

No. 13901

Supreme Court of Illinois

Atwood & Co.

vs.

Fleming et al.

71641  7

Pleas continued and held at the Court House in
Bloomington within and for the County of McLean in the
Eighth Judicial Circuit of the State of Illinois before the
Hon. David Davis Judge of said Eighth Judicial Circuit
in a certain action therein pending. wherein John M. Atwood
John P. White & John Sparhawk. partners composing the
firm of Atwood & Co. were plaintiffs and John C. Fleming
and Hugh M. Fleming. partners composing the firm
of Fleming & Bros. were Defendants. in which cause
final judgment was rendered on the Twentieth Sixth
day of June in the year of Our Lord One thousand eight
Hundred and fifty seven.

John M. Atwood, John P. White
& John Sparhawk. partners of
the firm of Atwood & Co.

vs

John C. Fleming & Hugh M. Fleming
partners of the firm of Fleming & Bros.



In Assumpsit

Be it remembered that heretofore, to wit. on
the Twenty first day of May in the year of Our Lord One
thousand eight Hundred and fifty seven, came said
Plaintiffs by Hanna & Scott their attorneys and filed
in the office of the Clerk of said Circuit Court a

Declaration. Copy of Note sued on and Security for costs
which said Declaration. Copy of Note sued on. and Security
for costs are respectively in words and figures as follows, to wit.

Declaration. State of Illinois } In the Circuit Court of Said
McLean County } County, June Special Term, A.D. 1856.
John M. Atwood, John P. White & John
Sparhawk. Partners under the name and style of
Atwood & Co. Plaintiffs in this suit. Complain of John
C. Fleming and Hugh M. Fleming, partners under the
name of Fleming & Brother. Defendants, in a plea of
Assumpsit. for that ^{whereas} the said Defendant, heretofore to
wit, on the first day of October in the year of our Lord
One thousand eight hundred and fifty six, at
Philadelphia, to wit at the County of McLean and State
of Illinois by the name of Fleming & Brother, made their
certain Note in writing, commonly called a promissory
note, bearing date the day and year last aforesaid and
then and there delivered the said note to the said plain-
-tiffs by which said note the said Defendant promised
to pay to the order of said Plaintiffs by the name of Atwood
& Co. six months after the date thereof. Twelve hundred
and thirty nine Dollars & sixty five Cents (for) value received
without defalcation and without relief from any valuation
or appraisement law. By reason whereof and by force of
the Statute in such case made and provided the said
Defendant became liable to pay to the said Plaintiff the
the said sum of money in the said note specified according
to the tenor and effect of the said note. And being so liable

the said Defendant in consideration thereof. afterwards to wit. on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said Plaintiff. well and truly to pay unto the said Plaintiff the said sum of money. in the said note specified. according to the tenor and effect of said note. And whereas ^{also} the said Defendant afterwards to wit on the first day of May in the year of Our Lord one thousand eight hundred and fifty seven. at the place aforesaid. was indebted to said plaintiff in the sum of Fifteen hundred Dollars. Lawful money of the United States of America. for money before that time lent and advanced by the said Plaintiff to the said Defendant. at the special instance and request of the said defendant. and for other money by said plaintiff before that time paid. laid out and expended for the said Defendant and at the like request of the said Defendant. And for other money by the said Defendant. before that time had and received to and for the use of said Plaintiff. And being so indebted the said Defendant. in consideration thereof afterwards to wit. on the same day and year last aforesaid and at the place aforesaid. undertook. and then and there faithfully promised the said Plaintiff well and truly to pay unto the said Plaintiff the said sum of money in this Court mentioned when the said Defendant should be thereunto afterwards requested. And whereas also the said Defendant. afterwards to wit. on the same day and year last aforesaid and at the place aforesaid. accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing

from the said Defendant to the said Plaintiff and then and there being in arrears and unpaid and upon such accounting the said Defendants then and there were found to be in arrears and indebted to the said Plaintiff in the further sum of fifteen Hundred Dollars of like lawful money as aforesaid. And being so found in arrears and indebted to said Plaintiff the said Defendants in consideration thereof afterwards to wit. on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said Plaintiff well and truly to pay unto the said Plaintiff the said sum of money last mentioned. when the said Defendant should be thereunto afterwards requested.

Nevertheless the said Defendant. (although. often requested &c. to wit on the day. when the said note became due and payable. according to the tenor and effect thereof and oftentimes since to wit at the place aforesaid) have not yet paid the said several sums of money above mentioned or any or either of them. or any part thereof to the said Plaintiff. but to pay the same or any part thereof to the said Plaintiff the said Defendants have hitherto altogether refused and still does refuse. to the damage of the said Plaintiff of Fifteen Hundred Dollars. And therefore the said Plaintiff bring suit &c

Hanna & Scott.

Plaintiff's Attorneys.

Copy of Note sued on

"#1237.65
7/10

Philadelphia October 1st 1856"

Copy of Note. "Six months after date the Subscriber of
Bloomington, County of McLean, State of Illinois, promises
to pay to the order of Atwood & Co. Jewelers Hundred and
thirty nine Dollars $\frac{65}{100}$ value received, without defalcation
and without relief from any valuation or appraisement
Law"

"Fleming & Brother"

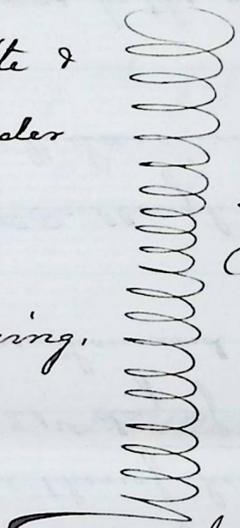
John M. Atwood, John P. White &
John Sparhawk, partners under
the name of Atwood & Co.

In the McLean
Circuit Court.

Security for Cost.

vs

John Fleming & Hugh Fleming,
partners under the name of
Fleming & Brother



I do hereby enter
myself security for costs, in this cause and acknowledge
myself bound to pay or cause 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 21st day of May 1857.

W. H. Hanna.

And thereupon sued out of said Clerks office a writ
of Summons, which said writ of Summons was in
words and figures as follows to wit.

State of Illinois
Summons McLean County The People of the State of Illinois.

To the Sheriff of said County, Greeting,
We Command you to Summon John C. Fleming &
Hugh M. Fleming partners under the name of Flem-
ing & Brother. if found in your County personally to
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 Bloomington on the third Monday in
the month of June next. to answer unto John M. Atwood
John P. White and John Sparhawk. partners under the
name & style of Atwood & Co. in a plea of Assumpsit
to their damage Fifteen Hundred Dollars as they say.
And have you then and then this writ. and make return
thereon in what manner you execute the same.

Witness. William McCullough. Clerk of said Circuit
Court and the seal thereof hereto affixed at
Bloomington this 21st day of May. in the
year of Our Lord One thousand eight Hundred
and fifty seven.

W^m. McCullough Clerk

By Geo. W. Garrison. Depty.

Which said writ of Summons was by the Sheriff of said
County. returned unto said Clerks office. endorsed in
words and figures as follows. to wit.

Endorsement.

Executed by reading to the within named John C. Fleming
& Hugh M. Fleming. May 23^d. 1857.

Fee. Service & Return \$1.10 Travel .10

\$1.20

J. H. Moore Shff.

And thereupon afterwards. to wit at the Special Term
term of said Circuit Court, in the year of Our Lord One
thousand Eight Hundred and fifty seven.

Present.

Hon David Davis	Judge
William McCullough	Clerk
Joseph H. Moors	Sheriff.

On the first day of said Term. being the fifteenth day of
June in the year last aforesaid. the following order was made
in this cause. as appears of Record. to wit.

Atwood & Co

vs

John C. & Hugh M. Fleming.

In Assumpsit.

This day on motion of said

Order of Court.

Plaintiffs by their Attorney. said Defendants are by the
Court here ruled to plead to said Plaintiffs Declaration.
filed herein. by wednesday morning next. or judgement will
be rendered against them by Default.

And thereupon afterwards. to wit. at said Special Term
Term. in the year last aforesaid.

Present.

Hon. Jesse O. Norton. Judge of the eleventh Judicial Circuit of the State of Illinois.	Judge
William McCullough	Clerk
Joseph H. Moors	Sheriff.

On the tenth day of said Term. being the twenty fourth day of June in the year last aforesaid, the following proceedings were had in this cause as appears of Record, to wit,

John M. Atwood, John P. White &
John Sparhawk, Firm of Atwood & Co

John C. Fleming & Hugh M. Fleming

Order of Court.

vs.

In Assumpsit.

And now at this

day come said Defendants by their Attorneys, and move the Court here to strike the Declaration of the said Plaintiffs from the files of this cause. And thereupon come said plaintiffs by their Attorneys, and here enter their Cross motion for leave to amend the Declaration aforesaid. And leave being granted, thereupon said Plaintiffs here in open Court proceed to amend their Declaration aforesaid by changing the figure 6 to the figure 7 in the Caption of said Declaration. And now said Defendants move the Court here to continue this cause for reasons shown to the Court. And the Court having considered said motion doth overrule the same, to which ruling said Defendant excepts. And now on motion of said Plaintiffs, said Defendants are by the Court ruled to filead to said Plaintiffs Declaration, by Thursday next or judgment will be rendered against them by default.

And thereupon afterwards to wit. on the day and year last aforesaid come said Defendants by their Attorneys and file among the papers of this cause, their demurrer to said Plaintiffs Declaration, which said demurrer is

in words and figures as follows, to wit.

John C. Fleming & Hugh M. Fleming
etc.

Demurrer

John M. Atwood & others

And the said Defendants Corne &c. and say that the said Plaintiff Declaration and the matters therein set forth are insufficient in law to be answered unto. And this they are ready to verify. Wherefore &c.

Sweett & Orme for Defalts.

And for matters of Special Demurrer. to said Declaration the Defendants show to the Court here.

1st. That there is no sufficient breach of the agreement and undertakings declared on, set forth and alleged in said Declaration.

2nd. That the Declaration does not show that said Defendants have failed to comply with their agreements

3^d. That the Declaration does not show, that said Plaintiffs have not been fairly paid, according to the promise set forth in the Declaration.

4th. That the breach in said Declaration is not sufficient.

And thereupon afterwards, to wit, At said Special June Term, in the year last aforesaid. Present,

Hon. Jesse O. Norton. Judge
William McCullough Clerk
Joseph H. Morris Sheriff

On the Eleventh day of Said Term. being Thursday the
twenty fifth day of June in the year last aforesaid. the
following proceedings were had in this cause as appears
of Record. to wit.

John M. Atwood, John P. White &
John Sparhawk.

Order of Court.

vs

John C. & Hugh M. Fleming

In Assumpsit

And now again
come said Defendants by their Attorney, and file herein
their Special Demurrer to the Declaration of said Plaintiffs
which Demurrer being sustained by the Court, thereupon
come said Plaintiffs and pray leave of the Court to amend
their Declaration aforesaid. and leave is granted them, to amend
their said Declaration by adding the letter s. to the words
"Plaintiff" & "Defendant" where necessary, which is done.
And now on motion of said Plaintiffs, said Defendants
are by the Court ruled to plead to said Plaintiffs Declaration
by Friday next or Judgment will be rendered against them
by Default.

And thereupon. Afterwards, to wit. on the day and year last
aforesaid. come said Defendants by their Attorney, and filed
among the papers of this cause, a plea to the Declaration of said
Plaintiffs. and also a Notice, which said plea and Notice
are in words and figures as follows to wit.

Plea.

John C. & Hugh M. Fleming
vs.

John M. Atwood & others

And said Defendants
come and defend the wrong & injury when &c. and say
Actio Non. Because they say that they did not undertake
and promise in manner & form as said plaintiff have
above thereof complained against them, and of this they
put themselves upon the country &c.

Swett & Orme

for Defolts.

Notice.

The said Plaintiffs will take notice that on the trial of this
cause the Defendants will give in evidence, and insist that
the note sued on was given for merchandise bought by
Defendants of Plaintiffs. That defendants purchased said
merchandise at the urgent request and solicitation of plaintiff
and in consideration that Defendants would make said
purchase of Plaintiffs. They (the Plaintiffs) expressly agreed
that Defendants should have twelve months from the date
of said purchase in which to pay for said goods. And there-
upon defendants executed a note drawn by Plaintiffs for the
price of said goods, payable six months after date under the
representation and agreement made by plaintiff that the
Defendants should have at least twelve months in which to
pay for the same. And after the execution of the said note
payable six months after its date, it was expressly agreed
that in consideration said Defendants had purchased so
large an amount of goods that said note should not

in fact be considered due and payable until twelve months
after the date as aforesaid. And that by said agreement
the said note is not yet due and payable. But in violation
of said express agreement the said Plaintiffs are now
harassing defendants by instituting this suit, when
according to an express agreement the said note is not
yet due.

And afterwards to wit, at said Special June Term
in the year last aforesaid. Present.

Hon Jesse D. Norton Judge
Wm. McCullough Clerk
Joseph H. Moon Sheriff.

On the twelfth day of said Term, being Friday the twenty
sixth day of June in the year last aforesaid. Final Judg-
-ment was rendered in this cause, as appears of Record in
words and figures as follows to wit.

John M. Atwood, John P. White &
John Sparhawk

vs

John C. & Hugh M. Fleming

In Assumpsit,

And now at this day

come said parties by their Attorneys and waiving a jury
submit the matters and things herein at issue to the
Court here for trial. And the Court having heard the evidence
and being fully advised in the premises finds that said
Defendants did promise and assume in manner and

Final Judgment.

form as said plaintiffs have declared against them. and doth assess the damages of said Plaintiffs. by reason of the non performance of the promises aforesaid at the sum of Twelve Hundred and fifty Seven Dollars and Sixty five cents. Therefore it is considered by the Court that said Plaintiffs recover of said Defendants the sum of Twelve Hundred and fifty Seven Dollars and Sixty five cents (\$1257.65) their damages so assessed as aforesaid. and likewise their costs in this behalf expended. and that they have execution therefor. And now come said Defendants and pray an appeal to the Supreme Court of this State which is granted them upon condition, that within sixty days from this date. they file with the Clerk of this Court an appeal Bond to be approved by the Clerk of this Court.

And thereupon afterwards to wit. on the Twenty fifth day of July in the year last aforesaid. came said Defendants and filed in the office of the Clerk of said Circuit Court an Appeal Bond. which said Appeal Bond is in words and figures as follows to wit.

Know all men by these presents that we John C. Fleming
George M. Fleming and _____ are held
and firmly Bound unto John M. Atwood. John P. White
& John Sparkhawk of the firm of Atwood & Co. in the special
sum of Seventy Six Hundred Dollars. for the payment of
which well and truly to be made we and each of us bind
ourselves our heirs. executors and administrators. jointly and

Severally and jointly by these presents,

Sealed with our seals and dated at Bloomington this 25th
day of July Anno Domini. One thousand eight hundred
and fifty seven.

The condition of the above obligation is such that whereas
the said John M. Otwood, John P. White & John Sparhawk
did on the twenty sixth day of June. one thousand eight
hundred and fifty seven at a Term of the Circuit Court
then being holden within and for the County of McLean
and State of Illinois obtain a Judgment, against the above
Borrowers John C. Fleming & Hugh M. Fleming, for the
Sum of Twelve hundred and fifty seven Dollars and
Sixty five Cents and Costs of Suit, from which Judgment
the said John C. & Hugh M. Fleming have prayed for and
obtained an appeal to the Supreme Court of said State

Now if the said John C. & Hugh M. Fleming shall duly
prosecute said appeal, and shall moreover pay the amount
of the Judgment, Costs, interest and damages rendered and
to be rendered against them the said John C. & Hugh M.
Fleming in case the said Judgment shall be affirmed
in the said Supreme Court, then the above obligation to be
null and void, otherwise to remain in full force and Credit
Taken and entered into before me

and approved this 25th day of

July. A.D. 1857.

W^m McCullough Clerk

John C. Fleming 

H. M. Fleming 

A. M. Fleming 

State of Illinois }
McLean County } ss
I, William McCullough Clerk of
the Circuit Court in and for said County do hereby certify
that the foregoing is a true and complete transcript
of the record and papers on file in the foregoing case
in my office.



Witness my hand and the seal of said Circuit
Court hereto affixed at Bloomington this
twenty fifth day of November, A. D. 1857.

Wm McCullough, Clerk.
By S. B. Woodward - Deputy

Received of Plaintiff, ^(attys) Six ⁵⁰cts in full
of fees for this transcript =

Wm McCullough, Clerk
per S. B. Woodward Deputy

