

14368

No. _____

Supreme Court of Illinois

Wright

vs.

Curtis et al.

71641  7

142

STATE OF ILLINOIS,
SUPREME COURT,

Third Grand Division.

14368

No. 249

Mwright

vs

Quinn

1862

Wright

SUPREME COURT OF ILLINOIS.

APRIL TERM, 1862.

JOHN F. WRIGHT,	}	<i>Appeal from Iroquois.</i>
APPELLANT,		
ads.		
EDWIN CURTIS.		
and		
JOSEPH BAKER,		
APPELLEES.	}	

POINTS OF APPELLANT.

First. The Plaintiffs below brought their suit upon a certain Promissory Note. The note was payable to "Curtis & Baker." The suit is in the individual names of "Edwin Curtis" and "Joseph Baker" as individuals. There is nothing upon the face of the papers showing that the individuals Edwin Curtis and Joseph Baker are the same persons to whom the note was made payable. There is nothing upon the papers showing that they, the plaintiffs, were partners, or in what manner they were jointly interested in the note sued upon.

The note itself may have been evidence sufficient to have proved a cause of action in favor of Curtis & Baker, against the defendant, but if they failed to show, by competent evidence, that the plaintiffs named in the Declaration constituted the firm of Curtis & Baker, they were not entitled to recover. "Unless they sue as partners, the Statute does not relieve them from producing the proof, which was required by the Common Law to maintain the action."

- 24 Ill. R., 109.
- 5. Wendell, R. 475.
- 2. Greenleaf, Ev., page 456, Sec. 478.
- 3. Campbell, R., 240 and note.
- 3. Starkie, 1070.
- Cowp., 569.
- 5. Term R., 709.
- 2. Watts, R., 222.
- 2. Greenleaf, Ev., Sec. 483.

Second. It might not have been necessary to have proved a partnership had the same appeared from the face of the papers, or had they declared in

the name of "Curtis & Baker" and alleged a partnership. The suit is in the name of entirely different parties than those named in the note. In 2d Scammon, page 290, the Court fully sustains the distinction here made, and decide that if the note named and sued upon in that case had been sued in the name of Collins & Salisbury, while the same was payable to Collins & Co., proof would have been necessary to show that Salisbury was one of the firm, &c.

2. Scam. R., page 290.

Citing 5, Wendell, R., 475.

" 1, Chitty Plead., 440.

Third. Defendant could not plead in abatement, or specially as to the partnership, as there was no such issue tendered, and he could not disprove that fact, as there was no proof of the fact of partnership.

Courts are not permitted to presume partnership as to plaintiffs. It is admitted that in case plaintiffs had sued as partners, the question of partnership could only have been put in issue by plea of abatement properly verified, 21 Ill. R., 524, 12 Ill. R., 124.

Fourth. Defendant was in Court to defend a claim alleged to be due Edwin Curtis and Joseph Baker as individuals, and not as against Curtis & Baker, other and different parties.

Fifth. This Court has fully decided the questions involved in this case in 24th Ill. R., 109, and the Supreme Court of New York has held the same way in 5 Wend. R., 475, and the rule seems to be fully sustained by all the authorities.

Sixth. The Judgment is not sustained by the evidence.

Seventh. The Court erred in not granting a new trial.

CHESTER KINNEY & S. G. BOVIE,

For Appellant.

²⁴⁹
Supreme Court

John F. Wright
Appellant
vs

Edwin Curtis &
Joseph Baker
Appellees

Points of Appell

Filed Apr. 23-1862
L. Leland
Clerk

Kimney & Bovio
Appellts Atty

SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

JOHN F. WRIGHT,
vs.
EDWIN CURTIS
and
JOSEPH BAKER.

} *Appeal from Iroquois.*

POINTS FOR APPELLEES.

In this case, the first objection of the Appellant is, that there was a variance between the pleading and proof; for that the averment in the declaration is that *Edwin Curtis and Joseph Baker* are plaintiffs; whereas, the note offered in evidence is one payable to *Curtis & Baker*.

The second objection is, that there was no proof of partnership of plaintiffs.

That there are no errors in the case must be so manifest that we deem it only necessary to cite the Court to

Hollenback vs. Williams et al., 1 *Scam.*, 544; *Vance et al. vs. Funk et al.*, 2 *Scam.*, 263, *Salisbury et al vs. Gillett et al.*, 2 *Scam.*, 290.

FRANKLIN BLADES,
GEORGE B. JOINER,
for Appellees.

250

1112 ~~250~~ 249

Night
of
Baker & Curtis

pts. for Appelles

Friday May 17, 1842
of Iceland
MR

Prices of Hades
for Appelles

SUPREME COURT OF ILLINOIS.

APRIL TERM, 1862.

JOHN F. WRIGHT,
APPELLANT,

ads.

EDWIN CURTIS.

and

JOSEPH BAKER,

APPELLEES.

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For Appellant.

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CHESTER KINNEY & S. G. BOVIE,

For Appellant.

²⁴⁹ Supreme Court

John F. Wright
Appellant
vs

Edwin Curtis &
Joseph Baker
Appellees

Points of Appellant

Filed Apr. 23 - 1862
L. Leland
Clerk

Kimney & Bove
Appellate Atty

SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

JOHN F. WRIGHT,
vs.
EDWIN CURTIS
and
JOSEPH BAKER. } *Appeal from Iroquois.*

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FRANKLIN BLADES,
GEORGE B. JOINER,
for Appellees.

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Wright
and
Curtis & Baker

Points for Appelles

Filed May 17, 1862
J. Leama
CNR

Wines & Glades
for Appelles

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PHOTOGRAPHIC COURSE

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CHESTER KINNEY & S. G. BOVIE,

For Appellant.

1417 ²⁴⁹ Supreme Court

John F. Wright
Appellant
vs
ads

Edwin Curtis
& Joseph Baker
Appellees

Points of Appellant

Filed April 23-1862
L. Ireland
Clerk

Kimmer & Borio
Appellate Atty

IN THE SUPREME COURT.

APRIL TERM, A. D. 1862.

JOHN F. WRIGHT,
APPELLANT,
ads.
EDWIN CURTIS
and
JOSEPH BAKER,
APPELLEES. } *Appeal from Iroquois.*

ABSTRACT OF RECORD.

- Rec. page 1 Placita November Term, 1861.
- 1 July 29th, 1861—Precipe filed and summons issued.
- 2 July 29th, 1861—Security bond for costs filed.
- 4 August 15th, 1861—Summons served.
- 4 November 9th, 1861—Declaration filed.
- 4, 5 First special count, upon a promissory note.
- 5, 6 Second count, a common count—goods sold, &c.
- 6, 7 Copy of note and bill of particulars.
- 7 Plea, general issue—Filed November 21st, 1861.
- 7 Similiter to plea.
- 8 Trial by the Court without a Jury, November 22d, 1861,
and judgment for plaintiffs for \$176.70.
- 9 Motion for new trial—Filed November 22d, 1861.
- 10 New trial denied December 18th, 1861. Defendant excepts.
Judgment, December 18th, 1861.

1427 248
Superior Court

John F. Wright
Appellant

vs
Edwin Currier &
Joseph Baker
Appellees

Abstract

Filed April 20th 1862
L. Deland
Clerk

Hinney & Burio
Appellate Attys

The People of the State of Illinois

To all to whom these presents shall come,

Greeting: Know Ye that we having caused to be inspected the records and proceedings of our circuit court in and for said Iroquois County do find there certain Records and proceedings in the words and figures following to wit

United States of America

" State of Illinois St.

" Iroquois County

" Pleas before the Honorable Charles Staw Judge of the twentieth Judicial circuit and Presiding Judge of the Iroquois County Circuit Court in the State of Illinois at a term of the said Iroquois County Circuit Court begun and held at the court house in the Town of Middleport in said Iroquois County on the third Tuesday (the same being the nineteenth day) in the month of November in the year of our Lord one thousand eight hundred and sixty one Present Hon. Charles R. Staw Presiding Judge of the twentieth Judicial circuit Charles Wood States attorney of the twentieth Judicial circuit Luther Slack Sheriff of Iroquois County Illinois Thomas Bennett clerk of the Iroquois county Circuit court

Be it Remembered that herebefore to wit on the 29th day of July A.D. 1861 there was filed in the office of the Clerk of the Circuit Court a "Process for Seizure" which read in the words and figures following to wit

State of Illinois
Jroquois County ss.

Circuit Court Jroquois County
November Term A.D. 1861

Edwin Curtis
Joseph Baker Plaintiff
vs
John D. Wright Defendant

"The Clerk of said Court
will issue a summons in the above cause dis-
sected to the Sheriff of Jroquois County in a
plea of Trespass on the case on Promises ret-
tainable at the November Term of said Court
A. D. 1861 to the damage of the Plaintiff
of Three hundred dollars

James J. Blades
Plaintiff's Attorney
Thomas Pennum Esq. Clerk
"July 26th 1861

And afterwards on the said
29th day of July 1861 there was filed in the office
of the Clerk of the Circuit Court a certain
"Bond for costs" which reads in the words
and figures following to wit

Edwin Curtis
Joseph Baker
vs
John D. Wright

In the Jroquois C. Cir. Court

"We do hereby enter ourselves
Security for costs in this cause and acknow-
ledge ourselves bound to pay or cause to be

Said 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 July 29th 1861

James B. Blakes

And afterwards to wit
 on the said 29th day of July A.D. 1861 there was
 issued out of the office of the Clerk of the Circuit
 Court a certain writ of "summons" which reads
 in the words and figures following to wit

State of Illinois
 Coquios County

"The People of the State of
 Illinois, To the Sheriff of said County Greeting:
 We Command You that you summon John
 F. Wright if to be found in your County person-
 ally to be and appear before the Circuit Court
 of said County on the first day of the next
 term thereof to be holden at the Court house
 in the town of Middleport in said Coquios
 County on the Third Tuesday of November next
 to answer Edwin Curtis and Joseph Baker in a
 plea of Trespass on the case upon promises to the
 damages of them the said Plaintiffs as it is said
 in the sum of Three hundred dollars and
 have you there and there this writ

LS

Witness Thomas Vennum Clerk of our
 said court and the Seal thereof at Midd-
 leport this 29 day of July A.D. 1861

Thomas Vennum Clerk

And which endorsement on said summons was in the following words and figures to wit

"Circuit Court Summons"

"Edwin Curtis & Joseph Baker"

"vs"

"John P. Wright"

"Joines & Blades Attys"

Served the within by reading to John P. Wright the 15th day of August 1861

"Luther J. Clark"

"Decy. 65"

"Shuift"

And afterwards to wit on the Ninth day of November A. D. 1861 there was filed with the Clerk of the said Circuit Court a certain "Declaration" which reads in the words and figures following to wit

State of Illinois ss. Of the November Term A. D. 1861
Madison County

"Edwin Curtis & Joseph Baker) Plaintiffs in this suit by Joines & Blades their Attorneys complain of John P. Wright, ^{defendant} who has been summoned etc. in a plea of Dispass on the case on Jurries. For that whereas the said defendant heretofore to wit on the Twentieth day of October in the year of our Lord one thousand eight hundred and sixty at New York to wit at in said county of Madison made his

Certain Promissory Note and then and there delivered the Same to Said Plaintiffs the date whereof is the day & year aforesaid in and by which said Note said defendant by the name Style and description of John F. Wright promised to pay to the order of the said Plaintiffs by the name Style and description of Curtis & Baker Six months after the date thereof the Sum of One Hundred and fifty five dollars at their office in New York 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 Plaintiffs 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 Plaintiffs according to the tenor and effect true intent and meaning of the said Note to wit, at the place aforesaid. And Whereas also the said defendant afterward to wit, on the seventeenth day of October in the year of our Lord one thousand eight hundred and Ninety to wit, at New York in said County became and was indebted unto the Plaintiffs in a large sum of money to wit Three hundred dollars for money before that time lent and advanced to and paid laid out and expended for said defendant by said Plaintiffs at said defendant request and for money before that time had and received by said defendant to and for the use of said Plaintiffs And also in like sum for goods wares and merchandise before that time sold and delivered by said Plaintiffs

to said defendant at like Special instance and request; and also in like Sum for the labor care and diligence of said Plaintiffs before that time done and performed by said Plaintiffs for said defendant and at the like instance and request of said defendant; and being so indebted said defendant in consideration thereof then and thereunto and promised to pay said Plaintiffs said last mentioned sum of money when thereunto afterward requested. Yet the said defendant not regarding his said promises and undertakings but contriving etc, although often requested to do, has not paid said Plaintiffs either of said sums of money or any part thereof but so to do has hitherto wholly neglected and refused and still does neglect and refuse to the damage of said Plaintiffs of Three hundred Dollars and therefore they bring this suit etc,

"Joiner & Blades
 "Atty. for Plffs.

Copy of instrument and account and upon \$155.00

New York October 17, 1860

"Six Months after date I the Subscriber of Middleport County of Iroquois State of New York promise to pay to the order of Curtis & Baker One hundred fifty five dollars at their office in New York value Received.

John P. Wright

John Wright

"Edward Curtis & Joseph Baker D^r

in Money Lent and advanced

\$300.00

in Money Expended and paid out for

\$300.

Page 7

To Money received for use of	\$ 300.
To Goods wares and Merchandises	\$ 300.
To Labor and Services	\$ 300.
To Balances on account Stated	\$ 300.

And afterwards to-wit on the 21 day of November 1861 there was filed with the said Clerk of said Court a certain Plea which reads in the words and figures following to-wit

State of Illinois November Term of the foregoing
 Crook County 2^d. Circuit Court A. D. 1861

John F. Wright
 ady
 Edwin Curtis &
 Joseph Baker

And the said John F. Wright
 "Defendant in the above suit

by Kinney & Bovie his attorneys comes and defends
 the wrong and injury when he and says that
 he did not undertake and promise in manner
 and form as the said Plaintiffs in their
 said declaration have complained and of
 this he put himself upon the country

" Kinney & Bovie
 " Atty for deft

Pfff. doth the like

" Jones & Blades
 " Atty for Pfff.

10/10
 C

And afterward to wit on the 22^d day of November a D1860 the Term being one of the regular days of the November Term of the Brognon County Circuit court for said year a D1861 the said court being then duly organized and sitting as a court for the transaction of judicial business certain proceedings were had and entered of Record by order of said court in the words and figures following to wit

Edwin Curtis ^{and}
 Joseph Baker
 27
 John F. Wright } Appraisers

"And now came the parties to this cause by their respective attorneys, the Plaintiffs by Jones & Blaney their attorneys and the Defendant in person and by Minney, Boon & Fletcher his attorneys and by agreement a jury for the trial of this cause is waived and the cause is hereby submitted to the court for trial. And the court having duly considered the evidence offered by the Plaintiffs and the arguments and objections of defendant counsel ordered that the Plaintiff in this cause do have judgment for the sum of one hundred and twenty six Dollars and Seventy cents

"It is therefore considered and ordered by the court that the Plaintiffs

do have and recover of and from the defendant the Said Sum of one hundred and Sixty Six Dollars and Twenty cents damages together with their costs and charges in and about their Suit in this behalf expended and that they have Execution therefor against the Said defendant

And now come defendant attorneys and enter their exception to the decision of the court in rendering judgment as aforesaid and also enter defendants Motion for a new trial in this cause.

And afterwards to wit on the said 22 day of November a D 1861 there was filed with the said clerk of said court a certain point for a new trial which read in the words and figures following to wit

State of Illinois
Jroquois County ss.
Edwin Currier }
Joseph Baker }
 } " November Term of the
 } Jroquois Circuit Court
 } A. D. 1861
 }
John P. Shight }
 } " The left moves the court

for a new trial in the above cause for the following reasons

- 1 The judgment is against the law and evidence
- 2 Plaintiff failed to prove Partnership

" Kinney & Rice
attorneys

And Afterwardly To-wit on the 18th day of December A. D. 1861 the same being one of the regular days of the November Term of Said Court for said year A. D. 1861 the said court being then duly organized as aforesaid certain other proceedings were had and Entered of Record by order of said court in the words and figures following to-wit

Edwin Cook's ^{and} }
 Joseph Baker }
 vs }
 John P. Thight } Appraisit

"And now came the Parties to this cause by their attorneys and the Motion for a new trial heretofore entered in this cause coming up for argument it is ordered by the court that said Motion be overruled ~ And now came defendant's attorneys and enter their exception to the overruling of said Motion and enter a Motion for an appeal in this cause to the Supreme Court of this State

"Whereupon it is ordered by the court that an appeal be granted on condition that defendant do within thirty days from this date enter into a Bond conditioned according to law in the sum of Two hundred Dollars with Alvin Kearns, Hamilton Jefferson ^{and} Lewis Pratt or any two of them Securities thereon And on Motion

it is further ordered that the defendant do file his Bill of exceptions within thirty days from this date "

And afterwards Term on the 18th day of December A D 1861 then was filed with the clerk of the circuit court aforesaid a certain "Bill of Exceptions" which reads in the words and figures following to wit

State of Illinois vs. In the Roguois circuit
Roguois County RR. Court of the Nov.
Term A. D. 1861

Edwin Curtis of
Joseph Baker

vs

John F. Wright

Bill of Exceptions

"Afterwards to wit at a circuit court held at the Court House in Middleport in and for the county of Roguois in said State on the day of November, A D 1861 Before Hon. C. R. Starr one of the circuit Judges appointed to hold the said term of court according to the form of the Statute in such case made and provided - The aforesaid issue thus joined between the parties as aforesaid came on to be heard before the said C. R. Starr Judge as aforesaid by consent of parties without a jury at which day came then as well the said Plaintiff as the said Defendant by their respective attorneys

Aforesaid and upon the trial of the said issue the counsel for the said Plaintiffs to maintain and prove the said issue on the part of the said issue Plaintiffs produced and offered in evidence a certain instrument in writing in the words figures and letters following to wit:

\$155.⁰⁰
"New York October 17, 1860."
"Six months after date I the Subscriber of Middleport County of droquis State of Illinois promise to pay to the order of Curtis & Baker One Hundred fifty five Dollars at their office in New York Value Received
No 1770 due Apr 20" "John F. Wright"

"To the Reading of which said instrument in evidence the counsel for the defendant then and there in due time form and manner objected. But the said Circuit Judge then and there overruled said objections & then and there did declare and decide and give his opinion that the said instrument in writing was good & competent evidence and that such objection made as aforesaid could not be sustained and that said instrument could be ^{read} received in evidence on the part of the Plaintiffs, To which said opinion decision & ruling of the said court the defendant by his said counsel did then and there in due time form and manner except. Whereupon said instrument in writing as aforesaid offered

in evidence was by the attorneys for the defense
 Plaintiffs under the ruling of the court
 then and there read in evidence in the words
 letters & figures following to wit

\$155⁰⁰

New York October 17, 1860

"Six months after date I the subscriber
 of Middleport County of Ingham State
 of Illinois promise to pay to the order of
 Curtis & Baker One hundred fifty five
 Dollars at their office in New York's Value

Received

John F. Knight

No. 1770 due ap. 20.

"Which was all the evi-
 dence given offered or received or produced
 on the trial of said cause given

Whereupon the said issue was then and there
 submitted to the court and to said circuit
 Judge and the said court did then and there
 declare & deliver his opinion that the Plaintiffs
 were entitled to judgment and that they have
 and recover judgment against said defendant
 for the sum & amount of one hundred and
 twenty six Dollars and twenty cents and costs
 of suit ~ To which Ruling decision &
 finding & every part thereof the defendant
 then and there in due time form & manner
 excepted ~ Whereupon the defendant by
 his counsel made a motion for a new
 trial then & there of said issue in said cause
 which motion was founded upon the
 following among other grounds
 & causes to wit

"I"

The Judgment is against the law ^{And the} evidence

"III"

Plaintiffs failed to prove a Partnership as
at Common Law.

"But the said court held
decided and then and then declared & rendered
his decision on said motion made for a new
trial as aforesaid by the said defendant
and then and then overruled said motion
and refused to grant and allow said
defendant a new trial. To all of which
rulings decisions & findings the said
defendant by his counsel did then and
then in due time manner & form except

"And inasmuch as the said several
matters so produced and given in evidence
on the part of the said parties and inasmuch
as the several objections exceptions & rulings &
decisions of said court do not appear by
the Record of the Verdict & proceeding aforesaid
The said counsel for the defendant did then
and then propose their aforesaid ~~objections~~
exceptions to the opinions rulings findings
and decisions of said court and requested
him to put his seal to this Bill of Exceptions
containing the several matters so produced & given in
evidence and the objections & rulings therein as aforesaid
according to the form of the statute in such case made providing
And thereupon the said Judge did sign & seal this Bill of Exceptions
pursuant to law in such case this 18th day of December A.D. 1861

"Kinney Green & Pletcher
Deft. attys"

C. R. Starr (seal)

And afterwards to wit on the 17th day of January A. D. 1862 there was filed with said Clerk of said Court a certain "Appeal Bond" which reads in the Word and figures following to wit

Know all men by these Presents that we John F. Knight Edwin Cannon^{and} Giram Pratt are held and firmly bound unto Edwin Cauty's Joseph Baker in the Penal Sum of four hundred dollars good and lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs administrators and assigns firmly by these presents

Witness our hands and seals this 6th day of January A. D. 1862.

"The condition of the above obligation is such that whereas the said Edwin Cauty & Joseph Baker did on the 18th day of December A. D. 1861 at the November Term of the Drogueois County Circuit Court then being holden recover a judgment against the above bounden John F. Knight for the Sum of one hundred and seventy five dollars and thirty cents and cost of suit, from which said judgment the said John F. Knight has taken an appeal to the Supreme court of the State of Illinois. Now if the said John F. Knight shall prosecute his said appeal with effect with due diligence

And Shall pay whatever Judgment cost interest
and damages in case said Judgment Shall
be affirmed heretofore rendered against him
and hereafter Shall be rendered against him
by the said Supreme court then and in that
case this obligation shall become void other-
wise to remain in full force and effect

John F. Thight (seal)

Alvin Carroun (seal)

Wiram Pratt (seal)

State of Illinois
Juguois County

I, Thomas Keenum clerk of
the Circuit Court in and for the
said County in the State aforesaid do hereby certify
that the above and foregoing is a true complete and
perfect transcript of the Record of the proceedings of
the Juguois County Circuit Court in said cause
therein entitled wherein Edwin Curtis & Joseph Baker
are Plaintiffs and John F. Thight is Defendant
and that said Transcript contains a full true
perfect copy of all the papers filed in said
cause forming any part of the Record of said
court in said cause

In attestation of which I have here-
unto set my hand and affixed the
Seal of said Court at office in
Middleport in said County this
21st day of March A. D. 1862
Thomas Keenum clerk

Edwin Curtis &
Joseph Boker, Appellees

Supreme Court
April Term 1862
3^d Grand Division

John F. Wright

Appellant } Assignment of Errors

And now comes the
said Appellant by Chester Kimey
& Stephen G. Borie his Attorneys and
says that the following errors are
manifest in the proceedings of this
cause upon the face of the Record

- 1 The court erred in rendering judgment
for the plaintiff
- 2 The judgment is against law
- 3 The judgment is against evidence
- 4 The court erred in admitting imper-
fect evidence.
- 5 The court erred ruling out & rejecting
evidence.
- 6 The court erred in allowing the note
to be read in evidence after objection
by defendant.
- 7 There ^{was} no proof of partnership, of ^{Plffs}
- 8 The plaintiff did not sue as partners
or allege a partnership on the part
of plaintiffs
- 9 The court erred in rendering judgment
for the plaintiff without any allegation
or proof that they were partners.
- 10 There was no proof of any indebted-
ness to Edwin Curtis & Joseph Boker

- 11 The court erred in not granting a new trial and in overruling the defendant's motion therefor
- 12 The judgment is not sustained by the evidence, & should have been for the defendant
- Christie Kinnery
& S. G. Brier
Appellants Attys

Now come in the said appeal by Campbell thurs atty & say that in the record of proceedings aforesaid & in the rendition of judgment aforesaid there is no error wherefore they pray judgment

Wm. Campbell
Atty for appellee

142 249

Edwin Curtis &
Joseph Baker

vs

John F. Wright

Record

Filed April 23^d 1862
L. Leland
clerk.

Wm. Boice & Mitchel
Depts. Attys.