

8421

No. _____

Supreme Court of Illinois

R. Pinkstaff

vs.

B. F. Baker & Co.

71641  7

State of Illinois } ss
Lawrence County }

Be it Remembered that herefor
to wit on the 7th day of August A.D. 1855
the following Declaration was filed
by John C. Riley the then Clerk of the
Circuit Court of Lawrence County in
the office of the Clerk of the said Circuit
Court to wit

"Of the September term of
the Lawrence Circuit Court
A.D. 1855

State of Illinois } ss
Lawrence County }

Benjamin I. Baker
Amos, Low & Robert

Whitney partners doing business under
the name style and firm of B. I.
Baker & Co. Plaintiffs complain of
R. Pinkstaff Jr. Defendant. being
summoned &c of plea of trespass on
the case on premises for that whereas
the said defendant hereto fore to wit on
the 20 day of November at Lonsville Ky
that is to say in the County of Lawrence
State of Illinois was indebted to the
said plaintiffs in the sum of two

hundred dollars for divers goods wares
merchandise & chattles by the said
Plaintiff before that time sold and
delivered to the said defendant and at
his special instance and Request and
being so indebted he the said defen-
dant in consideration thereof afterwards
to wit on the day and year last
aforesaid at the County last of us
said undertook and then and there
faithfully promised the said said
Plaintiffs to pay them the said last
mentioned sum of money when he the
said defendant should be therunto after-
wards Requested,

And whereas also afterwards to
wit on the day and year last aforesaid
at Louisville Ky. that is to say at
the County of Lawrence State of Illinois
aforesaid in consideration that the said
plaintiffs at the like special instance
Request of the said defendant have
before that time sold and delivered
divers other goods wares merchandise
and chattles to the said defendant
he the said defendant undertook and
then and there faithfully promised the

Plaintiffs to pay them so much money
as the said mentioned goods wares
and merchandises at the time of the
sale and delivery thereof were reasonably
worth when by the said defendant should
thence afterwards be requested and the said
plaintiff aver that the said last mention
d goods wares Merchandises and chattels
at the time of the said sale and delivery
thereof were reasonably worth the further
sum of two hundred dollars, to wit at
Sourville ofensaid that is to say at
the County of Lawrence State of Illinois
ofensaid whereof the said defendant
afterwards to wit the day and year
ofensaid then had notice,

And whereas also the said
defendant afterwards to wit on the day
and year last ofensaid at Sourville
Ky that is to say at the County of Lawrence
State of Illinois ofensaid accounted with
the said Plaintiffs of and concerning divers
other sums of money from the said defendant
to the said Plaintiffs before that time due
and owing and then ⁱⁿ area and unpaid
and upon such accounting the said
defendant was then and there found

to be in arrear and indebted to the said
Plaintiffs in the further sum of two hundred
dollars of like lawful money and being
so found in arrear and indebted he the
said defendant undertook and there
promised the said Plaintiffs to pay him
the said last mentioned sum of money,

Nevertheless the said defendant
not regarding his said several promises
and undertakings but contriving and
fraudulently intending to deceive and
defraud the said plaintiff in this
behalf hath not as yet paid the
said several sums of money or any or
either of them or any part thereof to
the said plaintiffs although often
requested so to do but the said defen-
dant to pay him the same hath
hitherto wholly neglected and refused
and still doth neglect and refuse
to the damage of the said Plaintiffs
of two hundred dollars and therefore
they bring their suit &c

H. Heywood

Atty for Plff

R Pinkstaff Jr To B F Baker & Co Dr
Nov 1851 to goods wares & Merchandise \$200
" " this amount due on account Station
\$300

And afterwards to wit on the same day and year aforesaid the following cost bond was filed in the office of the said Circuit Court to wit

"State of Illinois vs Lawrence Circuit
Lawrence County Court Sept Term 1855

Benjamin F. Baker
Andrew Low and
Roland Whitney partners } Assumpsit
vs the same style & firm Damages \$200.00
of B F Baker & Co

vs
R Pinkstaff Jr

I do hereby enter myself
Security for costs in this suit and ack-
nowledge myself bound to pay as same
to be paid all costs which may accrue
in this action either to the opposite party
or to any of the officers of this Court in
pursuance of the laws of this State dated
this 7th day of Aug 1855

H. Hayward J.B."

And after the filing of the foregoing
Declaration and bond for cost in
the said office of the Circuit Court
in Lawrence County a summons
was duly issued out of said office
in favor of said Plaintiffs and against
said defendant in assumpsit for
\$200.00 damages returnable to the September
Term A D 1855 of said Court which said
summons and the return made thereon

cannot be copied herein by Reason of the same having been lost from the files in the office of the Clerk of the Circuit Court of Lawrence County

And afterwards to wit At a Circuit Court Begun and held at the Court House in Lawrenceville on Monday the 8th day of September A.D. 1836 present the Hon^{ble} Justice Healden Judge John W. Watts Sheriff and C. J. Ryan Clerk the following proceedings and order of said Court were had ^{in said Court} and entered of Record, to wit;

" B. J. Baker & Co

vs

Redman Pinkstaff

} Assumpsit

And now at this day came the said parties by their attorneys and Issue being joined, let a jury come whereupon came a jury to wit Peter Smith Eliah Gaddy James Thompson William McCarty Robert B. McLeary John Bach John M. D. Chumesth Ezekiel Gaddy Josip Mickey John Hatters A. D. Braman and A. J. Conchman twelve good and Lawfull men who being well and truly elected tried and sworn the truth to speak upon the issue joined upon their oaths, ^{that} that they cannot agree upon a verdict in the cause whereupon by agreement of parties and the order of Court the jury was discharged and this cause continued until the next term of this Court. And the said J. J. Stiles further certifies

That the said pleas filed and constituting in part the said Issue in said cause have been lost or misplaced so that after diligent search in all places in my office or elsewhere as well as origining of all parties concerned where ^{they} would probably be found the same cannot be found

And afterwards to wit At a Circuit
Court begun and held at the Court
house in Sumnerville on Monday the
15th day of May A.D. 1857 present the
Hon^{ble} Justice Harlan Judge George W
Whittaker Sheriff and S. J. Stiles Clerk
the following proceeding was had in said
cause and entry of Record to wit

B. F. Baker & Co

vs

Assumpsit

Reuben Pinkstoff Jr

And now at this day come the
said Plaintiffs by their attorney and
the defendant although three times solemnly
called comes not but makes default therein
therefore it is considered by the Court that
the said Plaintiffs recover of and from
the said defendant their damages sustain-
ed by the nonperformance of his said prom-
ises and the Court being ignorant as to
what those damages are let a jury come
whereupon came a jury to wit John
Bennifield William Pearce Fielden
Hensley John B. Maxwell Miles Snyder
Aaron Gault Philip Snyder Lewis Davis
Thomas J. Kyle Daniel Graft William
Gulispie & Henry A. Walters who were
duly elected true and sworn to well
and truly enquire into and the dam-
ages assess in the said cause And
the said jury upon their oaths do say
we the jury find for the plaintiffs the
sum of one hundred and forty six dollars
therefore it is considered by the Court

that the said Plaintiffs Recover of the
said Defendant the said sum of
One hundred and forty six dollars
together with his costs and charges
by him about this suit in this behalf
expended and thereof have Execution
46

State of Illinois 3
Lawrence County 2^{ss}

J. S. J. Stiles clerk of the Circuit
Court of Lawrence County do hereby certify
that the foregoing pages contains a
full and complete copy from the files
and Records in my office of the pro-
ceedings of the above entitled cause
except as to the ^{lost} ^{pages} ^{above} mentioned
In testimony whereof I have
hereunto set my hand and
affixed the Seal of said Court
at Lawrenceville this 19th day
of October A.D. 1857
J. S. Stiles clerk

State of Illinois. Supreme Court. At Union.
Nov 6 Term A.D. 1859

Redman Pickens, p[er] in Error }
vs } Error to Lawrence.
B. F. Baker, & Co. Deft. in Error }

The said plaintiff in error
by F. H. Baker his atty. comes and says that there is
in the foregoing Record manifest Error; and assigns

to the Court the following causes viz—

1st.

The said plaintiff in error having appeared and
pleaded to the action below, it was error to take a
default against him, and the entry of said
default is error.

2^d.

The Jury were sworn to ~~assess~~ enquire into and
assess damages, whereas they should have been sworn to
try the issue, and the said Record is erroneous for this
cause.

3^d.

The Jury having found a verdict for damages for the
plaintiffs below, without trying the issue or finding
the Defendant below guilty, their verdict should
have been set aside, and the entry of Judgment
thereon by the Court was erroneous.

4th.

And that the said Record is otherwise
full of error, uncertain & insufficient and
ought to be reversed.

J. H. H. H.

Atty for Affirm

B F Baker & Co

vs Cost Bill

Redman Pinkstiff

Sept 1855	To docketing suit	10	
"	Issuing summons	35	
"	Entering atty per Plff	10	
"	" of per " "	10	
"	Issuing demons	50	
"	filing & papers	30	
"	Entering Rule to plead	20	
"	" Order of continuance	20	
Mar 1856	" docketing suit	10	
"	calling & swearing jury	15	
"	Entering order continuance	20	
Apr 1856	" docketing suit	10	
"	Entering or of continuance	20	
May 1857	" docketing suit	10	
"	calling & swearing jury	15	
"	Returning & Entering verdict	15	
"	Entering final judgment	25	
"	Satisfaction on same	10	
"	Issuing Execution	40	
"	docketing same	10	
"	Entering Sheriff Return	10	
"	Making cost bill	30	
"	Certificate & seal	35	
"	Transcript Certificate & seal	2 00	6 65
"	taking depositions	\$3.00	
"	Docket fee	1.25	
"	Jury "	3.00	7.25
			<u>7 25</u>
			\$13 90
	Sheriff fee on Summons		

State of Illinois vs
Lawrence County

I S. J. Stiles Clerk of the Circuit
Court of Lawrence County certify that the foregoing
bill of costs is a true copy from the fee Book
in my office

In testimony whereof I have
hereunto set my hand and affixed
the seal of said Court this 19th
day of October A D 1857

S. J. Stiles clerk

W. P. Sinks left for
off in court

18
B. F. Baker & Co. Depts.
in Court -
J. H. Lawrence

Filed No. October 1857

Attest Substantive Clerk

Prepared \$5.00

REDMAN PINKSTAFF, Plaintiff in Error
vs.
B. F. BAKER & CO. Defendants in Error

Error to Lawrence.

- 1 B. F. Baker & Co., sued Pinkstaff in assumpsit upon open account. Declaration filed, August 7th 1855.
- 2 At the September term 1756 the parties appeared and after issue joined, a trial was had before a jury,
- 3 who being unable to agree, were discharged and the cause continued.
- 4 At the may term 1857, the cause being again called and the defendant being called came not, wherefore
- 5 a default was entered, and a jury called, who were sworn, "To well and truly enquire into, and the
- 6 damages assess, in said cause," and who returned a verdict for the plaintiff below for \$146, upon which
- 7 judgment was entered, and execution ordered.

ERRORS.

- 1st. The entry of a default against the defendant below, there being an issue not disposed of.
- 2nd The jury were sworn to assess damages, whereas they should have been sworn to try the issue.
- 3d The verdict of the jury was erroneous, and the court should not have rendered judgment thereon against the defendant below.

18 Cam. 387-

Long is Bamey

390.

Mentore is Bamey

391.

Cull et al is Marks

534.

McKinney is May

R. P. Timberlake
B. F. Baker & Co

The undersigned, R. P. Timberlake, of the County of ... State of ... do hereby certify that the within and foregoing is a true and correct copy of the ... as the same appears from the records of the ...

WITNESSES

1. Subscribed and attested at ...
2. Witness my hand and seal of office this ... day of ... 1900
3. Attest: ...
4. ...
5. ...
6. ...
7. ...
8. ...
9. ...
10. ...

B. F. BAKER & CO. Notaries Public in and for the State of ...
My Comm. Expires ...

No 1

8421

1859

R. Pinkstaff Jr

vs

B. F. Baker & Co -

Error to Larceny -

Dismissed for want of
prosecution

See Order Book - Page - 73 -

Cost bill on Page 362 -

Chgo. Ills. October 25/57

Mr Johnson Esq

Dear Sir -

Enclosed I send you a
record which you will please file & send summons
against W. H. Baker & Co to the Sheriff of this
County. Please send as soon as you can - direct
to my care. I have retained the Abstract
& will have it printed here & sent on in
a few days - I enclose you \$5,
Yours truly

A. H. H. H.

R. Punktstoff für

Platz in error

in } Druck

B. L. Baku 60 Sefis

in error

Juli 26. October 1857.

Joseph Schuster Chk
" "

W. Pinkstaff }
vs }
B. F. Baker & Co } Enn to Laurence,

A. H. Hittell being
first duly sworn doth depose & say
that the above named defendants are
not residents of the State of Illinois
as he is informed & believes, wherefore
as atty for Plaintiff in Enn he prays
publication of notice as required by
Law -

A. H. Hittell

Subscribed & sworn to before }
Me 30. Nov. 1857 }

N. L. Linn, Clerk

~~44~~ ~~45~~

1

Pinkstaff

my

Baker & Co

Filed 30. Nov. 1857.

N. Johnston clk
(1)

REDMAN PINKSTAFF, Plaintiff in Error }
VS. } Error to Lawrence.
B. F. BAKER & CO. Defendants in Error }

- 1 B. F. Baker & Co., sued Pinkstaff in assumpsit upon open account. Declaration filed August 7th 1855.
- 2 At the September term 1756 the parties appeared and after issue joined, a trial was had before a jury,
- 3 who being unable to agree, were discharged and the cause continued.
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- 5 a default was entered, and a jury called, who were sworn, "To well and truly enquire into, and the
- 6 damages assess, in said cause," and who returned a verdict for the plaintiff below for \$146, upon which
- 7 judgment was entered, and execution ordered.

ERRORS.

- 1st. The entry of a default against the defendant below, there being an issue not disposed of.
- 2nd The jury were sworn to assess damages, whereas they should have been sworn to try the issue.
- 3d The verdict of the jury was erroneous, and the court should not have rendered judgment thereon against the defendant below.

1

Wm. H. H. H.

by

Wm. H. H.

Wm. H. H.

Wm. H. H. 1857

Wm. H. H.

Wm. H. H. 1857

Wm. H. H. 1857

Wm. H. H.

Wm. H. H. 1857

Wm. H. H. 1857

STATE OF ILLINOIS
SUPREME COURT,

SS. *St. Louis Division* WRIT OF ERROR.
THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of *Lawrence* GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the
Circuit Court of *Lawrence* county, before the Judge thereof, between

Benjamin L. Baker, Andrew Low and Richard Whitney
partners under the name style and firm of
B. L. Baker & Co - - - - -
plaintiffs, and *R. Pinkstaff Jr* - - - - -

defendant it is said manifest error hath intervened, to the injury of the aforesaid *Defendant*

as we are informed by *his*

complaint, 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

Mount Vernon, in the county of Jefferson, on the *1st Sunday after the 2^d Monday of*
November 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:

John D. Eaton

Witness, the Hon. ~~WALTER B. SCATES~~ Chief Justice
of our said court, and the seal thereof, at Mount Vernon this

twenty sixth day of *October*

in the year of Our Lord One Thousand Eight Hundred
and Fifty- *Seven*

Abraham Johnston
" " Clerk Supreme Court.

R. Teutestaff Jr.
Plym. Mass.

Pliff in error

As { Mrs Owen

B. L. Bahrler

slight in error

Issued to filia H^c Cutler
1857.

1857.

Wah Schuster Ch

STATE OF ILLINOIS, } ss. *1st Grand Division.*
SUPREME COURT.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Richland* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Richland* County, before the judge thereof, between *Benjamin F. Baker, Andrew Low and Richard Whitney - partners under the name style and firm of B. F. Baker & Co - Plaintiffs -*
Ann R. Pinkstaff Jr

defendant, it is said that manifest error hath intervened to the injury of said *Defendant*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, 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 *Benjamin F. Baker, Andrew Low and Richard Whitney - partners under the said name style and firm of B. F. Baker & Co*

that *they* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the *first Tuesday after the* Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *B. F. Baker & Co* notice, together with this writ.

John D. Caton

Witness, the Hon. ~~Saml. H. Taylor~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *26th* day of *October* in the year of our Lord, one thousand eight hundred and fifty-*seven*.

Noah Johnston

Clerk of Supreme Court.

R. Puustoff Jr

Officer even

in } Saw for

W. H. Barker also

deftor even

Serving writ 50

Returning 10

perce 60

By A. Hitchell

J. H. Barker

Served the writ in Bay Reading to
the undersigned & returned for
this 29th Oct 1854 James H. Barker