

No. **12106**

Supreme Court of Illinois

Moeller.

vs.

⁷⁰
Quarr~~r~~r, et al.
_{ie}

71641  7

Moeller impleaded &c
vs
Quarrier O.H. & Co -

Error to Marshall

And now comes said Moeller by DeKey & Wallace his attorneys & says that there is manifest error in the judgment & proceedings aforesaid - in this -

- 1st There is a joint judgment vs Moeller & Facknstock with service or legal notice to Facknstock - record does not show notice published for four weeks successively - to Facknstock
 - 2nd The court erred in finding the issue for the plaintiff on plea in abatement -
 - 3rd The court erred in overruling me for new trial -
 - 4 The court erred in admitting in competent evidence -
 - 5 The court erred in rendering judgment for plaintiff - -
 - 6th The court erred in refusing to left Moeller a right to plead to the merits after finding the issue for the pl^{ff} on plea in abatement -
- and for these & other errors said Moeller says said judgment ought to be reversed
- DeKey & Wallace
for pl^{ff} in error

And the said respondents in Error say that in the records and proceedings aforesaid and in the rendition of the judgment aforesaid there is no error and pray that the same may be affirmed -

July 3, 1853

J. P. Purple
, , Supt, Atty

Quarrier Ott et al }
vs } Attachment
Fahnestock & Moeller }

Pleas before the Honorable Theophilus L
Dickey Judge of the 9th Judicial district
of the State of Illinois Presiding in the
circuit court of Marshall county. —
at a term thereof begun and holden on
the fifth monday being the 29th day of March
AD 1852 at the court house in Saco in the
said county of Marshall and State of Illinois

Present
The Hon. Theophilus L Dickey
Judge

Durson C. Cook States Atty

John Durson Clerk

Greenberry L Fort Sheriff

Be it remembered that heretofore that is
to say on the fifth day of February AD 1852
I Edmund Mark Bangs Attorneys for the
Plaintiffs in this cause filed with the Clerk of
this court the following precipe, to wit:

Precipe
Archibald Quarrier }
Morgan L Ott } Marshall circuit court
John Lutz partners } March Term AD 1852

Trading ^{under} the firm of Quarrier Ott & Pfls }
vs }

Samuel Fahnstock and
William F Moehler late
partners trading under the
firm of Fahnstock & Co Defts } Assumpsit
Damages \$500

Issue a writ of Attachment
in the above entitled cause according to the
unmpled complaint returnable to the next

Term of said Court James Barys
John Burns esq. clk. of said court Attorneys for Pfls
Done Feb 3rd 1852

State of Illinois }
Marshall county } 32
Ira J Kern Attorney
for the Pfls named in the above entitled
cause being sworn saith that the Defendants
named in said cause are indebted to the said
Plaintiffs in a sum exceeding twenty twenty
dollars to wit, the sum of two hundred and
fifty eight dollars, on two bills, one a due bill
made by said Fahnstock & Co for forty four
dollars ninety seven cents dated September
6, 1851, the other a bill of exchange drawn
by said Quarrier Ott & Co on said Fahnstock
& Co for two hundred dollars dated February
1st 1851, payable to said Quarrier Ott & Co six
months after date & accepted by said
defendants Fahnstock & Co; that said Sam-
uel Fahnstock is not a resident of this state &
said defendant Moehler is about to depart from
this state with the intention of having his effects

I do hereby enter myself security for costs in the within
mentioned cause & each week up until my costs are paid to
be paid all costs which may accrue in said cause
from either to the opposite party or to any of the Court
in pursuance of the laws of the State of Illinois this 3rd
day of February A.D. 1852
Ira J Kern

removed from this State
Subscribed & sworn to Ira J. Ferrin
before me this 5th day Atty of Plffs
of Feby 1852 J Burns clerk

Indorsed

Archibald Quarrier
Morgan L Ott &
John Lentz partners
under the firm of Quarrier
Ott & Co vs Samuelahnstock
William F Moehler late partners
trading under the firm ofahnstock &
Filed Affidavit Filed Feby 5th 1852
J Burns clerk

Bond

Know all men by these presents that I, Ira
J Ferrin Attorney of Archibald A Quarrier Mor-
gan L Ott & John Lentz; and William Ferrin
of the County of Marshall & State of Illinois
am held and firmly bound unto Samuel
ahnstock & William F Moehler in the penal
sum of six hundred dollars for the pay-
ment of which well & truly to be made
we & each of us bind ourselves our heirs
executors & administrators jointly & severally
& firmly by these presents sealed with our
seals and dated at Sacon this fifth day of
February Anno Domini one thousand
eight hundred and fifty two.

The condition of the above obligation is
such that whereas the above bounden Ira
J Ferrin Attorney of Archibald A Quarrier
Morgan L Ott & John Lentz hath on this day

(12106-3)

of the date hereof prayed an attachment out
of the Circuit Court of Marshall County at the suit
of A. A. Quarrier Morgan & Ott & John Lutz
against the estate of the above named
Samuel Fehnestock & William F. Moehler
for the sum of Two hundred & fifty eight
Dollars & the same being about to be sued
out of said Court, returnable on the Twenty
ninth day of March next to the term of the Court
then to be holden: Now if the said Archi-
bald A. Quarrier Morgan & Ott & John Lutz
shall prosecute his suit with effect or in case
of failure therein shall well & truly pay &
satisfy the said Samuel Fehnestock
& William F. Moehler all such costs in said
suit & such damages as shall be awarded
against them the said Plaintiffs their heirs
executors or administrators in any suit or
suits which may hereafter be brought for wrong-
fully suing out the said attachment, then the
above obligation to be void otherwise to remain
in full force and effect. I do hereby
Entered into before me this ^{5th} ~~5th~~ day of February A.D. 1852
John Burns clerk

Circuit Court Marshall Co. Ill.

Indorsed A. Quarrier et al vs Muller et al
Filed Filed Feby 5th 1852 J. Burns clerk

Attachment The People of the State of Illinois to the Sheriff of
Marshall County greeting: Whereas Ira S.
Fenn Attorney of Archibald A. Quarrier,

Morgan Lott & John Lutz partners trading
under the firm of Quarrier Lott & Co. hath com-
plained on oath to John Barnes Clerk of the
circuit court of Marshall County that Sam-
uel Johnson & William F. Moehler late part-
ners trading under the firm of S Johnson
& Co are justly indebted to the said Archibald
A Quarrier Morgan Lott & John Lutz
to the amount of two hundred and fifty
eight dollars and oath having been also
made that the said Samuel Johnson
is not a resident of this State, & that the said
William F. Moehler is about to depart from
this State with the intention of having his ef-
fects removed from this State And the said
Jesse Attorney of the Plaintiffs as aforesaid
having given Bond and security according
to the directions of the act in such cases made
and provided: We therefore command You
that You attach so much of the estate of the
said Samuel Johnson & William F.
Moehler or either of them Real or personal
to be found in Your county as will be of
value sufficient to satisfy said debt & costs
according to the complaint, and such
estate so attached in Your hands to secure
or so to provide that the same may be liable
to further proceedings thereupon according
to law at a court to be held at the courthouse
in Lacawin for said County on the 29th day
of March next, so as to compel the said
Johnson & Moehler to appear and answer
the complaint of the said Attorney of the Plain-
tiffs and that You also summon William

William Merryman William F. Palmer William Maxwell and Thomas Adams as Garnishes to be and appear at the said Court on the 29th day of March next & then & there to answer to what may be objected against them & that you also summon the said Samuel Johnson & William F. Moehler to be and appear before said Court on the first day of the term thereof to be held on the said 29th day of March AD 1852 to answer said Complaint. When & where you shall make known to said Court how you have executed this writ and have you then and there this writ

Witness John Burns Clerk of said Court and the seal thereof at Salem this 5th day of February 1852

Seal of Court

John Burns
Clerk

Indorsed Quarrier O & Co vs Johnson & Moehler

Shiffs
Return

Served this writ of attachment & summons by reading the same to the within named William F. Waller on the 5th day of February AD 1852. The within named Samuel Johnson is not found in my County

Shiffers Service \$.50
Mileage & Return \$.15
\$.65

G. L. Fort Shiff
of Marshall & Co

Served this writ of attachment by reading the same to the within named William F. Moehler & by delivering to him a true copy of the same on the 5th day of February 1852. The within named S. Johnson is not found in my County. Neither do I find any estate real or personal

belonging to the Defendants in my County that I can secure as within commanded. I also summoned the within named William Merryman William F Palmer William Maxwell and Thomas Adams to appear and answer as within required this 5th day of July AD 1852 S L Fort Shiff McCall

Shiffs fee Service of attachment writ	.50
Copy " "	.50
Mileage & return	.15
Service of four Cornishus	2.00
Mileage on same	.20
	<u>3.35</u>

S. L. Fort Shiff McCall

Shiff fee \$3.35

65
\$4.00 S L Fort

Attachment
Notice

State of Illinois } ss In the Circuit Court March
Marshall county } Term AD 1852

Archibald Quarrier
Morgan Ott & John
Lentz partners under the firm of
Quarrier Ott & Co

Attachment

vs
Samuel Hubnestock &
William F. Mochler late partners
under the firm of S. Hubnestock & Co

Notice is

hereby given that a writ of attachment has been issued at the suit of the plaintiffs in the above entitled cause, against the estate of the said defendants for the sum of two hundred fifty

dollars; that the same is now pending before said court; and that unless the said defendants shall be and appear before said court on the first day of the next term thereof, to be held at the Court House in Lacon in said county on the 27th day of March next, judgment will be entered thereon for the plaintiffs, and the estate attached will be sold and applied to the satisfaction thereof. Dated at Lacon Feb. 9. 1852 John Burns Clerk
John W. Bangs atty for plffs

I hereby certify that the Certificate annexed notice was published in the Illinois Gazette, a weekly newspaper printed & published in the town of Lacon Ills four consecutive weeks commencing Feb. 9th AD 1852 and ending March 4th 1852. Dated Lacon this March 27th AD 1852
A. N. Ford pub. Gazette
Indorsed Quarrier et al v Fahnestock
Filed March 27th 1852 J. Burns Clerk

~~The State of Illinois Marshall County Circuit Court March Term AD 1852
Marshall County vs Archibald a Quarrier
Morgan & John Lutz partners trading under the firm of Quarrier et al vs
Plaint Samuel Fahnestock & William F Moehler in a plea of assumpsit, for that
whereas on the first day of February in the Year of our Lord one thousand eight hundred and fifty one, the said Samuel Fahnestock & William F Moehler were partners in trade, trading & doing business at~~

A Term of the Marshall County Circuit Court of the State of Illinois began and holden in the Courthouse in Leon on Monday the 29th day of March AD 1852 - the Hon. J. L. Dickey Judge of the 9th Judicial Circuit of the said State of Illinois present & presiding and upon the first day of the said term among other Proceedings had is the following, that is to say:

Archibald Quarrier
Morgan L. Ott &
John Lutz

vs

Samuel Schumstock &
William Wacker

Attachment

This day came the plain-
tiff by their Atty & make

Proof of publication of notice for more than sixty days prior to the first day of the present Term of this Court as to the defendant Schumstock

order
allowing
notice

The State of Illinois Marshall County
Declaration Circuit Court. March Term AD 1852
Marshall County 3 p

Archabald A Quamer
Margaret Ott & John Lentz partners
trading under the firm of Quamer Ott & Co
complain of Samuel Farnestock and
William F Moeller in a plea of assumpsit
for that whereas on the first day of February
in the year of our Lord one thousand eight-
hundred and fifty one, the said Samuel
Farnestock & William F Moeller were partners
in trade trading and doing business at ~~Dayton~~
Ohio

Dayton Ohio under the firm of "Fahnestock & Co" and also for that whereas the said Plaintiffs by the name of their said firm of Quarrier & Co on the day & year last aforesaid to wit: the first day of February A.D. 1851 at Wheeling in the State of Virginia to wit at the County aforesaid, made their Bill of exchange in writing and directed the same to the said defendants by the name of their said firm of "Fahnestock & Co" at Dayton O. and thereby required the said Defendants to pay to the order of the said Plaintiffs two hundred dollars six months after the date thereof (which period has now elapsed) and the said Defendants under the name of their said firm of "Fahnestock & Co" then & there at Dayton O. to wit at the County aforesaid accepted the said Bill & promised the plaintiffs to pay to them the same according to the tenor & effect thereof, & of their acceptance thereof, to wit at the County of Marshall aforesaid but did not pay the same when due.

And for balance whereas on the sixth day of September in the year of our Lord one thousand eight hundred and fifty one at Dayton O. to wit at the County of Marshall aforesaid the said Defendants so being partners as aforesaid made their certain promissory note in writing & delivered the same to the said plaintiffs and thereby under the name of ^{the} said firm of "Fahnestock & Co" promised to pay to the said plaintiffs by the said name of their firm of Quarrier & Co the sum of forty four dollars & ^{seven} cents on demand thereof without offset and the said

Defendants in the name of their said firm of
J. H. H. Stock & Co. then & there in consideration
of the premises promised to pay the amount
of the said note to the said plaintiffs according
to the tenor & effect thereof; and also of
that whereas the said defendants on the
day & year last aforesaid at the County
of Marshall aforesaid were indebted to
the plaintiffs in five hundred dollars for
the price & value of goods then & there sold
and delivered by the plaintiffs to the defend-
ants at their request. And in five
hundred dollars for money then & there
lent by the plaintiffs to the defendants
at their request, and in five hundred
dollars for money then & there received
by the defendant for the use of the plaintiff.
And in five hundred dollars for money
found to be due from the defendants to the
plaintiffs on an account then & there
stated between them. And whereas the
defendants afterwards, on the day & year
last aforesaid in consideration of the
premises then & there promised to pay
the said last mentioned several sums of
money to the plaintiffs on request yet
they have disregarded their promises
and have not paid the said several
sums of money nor either of them nor
any part thereof; to the damage of the
plaintiffs five hundred dollars and
thereupon they bring suit. By
J. H. H. Stock & Co. their attys

Proof of Debt

Copy of the Bill & note delivered on

\$200.00

No. 2.

Whiting Va Feb 1st 1851

Six months after date pay to the order of ourselves ~~two~~ hundred dollars too value Received which place to the account of
S. Johnstock & Co Quarries Ct & Dayton O.

Dolls: 44 ⁹⁷/₁₀₀

Dayton O. Sept 6/1851

On demand we promise to pay to Quarries Ct & Co or order forty four dollars & ninety seven cents without offset for value Received
S. Johnstock & Co

S Johnstock & Co

In account with

Quarries Ct & Co Dr

Sept 6th 1851

To amount of Bill for goods

Sold & delivered ————— \$500.00

To cash lent ————— 500.00

To amt of money rec'd by deft for use of Pyp 500.00

To balance of Book acct on settlement 500.00

Indorsed
Filed

Quarries Ct & Co vs S Johnstock & Co

Filed March 19th 1850 J. T. Burns Clerk

Dea in
abatement
[12106-2]

Samuel Johnstock & William P. Moehler sued as partners under the firm of S Johnstock & Co In the Marshall county circuit Court March Term AD 1852

ad
Archibald Quarrier
Morgan L Ott & John
Lutz being as partners under
the firm of Quarrier Ott & Co

Attachment

And now William
F Moehler one of the said defendants comes
& defends & when he and prays judgment of
the writ and declaration herein & prays
& prays that the same may be quashed because
he says that he was not at the time of being said
said writ of attachment about to depart from
the state of Illinois with the intention of having
his effects removed from this said state
of Illinois, and this he is ready to verify where
fore he the said William F Moehler prays judg-
ment of the said writ & declaration & that the
same may be quashed Wm F Moehler
State of Illinois

Marshall County Taylor & Richardson atty
for William F Moehler ^{or Moehler} one of the above named
defendants being duly sworn deposes & says that the
above plea by him pleaded is true in substance
and in matter of fact Wm F Moehler
Subscribed & sworn to before me
this 29 day of March 1852

J D Burns clerk

Indorsed Samuel Fahnestock & Co ad Quarrier Ott
& Co in plea in abatement in this word
Filed 30th 1852 J D Burns clerk

The Demurrer in this case having been mislaid
agreement - it is agreed that it was in substance as follows
From Ferris & Bangs
Atty for plffs

J L Putnam
Atty for def

And the said Plaintiffs come
and say that the defendants Moellers
plea in abatement in manner
and form as the same is by ~~them~~
him pleaded and the matters and
things therein contained are not
sufficient in law to bar or foreclose
preclude the said plaintiffs from having &
maintaining their action aforesaid against
the said defendant and that they are not
~~bound~~ bound in law to answer the same
and this the said plaintiff are ready to
verify wherefore they pray judgement
and their damages aforesaid to be ad-
judged to them.

Ferris & Bangs
Atty for plff

And the said plaintiffs come and
show the court the following special
causes of Demurrer

1st That the Plea contains matters which
can only be pleaded in abatement

and concludes in bar,

Q^d₁₁

That the Plea contains of the said defendant is a negative plea and concludes with a verification 3^d

3^d that the plea does not conclude with a prayer for judgement only but with a verification also

4th that the Plea is a traverse of affidavit of the plaintiff & concludes with a verification, and for other matters

March Term of the Marshall County Circuit Court begun & holden in the courthouse in Bacon in said Marshall County & State of Illinois on Monday the 29th day of March AD 1852 Present Hon J. L. Dickrey judge of the 9th judicial circuit of said State presiding:

Thursday April 1st 1852 present as heretofore. Among other Proceedings had upon this day are the following that is to say:

Archibald Quarrier
Morgan L. Ott and
John Lutz

Attachment

vs

Samuel Fahnstock &
William F. Noehler

William Fahnstock

409

Order

sustaining
demurrer

This day came again the plaintiffs by their Atty as well the defendant Wm F Noehler by his Atty and the plaintiffs file herein their demurrer to defendants plea of abatement which demurrer is sustained by the court whereupon the defendant Noehler asks leave to file amended plea which leave is granted at the costs of the defendant

Note - Demurrer not on file

Amended
plea in
abatement

Samuel Fahnstock & William F Noehler
sued as late partners under the firm of
Fahnstock & Co

ad

Archibald Quarrier Morgan L Ott and
John Lutz suing as partners under the firm of
Quarrier Ott & Co

Attachment

42106-10

Marshall County
(Missouri) Circuit Court
March Term 1852

And now William F. Moehler one of the
said defendants implicated with the said
Samuel Fahnestock, comes & defends
of whom he and says that he was not at the time
of issuing out the writ of attachment herein, about
to depart from this state with the intention of
having his effects removed from this state
and of this he puts himself upon the country &
prays that the said writ of attachment may
be quashed

Wm F. Moehler

State of Missouri

Marshall County) William F. Moehler one
of the above named defendants after
being duly sworn deposes & says that the
above plea by him pleaded is true in sub-
stance & in matter of fact

Wm F. Moehler
Subscribed & sworn to before
me this 1st day of April AD
1852 J. Burns Clerk

Indorsed J. Fahnestock & Co as Quarrier Ott
Clerk - Amended plea in abatement
Filed Filed April 1st 1852 J. Burns Clerk

Archibald Quarrier

Morgan L. Ott & John Lutz
partners trading under the firm of

Quarrier Ott & Co

vs

Marshall Circuit
Court - March
Term 1852

Allegations
as to Mer-
ryman

Samuel Johnson &
William P. Moeller ~~etc~~

In attestation

Merryman's
allegations
asto Mer-
ryman

partners trading under the
firm of Johnson & Co

The said plaintiffs
do hereby allege & say that

William Merryman Garrison in this suit at
the time of being served as Garrison in this
suit had in his hands possession & power
property effects & choses in action belonging
to said defendant Moeller and was also indebted
to the said defendant Moeller to a large a-
mount and was also indebted to said de-
fendant Moeller in the sum of Five ^{thousand} ~~hundred~~
dollars that said defendant Moeller sometime
about the month of January A.D. 1850 sold to
said Merryman a large & valuable stock of
Goods & merchandise for which said Merry-
man was & still is indebted to said Moeller —
That said Moeller sometime about the month
of June 1851 forwarded from his residence
Dayton Ohio by Thomas Adams a quantity of mer-
chandise the remnant of the stock of goods belonging
to said Moeller & his former partner Samuel
Johnson to Lacon in said county of Marshall
and about the same time the said Moeller
started & went to the Eastern Cities & in about
the month of July 1851 purchased a large stock of
goods to the amount of about six thousand doll-
ars on credit & shipped them to Lacon Illinois
and afterward about the month of August
1851 removed from Ohio to Lacon & resided with
his family & soon afterward his goods arrived and
about the month of September formed a partner-
ship with said William Merryman uniting his old

stock of goods with the new stock who had at the time a considerable amount of goods on hand that after they the said Merryman & Moeller under the firm of W^m Merryman & Co had united their several stocks of goods & engaged & continued for a time to sell goods in company the said Moeller about the month of January 1852 sold out his entire interest in the partnership stock notes accounts & claims for the sum of Five thousand dollars the said Merryman & Moeller having formed the purpose of going to the coast of the Pacific Ocean and the said Merryman in the month of January 1852 sold the entire stock of goods to William Palmer & William Maxwell for about six thousand dollars on credit with the exception of the amount of a claim which said William Palmer held against said Merryman of about eight hundred dollars that said Merryman had full knowledge of the source from which the goods of said Moeller came & that the goods purchased in July & August 1851 were purchased chiefly on credit: And that said Merryman was indebted to said Moeller for the sum as aforesaid at the date of the service upon him of the writ of attachment in this cause. And the Plaintiffs pray that said Merryman may be required to answer the allegations aforesaid upon his oath and to state particularly whether he did purchase from said Moeller goods as aforesaid or any goods or property or claims & what goods & merchandise choses in action or claims he did purchase from said Moeller & at what time & to what amount & value & for what price

Allegations
as to Mer-
ryman

that he state particularly & fully as to the payment
for the same - whether he paid anything at the
time of said purchase & if so to what amount, & how
& in what manner payments for the same were
made or to be made & at what time or times
And if he has assumed to pay any of the debts of
said Moeller to state when & in what manner
such assumption was made. And that if
he answers & state particularly whether he has
made or executed any assumption in writing;
or executed any written obligation to any creditor
or creditors of said Moeller previously to his
being served with process in this case & if so to
what creditor or creditors to what amount
& in what instrument of writing & at what
date and particularly with any such
written assumption if it exist was made with
the knowledge & consent of such cred-
itor or creditors whether such creditor or credito-
were present in person or by attorney or agent at
the time of making such assumption & name
the creditor or agent J. W. Bausathy & P. P.

Indorsed

Inquiries C. H. C. vs J. Johnston & Co -
Allegations for W. Merriman & Co -
Filed April 3rd 1850 J. Burns

Allegations
as to Palmer
Maxwell

Inquiries C. H. C. } Marshall Circuit Court
vs } March Term AD 1850
J. Johnston & Co } Attachment
The plaintiffs Com & allege & say
That William J. Palmer & William Maxwell
Garnishes in this case are indebted to the said
defendant Moeller for a stock of goods pur-

chased by said Palmer & Maxwell to the amount
of four thousand dollars - that said goods
are part of the same stock sent by said de-
fendant Moeller to Leon Illinois from
Dayton Ohio in June 1851 and of the stock
brought on by said Moeller from the eastern cities
in September 1851 & which were sold to them by W^m
Merryman & Co through the agency of said William
Merryman as his own goods
and the said plaintiffs pray that said William
P. Palmer & William Maxwell may be required
to answer the allegations aforesaid & whether
they purchased any goods of said defendant Moel-
ler or of the Firm of William Merryman & Co and
whether they purchased any goods of William Mer-
ryman & if so to state whether they purchased from
William Merryman the same stock of goods
& merchandise which were in the possession of
William Merryman & Co up to the time of the disso-
lution of that Firm at what time they made the pur-
chase the amount & value of said goods & price
agreed by them to be paid therefor & the terms of
payment & the amount remaining unpaid
therefor by them at the time they were served
with said writ of attachment as Garrisoned in
this case and also state if they know what portion
portion of the price & value of said goods justly
of right belongs to said defendant Moeller, either
directly from them or to said Merryman for him
& if there was a sale or pretended sale of said Moeller's
interest in stock & goods of William Merryman & Co
to state what ^{they} know as ^{or believe} the value of said Moeller's
interest therein and all they or either of them know

asto the terms of payment from Meryman to Moeller
by From Wangs for Plffs

Indorsed

Invarier Att Ho vs S Ahmestock Ho -

Allegation for Palmer & Maxwell Garnshu
Filed April 3rd 1852 J D Burns Clerk

Filed

At the October Term of the Marshall County
circuit court of the State of Illinois begun
& holden in the courthouse in Lacon in
said Marshall County & State of Illinois on
Monday the 14th day of October A D 1852, the
Honorable Edwin S. Leland, ^{judge of the 7th judicial district of Illinois} present & pre-
siding, John Burns Clerk & Green-
burg L. Fort Sheriff, Burton C. Cook states
attorney

Saturday October 16th 1852

present as heretofore

Among other proceedings had on this
day are the following that is to say:

Archibald Invarier
Morgan S Att and
John Lutz
vs

Attachment

Samuel Ahmestock &
William F. Moeller

This day came the plain-
tiffs by From & Wangs their

Attorney & the defendant Moeller appeared by
Richmond his attorney & it appearing to the Court
that the defendant Ahmestock had had notice
of the pendency of this suit more than sixty days
before the first day of this term by publication
in the Illinois Gazette & being three times called
came not but made default the Court is

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judgment

&

Exceptions

therefore of opinion that the plaintiffs have judgment against the defendant Samuel Johnson for the damages in their declaration mentioned and the defendant William F. Moeller having filed herein his plea in abatement to the plaintiffs declaration & issue being joined thereon a jury being waived the issue is submitted to the court & having heard the proofs & allegations of the parties & the argument of counsel & being fully advised in the premises the court finds the issue joined in favor of the Plaintiff & assesses the Plaintiffs damages at Two hundred and sixty two dollars & seventy three cents therefore it is considered by the court that the Plaintiffs recover of the defendant William F. Moeller & Samuel Johnson the said sum of Two hundred & sixty two dollars & seventy three cents their damages in form aforesaid assessed likewise their costs & charges by them ^{about} their suit in this behalf expended & have execution thereon whereupon the defendant Moeller excepts to the opinion of the court & by agreement of the parties the bill of exceptions is to be tendered in vacation

Maryman's State of Illinois Marshall county circuit court
answer Hereof January Term 1853
James A. H. } Attachment
vs }
Samuel Johnson }
The answer of William Maryman
summoned as a Garnishee herein
to the allegations & interrogations herein

State of Illinois
Marshall County
& Circuit Court thereof - Oct Term
1852,

Archabald A Quarrus
Margan L Ott & John Lentz
vs
Samuel Fahrenstoch and
William F Moeller

Attachment

Be it remembered that on the trial
of the issue herein joined between said
Plaintiffs and said defendant Moeller -
It was proved by Plff that on the
seventeenth day of February AD 1852
defendant Moeller owned a contingent
interest - in a mercantile establishment
in the county aforesaid in which
William ^{Merryman} was a partner - that on
that day said Moeller and Merryman
made a contract - in writing (deemed
a bona fide by the court) by which
said Moeller sold and transferred his
interest in said establishment - to
said Merryman, and in consideration
of said sale by contract in writing
& reciting that said William Merryman
and W^m F Moeller then intended to
go to California some time in the Spring
of 1852 for the purpose of examining
that country.) Said William

Merryman agreed to & with said William F. Moeller to pay all the expenses incurred by the said Moeller while on said journey, from the Town of Saxon Illinois to San Francisco in California.

It was further proved by parole by a witness introduced by defendant that at the time of making said agreement the parties made an estimate of what was the probable value of the contingent interest then sold by Moeller and that they supposed it was worth about three hundred dollars - It was also at the time of said sale supposed by said parties that - it ~~was~~ would probably cost about three hundred dollars to pay a man's expenses to California -

It was further proved that at the time of suing out of the attachment in this cause - ~~Sold~~ Said defendant Moeller was about to depart from this state to go to California - with the intention of residing there permanently - his expenses on the route to be paid as aforesaid. The Plaintiff then offered to prove the amount of the indebtedness claimed in the declaration to which defendants objected and insisted that even if the issue on the plea in abatement should

be found against him he would
have the right to answer over to the
merits. The Court overruled said
objection and the Plaintiff ~~was~~
proved an indebtedness to the
amount of the sum specified by the Court
in the finding. To which decision of the
Court in admitting said evidence
defendant then and there excepted —

This was the substance of all the evidence
given — The Court, ^{found} the issue joined in
favor of the Plffs. The def. moved for
a new trial which motion was overruled
by the Court — To which decision of the Court
in thus finding and in overruling
said motion for a new trial def.
excepted at the time of the making
thereof respectively, and pray that
this his bill of exceptions may be
signed sealed and made part of the
Record, which is done.

E. S. Leland ^{Seal}
Judge &c

Endorse. Archabald Quarrier et al
vs Saml. Hamstock et al
"(Bill of Exceptions)"

Filed Jan 1st 1853

G. S. Mort.
Clerk

State of Illinois Marshall County
Circuit Court thereof January
Term thereof 1853.

Quarrier & Co }
vs }
Samuel Fahnestock & al }
Attachment

The answer of William
Merryman Summonee as
a Garnashee herein to the allega-
tions and interrogations
herein

filed by said plaintiffs to be answered by him - answering says that he had not at the time of the service of said Garnish summons upon him herein in his hands control or possession of any property effects or choses in action belonging to said William F. Moeller, nor has he since had that he was not at that time indebted to said Moeller in any amount whatever that he did not purchase of said Wm. F. Moeller about the month of January 1852 any amount of goods whatever nor at any other time either upon a credit or on any other terms, nor was he indebted to said Moeller as alleged, said Maryman says that it is true that on the 22^d of August 1851 he did purchase in the town of Lacom a stock of goods of Wm. F. Moeller and Thomas M. Adams that the contract of purchase was reduced to writing a copy of which is herewith filed marked "Exhibit A" that said purchase was a "bona fide" purchase & that the receipts contained in said "Exhibit A" embracing the receipt therein copied - are strictly true to the best of the knowledge information & belief of this ~~deponent~~ respondent.

Respondent further answering says that the same time respondent entered into a contract of partnership with said Wm. F. Moeller which was in writing a copy of which is herewith filed & marked "Exhibit B" and that said written contract recites truly & fully the agreement & intentions of the parties & the considerations inducing them thereto

Contract as this respondent verily believes
That from the said 22^d day of August 1831
until the 17th day of January A.D. 1832 the
business of said Partnership was carried on
in the town of Lacon in pursuance of said Con-
tract of Partnership this Respondent using for
that purpose the stock of goods purchased
as aforesaid of Moeller & Adams & such ad-
ditions as he deemed it discreet to make by
purchases from time to time - That During
that time said Moeller had devoted his
services to the business of said firm, & during
that time had received from the said store
goods & cash for his private use, in paying
certain of his debts & defraying the current ex-
penses of himself & his family to about the
Amount of One Thousand dollars
That in the said 17th day of January
of 1832 said Partnership was dissolved
by mutual agreement - said Contract
of dissolution of said Partnership was fully
reduced to writing & signed by both parties
- a copy of which agreement or Contract is
herewith filed & marked "Exhibit C" Respondent
further answering says that the said written
Contract contained & expressed their whole
agreement that there was no ^{other} understand-
ing or agreement, written or verbal in that be-
half save what is set forth in said writing
marked "Exhibit C" & that the recitals therein
contained are true
That at the time of the service of said
Process upon Respondent said Moeller

did expect to go to California as set forth
in said "Exhibit C" Respondent did expect
to defray his expenses en route in pursuance
of said contract - that said Moeller has not yet
gone to California that there has been no agreement
or understanding between said Moeller &
Respondent varying or in any manner
altering or rescinding either directly or in-
directly said agreement set out in "Exhibit
C" - nor is there now nor was there at the time of
the service of the Garnisher summons, nor
has there been since any contract or
agreement or understanding written or
verbal by virtue of which this Respondent
can be regarded as liable to pay to said Moel-
ler any sum of money whatever save the
written clause set out in "Exhibit C" in the
words and figures following to wit: the
said William Merryman agrees to & with
the said William F. Moeller that for and
in consideration of the said sales and
transfers heretofore referred to - to pay
all the expenses incurred by said William
F. Moeller while on said journey from
the town of Lacon Marshall County Ill-
inois to California at San Francisco"
And Respondent insists that in as much
as he has not waived rescinded or altered said
agreement set out in said clause, said Moel-
ler cannot nor can anyone for or in his
right legally claim of this Respondent any
payment other or different from that
consented to by this Respondent, nor
can he be required to pay to said Moel-

or anything until said Moeller shall have gone to California, nor until Respondent shall have failed to perform said contract on his part

Respondent further says that at the time of the making of said agreement set out in "Exhibit C" respondent had no knowledge or suspicion that said Moeller was indebted to plaintiff, nor indeed to anyone in any considerable amount, except the indebtedness set out in the several Exhibits herewith filed. And to all other matters contained in said allegations respondent doth demur & says that he is not bound by law to answer the same. Respectively

William Merryman

State of Illinois
Marshall county, William Merryman
whose name is subscribed to the foregoing answer after being duly sworn deposes & says that said answer is true in substance and in matter of fact. William Merryman
Subscribed & sworn to before
me this 4th day of February
1853 G. L. Fort Clerk

Exhibit
A

Know all men by these presents that we William J. Moeller & Thomas M. Adams of the County of Marshall & State of Illinois for & in consideration of the matters & things hereinafter stipulated to be done & performed by William Merryman

of the said County of Marshall & State of said
do hereby this day bargain & sell unto the said Will-
iam Merryman our entire stock of goods pur-
chased by us in the City of Philadelphia in the latter
part of the month of July of the present year
& consisting of Dry goods Queensware Hardware
& Boots & shoes & for a more particular & spe-
cific description of said goods hereby sold
reference is hereby made to our Bill of Purchase
of the following descriptions & of goods bought at
the following mercantile Houses in the said
City of Philadelphia that is to say

Bought of

Names of Houses	Kind of Goods	amt	date of Pur	length of per
Couts & Brown	Dry Goods	464 31	July 25	6 Months
Livick Brothers & Co	Boots & shoes	543 95	do 21	do do
Sibly Norton & Woodruff	Dry Goods	517 48	do 29	do do
J Y Rushton	Queensware	322 58	do 24	8 do
A W Lee & Mason	Dry Goods	584 51	do 31	do do
Bennett & Sexton	do do	741 30	do 28	6 Months
Martin Smith	Hardware	389 50	do 24	do do
Jennant Klenickson & Co	Dry Goods	264 48	do 28	do do
Newman & Spots	do do	288 20	do 30	do do
Thos A Johns	do do	290 60	do 26	do do

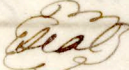

Turn over

Now the consideration of this Bargain & Sale is the
agreement herunto attached and to which espe-
cial reference is hereby made on the part of William
Merryman. It being understood that said
Merryman shall fully pay & discharge as they
severally shall become due & payable the
Bills of goods hereinbefore mentioned & shall
save & keep ^{us} harmless on account of our said
Purchase of the said goods as hereinbefore
described & as a further consideration for
the aforesaid Sale the said Merryman has
this day paid our Freight Bill incurred
by the buying of the said goods to the aforesaid
said County of Marshall & the receipt of
said Freight Bill is hereby acknowledged
& the said Merryman is forever discharged
from further liability thereon

In witness whereof we have herunto set
our hands & affixed our seals this the 22^d
day of August A.D. 1851

Attest

Samuel L. Richmond

Wm. F. Moehler 
J. M. Adams 

I Wm. Merryman of the County of Marshall &
State of Missis do hereby agree & consent to
all the matters & things contained in the above
mentioned Bill of Sale and hereby acknowledge
the receipt this day of all the goods mentioned
in the foregoing Bill of Purchase of William
F. Moehler & Thomas M. Adams & the terms
specific in the foregoing Bill of Sale & do hereby
oblige & bind myself to pay or cause to be paid
all of the said Bills when the same shall

become due & payable & save & keep the said
Moeller & Adams harmless from all obli-
gations made and liabilities incurred in
consequence of the purchasing said goods

In witness whereof I have hereunto set
my hand and affixed my seal this 22 day
of August A.D. 1851

Attest
Wm. Merryman *Seal*
Samuel Richmond

Indorsed
Moeller & Adams to Merryman
Marked Exhibit (A) dated 22 Aug.
1851

Exhibit
(B)

This agreement made & concluded this twenty
second day of August in the year of our Lord
one thousand eight hundred & fifty one by &
between William Merryman of the County of
Marshall State of Illinois of the one part
& William F. Moeller of the same place of
the other part Witnesseth, that the said
Merryman & Moeller have this day joined
& entered into a copartnership under the
name & style of William Merryman
& Co in the mercantile business, to be car-
ried on in the town of Leon in said County
of Marshall State aforesaid. And in
carrying on said business it is the
mutual agreement of said Merryman
& Moeller that all expenses incurred in
their business such as store & Warehouse
rent fuel Clerk's hire, & all other expen-
ses of any & every nature kind or name
whatsoever shall be borne equally by them

and each of them - That said expenses shall be paid out of the avails, profits or property of the firm of Merryman & Co. It also mutually agreed by the said Merryman & Moeller that the said William Merryman shall furnish all the capital necessary to the carrying on of said business, that is to say that said Merryman shall furnish the stock of Dry Goods, Groceries, Hardware, Cutlery & Boots & Shoes which he has now on hand, but that all of not only the present stock of goods as above specified but all stock of goods which shall be in the future purchased for the use of said firm shall belong to said William Merryman individually, and in consideration of the said Merryman so furnishing such capital as aforesaid & of the net profits of the said business of the said firm after all expenses being paid as aforesaid being equally divided between the said William Merryman & William A. Moeller it is understood & mutually agreed by them that the said William A. Moeller his personal services shall contribute wholly to the said business of the said firm of Merryman & Co. in a further consideration for taking into the said firm of the said William A. Moeller on the terms as herein before set forth is his enlarged experience and extensive acquaintance & credit in the eastern cities of the United States & his extensive information & knowledge of the mercantile business

generally. It is also mutually agreed & understood between the parties hereto that after all the expenses incurred by the said firm are paid as hereinbefore mentioned the net profits still remaining shall be equally divided between the parties to this agreement. & it is further agreed that said William Merryman shall also contribute his personal services & wholly devote the same to the business of the firm of William Merryman & Co.

In witness whereof we hereunto set our hands & affix our seals the day & year first above written.

Attest
William Merryman Seal
Samuel L. Richardson Wm J. Moeller Seal
Merryman & Moeller - contract of partnership - copy - Exhibit (B)

Indorsed

Exhibit
(B)

Know all men by these presents that we William Merryman & William J. Moeller Merchants & partners in trade under the name & style of William Merryman & Co have this day dissolved by mutual consent upon the following terms to wit

That the said William J. Moeller hereby bargains sell & transfers unto the said William Merryman all his right title & interest & do in all the profits arising from the sale of all Goods of any & every name nature and description whatsoever

2nd He said William J. Moller Bargains
sells & transfers unto said William Merry-
man, all his right title & interest to & in all
debts due said firm of William Merryman
& Co, including all notes Bills of Exchange accounts
& all other obligations of any & every name na-
ture or description whatsoever

3rd The said William Merryman is
to collect at his own expense all the debts
due said firm of William Merryman & Co,
& pay all debts which said firm owes, and
said William Merryman is also to pay and
discharge certain obligations contracted
by William J. Moller & Thomas M. Ad-
ams in the city of Philadelphia and all
referred to in the articles of copartnership now
existing between said William Merryman
and William J. Moller

4th And in consideration of the
said William J. Moller making the
aforesaid sales & transfers to said
William Merryman, he said Merry-
man hereby discharges & releases said
William J. Moller, from all liability
to said firm of William Merryman & Co
of his said (William J. Moller) Individual
account with said firm, & said William
Merryman & William J. Moller intend-
ing sometime in the spring of this
present year to go to California for the
purpose of Examining that Country, the
said William Merryman agrees to & with the
said William J. Moller, that for & in consid-

eration of the said sales & transfers here
before referred to to pay all the expenses
incurred by said William F. Moeller while
on said journey from the town of
Lacoo Marshall County Illinois
to California the said William F.
Moeller stopping in California at
San Francisco

In testimony whereof the said
William Merryman & William F. Moeller
hereunto subscribe their names.
this 17 day January in the year AD
1852.

Attest

William Maxwell

Wm Merryman *seal*

Wm F Moeller *seal*

Indorsed

Merryman & Moeller - contract copy
Exhibit (C)

Continued
and

At the January special term of the Mar-
shall County Circuit Court of the State
of Illinois began & holden in the Court-
house in Lacoo in said County &
State on the 24th day of January
AD 1853 - present - Hon Edwin
Seland judge of the 7th Judicial Circuit
of the said State of Illinois presiding
Greenberg L Fort Clerk & Henry L
Oram Sheriff and on the fifth
day of February of said special term
- present as before - among other
proceedings had on said day is the
following, that is to say:
Archibald James Morgan & Co
and John Lertz

vs
Samuel Johnson & William
A. Noeller & William Merriman
Garnish

This day this
Cause is continued till Court in course
by order of the Court

State of Illinois }
County of Marshall } P

J. Greenberg & Fort
Clerk of the Circuit Court of the said county
of Marshall do hereby certify the foregoing
to be a true and perfect copy of the
Record and papers appertaining to this
said Cause of Quarrion Ott & Co vs
Johnson & Noeller, except the Plff's
demurrer to Defts plea which appears herein
by agreement of Parties Atty. as appears
on file and of Record in my Office

In testimony whereof I have
hereunto set my hand and
affixed the seal of said Court
at Lacon this first day
of June. A.D. 1853
Greenberg & Fort

Clerks fee copy of Record
cut & seal

Clerk
10.50
35
\$10.85

64
Mr. F. Moeller
of
A. St. Quarrin Stals.

Record

64

Filed June 15. 1853.
L. Kellogg C.R.

Prepared

1853

12106