

No. 12411

Supreme Court of Illinois

Frye.

vs.

Menkins.

Be it remembered that heretofore, to wit: on the
17th day of August in the year of our Lord one
thousand eight hundred and fifty three there was filed in
the office of the clerk of the Circuit Court in and for the
County of Peoria in the State of Illinois a precept, declaration,
and copy of instrument declared on, which are in the
words and figures following, to wit:

precept - Frederick Menkens,
vs
Smith Frye.

Peoria Circuit Court,
To Sept. Term A. D. 1853.
In Assumpsit.

Damages \$ 500

The clerk will please issue
summons returnable &c. in this cause

A. S. Merriman.

Declaration -
In the Peoria Circuit Court of the
September Term A. D. 1853.

State of Illinois,
County of Peoria, ss.

Frederick Menkens plaintiff in this
suit complains of Smith Frye, defendant in this suit of a
plea of trespass on the case on promises.

For that whereas heretofore, to wit: on the seventh day of
October in the year of our Lord one thousand eight hundred
and fifty one said defendant at Peoria, to wit: at the County
of Peoria aforesaid made his certain promissory note in
writing bearing date the day and year aforesaid and thereby
then and there on or before the first day of March then

next promised to pay Elnathan Platter by name & style of
S^r Elnathan Platter or order the sum of two hundred & sixty
dollars for value rec^d & then & there delivered said note to said
Elnathan Platter who afterwards, to wit; on the day and year
aforesaid at the county aforesaid endorsed and delivered said
note to plaintiff, and afterwards, to wit; on the day & year
aforesaid at the county aforesaid said defendant in con-
sideration thereof undertook & faithfully promised plaintiff
to pay him said sum of money in said note specified
according to the tenor and effect thereof, and said plaintiff
further avers that the said note became due and payable
before the commencement of this suit,

Also for that whereas said defendant heretofore
to wit; on the first day of August A. D. 1853, at the county
of Sevier aforesaid was indebted unto plaintiff in the sum
of five hundred dollars for goods, wares & merchandize
before then sold and delivered by plaintiff to defendant
at his request — also for the work & labor by plaintiff
his servants & workmen done and performed before then
in and about the business of defendant at his request —
also for so much money before then paid, laid out and
expended for and lent and advanced to said defendant
at his request by plaintiff — also for money before then
had and received by defendant to and for the use of plaintiff
Also for interest money upon and for the loan & forbearance
of divers large sums of money for long spaces of time before
then elapsed by plaintiff to defendant at his request — also for
so much money found to be due and owing from defendant
to plaintiff upon accounting before then had between them —
and being so indebted he the said plaintiff afterwards, to
wit; on the day & year last aforesaid at the county aforesaid
undertook & promised to pay to plaintiff the said ~~sum~~ money
upon request.

Set to pay said money or either of them or any part thereof
to plaintiff although often requested so to do defendant has
hitherto wholly neglected and refused and still does refuse
to the damage of plaintiff of five hundred dollars and
therefore he sues &c.

A. S. Merriman
Atty for Plff.

Copy note

copy of note -

Keosauqua October 7th 1851

On or before the first day of March next I promise to
pay S Nathan Platter or order the sum of two
hundred & sixty dollars for value recd.

Smith Frye,

(Endorsed) (Elnathan Platter

Whereupon the clerk of said court issued under the seal of said court a
summons in said cause to the Sheriff of Keosauqua County in the words & figures
following to wit.

"The People of the State of Illinois

To the Sheriff of Keosauqua County Greeting:

We command you to summon Smith Frye if he may be
found in your county, to appear before our Circuit Court on
the first day of the next term thereof, to be held at Keosauqua,
within and for the said County of Keosauqua, on the second Monday
of September next then and there, in our said court, to answer
unto Frederick Menkind of a plea of trespass on the case
upon promises, To his damage five hundred dollars as he
says and make return of this writ, with an endorsement of
the time and manner of serving the same, on or before the first
day of the term of the said Court to be held as aforesaid
Witness Jacob Sale, clerk of our said Court, and the Seal thereof at Keosauqua this
seventeenth day of August in the year of our Lord one thousand eight
hundred and fifty three, Jacob Sale, clerk,

Which summons was returned by said Sheriff endorsed as follows,
to wit:

Service of this writ acknowledged by Smith Frye,
August 15th 1853 L.B. Cornwell
Sheriff T. W. Ellis.

Proceedings at a term of the Circuit Court begun and held
at the Court house in Peoria, in and for the county of Peoria in
the State of Illinois, on the second Monday of September in
the year of our Lord one thousand eight hundred and fifty
three, it being the twelfth day of said month, Present the
Honorable Anselm Peters Judge of the sixteenth Judicial
Circuit in the State of Illinois, Elbridge S. Johnson,
States attorney, Leonard B. Cornwell, Sheriff and Jacob
Fale, clerk, to wit:

Friday September 16th A. D. 1853.

Frederick Merkins,

vs
Deceit.

Smith Frye.

This day the plaintiff by Merminan his attorney
entered a motion for a rule on the defendant to plead to this
action by Monday morning next.

Saturday September 17th A. D. 1853.

Frederick Merkins,

vs
Deceit.

Smith Frye.

This day came on to be heard the motion for
a rule on the defendant to plead herein, whereupon it is ordered
that the defendant plead to this action by Tuesday morning
next.

And afterwards on the 20th day of September A. D. 1853, the
defendant filed his plea in said cause in the words & figures
following, to wit:

pleas -
Frederick McKend,

vs
Smith Frye



In the Peoria Circuit Court
To September Term A.D. 1853.

And the said defendant by
Purple & Sanger his attorneys comes and defends the wrong
and injury when &c and says that he did not undertake
or promise in manner and form as the said plaintiff hath
above thereof complained against him and of this he
puts himself upon the country &c.
Plff doth the like &c Purple & Sanger for Deft.
Manning & Merriam
for Plff.

And for further plea in this behalf
said defendant says actio non because he says, that after
the making of said note and before the commencement of
this suit and after said note had become due and payable
and before the endorsement of the same by said Elnathan
Platter, he fully paid and satisfied the said Elnathan
Platter for the amount due on said promissory note and
the said Elnathan Platter, accepted the payment & made
to him in full satisfaction of said note,
Purple & Sanger for deft.

And afterwards on the 2nd day of February A.D. 1854 the
plaintiff filed his Replication in the words & figures following, to wit.

Frederick McKend,

Peoria Circuit Court

May, V. 1854,

vs
Smith Frye.

Plaintiff avers said second plea of said
defendant says precludi non because he says that said
defendant did not fully pay & satisfy said Elnathan
Platter for the amount due on said promissory note in

manner & form as in said plea alleged & of this he puts himself upon the country &c.

Manning & Meriman
for plff. "

Proceedings in the Circuit Court in and for the county of Peoria in the State of Illinois at a term thereof begun and held at the Court House in the city of Peoria in said County, on the first Monday of in the month of March in the year of our Lord one thousand eight hundred and fifty four, it being the sixth day of said month—
Present the Honorable Anselm Peters Judge of the sixteenth Judicial Circuit in the State of Illinois— Elbridge S. Johnson, States attorney, Leonard B. Cornwell, Sheriff and Jacob Gale, clerk, to wit:

Wednesday March 22nd A.D. 1854

Frederick Mentkins,

vs
Smith Frye, Defendant,

trial &
Judge &c.

This day came the plaintiff by Julius Manning his attorney and the defendant by Thorman H. Purple his attorney, a waived a trial by jury and agreed that all matters both of law and fact arising in this cause shall be tried by the court, whereupon the court having heard the evidence, does find the issues joined, for the plaintiff and does assess the plaintiffs damages by reason of the premises at the sum of two hundred and ninety two dollars and six cents: Therefore it is considered that the said Frederick Mentkins have and recover of the said Smith Frye the sum of two hundred and ninety two dollars and six cents his damages aforesaid by the court assessed and also his costs and charges by him about his suit in this behalf expended.

and that he have execution therefor. The said Smith Frye prayed an appeal in this cause to the Supreme Court of this state, which is allowed upon his filing in thirty days in the office of the clerk of this court an appeal bond payable to the plaintiff in the penal sum of four hundred dollars with William S. Moss as surety and conditioned according to law.

And afterwards on the 22nd day of March A.D. 1854 there was filed in said cause the Verdict of Reception of the defendant in the words & figures following, to wit:

Verdict of Reception: *vs* In the Circuit Court of Peoria County,
Smith Frye.

Be it remembered that upon the trial of this cause the plaintiff to maintain the issue on his part offered in evidence a promissory note which is as follows

" Peoria October 7th 1851

On or before the first day of March next I promise to pay S. Nathan Platter or order the sum of two hundred & sixty dollars for value rec^d Smith Frye."

which said note was indorsed as follows

"For value rec^d I assign the within note to Frederick Menkind. Elnathan Platter."

The defendant objected to the introduction of said note in evidence because, there was no evidence offered or given to shew that the same was made payable to Elnathan Platter by the name of S. Nathan Platter, or that the same was indorsed to plaintiff by the payee thereof, or that S. Nathan Platter and Elnathan Platter were one and the same person.

The Court overruled the objection and admitted the

Note in evidence and Defendants Counsel then & there excepted.

This was all the evidence in the cause.

The Court gave judgment for the Plaintiff and Defendant then & there excepted & requested the court to seal this bill of exceptions which is done.

Enslow Peters Seal

And afterwards on the 24th day of March A.D. 1854. the defendant filed in said clerk's office his appeal Bond in the words & figures following to wit,

"Know all Men by these presents that we Smith Frye and William H. McOp are held and firmly bound unto Frederick McKinstry in the sum of four hundred dollars lawful money of the United States to which payment well and truly to be made and done, we do bind ourselves, our heirs, executors and administrators jointly and severally by these presents. Witness our hands and seals this 24th day of March A.D. 1854.

The condition of this obligation is this, Whereas on the 23rd day of March A.D. 1854, the Circuit Court of Teoria County then in session in a certain suit pending in said court wherein Frederick McKinstry was plaintiff and the above bound Smith Frye was defendant, a judgment was rendered in favor of the said plaintiff against the said defendant for the sum of \$272.06, from which judgment the said Smith Frye has taken an appeal to the Supreme Court of the State of Illinois. Now if the said Smith Frye shall duly prosecute his appeal and shall pay the judgment, interest, damages and costs, in case the judgment of the Circuit Court shall be affirmed in the Supreme Court, then this bond shall be void, otherwise in force.

Smith Frye, Seal

Wm H. McOp, Seal

State of Illinois }
Prona County } I Jacob Gale clerk of the Circuit
Court in and for the County of Prona in the State
of Illinois do hereby certify, that the foregoing is a full
and correct transcript of the Record and proceedings
in a certain cause in said Court wherein Frederick
Munkins is Plaintiff, and Smith Frye is defendant
as the same remain in Record and on file in my Office.
In witness whereof I hereto set my hand
and affix the seal of said Court at my
Office in Prona this fifth day of
June A.D. 1854 -
Jacob Gale, clerk.

Clerks fees for transcript \$2.25 - paid by defendant -
Jacob Gale, clerk.

Smith Frye } appellant
vs
Frederick Munkins } appellee } Appeal from Prona

And now comes the said
appellant and says that in the Record and
proceedings and in the rendition of the Judgment
aforesaid there is Error in this, to wit:

1. The Circuit Court erred in admitting the
note offered in Evidence

2. Said Court erred in rendering Judgment for
Munkins against appellant

For these and other Manifest Errors the
said appellant prays that said Judgment may
be set aside, reversed & wholly for nothing & dismissed

June 10th 1854.

12411-5

W. C. Purple Appellants Atty

Smith Faye appellant } Supreme Court
Frederick Munkus appellee } Appeal from Florida

And said appellee
comes and says that in the Record and
proceedings aforesaid in said Circuit
there is no such error as is above by
said Appellant assigned & that said
Judgment right in all respects to be
maintained and affirmed

Manning & Morrison
Atty for Appellee

#440.
Smith Faye
as
Frederick Munkus
Revs & errors

40

Filed June 12. 1854.
V. Ireland Ck.

Prepared
12411
1854