

11968

No.

Supreme Court of Illinois

Dana, et al.

vs.

Adams.

71641  7

W. B. Henry.

Lorenzo D. Dana et al.

vs.  
Benj. C. Adams.

1852

11968

Prepared

I Charles McMillan do hereby enter myself  
security for all costs that may accrue in the above  
intitled cause and I do hereby enter myself  
only 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 24<sup>th</sup> day of Nov. A.D.  
1851. Charles McMillan

Which has increased them

Nov 24<sup>th</sup> 1851

J. H. Johnson

Clerk

And thereupon to wit. On the day and year last aforesaid  
a certain writ of Summons was issued out of the  
office of the Clerk of the Circuit Court of said County  
in the words and figures following to wit

State of Illinois, The People of the State of  
County of Illinois to the Sheriff of said  
County Greeting.

We Command you  
that you Summon Lorenzo D. Dana and Soren Dana  
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 Woodstock in said County on  
the third Monday of January next to answer unto  
Benjamin C. Adams in a plea of Assumpsit to the  
debtors of the said Plaintiff as he says in the sum  
of Two thousand dollars. And have you then and  
then this writ with an endorsement thereon in  
which manner you executed the same. Witness our  
Hand and the seal thereof at Woodstock  
this 24<sup>th</sup> day of November Anno Domini  
1851. J. H. Johnson Clerk

(Seal)

United States of America

State of Illinois

McHenry County & Itas before the Honorable  
Judge J. Nelson Judge of the  
Circuit Court of the thirtieth Judicial Circuit  
of the State of Illinois and presiding Judge  
of the McHenry County Circuit Court in said  
Judicial Circuit at a Circuit Court begun and  
held at the Court house in Woodstock in said  
County on Tuesday the fifteenth day of March  
in the year of our Lord One thousand Eight  
hundred and fifty two and of the Independence  
of the said United States the twenty fifth

Present the Hon Judge J. Nelson

Attest J. H. Johnson Amos B. Cook  
Clerk State Attorney  
John Brown  
Sheriff

Be it remembered that hereof to wit on the 24  
day of November in the year of our Lord One  
thousand Eight hundred and fifty One Benjamin  
C. Adams the plaintiff in this suit filed in the  
Office of the Clerk of the Circuit Court of said  
County a certain bond for costs in the sum and  
figures following to wit.

McHenry Co. Cir. Court  
Jany Term A. D. 1851

Benj C. Adams

vs } Appraisers  
Foreman L. Dana  
Lucas Adams

And which said Summons has endorsed therein  
Regulated the return by sending to and in the hearing of  
the return named S. D. Dana - and Loren Dana not  
found in my County. Jan. 5<sup>th</sup> 1852

John Rank  
Shuff  
Decr Jan. 19<sup>th</sup> 1852  
J. H. Johnson C.

And heathen to wit on the 24<sup>th</sup> day of November in  
the year of our Lord one thousand Eight hundred  
and fifty one the said plaintiff filed in the office  
of the Clerk of the Circuit Court of said County his  
Declaration in writing in the words and figures following  
to wit.

McHenry County Circuit  
Court Jan. Term A.D. 1852.

Benjamin C. Adams &

Serges D. Dana and  
Loren Dana

vs  
Sprompert Benjamin C.  
Adams the plaintiff in  
this suit by Clerk and

William his attorney complains of Serges D. Dana and  
Loren Dana who have been summoned to of a plea of  
trispas on the case on promise. For that whereas the  
Defendants on the fifteenth day of July in the year  
of our Lord one thousand Eight hundred and fifty nine  
at Southport in the County of Racine in the State of  
Wisconsin to wit at the County of McHenry refused  
make their certain promissory note in writing and then  
and then delivered the same to one Quarters A. Lee and  
thereby promised to pay to the said Quarters A. Lee or  
bearer four hundred dollars with interest for seven  
months from the date thereof which period  
has now elapsed. And the said plaintiff avers that the  
legal rate of interest in the State of Wisconsin when said

note was made and executed was at the time said  
note was made & executed seven per cent per annum.  
And the said Trustee N. S. on the twenty fifth  
day of September A.D. 1849, assigned the said note  
to the plaintiff whereof the defendants then and there  
had notice and then and there in consideration of  
the premises promised to pay the amount of the  
said note to the plaintiff according to the tenor and  
effect thereof. And whereas the defendants afterwards  
on the day and year last aforesaid at the  
County of McHenry aforesaid in consideration of  
the premises respectively promised to pay the said  
sum of money in the said promissory note mentioned  
to the plaintiff on request yet they have disregarded  
their promises and have not paid the said sum  
of money or any part thereof though he brings  
Suit &c

And also for that whereas the said defendants  
on the sixteenth day of July in the year of our  
Lord one thousand eight hundred and forty nine  
at Southport in the State of Wisconsin for in the  
County of McHenry aforesaid made their certain other  
promissory note in writing and then and there delivered  
the same to the Trustee N. S. and thereby promised  
to pay to the said Trustee N. S. or bearer three hundred  
and thirty two dollars & eighty one cents with interest  
for value received ~~per~~ months after the date  
thereof which period has now elapsed. And the said  
plaintiff avers that the legal rate of interest in the  
State of Wisconsin when said note was made and  
executed is and was at the time said note was made  
and executed seven per cent per annum. And the said  
Trustee N. S. on the twenty fifth day of September  
in the year of our Lord one thousand eight hundred  
and forty nine assigned said note to the plaintiff  
whereof the defendants then and there had notice  
and then and <sup>there</sup> in consideration of the premises promised  
to pay the amount of the said promissory note to the

Plaintiff according to the tenor and effect thereof and  
whence the defendants afterwards to wit on the day and  
year last aforesaid in the County of McKenny aforesaid  
in consideration of the premises respectively promised  
to pay the said sum of money to the plaintiff on  
request. Yet they have disregarded their promises and  
have not paid any of the said sum of money or any  
part thereof therefore he brings suit &c.

And also for that  
whence the said defendants on the first day of November  
in the year of our Lord one thousand eight hundred  
and fifty one in the County ~~and~~ of Racine in the State  
of Wisconsin to wit at the County of McKenny State of  
Illinois was indebted to the plaintiff in six hundred  
dollars for the price and value of goods and chattels  
then and then sold and delivered by the plaintiff  
to the defendants at their request and in six hundred  
dollars for the price and value of labor & work then  
and then done and materials for the same furnished  
by the plaintiff for the defendants at their request. And  
in six hundred dollars for money then and then  
lent by the plaintiff to the defendants at their request.  
And in six hundred dollars for money then and then  
paid by the plaintiff for the use of the defendants  
at their request. And for six hundred dollars <sup>for</sup> money  
then and then received by the defendants for the use of  
the plaintiff. And in one hundred dollars for interest  
due from the said defendants to the plaintiff for and  
in respect of the said plaintiff <sup>having</sup> forborne and given day  
of payment of money due from the defendants to the  
plaintiff at the defendants request for a long time then  
elapsed and for six hundred dollars for money found  
to be due from the defendants to the plaintiff on an  
account then and then stated between them and  
whence the defendants afterwards to wit on the day  
year last aforesaid in the County aforesaid in con-  
sideration of the premises respectively promised to pay

the said several last mentioned promises respectively  
to the plaintiff on request yet they have assigned  
their promises and have not paid any of the said  
promises or any part thereof to the plaintiff. Amounts  
of two thousand dollars each therefore he brings  
Suit &c.

Church & Molland  
Atty for Plff

Copy of the note paid upon  
400<sup>00</sup>

Six months after date we promise to pay J. K.  
Lee or bearer four hundred dollars with interest for  
value received. (Signed) S. B. & S. C. Dana  
Southport July 16<sup>th</sup> 1849.

On the back of said  
note is the following assignment.

For value received  
I assign the within note to Benj. C. Adams without  
recourse. Sept 25<sup>th</sup> 1851. Signed J. K. Lee  
Southport July 16 1849

333<sup>81</sup>/<sub>100</sub>. Six months after date we promise to pay  
J. K. Lee or bearer three hundred & thirty two dollars  
& Eighty One Cents with interest for value received  
Signed S. B. & S. C. Dana

On the back of said note is the following assignment  
For value received I assign the within note to Benj.  
C. Adams without recourse on my Sept 25<sup>th</sup> 1849  
Signed J. K. Lee

Copy of asc declared upon

For Goods & Chattels \$600. Mark Labor \$600.

Money lent to Deft \$600. Money paid by Plff on Deft \$600.

Money rec'd by Deft of Plff \$600 Interest due \$600.

asc stated \$600.

Church & Molland.

Endorsed

Atty for Plff

Witness Nov 24<sup>th</sup> 1851.

J. H. Johnson &c

And afterwards to wit on the 30<sup>th</sup> day of March  
in the year of our Lord one thousand eight  
hundred and fifty two it being one of the days  
of the said March Term of said Court, the said  
Court then being in session at Woodstock aforesaid  
the following proceedings were had to wit

Benjamin C Adams

Sorenz G Dana &  
Soren Dana

Attorneys

And now came  
the plaintiff by Church and  
Hillard his attorneys and

thereupon came the defendants by Smith and Wetmore  
and the pleas filed herein by the said defendants  
and also their appearance and the said defendants  
being called came not nor any one for them but filed and  
made default herein which is ordered to be entered  
of record. It is therefore on motion of the plaintiff  
Attorneys that the plaintiff have judgment for his  
damages but because there are promissory and other  
notes to the Court this suit being brought upon an  
instrument of writing for the payment of money only  
it is therefore ordered that the Clerk upon the return  
and he having ascertained and reported to the Court  
the sum of eight hundred and fifty eight dollars  
and thirty six cents which is ordered to stand confirmed  
and affirmed. It is therefore ordered and considered  
by the Court that the said plaintiff have and recover of  
the defendants the sum of eight hundred and fifty eight  
dollars and thirty six cents his damages so ascertained  
as also his costs and charges herein expended and  
that he have execution therefor.

State of Illinois  
McHenry County } I the undersigned Clerk of  
the Circuit Court in and  
for the said County and State, do certify that  
the foregoing is a true and perfect copy of  
record and proceedings in the above entitled cause  
on file and of record in this office, except  
the pleas thereto filed by the said defendants,  
which are not copied in this record.

Witness my hand & the seal thereof at  
Woodstock this 12<sup>th</sup> day of June A.D.  
1852

J. H. Johnson Clerk

~~And now comes the plaintiffs in Error by J. H. Smith  
their Attorney and says, there is manifest error in the Records in  
this to wit: Judgment was rendered against both the said  
Lorenzo D. Dana & Loren Dana but the said Lorenzo D. Dana  
only, was served with process~~

~~J. H. Smith  
Attorney for Plaintiffs in Error~~

Lorenzo D. Dana } Over To  
& Loren Dana } McHenry County  
vs  
Benjamin R. Adams }

Now comes the plaintiffs in the above  
entitled cause and say there is  
aggravated Error in the proceedings  
had in said cause and assign  
the following as causes of Error  
therein

First. The Court Erred in rendering  
final Judgment against both  
of the defendants when process  
had been served on but one of  
them

Smith Murphy &  
McClure  
for pffs in Error

collecting

George D. Dana stal.

Benj. C. Adams

Transcript. de.

Filed July 9<sup>th</sup> 1852.  
Melano Ck.

\$2.75

Supreme Court Jan Term. 1852

Loren J. Dana

Loring & Dana

Plaintiffs in Error

vs

Benjamin C. Adams

Defendant in Error

Error to the Supreme Court

It is agreed between the Counsel of both

Parties to this writ that both Defendants appeared at in the above case in the Court below, <sup>by counsel</sup> at the January Term last past 1852 and filed their plea of Non assumpsit and also a Special plea To the plea of Non assumpsit the Plaintiff below added the Special plea and filed Demurrer to the Special plea and the case was continued until the March Term of the Circuit Court

<sup>1852</sup> ~~when the case was reached for trial~~ at which time the Defendants ~~and~~ <sup>the</sup> withdrew their plea and further proceedings were had as appears on the transcript

It is agreed between the counsel that this Court <sup>is to review the judgment</sup> as though the transcript contained the entire pleadings as above stated

C. M. Blum for Plaintiff  
in Error

S. S. Church  
for Defendant in Error

The object of the above stipulation is to admit that appearance of both ~~defendants~~ <sup>parties</sup> was entered and pleas filed and heard & appearance within answer -  
M. Blum &

Clara

5

in ~~the~~ hands

of the ladies

Filed July 9. 1852.  
J. Deland Clerk.

L. E. Leama { Error to not say  
B. C. Adams }

6 Black-foot page 557

The point made is that the  
Court found in rendering. Judge  
against both sides only one having  
been served with process

Appearance & plea for both  
were entered and subsequently. appear-  
ance & plea with answer - after  
which Judge of default

The appearance and plea  
being withdrawn before the case  
as if there had been no appear-  
ance & plea

Scana  
as  
Scans

Given July 10<sup>th</sup> 1852.  
J. Leland Clerk  
By Geo. Leland Deput.

Lorenzo D Davis  
v Loren Dand  
Plffs in Error

vs  
Benjamin C. Adams  
Defendant in Error

Superior Court

1832  
June 26th

I do hereby enter myself security  
for costs in this Cause & 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 law.

Dated this 26<sup>th</sup> day of June A.D. 1832 -

J. C. Smith

Supreme Court

L. D. Curran

4 Loren Curran

Plffs in Error

vs

Benj. C. Adams

Defendant

See for costs

Filed Feb 9. 1852  
Held and Ctho.