

12745

No. _____

Supreme Court of Illinois

French, for use

vs.

Crittenden et al

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John Brittenden vs
Charles R. French

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Be it remembered that on the twenty third day of December A.D. 1858, Charles R French for the use of Elijah Dee, by Taylor & Phelps his Attorneys, came into the office of the Clerk of the Circuit Court within and for the County of Bureau on the State of Illinois, and filed his praecipe for summons herein, which is in the words & figures following to wit;

State of Illinois } ss In Circuit Court
Bureau County } In January T. D. 1859

Charles R French for the
use of Elijah Dee

John Crittenden, James
Fitzmaurice & William Converse

Trespass on the Case upon
promises Damages \$400.00

The Clerk of said Court
will please issue summons against the defendants in the
above suit. Lay the Action, trespass on the Case upon prom-
ises & Plaintiff damages at four hundred dollars accord-
ing to the Statute

Princeton Dec^r 23/58

Taylor & Phelps, Attys for Plff.

And on the same day, process of summons issued
herein, out of the office of the said Clerk of said Court in the
words and figures following to wit;

State of Illinois } ss The People of the State of Illinois
Bureau County } To the Sheriff of said County Greeting

We command you that you summon John
Crittenden, James Fitzmaurice & William Converse if they
shall be found in your County personally to be and appear
before the Circuit Court of said County on the first day of
the next term thereof, to be holden at the Court House in
the Town of Princeton in said County on the first Monday
in the Month of January next to answer unto Charles R
French for the use of Elijah Dee of a plea of trespass on the
Case upon promises to the damage of the said Plaintiff as he

says in the sum of four hundred dollars and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same

Witness Edward M. Fisher Clerk of our said Circuit Court
 1858 and the seal thereof at Princeton in said County this
 23^d day of December in the year of our Lord one thousand
 eight hundred and fifty eight

Edward M. Fisher Clerk,

and on the back of which summons the Sheriff made the following endorsement to wit: "Served this 24th day of December 1858 by reading to the within named defendants John Crittenden James Fitzmaurice & William Converse J. E. Norton Sheriff Bureau Co Ills"

And afterwards to wit on the 24th day of December AD 1858 came the said Plaintiff by his Attorneys aforesaid and filed his declaration and copy of note by him then and there declared upon, in the words and figures following to wit:

State of Illinois } ss In Circuit Court
 Bureau County } January Term AD 1859

Charles R. French the Plaintiff who sues for the use of Elijah Dee by Taylor & Phelps his Attorneys complains of John Crittenden James Fitzmaurice and William Converse the defendants in a plea of trespass on the case upon promises for that whereas the said defendants on the fifth day of November AD 1855 at Princeton in the County of Bureau and State of Illinois made their promising note in writing bearing date on that day and delivered the same to the Plaintiff and thereby eighteen months after the date thereof for value received they promised to pay to the plaintiff or bears by and under their names of John Crittenden Jas Fitzmaurice and W^m Converse the sum of two hundred and eighty seven dollars and fifty cents with interest thereon at the rate of ten per cent per annum from date thereof until paid which period hath now elapsed and the said defendant then and there, in consideration

of the premises promised to pay to the said Plaintiff by
 and under their said names of ^{John Cullenden} Jas Fitzmaurice and W^m Con-
 verse the amount of said note with the interest thereon ac-
 cording to the tenor and effect thereof of said note yet the
 said defendants have disregarded their promise and have not
 nor have any or either of them paid the said sum of money and
 interest or any part thereof to the damage of the Plaintiff of
 four hundred dollars and thereupon he brings his suit &c

Taylor & Phelps Attys for Plff

Copy of the note sued on

Princeton November 5th 1855

Eighteen Months after date for value received we promise to
 pay Charles R French or bearer, two hundred eighty seven
 dollars fifty cents with interest at ten per cent

(signed) John Cullenden
 Jas Fitzmaurice
 W^m Converse

Copy of the endorsements on the back of said note

" Interest paid on this note up to 1st April 1858

" Received \$12.50 principal on this note up to April 1st /58

Pleas before the Honorable Martin Ballou Judge of
 the twenty third Judicial Circuit of the State of Illinois at
 the January Term of said Court begun and held at the
 Court House in Princeton in the County of Bureau and State
 of Illinois on Monday the third day of January in the year
 of our Lord one thousand eight hundred and fifty nine

Present Honorable Martin Ballou Judge

E. M. Fisher Clerk
 D. E. Norton Sheriff
 Geo W Stipp State atty

To wit on the third day of said term
 Charles R French for the
 use of Elijah Ice

vs

Assumpit

John Cullenden & James
 Fitzmaurice and William Converse.

Now come the defendants by Stupp their Attorney and file their plea to said declaration in the words and figures following, to wit;

State of Illinois } ss Circuit Court
Bureau County }

January Term AD 1859

John Cullenden
James Fitzmaurice
& William Converse

vs

Charles R French

In assumpsit

And the said defendants come and defend the wrong and injury when v^d, and say they did not procure in manner and form as in the declaration alleged and of this they put on the Country v^c

By Stupp & Sparling their Attys

To wit on the fourth day of said term

Charles R French for the
use of Elijah Dee

vs

John Cullenden James
Fitzmaurice & William Converse

Assumpsit

This day this cause being called the Plaintiff comes by Taylor & Phelps his attorneys and the defendants come by Stupp their Attorney and by agreement of said parties a jury is waived and this cause is submitted to the Court for trial and the Court finds for the Plaintiff and assesses his damages herein at the sum of two hundred and ninety six dollars and one cent. It is therefore Considered by the Court that the Plaintiff have and recover of the said defendants the said sum of two hundred and ninety six dollars and one cent his said damages together with all his costs and charges in and about his suit in this behalf expended and that he have execution therefor. And the Defendants by their said Attorney pray an appeal herein which is allowed on condition that said defendants file their appeal bond herein in the sum of six hundred dollars

with security to be approved by the Court by Monday of third week.

And on the same day came the said Defendants and filed their Bill of Exceptions herein which is in the words and figures following to wit;

State of Illinois	}	Circuit Court of the
Bureau County, ss		
Charles R French for the	}	January Term AD 1859
use of Elijah Ice		
vs	}	In Accompany
John Crittenden James		
Fitzmaurice & William Converse	}	

Be it remembered that on the trial of this Cause at the said term, a jury was waived and the Cause was tried by the Court. And the said Plaintiff then and there offered to read in evidence upon said trial a note in the words and figures following to wit;

Princeton

November 5th 1855

Eighteen months after date for value received we promise to pay Charles R French or bearer Two Hundred Eighty seven dollars fifty cents with Interest at Ten per Cent

\$287 ⁵⁰/₁₀₀

John Crittenden
Jas Fitzmaurice
Wm. Converse

- on the back of which note there were the following endorsements,

- " Interest paid on this Note up to 1st April 1858 "
- " Received \$12 ⁵⁰/₁₀₀ principle on this note up to April 1st 58 "
- " I Guarantee the payment of the within note to Elijah Ice
Enos Matson Sen "

- to the reading of which note in evidence the defendants then and there objected for the reason that said note was

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not the note described in the said declaration, but the Court overruled the said objection of said defendants and permitted the said Plaintiff to read the same in evidence to the said Court on said trial, to which decision of said Court, the said defendants then and there excepted which was all the testimony in said Cause, whereupon the said Court then and there rendered judgment in said Cause against the said defendants to the rendition of which judgment, the said defendants then and there objected and excepted and prayed said Court to sign and seal this their Bill of exceptions and it is done accordingly

M Ballou Judge (seal)

Charles R French for the
use of Elijah Dee
vs.)

John Crittenden James
Fitzmaurice & William Converse

Assumpers

To wit on the 13th day of said Term

Now come the defendants and present their appeal bond herein which is approved and ordered to be filed and is in the words and figures following to wit

" Know all men by these presents, that we John Crittenden,
" James Fitzmaurice and William Converse and William
" H Winter are held and firmly bound unto Charles R
" French for the use of Elijah Dee in the penal sum of
" Six hundred dollars for the payment of which well
" and truly to be made we bind ourselves our heirs execu-
" tors and administrators, jointly, severally, and firmly by
" their presents. Witness our hands and seals this 17th
" day of January AD 1859.

" The condition of the obligation is such that where-
" as the said Charles R French did at the January Term
" AD 1859 of the Circuit Court of the County of Bureau
" and State of Illinois, recover a judgement against the
" above named John Crittenden, James Fitzmaurice, and
" William Converse, for the sum of two hundred and

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" ninety six dollar and one cent, and costs of suit for the
 " use of ^{the said} Elijah Dee from which judgment the said John
 " Buttenden, James Fitzmaurice, and William Converse
 " have prayed an appeal to the Supreme Court of said
 " State Now if the said John Buttenden, James Fitzmaurice
 " and William Converse shall pay the said judgment costs,
 " interest, and damages in case the said judgment shall
 " be affirmed, and shall duly prosecute said Appeal,
 " then this bond shall be void, otherwise in force

" John Buttenden (seal)
 " Jas Fitzmaurice (seal)
 " Wm Converse (seal)
 " W.H. Winter (seal)"

State of Illinois } ss
 Bureau County }

J. Edward M. Fisher Clerk of the
 Circuit Court within and for the said County of Bu-
 reau in the State aforesaid do hereby Certify that the a-
 bove and foregoing is a true and perfect copy of the
 proceedings in the above entitled Cause as the same
 appear on the files and of Record in my Office.

In testimony whereof I hereunto subscribe
 my name and affix the seal of the said
 Court at my Office in Puncetion in said
 County this 1st day of March A.D. 1857

Edward M. Fisher Clerk
 per H. H. Fisher Secy

Fees Docket Fee to Supreme Ct \$5.00

This Transcript & Postage 3.00

\$ 8.00 Paid by Plaintiff (E. Dee)

State of Illinois } Supreme Court
~~Lower Court~~ } April Term A. D. 1859

John Crittenden
 James Fitzmaurice
 & William Lawrence

Appellants

Appeal from
 Bureau

vs
 Charles R. French

Appellee

And now comes the
 appellant, by steph & Sparling their attorneys, and shews
 to the Court that in the record of the proceedings
 and judgment aforesaid there is manifest
 Error in this, to wit.

First the Court below erred in overruling the objection
 of the Defendants below, to the introduction in
 evidence of the said note, and in permitting
 the plaintiffs below to read the same in evidence

Second ~~the Court~~ the Court below erred in rendering
 judgment against the Defendants—
 steph & Sparling for appellants

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 Charles R. French for use of C. D. Lee

John Crittenden, James

Fitzmaurice & William Lawrence

Certified Transcript of

Records

Filed April 14, 1859

L. Leland Bell

By J. D. Price Deput

Fee \$2.75
 Index 3.00

And the appellee comes & joins in error
 and says there is no such error as is
 above assigned, and prays that said
 judgment be affirmed

W. H. McAllister
 for appellee

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

JOHN CRITTENDEN, JAMES FITZMAURICE, & WILLIAM CONVERSE, Appellants, *vs.* CHARLES R. FRENCH, Appellee.

Appeal from Bureau County.

ABSTRACT OF THE RECORD.

I.

Record.

This cause was tried before Ballou, Judge, at the Jan. Term, 1859, of the Bureau Circuit Court. Action Assumpsit, by appellee *vs.* appellants, on a promissory note. The declaration contains one count only—is special upon the note, and describes the note as follows, to wit:

- 2 “For that whereas, the def’ts, on the 5th day of November, A. D. 1855, at Princeton, in the County of Bureau, and State of Illinois, made their promissory note in writing, bearing date on that day, and delivered the same to the plaintiff, and thereby, eighteen months after the date thereof, for value received, they promised to pay to the plaintiff or bearer, by and under their names of John Crittenden, Jas. Fitzmaurice and Wm. Converse, the sum of two hundred and eighty-seven dollars and fifty cents, *with interest thereon at the rate of ten per cent. per annum from the date thereof until paid*, which period hath now elapsed, &c.”

II.

- 4 The defendants pleaded the *general* issue.

III.

- 5, 6 The bill of exceptions shows that a jury was waived, and trial had by the Court. Plaintiffs, appellees, offered in evidence the following note, to wit:

“Princeton, November 5th, 1855. Eighteen months after date, for value “received, we promise to pay Charles R. French or bearer, two hundred “eighty-seven dollars fifty cents, *with interest at ten per cent.*” To which the defendants, appellants, objected, because of variance; objection overruled, note read—which was all the evidence—and judgment rendered in favor of plaintiffs, appellees, against defendants, appellants; to the rendition of which judgment defendants, appellants, excepted.

IV.

ASSIGNMENT OF ERRORS.

1. The Court erred in overruling the objection of defendants below to the note, and in permitting plaintiffs below to give the same in evidence.
2. The Court erred in rendering judgment in favor of plaintiffs below against defendants below.

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Crittenden et
al
v
Lynch
et al

Filed April 26, 1869
Lynch
et al

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

JOHN CRITTENDEN, *et al*, Appellants, }
vs. } Appeal from Bureau.
CHARLES R. FRENCH, Appellee.

POINTS AND AUTHORITIES RELIED ON BY THE APPELLANTS.

1st. The words in the declaration, with interest "*until paid*," are descriptive of the note sued on. The note offered in evidence does not contain the words, "*until paid*;" there is, therefore, a variance between the declaration and the note offered.

Saxton & Hutchinson vs. Johnson, 10 Johnson's N. Y. Rep. 418.

Swan's Practice, 306, note q.

2d. Allegations descriptive of material matters cannot be rejected; but must be proved, or the variance is fatal.

1 Starkie Ev. 442.

STIPP & SPARLING,
For the Appellants.

*I guess this is no variance. This is not
description of the identity but is stating
the substance or legal effect of the note*

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Crittenden et al
vs

French

Brief

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Third Division—April Term, 1859.

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1 Starkie Ev. 449. 449-

STIPP & SPARLING,
For the Appellants.

appellee asks dismissal of appeal
with damages - insisting that the
it is apparent that it was only taken
for delay

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Crutenden et al

French

Brief

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

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Brittenden &
al

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Funer

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Filed April 26, 1857

L. Leclercq

clerk