 1857, buy of one Geo. W. King, of La Salle, in the state of Illinois, jointly, a stock of groceries to the amount of three hundred and forty-eight and 86-100 dollars, two hundred and forty-eight and 86-100 dollars of which amount yet remain unpaid, and for the payment of which remaining amount the said Lounsbury and Evans are jointly bound, and the said Lounsbury having bought of the said Evans his interest in the said goods, agreeing therefor to pay to the said Geo. W. King the whole amount of the said two hundred and forty-eight and 86-100 dollars, at the time it falls due. Now, therefore, if the said A. J. Lounsbury shall well and truly pay, or cause to be paid, to the said Geo. W. King the sum of two hundred and forty-eight and eighty-six cents, as follows: one hundred and twenty-four and 43-100 dollars on the 21st day of August, 1857, and the remaining sum of one hundred and twenty-four and 43-100 dollars on the 21st day of September, 1857, so as to relieve the said B. F. Evans entirely from the liability to pay the same, then this obligation to be void, otherwise to remain in full force and effect.

A. J. LOUNSBURY, [SEAL.]
AMOS EDWARDS. [SEAL.]

9, 10, 11, 12,
13

At the said December Term the said defendant, Amos Edwards, appeared and filed a general demurrer to plaintiff's declarations, which demurrer was sustained by the Court and judgment rendered against said plaintiff for cost.

O. R. POWERS,
Plaintiff's Attorney.

BRIEF FOR PLAINTIFF IN ERROR.

1. The declaration is warranted by all the books on pleading.
2. And by all the precedents in such cases.
3. It only shows that a Court and counsel have been found, who think that a declaration on a bond, duly signed and sealed, ought to show a consideration other than that which appears upon the face of the instrument.
4. There is nothing to sustain the judgment given by the Court below, and the same ought to be reversed.

CHARLES C. BONNEY,
Of Counsel for Plaintiff.

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Evans
vs

Edwards
vs

Abstract & Brief
vs

Filed May 1st 1861

L. Leland

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

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CHARLES J. BEATTIE,
Attorney for Plaintiff.

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A. J. LOUNSBURY, [SEAL.]
AMOS EDWARDS. [SEAL.]

9, 10, 11, 12, 13 At the said December Term the said defendant, Amos Edwards, appeared and filed a general demurrer to plaintiff's declarations, which demurrer was sustained by the Court and judgment rendered against said plaintiff for cost.

O. R. POWERS,
Plaintiff's Attorney.

BRIEF FOR PLAINTIFF IN ERROR.

1. The declaration is warranted by all the books on pleading.
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CHARLES C. BONNEY,
Of Counsel for Plaintiff.

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Evans
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Abstracts & Briefs-

Filed Apr. May 1st 1861

L. Leband
Clerk-

PAGE OF REC. 4 groceries to the amount of three hundred and forty-eight and 86-100 dollars, two hundred and forty-eight and 86-100 dollars of which amount yet remains unpaid, and for the payment of which remaining amount the said Lounsbury and Evans are jointly bound, and the said Lounsbury having bought of the said Evans his interest in the said goods, agreeing therefor to pay to the said Geo. W. King the whole amount of the said two hundred and forty-eight and 86-100 dollars at the time it fell due. Now therefore if the said A. J. Lounsbury shall well and truly pay, or cause to be paid, to the said Geo. W. King the sum of two hundred and forty-eight dollars and eighty-six cents, as follows: One hundred and twenty-four and 43-100 dollars on the 21st day of August, 1857, and the remaining sum of one hundred and twenty-four and 43-100 dollars on the 21st day of September, 1857, so as to relieve the said B. F. Evans entirely from any liability to pay the same, then this obligation to be void, otherwise to remain in full force and effect. Nevertheless the said plaintiff in fact says that after making the said writing obligatory, to wit: on the day and year aforesaid, at the place aforesaid, the said Almon J. Lounsbury did not pay to the said Geo. W. King the said sum of two hundred and forty-eight dollars and eighty-six cents, mentioned in the said condition of the writing obligatory, at the time that it became due, nor any part thereof, but to do the same hath hitherto wholly refused and still doth refuse; and the said plaintiff for assigning a further breach of the said condition of the said writing obligatory, according to the form of the Statute in such case made and provided, further says that the said A. J. Lounsbury did not pay the said sum of one hundred and twenty-four dollars and forty-three cents mentioned in the said condition of the said writing obligatory, to the said Geo. W. King, on the 21st day of August, in the year of our Lord one thousand eight hundred and fifty-seven, nor any part thereof, but so to do hath hitherto wholly refused, and still doth refuse. And the said plaintiff for assigning a further breach of the said condition of the said writing obligatory, further says, that the said A. J. Lounsbury did not pay the said other sum of one hundred and twenty-four dollars and forty-three cents, mentioned in the said condition of the said writing obligatory to the said Geo. W. King on the twenty-first day of September, in the year of our Lord one thousand eight hundred and fifty-seven, but to do so hath hitherto wholly refused and still doth refuse. And the said plaintiff in fact says that he has not been relieved from the said liability, but that he has paid the said sum of two hundred and forty-eight dollars and eighty-six cents to the said Geo. W. King. By means of which said several premises an action hath accrued to the said plaintiff to demand and have of the said defendants the sum of two hundred and forty-eight dollars and eighty-six cents above demanded. Yet the said defendants, although often requested so to do, have not as yet paid the said sum of two hundred and forty-eight dollars and eighty-six cents above demanded or any part thereof to the said plaintiff, but to do so have hitherto wholly refused, and still do refuse, to the damage of the said plaintiff, of three hundred dollars, and therefore he brings this suit, &c.

CHARLES J. BEATTIE,
Attorney for Plaintiff.

Copy of the Writing Obligatory.

Know all men by these presents, that we, Almon J. Lounsbury and Amos Edwards, of the county of Livingston and state of Illinois, are held and firmly bound unto Benjamin F. Evans, of the county and state aforesaid, in the sum of two hundred and forty-eight dollars and eighty-six cents, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs and executors, jointly, severally, and firmly by these presents. Witness our hands and seals, this 3d day of August, A. D. 1857.

PAGE OF REC.

The condition of the above obligation is such, that, whereas the above bounden A. J. Lounsbury and the aforesaid B. F. Evans did, on the 21st day of July, 1857, buy of one Geo. W. King, of La Salle, in the state of Illinois, jointly, a stock of groceries to the amount of three hundred and forty-eight and 86-100 dollars, two hundred and forty-eight and 86-100 dollars of which amount yet remain unpaid, and for the payment of which remaining amount the said Lounsbury and Evans are jointly bound, and the said Lounsbury having bought of the said Evans his interest in the said goods, agreeing therefor to pay to the said Geo. W. King the whole amount of the said two hundred and forty-eight and 86-100 dollars, at the time it falls due. Now, therefore, if the said A. J. Lounsbury shall well and truly pay, or cause to be paid, to the said Geo. W. King the sum of two hundred and forty-eight and eighty-six cents, as follows: one hundred and twenty-four and 43-100 dollars on the 21st day of August, 1857, and the remaining sum of one hundred and twenty-four and 43-100 dollars on the 21st day of September, 1857, so as to relieve the said B. F. Evans entirely from the liability to pay the same, then this obligation to be void, otherwise to remain in full force and effect.

A. J. LOUNSBURY, [SEAL.]
AMOS EDWARDS. [SEAL.]

9, 10, 11, 12,
13

At the said December Term the said defendant, Amos Edwards, appeared and filed a general demurrer to plaintiff's declarations, which demurrer was sustained by the Court and judgment rendered against said plaintiff for cost.

O. R. POWERS,
Plaintiff's Attorney.

BRIEF FOR PLAINTIFF IN ERROR.

1. The declaration is warranted by all the books on pleading.
2. And by all the precedents in such cases.
3. It only shows that a Court and counsel have been found, who think that a declaration on a bond, duly signed and sealed, ought to show a consideration other than that which appears upon the face of the instrument.
4. There is nothing to sustain the judgment given by the Court below, and the same ought to be reversed.

CHARLES C. BONNEY,
Of Counsel for Plaintiff.

PAGE OF REC.

The condition of the above obligation is such, that, whereas the above bounden A. J. Lounsbury and the aforesaid B. F. Evans did, on the 21st day of July, 1857, buy of one Geo. W. King, of La Salle, in the state of Illinois, jointly, a stock of groceries to the amount of three hundred and forty-eight and 86-100 dollars, two hundred and forty-eight and 86-100 dollars of which amount yet remain unpaid, and for the payment of which remaining amount the said Lounsbury and Evans are jointly bound, and the said Lounsbury having bought of the said Evans his interest in the said goods, agreeing therefor to pay to the said Geo. W. King the whole amount of the said two hundred and forty-eight and 86-100 dollars, at the time it falls due. Now, therefore, if the said A. J. Lounsbury shall well and truly pay, or cause to be paid, to the said Geo. W. King the sum of two hundred and forty-eight and eighty-six cents, as follows: one hundred and twenty-four and 43-100 dollars on the 21st day of August, 1857, and the remaining sum of one hundred and twenty-four and 43-100 dollars on the 21st day of September, 1857, so as to relieve the said B. F. Evans entirely from the liability to pay the same, then this obligation to be void, otherwise to remain in full force and effect.

A. J. LOUNSBURY, [SEAL.]
AMOS EDWARDS. [SEAL.]

9, 10, 11, 12, At the said December Term the said defendant, Amos Edwards, appeared and filed a general demurrer to plaintiff's declarations, which
13 demurrer was sustained by the Court and judgment rendered against said plaintiff for cost.

O. R. POWERS,
Plaintiff's Attorney.

BRIEF FOR PLAINTIFF IN ERROR.

1. The declaration is warranted by all the books on pleading.
2. And by all the precedents in such cases.
3. It only shows that a Court and counsel have been found, who think that a declaration on a bond, duly signed and sealed, ought to show a consideration other than that which appears upon the face of the instrument.
4. There is nothing to sustain the judgment given by the Court below, and the same ought to be reversed.

CHARLES C. BONNEY,
Of Counsel for Plaintiff.

124

Evans
vs

Edwards

Abstract & Brief

Filed May 1st 1861
L. Ireland
Clerk

Know all Men by these Presents, That We

Amos Edwards

as principal, and

Pelley

Edwards

as security, are held and firmly bound

unto

Benjamin F. Edwards

in the penal sum of Five hundred dollars
good and lawful money of the United States, for the payment of which, well and truly
to be made, the said Amos Edwards & Pelley Edwards

do hereby bind ourselves ^{our} heirs, executors and administrators,
jointly, severally and firmly by these Presents.

Witness,

Our hand & seals

this 29th day of January A. D. 1862

The Condition of the above Obligation is such, That, whereas the above named
Benjamin F. Edwards

did, at the December Term of the Livingston County Court,
held in and for the County of Livingston in the
State of Illinois, A. D. 1861 recover a judgment against the above bounden

Amos Edwards

for the sum of Two hun-
dred and fifty six dollars ^{and eight six cents} and fifty three dollars
and fifty one cents ^{costs of suit} damages to reverse which said judgment, the
said Amos Edwards

has sued out a Writ of Error from the Supreme Court, within and for the Third
Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the
said Amos Edwards

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said
judgment, and all judgments, costs, interest and damages which the said Supreme Court
shall adjudge against him

and abide the order and judgment of said Su-
preme Court in this behalf, then this obligation is to be void, otherwise to remain in full
force and effect.

Amos Edwards by [SEAL.]

his atty in fact [SEAL.]

J. O. Glover [SEAL.]

Pelley Edwards [SEAL.]

by his atty. in fact J. O. Glover

No. _____
SUPREME COURT,
THIRD GRAND DIVISION.

* vs.

SUPERSEDEAS BOND.

Filed _____ 78

Clerk.

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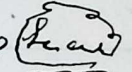
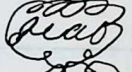
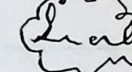
2000

2000

Know all men by these Presents that we
Amos Edwards and Peleg Edwards of the
County of Livingston and State of Illinois
have made constituted and appointed
and by these presents do make constitute
and appoint Joseph O. Glover of the County
of La Salle and State of Illinois to be our
true and lawful attorney for us and in
our names and for the benefit of the under-
signed Amos Edwards to make and execute
any and all such bonds as may be neces-
sary in perfecting an appeal to the Supreme
Court of this State of a cause lately tried
in Livingston County, ^{Court} in an action of debt
wherein Benjamin F. Evans is Plaintiff
and Almon J. Townsberry and Amos Edwards
are defendants, also any bond that may
be required for procuring a Supersedeas
or any other paper that may be necessary
in removing said cause into the Supreme
Court of this State for hearing, hereby giving
and granting unto our said attorney full
power and authority in the premises to use
all lawful means in ~~our~~ name for the
purposes aforesaid And generally to do and
perform all such acts matters and things
as our said attorney shall deem necessary
or expedient for the completion of the authority
hereby given as fully as I might and could

do if we was present ourselves. And finally
hereby ratifying and confirming all the acts
of our said Attorney or his substitutes done
by virtue of these presents

In witness whereof we the said Amos
Edwards and Poley Edwards have hereunto
set our hands and seals this the twenty
fifth day of January A.D. 1862

Amos Edwards 
Poley Edwards 


Signed, sealed and
delivered in presence
of
J. J. Brower

Power of Attorney to
Joseph Q. Glover. by
Amos Edwards &
Pely Edwards &
Supd's Bond

Filed January 30th 1862
L. L. L. L.
Clerk

STATE OF ILLINOIS,
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the County Court for the County of Livingston Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Court of Livingston County, before the Judge thereof, between Benjamin F. Evans

plaintiff, and Almon J. Lonsberry & Amos Edwards

defendants..., it is said manifest error hath intervened, to the injury of the aforesaid Amos Edwards

as we are informed by his complainant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 30th day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty-two

S. Seland

Clerk of the Supreme Court.

Amos Edwards

No.

vs.

Benjamin F. Evans

WRIT OF ERROR.

FILED

January 30th

A. D. 186

L. Leland

Clerk.

This writ of error is
made a supersedeas &
as such should be obeyed
by all concerned —

L. Leland
Clk.



STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Livingston

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the ~~Circuit~~ ^{County} Court of Livingston County, before the Judge thereof, between Benjamin F Evans

plaintiff, and Amos Edwards in pleaded with Almon J. Lowensbury

defendant....., it is said that manifest error hath intervened, to the injury of the said plaintiff

as we are informed by his complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Amos Edwards

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Amos Edwards

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty One

L. Leland

Clerk of the Supreme Court.

by J. B. B. Deputy

Benjamin H. Evans

No.

vs.

Amos Edwards

SCIRE FACIAS.

FILED

April 25

A. D. 1861

E. Leland

Gleick.

I have executed this writ by
reading the same to the within
named Amos Edwards this
21st day of January A. D.
1861
E. R. M. Phelps Shff of
Livingston County

Service

50

mils

50

W-

10

\$1.10

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the County Court for the County of Louisa Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Court of Louisa County, before the Judge thereof, between Benjamin F. Evans

plaintiff, and Amos Edwards in pleaded with Almon J. Lowmurgy

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

_____ as we are informed by his complainant _____ and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what off right ought to be done according to law.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leonard Clark

Clerk of the Supreme Court.

By J. B. Rinehart Deputy

Benjamin F. Evans

No.

vs.

Amos Edwards

WRIT OF ERROR.

FILED

January 16 A. D. 186*7*

L. Leland

Clerk.

Page 1

Proceedings before the County Court of the County
of Livingston in the State of Illinois, at the Decem-
ber Term of said Court, begun & held at the Court
House in Pontiac, in said County, on the Seventh
day of December 1857.

Plaint { ~~George Jones, Esq. Judge~~
 ~~S. J. Beattie~~ " Clerk
 J. W. Remick, Sheriff

Benjamin F. Evans }
vs } Action of Debt
Almon J. Lownsbury }
& Amos Edwards }

Be it remembered that
heretofore, to wit: on the 12th. day of November
1857 there was filed in the Clerk's office of this
Court a "Receipt" for a summons, by the Plaintiff's
attorney, C. J. Beattie, and said Receipt was in
the words & figures which follow, to wit:

State of Illinois } In the County Court thereof
Livingston County } of the Dec. Term A.D. 1857

Benjamin F. Evans }
vs } Action of Debt
Almon J. Lownsbury } for \$248.86
& Amos Edwards } Damages & Costs

The Clerk of said Court will please issue sum-
mons against the above named defendants to
C. J. Beattie
Atty for Plaintiffs

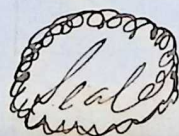
And further - that on the 12th day of November
1857 there was issued out of the Clerk's ^{Office} of said
Court a summons, in the words and figures
which follow:

State of Illinois }
Livingston County } ss

The People of the State of
Illinois.

To the Sheriff
of said County, Greeting:

We Command you,
that you summon Almon J. Lowensbury, and
Amos Edwards, if to be found in your County,
to appear before the County Court of Livingston County,
on the first day of the next term then to be holden
at the Court House in Pontiac on the first Mon-
day in the Month of December next, to answer
unto Benjamin F. Evans, in a plea of Debt, for a
failure to pay him the sum of two hundred and
forty eight dollars, and eighty six Cents, to the
damages of the said Plaintiff, as he says, three
hundred dollars; and there of make due return
from said Court as the law directs.



Witness S. S. Saul Clerk of said
Court and the Judicial Seal thereof at
Pontiac, this twelfth day of November
A.D. 1857

Samuel S. Saul, Clerk.

Endorsed on this summons is the following; return
served by reading to the within named Amos

Page 3 Edwards this 17th day of November 1857, the
writin named Almon J. Lounsbury not found in
my County.

Service .50

8 miles return .50

\$1.00

James W. Pernick, Sheriff
by E. H. Masters, Deputy.

This summons thus endorsed was returned by
the sheriff & filed in the office of the said clerk
on the 29th day of November 1857.

And further, that on the 26th day of November
1857 the said Plaintiff by his said Attorney, filed
in the office of the said clerk, his declaration
herein, and said declaration was in the words
and figures which follow, to wit:

State of Illinois)
Livingston County) ss.

In the County Court of
the December Term A.D. 1857

Benjamin F. Evans)

vs

Almon J. Lounsbury)

& Amos Edwards)

Action of Debt

Benjamin F. Evans, the
Plaintiff in this suit by C. F. Beattie, his Attorney
complains of Almon J. Lounsbury, and Amos
Edwards, the defendants in this suit, in a plea that
the said defendants owe to the said plaintiff the
sum of Two Hundred and forty eight dollars

and Eighty six Cents, which they owe to and unjustly detain from him.

For that whereas the said defendants, heretofore, to wit: on the third day of August in the year of our Lord one thousand eight hundred and fifty seven at the County of Livingston and State of Illinois by their Certain writing obligatory, sealed with their seals and now shown to the Court here, the date whereof is the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said Plaintiff in the sum of two hundred and forty eight dollars and Eighty six Cents, above demanded to be paid to the said Plaintiff. And the said Plaintiff according to the form of the Statute in such Case made and provided says that the said writing obligatory, was and is subject to Certain Conditions therein written whereby it is provided, That the Condition of the above Obligation is such, That whereas the said Comrs. A. J. Lowndesbury and the aforesaid R. J. Evans, did on the 21st day of July 1857 buy of one Gen. W. King of LaSalle in the State of Illinois jointly a Stock of Groceries to the amount of three hundred and forty eight and ⁸⁶/₁₀₀ dollars, two hundred and forty eight and ⁸⁶/₁₀₀ dollars of which amount yet remains unpaid, and for the payment of which remaining amount the

Page 5- said Lowndes and Evans are jointly bound,
and the said Lowndes, having bought of the
said Evans, his interest in the said goods agree-
ing therefor to pay to the said Geo. W. King the whole
amount of the said two hundred and forty eight
and $\frac{86}{100}$ dollars, at the time it falls due - Now
therefore if the said A. J. Lowndes, shall well
and truly pay or cause to be paid to the said
Geo. W. King, the sum of two hundred and forty
eight dollars and eighty six cents, as follows,
one hundred and twenty four & $\frac{43}{100}$ dollars on
the 21st day of August 1857, & the remaining
sum of one hundred and twenty four and $\frac{43}{100}$
dollars on the 21st day of September 1857 - So as
to relieve the said B. F. Evans entirely from any
liability to pay the same, then this obligation to be
void, otherwise to remain in full force and effect.
" Nevertheless the said Plaintiff in fact says that
after making the said writing obligatory, to wit:
on the day and year aforesaid, at the place aforesaid,
~~at the place aforesaid~~, the said Aaron
J. Lowndes did not pay to the said Geo. W. King
the said sum of two hundred and forty eight
dollars and eighty six cents, mentioned in the
said Condition of the said writing obligatory
at the time that it became due, nor any part thereof,
but to the same hath hitherto wholly refused and
still doth refuse, and the said Plaintiff for assigning

a further breach of the said Condition ~~of the~~
~~said Condition~~ of the said writing obligatory,
 according to the form of the Statute in such
 case made & provided, further says that the
 said A. J. Lowndes did not pay the ^{said} sum of
 one hundred and twenty four dollars and forty
 three Cents mentioned in the said Condition of
 the said writing obligatory, to the said Gen. W.
 King on the 21st or day of August in the year of our
 Lord one thousand eight hundred and fifty seven
 nor any part thereof, but he doth hitherto
 wholly refused and still doth refuse - and
 the said Plaintiff for assigning a further breach
 of the said Condition of the said writing obligatory
 further says that the said A. J. Lowndes did not
 pay the said other sum of one hundred and twenty
 four dollars and forty three Cents, mentioned
 in the said Condition of the said writing obligatory
 to the said Gen. W. King on the ^{last} day of September
 in the year of our Lord eighteen hundred and fifty
 seven but he doth hitherto wholly refuse and
 still doth refuse, And the said Plaintiff in
 fact says that he has not been relieved from the
 said liability - but that he has paid the said sum
 of ^{two} one hundred and forty eight dollars and eighty
 six Cents, to the said Gen. W. King - By means of
 which said several premises an action hath accrued
 to the said Plaintiff to demand and have of the said

defendants, the sum of two hundred and forty eight dollars and eighty six Cents above demanded - yet the said defendants although often requested so to do, have not as yet paid the said sum of two hundred and forty eight dollars and eighty six Cents above demanded or any part thereof to the said Plaintiff, but to do so have hitherto wholly ~~quite~~ refused and still do refuse to the damage of the said Plaintiff of three hundred dollars & therefore he brings this suit &c

Charles J. Beattie
Attorney for Plaintiff

Copy, exhibiting obligatory Know all men by these presents that we Almon J. Lowensbury and Aaron Edwards of the County of Livingston and State of Illinois, are held and firmly bound unto Benjamin H. Evans of the County of ~~and~~ State aforesaid in the sum of two hundred and forty eight dollars and eighty six Cents for the payment of which well and truly to be made, we hereby bind ourselves, our heirs and Executors, jointly severally and jointly by these presents. Witness our hands and seals this 3rd. day of August A.D. 1857

The Condition of the above obligation

is such that whereas the above bounden A. J. Lownsbury and the aforesaid P. F. Evans did on the 21st. day of July 1857 buy of one Gen. W. King of La Salle in the State of Illinois, jointly a store of Groceries to the amount of three hundred and forty eight and $\frac{86}{100}$ dollars two hundred and forty eight & $\frac{86}{100}$ dollars of which amount yet remains unpaid, and for the payment of which remaining amount the said Lownsbury, and Evans, are jointly bound, and the said Lownsbury having bought of the said Evans his interest in the said goods agreeing therefor to pay to the said Gen. W. King the whole amount of the said two hundred and forty eight and $\frac{86}{100}$ dollars, at the time it falls due, now therefore if the said A. J. Lownsbury, shall well and truly pay or cause to be paid to the said Gen. W. King the sum of two hundred and forty eight dollars and eighty six cents, as follows; one hundred and twenty four cents & $\frac{43}{100}$ dollars, on the 21st. day of August 1857, and the remaining sum of one hundred and twenty four and $\frac{43}{100}$ dollars on the 21st. day of September 1857. So as to relieve the said P. F. Evans entirely from any liability to pay the same then this obligation to be void, otherwise to remain in full force and virtue effect

A. J. Lownsbury
Amos Edwards

Seal
of
Amos Edwards

Page 9 And Be it further remembered, that afterwards
to-wit: on the 15th. day of December 1857 the
following proceedings were had in open court.

Present Henry Jones, County Judge
S. S. Saul " Clerk
J. W. Rennie, Sheriff.

to-wit: On this day came the Plaintiff by his
attorney C. J. Beattie & also came one of the said
defendants, to-wit: Amos Edwards, by his attorneys
Duff and Harding, and this cause coming on
to be heard, the said Defendant, by his said at-
torneys, came & filed a demurrer to the said
Plaintiff's declaration, herein, and said demurrer
is in the words and figures which follow. to-wit:

In the County Court of Livingston County. To
the December Term thereof A.D. 1857

Benjamin F. Evans }
vs } In Debt
Almon J. Lonsbury }
& Amos Edwards }

And the defendant ~~by Duff~~
Amos Edwards, by Duff & Harding his attys comes
and defends as to Amos Edwards the wrong and
injury when &c and says that the said declaration
and the matters therein contained in manner & form as
the same are therein stated and set forth are not

for the said
 sufficient in law, Plaintiff to have or maintain
 his aforesaid action there against the said
 defendants and he the said defendants is not
 bound by law to answer the same and this he
 is ready to verify whereupon by reason by
 the insufficiency of the declaration in this
 behalf the said defendants prays judgment
 and that the said Plaintiff may be barred
 from having or maintaining their aforesaid
 action there against him &c

Duff & Harding, Atty for
 Arno Edwards
 one of said defendants

And the said Plaintiff by his said Attorney
 Thompson came and filed his replication to
 the said demurrer & said application is in
 the words and figures which follow, to wit:

And the said Plaintiff by C. J. Beattie his
 attorney comes & says that the said de-
 claration above mentioned is sufficient in
 law, to be answered unto by the said defendants
 and this he is ready to verify

C. J. Beattie
 Atty for Plaintiff

And now the matters arising being heard by the

Page 11 Court, it was ordered by the Court that the said demurrer be sustained. Thereupon again came the said Plaintiff by his said Attorney, & filed his bill of exceptions to the said ruling of the Court & said bill of exceptions is in the words and figures which follow. To wit:

State of Illinois } In the County Court thereof,
Livingston County } of the December Term A.D. 1857

Benjamin F. Evans }
vs } Action of debt
Almon F. Lowenberg }
& Amos Edwards }

Afterwards to wit: on the day and place within contained, before the honorable Henry Jones the Judge of the County Court of Livingston County ~~County~~ came as well the said Benjamin F. Evans by his Attorney C. J. Beattie, as the said Amos Edwards, one of the above named defendants by his Attorneys Duff & Harding, and thereupon ~~there~~ Counsel came in the law, for the said defendants filed a general demurrer then and there to the declaration of the said Plaintiff filed herein, and the said Counsel for the said defendant did then and there argue and insist upon a want of consideration upon

upon which to base the liability of the said
 defendants, to which the Plaintiff by his said
 Counsel did then and there object and the
 said County Judge did then and there give
 his opinion and decide that the argument
 of the said defendants by his Counsel given
 of consideration was properly argued under
 the said demurrer, to which opinion of the
 said County Judge the said Plaintiff by his
 Counsel did then and there except, and
 the said County Judge, did then and there
 give his opinion and decide that the said
 demurrer be sustained because of a want of
 consideration as argued by the Counsel for
 the defendants, to which opinion and decision
 of the said County Judge the Plaintiff by his Counsel
 did then and there except, and because now
 of the said exceptions so offered and made
 appear upon the record of said trial therefore
 on the prayer of the said Plaintiff by his
 Counsel, the said County Judge hath to
 this bill of exceptions set his hand and
 seal, according to the form of the Statute in
 such Case made and provided.

this 16th. day of December A.D. 1857

Henry Jones Esq. Judge

Whereupon it was ordered by the Court that the

page 13 defendants recover of & from the Plaintiff his Costs
& Charges on this behalf. About this suit. Expenses

And Be it further remembered that on the
Eighth day of March 1858, in open Court

Present Henry Jones, Esq. Judge

Samuel S. Saul, " Clerk

J. W. Remick, Sheriff.

Again Come the Plaintiff by his said Attorney
And the said Plaintiff by his said Attorney, and
then & there presented the following Affidavit
of the clerk of this Court. To wit:

State of Illinois
Livingston County 3rd W.

In the County Court
Held of the December
Term A.D. 1857

Benjamin F. Evans

vs

Abner J. Lowndes } action of debt
& Amos Edwards }

Samuel S. Saul being
first duly sworn declares & says on oath that
his clerk of the County Court of the County of
Livingston in the State of Illinois, duly commis-
sioned and sworn, that the December Term A.D.
1857 of said Court held at the Court House in
Pontiac in said County, the declaration, filed by
the Plaintiff in the above entitled Cause, was then

Page 14 on file among the papers & files of the said Court, that
since that time the said Decretation has been
taken from among the files and papers of the Court
kept in the office of the said Clerk of the said
Court and this Affidavit further says that he has
made diligent search for the same among
the papers and files of the said Court, and that
the said Decretation cannot be found, and
is not now among the papers on file in said
office

Subscribed and sworn to }
before me this 8th day of } Samuel S. Saul
March A.D. 1858 }
Charles J. Peattie
Notary Public

And now at this time
again came the said Plaintiff by his said
Attorney, and asked leave to file a copy of
the Decretation filed herein, which it appeared
had been lost & therewith filed an affidavit
which is in the words and figures which
follow to-wit:

State of Illinois }
Livingston County } ss.

In the County Court of }
of the December term A.D. 1857 }

Page 15 Benjamin F. Evans

vs

Action of Debt

Almon J. Lowensbury

J. Anna Edwards

Charles J. Beattie being first

duly sworn declared & says, on oath, that he wrote
the declaration filed by the Plaintiff in the above
entitled Cause at the term of the Court aforesaid
which has been lost from among the files of the
said Court, and that the declaration now pre-
sented to the Court is a true copy of the original
declaration, and substantially the same as the
original declaration

Subscribed & sworn to before me Charles J. Beattie
this 8th day of March 1858

Samuel S. Saul, Clerk of the County Court
of Livingston County Illinois

Whereupon it was ordered by the Court that
leave be granted to the said Plaintiff to file a
copy of the said declaration

State of Illinois 3
Livingston County 3

State of Illinois. Third Grand Division.
Supreme Court. April Term A.D. 1861.

Benjamin F. Evans - Plaintiff in Error -

vs
Amos Edwards - Defendant in Error -

And the said Plaintiff by Charles J. Beattie,
his Attorney, comes and says that in the
Record and proceedings of the Court
below Error hath intervened to his injury
and prejudice, and assigns for Error the
following causes, to wit, -

1st

The Court below erred in not overruling the
defendants demurrer to plaintiffs declaration.

2nd

The Court below erred in sustaining
the defendants demurrer to the plaintiffs
declaration.

3rd

And for other Errors -
And the said Plaintiff prays that the
decision of the Court below be reversed -

Charles J. Beattie
Plaintiff Attorney

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No

Benjamin F. Evans.

vs
Amos Edwards

Error to Livingston

Filed January 16, 1861

L. Leland
Clerk

C. J. Prattis

Plaintiff Attorney