

No. 13580

Supreme Court of Illinois

Butterfield

vs.

Carver

71641  7

HOUNDS, Printer, 46 State Street, Chicago.

SUPREME COURT OF ILLINOIS

STATE OF ILLINOIS, SS.

*In the Supreme Court of said State, in the Third Grand Division.
Of the Term of April, A. D. 1862. Appeal from the Superior
Court of Chicago, Cook County, in the State aforesaid.*

BENJAMIN F. CARVER, APPELLANT,

vs.

ELIZABETH BUTTERFIELD, APPELLEE.

This was an action of COVENANT, based upon a BOND, in these words and figures, that is to say:

5 “*Know all Men by these Presents, That I, Benjamin F. Carver, of the city of Chicago, Cook County and State of Illinois, am held and firmly bound unto Elizabeth Butterfield, of the same place, in the penal sum of one hundred and forty thousand dollars, for the payment of which, well and truly to be made to herself, her heirs, executors and administrators, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, and dated this 18th day of February, A.D. 1857.*

“The condition of the above obligation is such, that whereas the said Benjamin F. Carver is indebted unto the said Elizabeth Butterfield in the sum of *seventy thousand dollars*, payable in *ten years* from the date hereof, with interest thereon, from the date hereof until paid, at and after the rate of *six per cent. per annum*, which said interest is payable *semi-annually* at the end of each and every half year.

“Now, if the said Benjamin F. Carver shall well and truly pay the said principal and interest thereon, as aforesaid, in the time and manner aforesaid, then this obligation to be void, else to remain in full force and effect. And it is *expressly* understood that if *any portion* of the said *principal, or interest* thereon, shall remain unpaid after the same respectively become due and payable, then and in that event, a right of action shall accrue upon this bond, *TIME being regarded as the essence of the contract.*

BENJAMIN F. CARVER, [SEAL.]

Witness, R. S. BLACKWELL.”

2 The suit upon this bond was commenced by summons, dated October 23, 1861, returnable to the November term of said Superior Court, and directed to the Sheriff of Cook County aforesaid.

2 The return upon said writ was in these words, viz :

“Served this writ by reading to within named defendant this 26th day
“of October, 1861.

“A. C. HESING, Sheriff,
“by WM. WAYMAN, Deputy.”

3 The declaration was filed upon said bond November 22, 1861, in these
words :

SUPERIOR COURT OF CHICAGO,
November Term, 1861.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Elizabeth Butterfield, plaintiff in this suit, by Hoyne, Miller & Lewis, her attorneys, complains of Benjamin F. Carver, defendant, who has been summoned, &c., of a plea of a breach of covenant.

For that whereas the said defendant heretofore, to wit: on the eighteenth day of February, in the year of our Lord, one thousand eight hundred and fifty-seven, to wit: in said County of Cook, by his certain writing obligatory, sealed with his seal, and now shown to the Court here, the date whereof is a certain day and year therein mentioned, to wit: the day and year aforesaid, acknowledged himself to be held and firmly bound unto the said plaintiff in the penal sum of one hundred and forty thousand dollars, to be paid to the said plaintiff, her heirs, executors and administrators, which said writing obligatory was, and is, subject to a certain condition there under written, whereby, after reciting to the effect following, to wit: that whereas, the said defendant was indebted unto the said plaintiff in the sum of seventy thousand dollars, payable in ten years from the date thereof, until paid, at and after the rate of six per cent. per annum, which interest was payable semi-annually, at the end of each and every half year, it was conditioned, that if the said defendant shall well and truly pay the said principal and interest thereon as aforesaid, in the time and manner aforesaid, then the said obligation should be void, else to remain in full force and effect. And the said defendant did thereby, for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said plaintiff, her heirs, executors and administrators, that he the said defendant should and would well and truly pay the interest on said principal sum, from the date of said writing obligatory, until the same should be paid, at and after the rate of six per cent. per annum, payable semi-annually at the end of each and every half-year, as by the said writing obligatory, reference being thereunto had, will (amongst other things,) more fully and at large appear.

And the said plaintiff saith, that after the making of the said writing obligatory, to wit: on the eighteenth day of August, in the year of our Lord one thousand, eight hundred and sixty-one, to wit: at said County of Cook, a large sum of money, to wit: the sum of twenty-one hundred dol-

lars, of the interest aforesaid, to wit: the interest on the said principal sum of seventy thousand dollars for one half of a year, ending on the day and year last aforesaid, and then last elapsed, became and was due, and still is in arrear and unpaid to the said plaintiff, contrary to the tenor and effect, true intent and meaning of the said writing obligatory, and of the said condition thereof, and of the said covenant of the said defendant, by him in that behalf so made as aforesaid, to wit, at the County of Cook aforesaid.

And so the said plaintiff in fact saith, that the said defendant, although often requested so to do, hath not kept the said covenant so by him made as aforesaid, but hath broken the same, and to keep the same with the said plaintiff hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff of two thousand dollars, and therefore she brings her suit, &c.

HOYNE, MILLER & LEWIS,
Plaintiff's Attorneys.

7 The following is the copy of the account annexed to the declaration,
viz:

BENJAMIN F. CARVER,

To ELIZABETH BUTTERFIELD, Dr.

To installment of interest due on the bond, of which the
foregoing is a copy, August 18, 1861, at 6 per cent, \$2,100

Cr.

By cash paid on acc't of same, Aug. 23, 1861, - - - 1,000
\$1,100

7 On December 4, 1861, a judgment by *default* was rendered, and damages assessed to the amount of \$1,120.21.

8 On the same day leave was given to withdraw the bond sued on.

8 On December 27, 1861, the appellant prayed an appeal which was granted *on condition* that he should within five days file an appeal bond in the penalty of \$2,300.00, with Elisha S. Wadsworth as his surety.

9 On the same 27th Dec., 1861, the appeal bond was duly filed, and is in conformity with the conditions required by law and the order of the court below.

12 The errors assigned are:

(1.) That the Court erred in rendering a judgment by default against the appellant.

1. Because the summons was void.

2. Because the return of the Sheriff was irregular, insufficient and void.
3. Because the declaration is and was insufficient.
4. Because the form of action was misconceived.
 - (2.) The damages are excessive.
 - (3.) The general assignment of errors.

R. S. BLACKWELL,

Attorney for Appellant.

Benjamin J. Carver

vs. { Abstract

Elizabeth Butterfield

Filed April 24th 1860
C. S. Seward
Clerk.

F. FULTON & Co., PRINTERS, 148 LAKE ST., CHICAGO.

SUPREME COURT OF ILLINOIS,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

BENJAMIN F. CARVER,
Appellant,
vs.
ELIZABETH BUTTERFIELD,
Appellee.

APPELLEE'S POINTS.

I.

The return of the summons was sufficient. It states the manner and time of service, and on whom it was made.

Belingall v. Gear, 3 Scam. 575.

Simms v. Klein, Breese, 292.

Beaubien v. Sabine, 2 Scam. 457.

Farnsworth v. Strasler, 12 Ill. 485-6.

Pardon v. Dwire, 23 Ill. 574.

II.

On error, no exceptions can be taken to the amount of the judgment, if it is within the damages laid in the declaration.

Plato v. Turrill, 18 Ill. 275.

III.

The indorsement on the declaration is thus headed, "bill of particulars," or "copy of account declared on;" and notwithstanding this indorsement we were at liberty to show that only \$979.79 had been paid on account of the installment of interest, instead of \$1,000, as there stated; and moreover this indorsement is no part of the record, and cannot be considered by this court unless incorporated in a bill of exceptions.

Eggleston v. Buck, 24 Ill. 262.

The appeal was evidently taken merely for delay, and we ask that ten per cent. damages may be awarded to appellee.

HOYNE, MILLER & LEWIS,

For Appellee.

Supra Card

Bryan Flower

24

Elizabeth Partridge

Brief of life

Filed May 3, 1862

S. Seward

clerk

F. FULTON & Co., PRINTERS, 148 LAKE ST., CHICAGO.

SUPREME COURT OF ILLINOIS,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

BENJAMIN F. CARVER,

Appellant,

vs.

ELIZABETH BUTTERFIELD,

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Plato v. Turrill, 18 Ill. 275.

By John S. Leaver

to

Elizabeth Leaver

Prof of
Leaves

Witnessed May 3. 1862
S. Seaman
Clerk

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F. FULTON & Co., PRINTERS, 148 LAKE ST., CHICAGO.

SUPREME COURT OF ILLINOIS,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

BENJAMIN F. CARVER,
Appellant,
vs.
ELIZABETH BUTTERFIELD,
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HOYNE, MILLER & LEWIS,
For Appellee.

F. FULTON & Co., PRINTERS, 148 LAKE ST., CHICAGO.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

BENJAMIN F. CARVER,

Appellant,

vs.

ELIZABETH BUTTERFIELD,

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The appeal was evidently taken merely for delay, and we ask that ten per cent. damages may be awarded to appellee.

HOYNE, MILLER & LEWIS,

For Appellee.

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Elysius

Brief of
depts

Given May 3. 1842
S. Selman
clerk

F. FULTON & Co., PRINTERS, 148 LAKE ST., CHICAGO.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

BENJAMIN F. CARVER,

Appellant,

vs.

ELIZABETH BUTTERFIELD,

Appellee.

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Eggleston v. Buck, 24 Ill. 262.

The appeal was evidently taken merely for delay, and we ask that ten per cent. damages may be awarded to appellee.

HOYNE, MILLER & LEWIS,

For Appellee.

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Supra cont

Byron Hens

^{By Parkfield}
Elywood

Depts Fresh

Filed May 3^d 1882
L. Leland
Clerk

F. FULTON & Co., PRINTERS, 148 LAKE ST., CHICAGO.

SUPREME COURT OF ILLINOIS,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

BENJAMIN F. CARVER,
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ELIZABETH BUTTERFIELD,
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HOYNE, MILLER & LEWIS,
For Appellee.

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Given May 3. 1862
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ROUNDS, Printer, 46 State Street, Chicago.

SUPREME COURT OF ILLINOIS

STATE OF ILLINOIS, SS.

*In the Supreme Court of said State, in the Third Grand Division.
Of the Term of April, A. D. 1862. Appeal from the Superior
Court of Chicago, Cook County, in the State aforesaid.*

BENJAMIN F. CARVER, APPELLANT,

vs.

ELIZABETH BUTTERFIELD, APPELLEE.

This was an action of COVENANT, based upon a BOND, in these words and figures, that is to say:

5 “*Know all Men by these Presents, That I, Benjamin F. Carver, of the city of Chicago, Cook County and State of Illinois, am held and firmly bound unto Elizabeth Butterfield, of the same place, in the penal sum of one hundred and forty thousand dollars, for the payment of which, well and truly to be made to herself, her heirs, executors and administrators, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, and dated this 18th day of February, A.D. 1857.*

“The condition of the above obligation is such, that whereas the said Benjamin F. Carver is indebted unto the said Elizabeth Butterfield in the sum of *seventy thousand dollars*, payable in *ten years* from the date hereof, with interest thereon, from the date hereof until paid, at and after the rate of *six per cent. per annum*, which said interest is payable *semi-annually* at the end of each and every half year.

“Now, if the said Benjamin F. Carver shall well and truly pay the said principal and interest thereon, as aforesaid, in the time and manner aforesaid, then this obligation to be void, else to remain in full force and effect. And it is *expressly* understood that if *any portion* of the said *principal, or interest* thereon, shall remain unpaid after the same respectively become due and payable, then and in that event, a right of action shall accrue upon this bond, *TIME being regarded as the essence of the contract.*

BENJAMIN F. CARVER, [SEAL.]

Witness, R. S. BLACKWELL.”

2 The suit upon this bond was commenced by summons, dated October 23, 1861, returnable to the November term of said Superior Court, and directed to the Sheriff of Cook County aforesaid.

2 The return upon said writ was in these words, viz :

“ Served this writ by reading to within named defendant this 26th day
“ of October, 1861.

“ A. C. HESING, Sheriff,
“ by WM. WAYMAN, Deputy.”

3 The declaration was filed upon said bond November 22, 1861, in these words :

SUPERIOR COURT OF CHICAGO,

November Term, 1861.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Elizabeth Butterfield, plaintiff in this suit, by Hoyne, Miller & Lewis, her attorneys, complains of Benjamin F. Carver, defendant, who has been summoned, &c., of a plea of a breach of covenant.

For that whereas the said defendant heretofore, to wit: on the eighteenth day of February, in the year of our Lord, one thousand eight hundred and fifty-seven, to wit: in said County of Cook, by his certain writing obligatory, sealed with his seal, and now shown to the Court here, the date whereof is a certain day and year therein mentioned, to wit: the day and year aforesaid, acknowledged himself to be held and firmly bound unto the said plaintiff in the penal sum of one hundred and forty thousand dollars, to be paid to the said plaintiff, her heirs, executors and administrators, which said writing obligatory was, and is, subject to a certain condition there under written, whereby, after reciting to the effect following, to wit: that whereas, the said defendant was indebted unto the said plaintiff in the sum of seventy thousand dollars, payable in ten years from the date thereof, until paid, at and after the rate of six per cent. per annum, which interest was payable semi-annually, at the end of each and every half year, it was conditioned, that if the said defendant shall well and truly pay the said principal and interest thereon as aforesaid, in the time and manner aforesaid, then the said obligation should be void, else to remain in full force and effect. And the said defendant did thereby, for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said plaintiff, her heirs, executors and administrators, that he the said defendant should and would well and truly pay the interest on said principal sum, from the date of said writing obligatory, until the same should be paid, at and after the rate of six per cent. per annum, payable semi-annually at the end of each and every half-year, as by the said writing obligatory, reference being thereunto had, will (amongst other things,) more fully and at large appear.

And the said plaintiff saith, that after the making of the said writing obligatory, to wit: on the eighteenth day of August, in the year of our Lord one thousand, eight hundred and sixty-one, to wit: at said County of Cook, a large sum of money, to wit: the sum of twenty-one hundred dol-

lars, of the interest aforesaid, to wit: the interest on the said principal sum of seventy thousand dollars for one half of a year, ending on the day and year last aforesaid, and then last elapsed, became and was due, and still is in arrear and unpaid to the said plaintiff, contrary to the tenor and effect, true intent and meaning of the said writing obligatory, and of the said condition thereof, and of the said covenant of the said defendant, by him in that behalf so made as aforesaid, to wit, at the County of Cook aforesaid.

And so the said plaintiff in fact saith, that the said defendant, although often requested so to do, hath not kept the said covenant so by him made as aforesaid, but hath broken the same, and to keep the same with the said plaintiff hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff of two thousand dollars, and therefore she brings her suit, &c.

HOYNE, MILLER & LEWIS,
Plaintiff's Attorneys.

7 viz: The following is the copy of the account annexed to the declaration,

BENJAMIN F. CARVER,

To ELIZABETH BUTTERFIELD, Dr,

To installment of interest due on the bond, of which the foregoing is a copy, August 18, 1861, at 6 per cent, \$2,100

Cr.

By cash paid on acc't of same, Aug. 23, 1861, - - - 1,000
\$1,100

7 On December 4, 1861, a judgment by *default* was rendered, and damages assessed to the amount of \$1,120.21.

8 On the same day leave was given to withdraw the bond sued on.

8 On December 27, 1861, the appellant prayed an appeal which was granted *on condition* that he should within five days file an appeal bond in the penalty of \$2,300.00, with Elisha S. Wadsworth as his surety.

9 On the same 27th Dec., 1861, the appeal bond was duly filed, and is in conformity with the conditions required by law and the order of the court below.

12 The errors assigned are:

(1.) That the Court erred in rendering a judgment by default against the appellant.

1. Because the summons was void.

2. Because the return of the Sheriff was irregular, insufficient and void.
 3. Because the declaration is and was insufficient.
 4. Because the form of action was misconceived.
- (2.) The damages are excessive.
 - (3.) The general assignment of errors.

R. S. BLACKWELL,
Attorney for Appellant.

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Benjamin, G. Carver
T.S. & Abstract
Elizabeth Butterfield

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Filed April 29th 1862
L. C. Stone
Clerk.

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UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Second day of December in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the United States of America the Eighty Sixth

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Van H. Higgins }
Grant Goodrich } Judges.

Charles Hearon Prosecuting Attorney.

A. C. Hering Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it Remembered, that heretofore to wit, on the twenty third day of October, in the year of our Lord One thousand, eight hundred, and Sixty one, there issued out of the office of the Clerk of the Superior Court of Chicago, the Peoples writ of Summons, which writ, with the Sheriffs return thereon enclosed, is in the words and figures as follows, to wit.

2

State of Illinois
County of Cook } S.S.

The People of the State of Illinois. To the
Sheriff of said County Greeting:

We Command you that you summon
Benjamin F. Carnes if he shall be found in your
County, personally to be and appear before the Superior
Court of Chicago, of said Cook County, on the first
day of the next term thereof, to be holden at the Court
House, in the City of Chicago, in said Cook County,
on the first Monday of November next, to answer unto
Elizabeth Butterfield in a plea of Covenant, to
the damage of said plaintiff as she says in the
sum of Two Thousand Dollars. And have you
then and then this writ, with an endorsement
thereon, in what manner you shall have executed
the same,

Witness Walter Kimball Clerk of our said
Court, and the Seal thereof, at the City
of Chicago, in said County this 23rd day
of Oct. A.D. 1861.

Walter Kimball Clerk

Served this writ by reading to within named defendant
this 26th day of October 1861. A. C. Keesing Sheriff
by Wm. Hayman Deputy.

Seal

And afterwards to wit, on the twenty second day of November in the year aforesaid, the plaintiff filed herein her Declaration, in words and figures following viz.

Superior Court of Chicago.
November Term 1881.

State of Illinois }
County of Cook } Ss.

Elizabeth Putterfield Plaintiff
in this suit, by Hoyme Miller & Lewis her Attorneys,
complains of Benjamin F. Carver, Defendant,
who has been summoned &c of a plea of breach of
Covenant.

For that whereas the said Defendant
heretofore, to wit, on the eighteenth day of February
in the year of Our Lord One thousand eight
hundred and fifty seven, to wit, as said County of
Cook, by his certain writing obligatory sealed with
his seal and now show to the Court here, the date
whereof is a certain day and year therein mentioned,
to wit, the day and year aforesaid, acknowledged
himself to be held and firmly bound unto the
said Plaintiff in the penal sum of One hundred
and Forty Thousand Dollars to be paid to the said
Plaintiff, her heirs executors and administrators -
Which said writing obligatory was and is subject
to a certain condition ^{under} therein written, whereby

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after reciting to the effect following to wit that
 whereas the said Defendant was indebted unto
 the said Plaintiff in the sum of seventy thousand
 dollars payable in ten years from the date thereof
 until paid at and after the rate of six per cent per
 annum which interest was payable semi-annually
 at the end of each and every half year, it was
 conditioned that if the said Defendant should
 well and truly pay the said principal and interest
 thereon as aforesaid in the time and manner
 aforesaid, then the said obligation should be void
 else to remain in full force and effect. And the
 said Defendant did thereby for himself his heirs,
 executors and administrators, covenant promise and
 agree, to and with the said plaintiff her heirs,
 executors and administrators, that he the said
 Defendant should and would well and truly
 pay the interest on said principal sum from the
 date of said writing obligatory until the same
 should be paid at and after the rate of six per cent
 per annum, payable semi-annually at the end of
 each and every half year, as by the said writing
 obligatory, reference being thereunto had will
 { amongst other things } more fully and at large
 appear

And the said Plaintiff saith that after
 the making of the said writing obligatory, to wit
 on the eighteenth day of August in the year
 of Our Lord One thousand eight hundred and sixty
 one, to wit at said County of Cook, a large sum

5.
of money to wit. the sum of Twenty one hundred
Dollars of the interest aforesaid to wit. the interest
on the said principal sum of Seventy Thousand
Dollars for one half of a year ending on the day
and year last aforesaid and then last elapsed,
became and was due and still is in arrear and
unpaid to the said Plaintiff, contrary to the tenor
and effect true intent and meaning of the said
writing obligatory and of the said condition thereof,
and of the said Covenant of the said Defendant,
by him in that behalf so made as aforesaid,
to wit at the County of Cook aforesaid -

And so the said Plaintiff in fact. pritteth
that the said defendant, although often re-
quested so to do, hath not kept the said Covenant
so by him made as aforesaid, but hath broken
the same and to keep the same with the said
Plaintiff hath hitherto wholly neglected and
refused and still doth neglect and refuse, to
the damage of the said Plaintiff of Two thousand
Dollars and therefore she brings her suit &c

Hoyle Miller & Lewis

Plaintiff's Attorneys

Copy of the Instrument said upon -

Know all men by these presents; That I Benjamin
F. Carnes of the City of Chicago. Cook County
and State of Illinois am held and firmly bound
unto Elizabeth Butterfield of the same place

6
in the penal sum of One hundred and forty thousand dollars, for the payment of which, well and truly to be made to herself, her heirs, executors, and administrators. I bind myself my heirs, executors and administrators firmly by these presents. sealed with my seal and dated this 18th day of February A.D. 1854.

The condition of the above obligation is such that whereas the said Benjamin F. Carnes is indebted unto the said Elizabeth Putterfield in the sum of Seventy thousand dollars, payable in ten years from the date hereof, with interest thereon from the date hereof until paid at and after the rate of six per cent per annum, which said interest is payable semiannually, at the end of each and every half year.

Now if the said Benjamin F. Carnes shall well and truly pay the said principal and the interest thereon as aforesaid, in the time and manner aforesaid, then this obligation to be void, else to remain in full force and effect and it is expressly understood that if any portion of the said principal or the interest thereon shall remain unpaid after the same respectively become due and payable, then and in that event, a right of action shall accrue upon this bond, time being regarded as the essence of the contract

Witness

R. S. Blackwell.

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Benjamin F. Carnes. 

7.

Benjamin F Carver

To Elizabeth Putterfield

vs.

To Installment of Interest due on the
bond of which the foregoing is a copy.

Aug^t 18th 1861. at 6% -

\$2100—

ci.

By Cash paid on ^{of} of same Aug 23 1861. 1000
\$1100

And afterwards to wit, on the fourth day
of December in the year aforesaid, said day being
one of the days of the December term of said Court,
the following among other proceedings, was had in
said Court. and entered of record, to wit,

Elizabeth Putterfield

vs.

Benjamin F Carver

} Covenant.

This day comes the
said plaintiff, by Hoyme Miller and Lewis, her
Attorneys, and due personal service of summons issued
in said cause having been had on the said defendant,
and he being three times solemnly called in open
Court comes not, nor does any person for him,
but herein makes default. which is on Motion
Ordered to be taken and is hereby entered of record;
Therefore the said plaintiff ought to have and
recover of and from the said defendant, her
damages sustained herein by reason of the premises

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and the Court now here after hearing the proofs and allegations submitted, by the said plaintiff and being fully advised in the premises assesses her damages herein against said defendant, to the sum of One thousand, One hundred and twenty dollars, and twenty one cents,

§ 1120. 21.

Therefore it is considered that the said plaintiff, do have and recover of and from the said defendant her damages of One thousand, one hundred and twenty dollars and twenty one cents, in form aforesaid assessed by the Court, and also her cost and charges in this behalf expended, and have execution therefor,

And thereupon on Motion plaintiff it is ordered that leave be and is hereby given to withdraw the bond declared on, from the files of this cause,

And afterwards, to wit, on the twenty seventh day of December, in the year aforesaid, said day still being of the December term of said Court, the following among other proceedings, was had in said Court, and entered of record, to wit

Elizabeth Butterfield

v.

Benjamin F. Currier

} Covenant.

This day comes said defendant by Robert S. Blackwell his Attorney

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and prays an appeal to the Supreme Court of
this State, from the judgment of this Court,
which is allowed to him upon filing bond in security
of twenty three hundred dollars, with Elisha S
Wadsworth as security, within five days from the
date hereof.

And afterwards, to wit, on the same day and
year last aforesaid, the said defendant filed
herein his Appeal Bond, which is in the words
and figures, as follows, to wit.

Know all Men by these presents. That We Benjamin F. Carver & Elisha S. Wadsworth of the County of Cook and State of Illinois are held and firmly bound unto Elizabeth Butterfield also of the same County and State in the special sum of Twenty three hundred dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly, severally and firmly by these presents. witness our hands and seals this 27th day of December A.D. 1861.

The Condition of the above obligation is such that whereas the said Elizabeth Butterfield did on the fourth day of December A.D. 1861. in the Superior Court of Chicago. in and for the County of Cook and State aforesaid and of the December term thereof A.D. 1861. receive a judgment against the above bounden Benjamin F. Carver in an action of Covenant for the sum of One thousand one hundred and twenty dollars and twenty one cents. besides costs of suit. from which said judgment of the Superior Court of Chicago. the said Benjamin F. Carver has prayed for and obtained an appeal to the Supreme Court of said State.

Now therefore if the said Benjamin F. Carver shall duly prosecute his said appeal with effect. and moreover pay the amount of the judgment. costs interest and damages

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rendered, and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise to remain in full force and virtue

J. F. Carver Seal
E. F. Wadsworth Seal

Taken and entered into before
^{at my office}
me in Chicago this 27th day
of Decr. AD 1861.

T. P. Carter Clerk

State of Illinois
County of Cook & S.S.

I, Thomas P. Carter, Clerk of the Superior Court of Chicago, in and for said County, do hereby certify that the foregoing is a full, true, and complete transcript, of the process, pleadings, orders and judgment, together with the Appeal Bond, in the suit wherein Elizabeth Puttufatet is plaintiff, and Benjamin F. Carter defendant.

In testimony whereof, I hereunto subscribe my name, and affix the Seal of said Court, at the City of Chicago, in said County this 16th day of January AD 1862

Thomas P. Carter Clerk



United States of America
State of Illinois

In the Supreme Court of
the State of Illinois of the
Term of April AD 1862

Third Grand Division

And now comes the said appellant by R. S. Blackwell, his attorney and says that in the record of the proceedings aforesaid and in the rendition of the judgment aforesaid manifest error has intervened to his prejudice in this, to wit,

1. The said Superior Court erred in rendering a judgment by default against the said appellant.

1. Because the summons aforesaid was void

2. Because the said return upon the said summons was irregular and void

3. Because the said declaration is insufficient in law to sustain the said judgment by default.

4. Because the form of action was improper and misperceived.

2. The said Superior Court erred in rendering a judgment for the said appellee when by the laws of the land the said judgment ought to have been rendered for the said appellant.

Wherefore &c. the said appellant prays judgment &c. R. S. Blackwell attorney for appellant

Benjamin F. Carver

vs.

Elizabeth Butterfield

Case now comes to said appellee
of Henry Mass. there has attempt
says there is an error in the record
& proceedings general in a
present general and for that said
present may in all things sufficient
Henry Mass. has
all of application

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Elizabeth Butterfield

Benjamin F. Carver

Nov 24 1881

Filed Oct. 24, 1882
L. Deland
Clerk.

13580
1862

Ex. Sec. David J. Barber Clerk