

No. 12951

Supreme Court of Illinois

Whiting et al.

vs.

Fuller et al

71641  7

State of Illinois—Supreme Court.

THIRD GRAND DIVISION.

WILLIAM P. C. WHITING and
JOHN F. BLAIN, APPELLANTS,

vs.

JAMES E. FULLER, and
JEROME MYERS.

*Appeal from the Cook County
Court of Common Pleas.*

Abstract of the Record.

Page 2 of the Record.

On the 28th of May, 1858, suit was commenced and summons issued, returnable at the next June Term, which was duly served and returned.

Pages of Record 4, 5, 6, 7, 8, 9

On the same day plaintiffs below filed their Declaration in the cause containing special counts on two notes, one dated November 23, 1857, due in sixty days, made by Whiting & Co., and payable to the order of Fuller & Myers, for \$461.20, and the other for \$64.05, made by Whiting & Co., dated April 1st, 1858, due at date, and payable to Fuller & Myers, or order, and containing also the common counts.

Pages of Record 9, 10, 11,

On the 7th day of June, 1858, which was the first day of the June Term of said Court, the defendants, by O. Hawkins, their Attorney, filed in said cause their plea of the General Issue, with notice of off-sets.

And on the same day, together with said plea, filed their affidavit in the words and figures following, that is to say:

STATE OF ILLINOIS, }
Cook County Court of Common Pleas, } Cook County ss.

JAMES E. FULLER and JEROME MYERS,
vs.
WILLIAM P. C. WHITING and JOHN BLAIN,

William P. C. Whiting, being duly sworn, deposes and says that he is one of the defendants in the above entitled cause, that he knows for what said suit is brought; that he believes he has a good defence to said suit upon the merits thereof, and further this deponent saith not.

W. P. C. WHITING.

Sworn and subscribed this 7th day of June, eighteen hundred and fifty eight.

WALTER KIMBALL, Clerk.

On the 10th day of the same June Term, on motion of the plaintiffs below, an order was entered by the Court that the plea of the defendants filed in said cause be stricken from the files for the want of a sufficient affidavit of merits to the defence in said cause, and that default be entered for want of plea, which was accordingly done.

And thereupon judgment was entered in favor of the appellees and against the appellants for their damages, \$516.87, and costs.

94-168

Whiting deal no Miller

Abstract

12957

Filed May 4, 1857

L. Leland
Clerk

State of Illinois—Supreme Court.

THIRD GRAND DIVISION.

WILLIAM P. C. WHITING and
JOHN F. BLAIN, APPELLANTS,

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94-168

Whiting coal

vs

Triller coal

Abstract

Filed May 4, 1859

L. Leland
Clerk

State of Illinois—Supreme Court.

THIRD GRAND DIVISION.

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94

Whitney et al

vs

Fuller et al

Abstract

Filed May 4, 1839

L. Leland

Clk

State of Illinois—Supreme Court.

THIRD GRAND DIVISION.

WILLIAM P. C. WHITING and
JOHN F. BLAIN, APPELLANTS,

vs.

JAMES E. FULLER, and
JEROME MYERS.

APRIL TERM, 1859.

Points made and authorities cited by Counsel for Appellants.

It is alleged that the Court erred in holding that the affidavit of merits was insufficient—in striking the plea from the files, and rendering judgment by default for want of a plea.

The statute requires that in actions upon contract, the defendant shall file with his plea an affidavit of merits, setting forth “that he believes he has a good defence to said suit upon the merits.”

Scates’ Statute, vol. 1, page 272, sec. 3.

The appellant Whiting states that he is one of the defendants: that he knows upon what the suit is brought; that he believes he has a good defence to said suit upon the merits thereof.

This affidavit was held insufficient because it does not state that both defendants have a good defence.

This affidavit was sufficient for the reasons.

1st.—If one of the defendants had a good defence, they both had. To prove the one was to establish the other. Each could avail himself of the defence of the other.

2d.—The two were made defendants by the plaintiffs. They were not joined at their own election.

Joint defendants may plead separately or jointly as they choose. Each may set up the defence he has, either under a separate plea or a joint one, as he may be advised is for his interest.

The appellant Whiting had a good defence upon the merits, and so states in his affidavit.

This defence he had a right to make, as well under the joint plea as though he had pleaded separately.

He could not make this defence without an affidavit of merits, and so is the law.

Now, concede that he could not make oath that the other defendant had a good defence, what will he do?

Either he must make the affidavit he has, or the Courts are closed upon his rights, and he can make no defence.

This affidavit therefore is sufficient, or the statute requiring an affidavit is unconstitutional: but this Court have held in *McDonnell v. Orwell*, 17 Ill. 375, that the statute is constitutional, and we therefore must conclude that the affidavit is sufficient.

3d. If the affidavit was sufficient, as we have seen, the plea was improperly stricken from the files, and the judgment is erroneous.

WALKER VAN ARMAN & DEXTER,
Counsel for Appellants.

94-168

Whiting Et al

vs

Fallon Et al

appts. mgt.

Filed May 12, 1889
L. Leland
Clerk

State of Illinois—Supreme Court.

THIRD GRAND DIVISION.

WILLIAM P. C. WHITING and
JOHN F. BLAIN, APPELLANTS,

vs.

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94-168

Whiting Et al
vs

Fulton Et al
app'ts argt

Filed May 12, 1859
L. Leland
Clerk

BRIEF.

WILLIAM P. C. WHITING, ET AL }
VS
JAMES E. S. FULLER, ET AL. }

BRIEF FOR THE DEFENDANT IN ERROR.

There is only one error assigned—it is striking the plea from the files, and holding the affidavit of merits insufficient. There is no bill of exceptions in the case, and nothing to show us what pleas were filed, or that affidavit was made; all that appears in the record is, that the plea of the defendant be stricken from the files, for want of sufficient affidavit of merits. No exception was taken to the order striking the plea from the files, nor any bill of exceptions to preserve the plea and affidavit, if any was ever filed.

There appears in the record a plea and affidavit, but we imagine they form properly no part of the record, and that they cannot be considered by this Court..

I. The Supreme Court will presume that the court below decided correctly.

11 Ill. R. 620.

17 Ill. R. 392.

14 Ill. R. 45, 394, 456.

II. The party claiming that the affidavit was sufficient, must preserve the same by bill of exceptions.

17 Ill. R. 166.

14 Ill. R. 45, 394.

11 Ill. R. 620.

4 Gilm. R. 326.

15 Ill. R. 297.

2 Gilm. R. 728.

2 Gilm. 730.

11 Ill. R. 297.

The mere copying them into the record, by the clerk below, does not make them part of the record. They must be made so by bill of exceptions.

14 Ill. R. 58-45.

3 Gilm. 366.

5 Gilm. R. 126.

4 Scam. R. 419.

5 Gilm. R. 209.

11 Ill. R. 586.

12 Ill. R. 380.

4 Scam. R. 59.

3 Scam. R. 185.

Note particularly the case of Magher vs. Hone, 12 Ill. R. 381, Treat C. J.

III. It appears by the record, that when the plea, whatever that plea was, was stricken from the files, the plaintiffs in error were present; they did not except, and it is too late to claim error in this court.

4 Gilm. R. 330.
19 Ill. R. 271.
18 Johns. R. 247.
2 Gilm. R. 293.
13 Ill. R. 342.
3 Scam. R. 65-49
12 Ill. R. 76.
11 Ill. R. 84.
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2 Scam. R. 353.
11 Ill. R. 30, 586.
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17 Ill. R. 238.

But admitting, for the sake of argument, that the plea and affidavit, found among the records, is the one and that objection can be taken for the first time in this court, without excepting below—we say, the affidavit of merits is insufficient. It is, that one defendant has a defence; this is not according to the statute. Great strictness is required in affidavit of merits. 7 Term. R. 661, 4 ^{and} Dent. P. C. 577, 3 ^{and} Dent. P. C. 107, 648, 4 ^{and} Dent. 289, 1 Hav. P. W. 515 2 ^{and} Dent. 710.

A defence peculiar to one defendant cannot be made under a joint plea.

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SHUMWAY, WAITE & TOWNE,
Attorneys for defendants in error.

*The affidavit is a mere matter of belief;
It is not sufficiently positive. It should
not be an inquiry.*

94-168

William R. Whitings

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J. E. S. Hurler
stat

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" " "

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Free May 12, 1889
L. Deland
Clerk

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94-168

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stab

J. S. Fuller
stab

Dpds bnf

Find May 12, 1839
L. Leland
Cluck

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94-168

Mr. P. G. Whiting stat

L. E. S. Hunter.
stat
Brief for depts

Filed May 12, 1889
L. Leland
Clerk

STATE OF ILLINOIS,
SUPREME COURT,

} ss. The People of the State of Illinois,
To the Clerk of the Cook County Court of Common Pleas, Court for the County Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Cook County Court of Common Pleas Court of Cook County, before the Judge thereof, between James E. Fuller & Jerome ~~Whiting~~ ^{Myers}

plaintiffs and William P. C. Whiting & John F. Blair

defendants, it is said manifest error hath intervened, to the injury of the aforesaid defendants

as we are informed by their complaint ——— and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 3^d ——— day of July ——— in the Year of Our Lord one thousand eight hundred and fifty-eight
S. Leland

Clerk of the Supreme Court.
J. R. Rice Deputy

⁷⁴
William P. B. Whiting et al

by
James E. S. Fuller et al

Writ of Error

This writ of Error is
made a supersedeas
and as such is to be
obeyed by all concerned
L. Leland clk
by J. B. Rice Deputy

Filed July 2^d 1858
L. Leland clk



State of Illinois In Supreme Court
Third Ward Division of said State

William P. B. Whiting &
John F. Blair Plaintiffs versus
James E. S. Fisher &
Jerome Myres Defendants

State of Illinois
Cook County. Thomas H. Palmer
being duly sworn deposes & says
that he resides in the City of Chicago
& is doing business therein at the Corner
of Canal & Van Buren Streets in said
City of Chicago that he is a general dealer
in Lumber at the Place aforesaid
that he has since October Last & intends
to make it his permanent business
that he has signed the Bond in this
cause there to annexed in this cause
in the penal sum of Seven Hundred
Dollars that he is worth at least ten
thousand dollars over & above all
debts that there are no suits Indorsements
or decrees against him neither are
there any liens by Indorsements or
mortgages or otherwise upon any
of his Property but the same
is perfectly good & clear of all

Incumbance whatever further
different said not
sworn subscribed
this second day of July
at 1855 before me
J. H. Stewart
Not Public

In the above entitled case.

I Oney Hawkins being
duly sworn do depose that
I am a resident of Chicago
& have been for two years last past
that I am the owner of an ^{undivided} interest
in real estate in the County of Cook
in said State to the amount of ten
thousand dollars & upwards
that there is not any lien upon
the same by way of judgment
secured mortgage or in any other
way whatever but the same
is wholly free from all
incumbance whatever
further different said not

sworn subscribed this
2^d day of July A.D. 1855 } O. Hawkins
before me
J. H. Stewart
Not Public

Know all Men by These Presents, That *W. C. Whitman & John F. Blain*
John F. Blain as principal and *John F. Blain* as security, are held and firmly bound unto *James E. Fuller & Jerome Myers*
penal sum of *Five Hundred* in the
and lawful money of the United States, for the payment of which, well and truly to be made, the said
James E. Fuller & Jerome Myers bind themselves & their heirs, executors, and administrators, jointly, severally, and firmly by
these Presents.

Witness, our hands & seals

this *Second* day of *July* A. D. 1858

The Condition of the above Obligation is such, That, whereas, the above named
James E. Fuller & Jerome Myers did, at the *June* Term of the *Common Pleas* Court,
held in and for the County of *Cook* in the State of Illinois, A. D. 1858 recover a
judgment against the above bounden *William P. C. Whitman & John F. Blain*
F. Blain

for the sum of *Five Hundred & Sixty*
dollars & Eighty Seven Cents to reverse which said judgment, the said *William P. C. Whitman & John F. Blain* have sued out a Writ of
Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said
William P. C. Whitman & John F. Blain shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and
damages which the said Supreme Court shall adjudge against *them*
and abide the order and judgment of said
Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

W. P. C. Whitman [SEAL.]
J. F. Blain [SEAL.]
John F. Palmer [SEAL.]
Edw. Rice [SEAL.]

Supreme Court
and R.C. Whiting
and F. Blair

27
E.S. Tuttle &
one Mynd

d for suit of
or

Harro Tuttle
attorney at law

1
United States of America }
State of Illinois }
County of Cook } ss

Pleas before the Honorable John M Wilson Judge of the Cook County Court of Common Pleas. within and for the County of Cook, State of Illinois, at a special term of the Cook County Court of Common Pleas begun and held at the Court House in the City of Chicago in said County in pursuance of an order of the Judge thereof, and to public notice given in accordance with the Statute in such case made and provided, on the Second Tuesday being the eighth day of June in the year of our Lord one thousand eight hundred and fifty eight and of the Independence of the United States the Eighty Second

Present the Honorable John M Wilson Judge
Carlos Haven Prosecuting Attorney
John S Wilson Sheriff
Attest Walter Kimball clerk

Be it remembered that heretofore to wit on the twenty eighth day of May in the year of our Lord one thousand eight hundred and fifty eight James E Fuller and Jerome Myers by Thumway Waite & Torne their Attorneys filed

in the office of the Clerk of the Cook
County Court of Common Pleas, in and
for the County of Cook, State of Illinois
their Precept for Summons in the words
and figures as follows to wit.

State of Illinois }
County of Cook } ss Cook County Court
of Common Pleas
June Term AD 1838

James E. T. Fuller }
Jerome Myers } Assumpsit
vs } Damages \$1000⁰⁰
(William H. Whitney)
John F. Blain }

The Clerk of said Court will issue a
summons in the above cause directed to
the Sheriff of Cook County in a plea of
trespass on the case on promises returnable
at the June Term of said Court AD 1838
to the damage of the Plaintiffs of One
Thousand Dollars

Thurman Waitt & Torne
Plaintiffs Attorneys

To Walter Kimball Esq Clerk

Chicago May 28. 1838

And afterwards to wit on the same
day and year aforesaid there issued

3.
out of the office of the Clerk of said
Court a writ of summons ^{which with the Sheriff's return thereon endorsed is} in the words
and figures as follows to wit

State of Illinois }
County of Cook } ss The People of the State
of Illinois to the Sheriff of said County
Greeting—

We command you that you sum-
mon William P. C. Whiting & John F.
Blain if they shall be found in your County
personally to be and appear before the Cook
County Court of Common Pleas of said County
on the first day of the next term thereof to be
holden at the Court House in the City of
Chicago in said County on the First Monday
of June next to answer unto James E. S.
Fuller & Jerome Myers in a plea of trespass
on the case on promises to the damage of the
said Plaintiffs as they say in the sum of
One thousand dollars

And have you then and there
this writ with an endorsement thereon
in what manner you shall have ex-
ecuted the Same

Seal } Witness Walter Kimball Clerk
of our said Court and the seal
thereof at the City of Chicago in
said County this 28th day of
May A.D. 1855 Walter Kimball

"Sheriff's Return Endorsed"
 Served the within summons by reading
 to the within named defendants this 28th
 day of May AD 1838

John L Wilson Sheriff
 By J Harlan Wood
 Special Deputy

And afterwards to wit on the same day
 and year aforesaid the said Plaintiff
 by their Attorneys filed in the office of the
 Clerk of said Court their declaration
 in the words and figures as follows to wit

Cook County Court of Common Pleas
 of the June Term AD 1838
 State of Illinois)
 County of Cook) ss
 James E Fuller and Jerome
 Myers Partners under the name of
 Fuller & Myers Plaintiffs in this suit by
 Shumway Wate & Fournier their Attorneys
 complain of William P C Whiting and
 John F Blain Partners under the name
 of Whiting & Co defendant who are
 summoned &c of a plea of trespass on
 the case on promises. For that whereas the
 said defendants heretofore to wit on the
 twenty third day of November in ^{the} year

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of our Lord one thousand eight hundred and fifty seven at Chicago to wit at said County of Cook made their certain Promissory Note in writing bearing date the day and year aforesaid and then and there delivered the same to the said Plaintiff in and by which said Note said defendant by the name style and description of Whiting & Co promised to pay to the order of the said Plaintiff Fifty days after the date thereof which period hath elapsed the sum of Four hundred and sixty one dollars and twenty cents at the office of E K Willard & Young for value received.

By means whereof and by force of the statute in such case made and provided the said defendant became liable to pay said Plaintiff said sum of money mentioned in said Note and being so liable in consideration thereof then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect of the said Note to wit at the place aforesaid. And for that whereas also the said defendant heretofore to wit on the first day of April in the year

of our Lord one thousand eight hundred and fifty eight at Chicago to wit at said County of Cook made their certain other Promissory Note in writing bearing date the day and year aforesaid and then and there delivered the same to said Plaintiffs in and by which said Note said defendants by the name style and description of Whiting & Co pr S H & H promised to pay to the order of the said Plaintiffs at any time after the date of said note the sum of sixty four dollars and five cents for value received

By means whereof and by force of the Statute in such case made and provided the said defendant became liable to pay said Plaintiff said sum of money mentioned in said Note and being so liable in consideration thereof then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect of the said Note to wit at the place aforesaid

And whereas also the said defendant afterwards to wit on the twentieth day of May in the year of our Lord one thousand eight hundred and fifty eight to wit at said County became and were indebted

ed unto the Plaintiffs in a large sum of money to wit one thousand dollars for money before that time lent and advanced to said defendants by said Plaintiffs at said defendants request and also in the like sum for money before that time paid laid out and expended for said defendants by the said Plaintiffs at the like special request of said defendants and in the like sum for money before that time had and received by said defendants to and for the use of said Plaintiffs and also in the like sum for goods wares and merchandize before that time sold and delivered by said Plaintiffs to said defendants at the like special instance and request. and also in the like sum for the labor care and diligence of said Plaintiffs before that time done and perform by said plaintiffs for said defendants and at the like instance and request of said defendants and also in the like sum then and there found to be due and owing to said plaintiffs on an account stated between them. and being so indebted said defendants in consideration thereof then and there undertook and promised to pay said plaintiffs said several sums of money above mentioned when there-

ed unto the Plaintiffs in a large sum
 of money to wit one thousand dollars for
 money before that time lent and advanc-
 ed to said defendants by said Plaintiffs
 at said defendants request and also in
 the like sum for money before that time
 paid laid out and expended for said
 defendants by the said Plaintiffs at the
 like special request of said defendants
 and in the like sum for money before
 that time had and received by said defend-
 ants to and for the use of said Plaintiffs
 and also in the like sum for goods wares
 and merchandize before that time sold
 and delivered by said Plaintiffs to said
 defendants at the like special instance
 and request. and also in the like sum
 for the labor care and diligence of said
 Plaintiffs before that time done and
 perform by said plaintiffs for said defend-
 ants and at the like instance and request
 of said defendants and also in the like sum
 then and there found to be due and owing
 to said plaintiffs on an account stated
 between them. and being so indebted
 said defendants in consideration thereof
 then and there undertook and promised
 to pay said plaintiffs said several sums
 of money above mentioned when there-

8. unto afterwards requested

Yet the said defendants not regarding their said promises and undertakings but contriving &c although often requested so to do have not paid said Plaintiff either of said sums of money above mentioned or any part thereof but so to do have hitherto wholly neglected and refused and still do neglect and refuse to the damage of said plaintiff of one thousand dollars and therefore he bring this suit &c

Shumway Waite & Towne

Plaintiffs Attorneys

"Copy of Instruments and account sued on"

\$461²⁰

Chicago Nov 23, 1837

Fifty days after date we promise to pay to the order of Fuller & Myers Four Hundred and sixty one $\frac{2}{100}$ dollars value received at office of E. K. Willard & Young
(Signed) Whiting & Co

\$64.05 Due Fuller & Myers or order Sixty four & $\frac{5}{100}$ dollars value received
Chicago April 1st, 1838
(Signed) Whiting & Co
per S. S. & W.

9 Whiting vs
To Fuller & Myers Dr

To money lent and advanced	\$ 1000.
To money paid laid out and expended	\$ 1000.
To money had and received to and for the use of said Plaintiff	\$ 1000.
To goods wares and merchandise sold and delivered	\$ 1000.
To labor and services	\$ 1000.
To balance due on account stated	\$ 1000.

And afterwards to wit on the seventh day of June in the year aforesaid the defendants by A Hawkins their attorney filed in the office of the Clerk of said Court their Plea. notice and affidavit of Merits in the words and figures as follows to wit.

State of Illinois

Cook County Court of Common Pleas

James C F Fuller &
Jerome Myers

vs
William O C Whiting &
John F Blain

} of the seventh day of
June being the first
day of the June Term
of said Court for the
Year A D Eighteen Hun-
dred & Fifty eight

Cook County ss

And the defendants by A Hawkins
their attorney comes & defends the wrong and
injury where and say that they did not
undertake or Promise in manner of form

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as the said Plaintiffs have above thereof com-
plained against them and of this they
put themselves upon the Country &c

By O Hawkins
Their Attorney

To the above named Plaintiffs or their Attorneys

You will Pleas take notice, that on
the trial of this cause that the above named
defendants will give in Evidence & Insist
that the above named Plaintiffs before and
at the time of the commencement of this ~~was~~
and still is indebted to the said defend-
ants in sum of one thousand dollars
lawful money of the United States of
America for Diver goodswase merchan-
dize sold and delivered by the said de-
fendants to the said Plaintiffs and at their
special instance and request and for
money by the said defendants before
that time lent & advanced to and paid
laid out & expended for the said plaintiffs
and at their like request and for money
by the said plaintiffs before that time
had received to and for the use of the
said defendants, and for money due
& owing from the said Plaintiffs to the said
defendants which said sum of money is
due & owing from the said plaintiffs to the

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said defendants as aforesaid exceeds
 the claim of said plaintiffs & that the
 said defendants will set off and allow
 to the said plaintiffs on the said trial
 so much of the said sum of one thousand
 dollars so due & owing from the said plain-
 tiffs to the said defendants against any
 demand of the said plaintiffs to be proved
 on the said trial as will be sufficient to sat-
 isfy & discharge such demand according
 to the form of the statute In such case made
 & Provided

Dated June 8 1838

Your &c

C. Hawkins Atty for
 said defendants

Fuller & Myers

To Whiting & Co. Dr

To Balance on Goods 150.00

To Cash lent 20.00

To Cash advanced 1000.00 1070.00

State of Illinois, Cook County

Court of Common Pleas -

James E. S. Fuller &

Jerome Myers

William H. Whiting &

John T. Blain

12 Cook County of William P. C. Whiting being duly
sworn deposes and says that he is one of
the defendants in the above entitled cause
that he knows for what said suit is Brought
that he believes he has a good defence
to said suit upon the merits thereof, and
further deponent saith not
Sworn & Subscribed this
seventh day of June 1850 } W. P. C. Whiting
Eighteen hundred & fifty }
Eight Walter Kimball clerk

And afterwards to wit on the tenth day
of June in the year aforesaid said day
being one of the days of the June Special
Term of said Court the following among
other proceedings were had in said Court
and entered of Record to wit

James E. J. Fuller &
Jerome Myers
vs Assumpsit
William P. C. Whiting &
John J. Blain

And now at this day come
the said Plaintiffs by Thumway Waiter &
Toune their Attorneys. And the said
defendants being duly served with
process of summons in this cause also

come by Astor & Sons their attorney, and on motion of said plaintiffs it is ordered, that the plea of said defendants be stricken from the files of the cause for want of a sufficient affidavit of merits to their defence herein, and that their default be entered for want of a plea which is accordingly done. Wherefor the said plaintiffs ought to have & recover of the said defendants their damages herein sustained by occasion of the premises, and the Court now here after hearing the allegations & proofs submitted by said plaintiffs assesses their damages to the sum of Five Hundred & Sixteen dollars and eighty seven cents

Therefore it is considered that the said plaintiffs do have and recover of the said defendants their damages of Five hundred and sixteen dollars and eighty seven cents in form aforesaid by the Court here assessed and also their costs and charges by them about their suit in this behalf expended and have execution therefor

State of Illinois }
Cook County } s

A. Walter Kimball Clerk of the

Cook County Court of Common Pleas
in and for said County do hereby certi-
fy that the foregoing is a full and true
transcript of all the papers on file in my
office and of the proceedings had in said
Court and entered of Record in the case
wherein James E S Fuller & Jerome My-
ers are Plaintiffs and William P C
Whiting and John T Blain are defend-
ant



In testimony whereof I have
hereunto set my hand and
affixed the seal of said Court
at Chicago in said County
this 16th day of June A D 1838
Walter Kimball Clerk.

15 In Supreme Court & Division
William R. C. Whiting
& John F. Blaw

James E. Fuller &
Leorne Myers

Aras near comes the
dependant says this
is no over in
dependant case of proceeds -
Shannonway wants Bond
dependant

And the said Plaintiff
Error by O'Hawkins then atty comes
+ say that there is error in the record
proceedings aforesaid that the Court
Error in deciding that the affidavit
of merits filed in this cause was
insufficient & in striking the same
from the record files in the cause
& in rendering judgment for the defendant
in Error & in so standing said
affidavit of merits

O'Hawkins
att'y for Plff where

Set a supersedeas issue. Bail Seven
hundred dollars. Thomas W Palmer
and O'Hawkins Sureties

J. D. Leaton

Cook's list of Common Birds
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James E. S. Fuller et al

William R. C. Whiting et al

Transcript & copy
of errors

Filed July 3^d 1858
L. Leland Ell

For \$5.00 Paid