

No. 14402

Supreme Court of Illinois

Edwards

vs.

Evans

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 88

14402

Edwards

vs

Evans

1863

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Page of
Record

21

Court that plaintiff have judgment
~~herein~~ against the said defendant
Amos Edwards on the demurrer
filed herein and on motion of
the said plaintiff by his attorney
it is ordered by the court that
a jury of twelve good and lawful
men come and assess plaintiffs
damages herein namely ~~vs.~~ xx who
being first duly sworn to well and
truly ~~try~~ assess the damages herein
and after hearing the evidence

22

adduced and the arguments of counsel
do say we of the jury find for the
plaintiff two hundred and forty eight
dollars and eighty six cents damages
for his debt and two hundred and
forty eight dollars and eighty six cents
for his damages herein, and it is
further ordered by the court that the
said judgment be satisfied by paying
the amount of damages herein and for
his costs for his costs and charges
by him herein expended and that he
have execution therefor against the
said defendant Amos Edwards

~~It~~ No final judgment having
been rendered by the court below a

writ of error does lie in this case.

The Court below ordered execution for the costs of suit only. and if an execution was issued for the amount of debt or damages named in the verdict of the jury herein, the defendant's remedy was not by writ of error. His remedy by some action ^{at law} against the officers or perhaps by injunction.

The writ of error should ~~be~~
be dismissed.

J. B. Rice
Sef'ts atty

88
Amos Edwards

vs
Benjamin H. Evans

Motion to
Dismiss writ of
Error & Suggestions

Filed May 14 1820
L. Leland
clerk

Notice was given me
that the written motion
would be made the next
morning after the notice
was given. but no notice
was served on Mr. Edwards
my client

B. C. Leach

Know all Men by these presents that
Amos Edwards as principal and
Barton C. Cook as a surety are
held and firmly bound unto
Benjamin F. Coons in the penal
sum of Two Hundred Dollars
good and lawful money of the
United States for the payment of
which well and truly to be made
the said Amos Edwards and
Barton C. Cook bind themselves
their heirs executors administra-
tors jointly severally and firmly
by these presents. Witness our
hands and seals this 15th day
of November A.D. 1862

The condition of the above obli-
gation is such that whereas the above
named ~~Amos Edwards~~ ^{Benjamin F. Coons} did at the
June Term of the Livingston County
Court held in said County in the
State of Illinois A.D. 1862 a judgment
against the above bounden Amos
Edwards for the sum of Two Hun-
dred and fifty eight Dollars and
Eighty six cents in value which
said judgment the said Amos
Edwards has sued out a writ
of error from the Supreme
Court within and for the third
ground division of said State

When any error is shown a
supersedas, from if the said
Amos Edwards shall duly pro-
ceede said mit of error and
pay or cause to be paid the am-
ount of said judgment and
all judgments costs minutes and
damages which the said Su-
preme court shall adjudge
against him in case the said
judgment shall be affirmed
and obvie the order & judgments
of said Supreme Court in this
behalf then this obligation to
be void other wise to remain in
full force & effect

Amos Edwards *[Signature]*
B. C. Cook *[Signature]*

Filed Nov. 15. 1862.
J. Deland
Clerk.

Amos Edwards ⁸⁸
11
Bey. F. Edwards
Superior Court

Amos Edwards
vs

Benjamin F. Evans

This motion comes too late,
the error in this case were confessed and the
judgment reversed during the first week of the
Term. I reported the fact to the plaintiff in
in error - my client - advised him that the
case was at an end in this court. He settled
with one and paid me and my connection
with the case ceased. The point I make is;
not that the court has not full control of a judg-
ment - but that notice should be given, and
that simply making a motion, to the court is
not such notice as is required under the circum-
stances,

As "Amicus curiae" and not as attorney for Mr.
Edwards I wish to suggest: that there is con-
fessing a judgment for costs in this case, and
an execution awarded and that is a sufficient
judgment to sustain a writ of error.

But there is probably a sufficient judgment
for debt and damages to sustain the execution.
The

The defendant in error having confessed the
errors assigned have waived their right to
move to dismiss the writ of error, if it be possi-
ble that a motion to dismiss a writ of error can

be made too late this is too late,

It is like moving to dismiss a suit after ap-
pearance, plea and judgment on account of a
defect in the summons

B. C. Cook

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Edwards

vs

Evans

Suggestions against
the motion

Filed May 16. 1863
L. Leland
clerk

Suggestions in reply to
Plaintiff's suggestions

Mr. Cook is the attorney on the record in this case & the fact that he has settled with his client does not ~~preclude~~ affect the rights of Defendant.

Defendant had a right to consider Mr. Cook the attorney of the plaintiff during the present term of this Court, as he has not notified the defendant that he has ceased to be the attorney of the Dept.

The Motion is made at the same term of Court in which the judgment of reversal was made & is not too late

If there was no judgment rendered in this case by the Court below - a writ of error will not lie; and there is nothing for the Court to reverse.

J. B. Rice Dept's atty

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Edwards
by
Evans

Suggestions
in reply

Filed May 16, 1953
L. Leland
Clerk

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

ALMON J. LOUNSBURY AND
AMOS EDWARDS,
PLT'FS IN ERROR,

vs.

BENJAMIN F. EVANS,
DEFT. IN ERROR.

ERROR TO LIVINGSTON COUNTY
COURT.

ABSTRACT.

- 9 This was an action of debt, brought by Defendant in Error vs. Plaintiff in Error, upon a penal bond for \$248.86, conditioned that if Lounsbury should pay this amount and keep Evans harmless, the bond should be void.
- 11 & 12 Demurrer to declaration and sustained, and judgment thereon.
- 19 Case taken to Supreme Court and reversed.
- 20 Second judgment rendered against Edwards.
- 21 Taken to Supreme Court again and reversed.

Mandate of Supreme Court presented to County Court June 4, 1862, and on the same day the following proceedings were had, without notice to Defendants below:—Ordered, that Plaintiff have judgment against Defendant, Amos Edward, upon demurrer, and that a jury come and assess the Plaintiff's damages herein, which jury came, and was sworn "well and truly to assess the *damages* of the Plaintiff.

- 22 Verdict:—"We, of the jury, do find for the Plaintiff \$248.86 for his debt, and \$248.86 for his damages herein." Then follows the order of Court—"that the said judgment be satisfied by paying the amount of

damages herein, and for his costs and charges by him herein expended, and that he have execution therefor against the said Amos Edwards."

23 Motion to set aside the judgment upon affidavit, which is as follows:

"BENJAMIN F. EVANS <i>vs.</i> ALMON J. LOUNSBURY and AMOS EDWARDS.	}	IN THE COUNTY COURT OF LIVINGS- TON COUNTY.
---	---	--

Amos Edwards, being first duly sworn, saith on oath that he is one of the Defendants in the above entitled cause. That said cause was taken to the Supreme Court of the State of Illinois, from a former judgment of this Court. That said cause was heard in the said Supreme Court, at the April term thereof, A. D. 1862. That, for many years, it has been the practice of said Court not to decide any cause tried before them until the last day of the term at which the same is argued. That affiant did not know that any different course had been taken in this cause; that, to-day, he has been informed that the errors in this case were confessed and the judgment reversed on call. That he did not know that fact before, nor had he in any way any intimation of it. That, as he is informed, said judgment was reversed about the 28th of April, 1862. That, before the commencement of the June Term, A. D. 1862, of this Court, and during

26 the week before said term, affiant went to Pontiac to examine and see whether this case had been brought down from the Supreme Court, and found that it had not. Said cause was not brought down from the said Supreme Court until the third day of the June Term of this Court, A. D. 1862, as affiant is informed and believes, and judgment was rendered against this affiant by default, on the same day of said term; affiant had no notice of any kind whatever that said cause had been brought down to this Court from the Supreme Court, and the judgment was rendered without any knowledge by, or intimation to, this affiant that the cause would be filed at said term in this Court. That the present Judge of this Court was one of the counsel of affiant in said suit, and affiant had no idea that the case would be tried before said Judge and he is informed by counsel, and verily believes, that it could not legally be done. Affiant saith that he has a good and meritorious defence to this suit, as he is advised by counsel and verily believes. That said Plaintiff and said Lounsbury applied to affiant to sign the bond upon which this suit is brought, and then and there falsely and fraudulently represented to affiant that the firm of

27 Evans & Lounsbury were only indebted in the sum of one hundred and eighty-six dollars and sixty-five cents, and that said firm had owned one hundred barrels of cement, worth three hundred dollars, and one hundred barrels of salt, and a quantity of sugar, and twelve half barrels of whitefish, which fish was worth ninety-six dollars, and that all this property was at Wenona, and that all of said property had been turned over by said Plaintiff to said Lounsbury, and was then in the possession of Lounsbury, out of which he could pay the debts of said firm, and that the agreement of Lounsbury to pay said debts was a part of the consideration given by

him for Evans' share of said property ; said representations were made by both said Plaintiff and said Lounsbury, and were the inducement to affiant to sign said bond, and he would never have signed the same but for the fact that he relied upon the said false and fraudulent representations ; and the truth was, at that time, that said firm of Evans & Lounsbury owed a much larger sum than the sum of one hundred and eighty-six dollars and sixty-five cents, neither had they any such property as above described, or any of it, nor had such property been turned over by said Evans to 28 said Lounsbury, or any part thereof ; nor had said Lounsbury any such property or any part thereof. That said Plaintiff owes said affiant the costs of affiant in the Supreme Court in this case, which affiant is informed and believes amounts to about twenty dollars. Said Plaintiff is insolvent, and not in this State ; that he left the State some time before the said June Term of this Court, and affiant prays that the judgment herein entered at said June Term be set aside, and he be permitted to file his pleas, and make his defence herein.

AMOS EDWARDS.

Subscribed and sworn to before me, this }
 4th day of July, 1852. }
 ROBERT E. HARRINGTON,
 Clerk Co. Court. }

ERRORS ASSIGNED.

1st. There is no finding of the debt ; the Court did not find it, and the finding of the jury is void, for the record shows that they were only sworn to assess the damages.

2d. There is no judgment except the award of final execution, which is erroneous.

3d. The judgment should have been for the debt to be discharged upon the payment of damages, and it is not so.

4th. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

5th. The Court erred in overruling the motion to set aside the judgment.

POINTS FOR PLAINTIFF IN ERROR.

I.

The mandate of the Supreme Court was filed in the Court below, on the fourth day of June, (3d day of term,) and on the same day the judgment was entered, in the absence of the Defendant below, and while he was entirely ignorant of the proceedings, no notice whatever having been given him. This is a sort of trick or sharp practice not countenanced by this Court.

II.

The jury were only *empanelled* and *sworn* to assess the Plaintiff's *damages*. The record shows that they found *debt*, \$248.69, and *damages* \$248.68.

They had no right to find any *debt* at all, and their finding as to the *debt* is simply void.

III.

The amount of the *debt* should have been found, and no *damages* can be assessed unless the *debt* be first found, so that there is no proper finding in the case.

Wilcoxon v. Roby, 3 *Gilm.*, 477.

Johnson v. Haskell, 2d *Scam.*, 565.

Heyle v. Stapp, 3 *Scam.*, 95.

Frazier v. Laughlin, 1 *Gilm.*, 347.

IV.

The judgment is informal, improper, and invalid. It was rendered before assessing the damages. It was not rendered for any particular sum. The execution was awarded for an amount of damages without judgment being rendered for them.

The judgment and execution should have been for the debt (which was not found) to be discharged upon payment of the damages.

Store v. People, 25 Ill., 600.

Freeland v. Board of Supervisors, 27 Ill., 303.

2d Scam., 572.

Patrick v. Rusker, 19 Ill., 428.

Bowman v. Bartley, 21 Ill., 30.

V.

The Court should have set aside the judgment upon the motion, supported by affidavit, filed at the next term after judgment was rendered. The affidavit advised the Court that the Defendant had a full, perfect, and meritorious defence; that in consequence of the snap judgment obtained by the trick of the Plaintiff, he had no opportunity of setting it up.

GLOVER, COOK & CAMPBELL,
For Plaintiff in Error.

88-22
Lonsbury

or
Evans

Abel & Poole

The judgment is affirmed, and the execution is ordered to issue thereon. It was rendered

Yulec April 27, 1863

J. Selace M

The Court should have set aside the judgment upon the motion and
renewed the order: that in consequence of the same judgment operating
The original order of the Court that the Defendant pay a full judgment, and
before the original trial at the next term after judgment was rendered.

PROVER, COOK & CAMPBELL

STATE OF ILLINOIS, }
SUPREME COURT, }

ss. The People of the State of Illinois,

To the Clerk of the County Court for the County of Livingston Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the County Court of Livingston County, before the Judge thereof, between

Benjamin H. Edwards

Complainant, and

Amos Edwards

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid Edwards

as we are informed by his

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 judgments 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 15th day of November in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

L. Deland
Clerk of the Supreme Court.

Amos Edwards

No.

vs.

Benjamin F. Edwards

WRIT OF ERROR.

*This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.*

L. Seland

Clerk.

FILED

Apr 15th

A. D. 1862

L. Seland

Clerk.



Plaintiff filed his process in the
Clerks office of said court. which said
process is in the words and fig-
ures following, to wit

State of Illinois In the county court
Livingston county of the State of Illinois
Term 1857

Benjamin T. Evans vs Action of debt for \$25.00
Almon J. Tombsberry Damages \$50.00
Amos Edwards

The Clerk of said court
will please issue summons
against the above named defendants

of Beattie
and ^{afterwards} ~~following~~ Attorney for Plaintiff
to wit on the twelfth
day of November 1857 a sum-
mons issued from said court in
the words and figures following, to wit

State of Illinois The People of the State of Ill-
Livingston county iniois to the Sheriff of said county
Greeting, We ~~command~~ ^{command} you that
you summon Almon J. Tombsberry
and Amos Edwards if to be found
in your county to appear before the
county court of Livingston county on
the first day of the next Term thereof
to be holden at the court House

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in Pontiac in said County on the first Monday in the month of December next to answer unto Benjamin J. Eoons in the plea of Debt for a failure to pay him the sum of two hundred and fifty eight dollars and eighty six cents to the damage of said Plaintiff as he with three hundred dollars and more are returned to our said Court as the law directs

Witness S. J. Saul Clerk
of said Court and the
Judicial Seal thereof at
Pontiac this twelfth day
of November AD 1857
Samuel Saul Clerk

And after words writ on the 21st day
of November AD 1857 the said Plain-
tiff filed his declaration in the said
Court in the office of the Clerk of said
Court which declaration was in the
words and figures following, to wit

State of Illinois } In the County Court being
Livingston County } of the December Term AD 1857

Benjamin J. Eoons

vs

Almon J. Tombs }
Ands Executors } Action of Debt

Benjamin J. Eoons the Plaintiff
in this suit by C. J. Beattie his Attorney
complain's of Almon J. Tombs and

Equal

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and Armas Edwards the defendants
in this suit in a plea that the said
defendants render to the said Plaintiff
the sum of Two Thousand and Forty
eight dollars and eighty six cents
which they owe to and unjustly
detain from him

First that whereas the said defendants
heretofore to wit on the third day of
August in the year of our Lord one
Thousand eight hundred and fifty
seven at the county of Livingston
and state of Illinois by their cer-
tain writing obligatory sealed with
their seals and now shown to the
court here the date whereof is the
day and year of the said de-
scribed themselves to be held and firm-
ly bound unto the said Plaintiff
in the sum of Two Thousand and
forty eight dollars and eighty six
cents above demanded to be paid
to the said Plaintiff according to the
form of the Statute in such case made
and provided so that the said writing
obligatory was and is subject to a
certain condition then made written
whereby it is provided that the condi-
tion of the same obligation is such
that whereas the above named
A. J. Tompberry and the other said
B. F. Evans did on the 21st day of
July 1857 buy of one George W. King
of La Salle in the state of Illinois

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jointly a stock of groceries to the
 amount of three hundred and
 forty eight and $\frac{46}{100}$ dollars two hun-
 dred and forty eight and $\frac{46}{100}$ dollars
 of which amount the remainder unpaid
 and for the payment of which remain-
 ing amount the said Lornsberry and
 Evans are jointly bound and the said
 Lornsberry having bought of the said
 Evans his interest in the said goods
 agreeing therefor to pay the said G. W.
 King the whole amount of the said
 two hundred and forty eight and
 $\frac{46}{100}$ dollars at the time it falls due

Now therefore if the said A. J. Lorn-
 berry shall well and truly pay or cause
 to be paid to the said G. W. King the
 sum of two hundred and forty eight
 dollars and eighty six cents as follows
 one hundred and twenty four & $\frac{43}{100}$
 dollars on the 21st day of August 1857
 and the remaining sum of one
 hundred and twenty four and $\frac{43}{100}$
 dollars on the 21st day of September 1857
 so as to release the said B. F. Evans
 entirely from any liability to pay the
 same then this obligation to be void
 otherwise to remain in full force and
 effect Over this the said plaintiff
 in fact says that after the making
 of this writing obligatory to wit on
 the day and year above said at the
 place above said the said ^{Alonzo} Lornsberry
 did not pay to the said G. W. King

the said sum of two hundred and
 forty eight dollars and eighty six
 cents mentioned in the said con-
 dition of the said writing obliga-
 tory at the time it became due
 nor any part thereof but to do
 the same with interest wholly
 unpaid and still with unpaid
 and the said Plaintiff for as-
 signing a further breach of the
 said condition of the said
 writing obligatory according to the
 form of the statute in such con-
 nexion and proceeds further
 says that the said A. J. Hornsberry
 did not pay the said sum of
 one hundred and twenty four
 dollars and fifty three cents
 mentioned in the said condition
 of the said writing obligatory to
 the said Geo. T. Perry on the twenty
 first day of August in the
 year of our Lord one thousand
 eight hundred and fifty seven
 nor any part thereof but to do
 with interest wholly unpaid and
 still with unpaid, And the said
 Plaintiff for assigning a further
 breach of the said condition of
 the said writing obligatory further
 says that the said A. J. Hornsberry
 did not pay the said other sum
 of one hundred and twenty four
 dollars and fifty three cents men-

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troued in the said condition of the
 said writing obligatory to the said
 Geo W King on the twenty first day
 of September in the year of our Lord
 eighteen hundred and fifty seven
 but so to do with hereto wholly
 refused and still with refusal
 and the said Plaintiff in fact
 says that he has not been re-
 lieved from the said liability
 but that he has paid the sum
 of two hundred and forty eight
 dollars and eighty six cents to
 the said Geo W King

By means of which said several
 promises an action hath accrued
 to the said Plaintiff to demand
 and have of the said defendants
 the sum of two hundred and
 forty eight dollars and eighty
 six cents above demanded
 Yet the said defendants although
 after requested so to do have not as
 yet paid the said sum of two
 hundred and forty eight dollars
 and eighty six cents above deman-
 ded or any part thereof to the said
 Plaintiff but to do this have per-
 sisted wholly refused and still as re-
 fuse to the damage of the said

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Plaintiff of three hundred dollars
 and therefore he brings this suit &c

Charles J. Beattie
 Attorney for Plaintiff

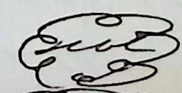
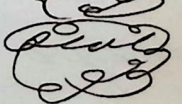
A Copy of writing obligatory
 know all men by these presents that
 we Almon J. Tombsberry and Amos
 Edwards of the county of Livingston
 and State of Illinois are held
 and firmly bound unto Benja-
 min F. Edwards of the county and
 State of New York in the sum of
 two thousand and fifty eight
 dollars and eighty six cents
 for the payment of which well
 and truly to be made we here-
 by bind our selves our heirs and
 executors jointly severally and
 jointly by these presents.

Witness our hands and seals
 this 3rd day of August 1857
 The conclusion of the above obli-
 gation is such that whereas the
 above bounden A. J. Tombsberry
 and the other said B. F. Edwards
 did on the 21st day of July 1857
 buy of one Geo. B. King of the State
 in the State of Illinois jointly a
 stock of groceries to the amount
 of two thousand and fifty eight
 and 86/100 dollars. Two thousand
 and fifty eight & 86/100 dollars of
 which amount yet remains
 unpaid and for the due payment
 of which remaining amount the
 said Tombsberry and Edwards
 are jointly bound, and the

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said Formberry having bought
of the said Ebons his interest in
the said goods agreeing therefor
to pay to the said Geo. H. King the
whole amount of the said two
thousand and forty eight and
43/100 dollars at the time it falls
due.

now therefore if the said A. J.
Formberry shall well and truly
pay or cause to be paid to the
said Geo. H. King the sum of
two thousand and forty eight
dollars and eighty six cents
as follows One thousand and
twenty four and 43/100 dollars
on the 21st day of August 1857
and the remaining sum of one
thousand and twenty four and
43/100 dollars on the 21st day
of September 1857 so as to relieve
the said W. H. Ebons entirely from
any liability to pay the same
then this obligation to be void
otherwise to remain in full
force and effect.

A. J. Formberry 
Amos Edwards 

And after words to wit on the
22nd day of November 1857 the
said summons was returned
into the clerk's office of said court
by the Sheriff of said court

The said Sheriff's return endorsed thereon which said return was in the words and figures following, to wit: Seized by me to the within named Amos Edwards this 17th day of November 1857 the within named Almon J. Tombs of 200 furloms in my county of 50 & miles & return 50 — \$1.00

Jas. B. Remick Sheriff
 by E. H. Masters
 Deputy

And afterwards, to wit on the 14th day of December 1857 the county court of said county was organized as follows

Present, Hon. Henry Jones
 Judge, J. J. Saul Clerk
 J. B. Remick Sheriff

And afterwards to wit on the 15th day of December 1857 the said defendant Amos Edwards filed his demurrer to the said Plaintiff's declaration which demurrer was in the words and figures following, to wit: In the county court of Livingston county To the December Term thereof AD 1857

Benjamin Evans

vs

Almon J. Tombs
 Amos Edwards

In debt

And the defendant Amos Edwards
 by Buff & Horning his atys comes
 and defends (as to Amos Edwards)
 the wrong and injury when he and
 says that the said declaration
 and the matters therein contained
 in manner and form as the
 same are therein stated are in
 fact are not sufficient in law
 for the said Plaintiff to have or
 maintain his aforesaid action
 then of against the said defendant
 and he the said defendant is
 not bound by law to answer the
 same and that he is ready to
 verify whereupon by reason of the
 insufficiency of the said de-
 clarator in this behalf the said
 defendant prays judgment and
 that the said Plaintiff may
 be barred from proving or main-
 taining the said action
 then of against him &c.

Suff & Horning

Atty's for Amos Edwards the
 said defendant,

And after words to wit on the 15th
 day of September 1857 the following
 proceedings were had and en-
 tered of record to wit:

Benjamin F. Evans

vs

Almon Johnson
 Amos Edwards

} Action of Debt

And now this way comes the Plaintiff
 by C. J. Rottie his Attorney also
 comes defendants by their Attorneys
 Attorneys and the Defendants files
 herein, ^{his} demurrer to the Plaintiffs ave-
 leration and the motion of law
 arising being read by the court
 it is ordered by the court that
 the demurrer be sustained, and
 now again comes the Plaintiff
 by his Attorney and files his
 exceptions thereto to the ruling
 of the court and it is for this
 ordered by the court that the
 defendants have and recover
 from the Plaintiff his proper
 costs and charges on his behalf
 and that they have execution
 therefor

And after words to wit the said
 Plaintiff files his bill of exceptions
 herein which said bill of exceptions
 is in the words and figures following
 to wit

State of Missouri In the county court then
 Longview County } 2d of the December Term 1857

Benjamin F. Evans

vs

Almon J. Tombsberry &
 Amos Edwards

} Action of debt

After words to wit at the day
 and place within contained before

The Honorable Henry Jones the Judge
 of the County Court of Livingston,
 County comes as well the said
 Benjamin F. Evans by his Attorney
 C. J. Beattie as the said Amos Ed-
 wards one of the other named de-
 fendants by his attorney J. H. Hordain
 and thereupon the counsel learned
 in the law for the said defendant
 filed a general demurrer then and
 then to the said declaration of the
 plaintiff filed herein and the
 said counsel for the said defend-
 ant did then and there agree
 and insist upon a writ of con-
 sideration upon which to base the
 liability of the said defendant
 to the plaintiff by his said
 counsel did then and there object
 and the said county judge did
 then and there give his opinion
 and decide that the argument
 of the said defendant by his
 counsel of writ of consideration
 was properly argued under the
 said demurrer to which opinion
 of the said county judge the said
 plaintiff by his counsel did then
 and there except and the said
 county judge did then and
 there give his opinion and
 decide that the said demurrer
 be sustained because of a writ
 of consideration as argued by

the counsel for the defense and to which opinion and decision of the said county judge the Plaintiff by his counsel will then and there except and beare none of the said exceptions so offered and move upon the record of said trial, therefore on the prayer of the said Plaintiff by his counsel the said county judge hath to this bill of exceptions set his hand and seal according to the form of the statute in such case made and provided, this 16th day of December A.D. 1857.

Henry Jones Co. Judge
and afterwards to wit on the 8th day of March 1858 the said county court of Livingston county was duly organized as follows

Present Hon Henry Jones Co. Judge

Samuel S. Lusk Clerk

J. P. Remick Sheriff

and afterwards to wit on the 8th day of March 1858 at the regular March Term of said court the said Plaintiff filed an affidavit in said court which affidavit was in the words and to the following tenor

State of Missouri
Livingston County

I do. In the county court then of the December Term A.D. 1857.

Benjamin F. Evans

vs

Almon Tomsonberg
Amos Edwards

action of debt

Samuel L. Saul being first duly sworn declares and says on oath that he is Clerk of the County Court of the County of Livingston in the State of Illinois duly commissioned and sworn

that at the December Term AD 1857 of said court held at the Court House in Pontiac in said county the declaration filed by the Plaintiff in the above entitled cause was then on file among the papers and files of the said court that since that time the said declaration has been stolen from among the files and papers of the court kept in the office of the said Clerk of the said court and this affiant further says that he has made diligent search for the same among the papers and files of the said court and the said declaration cannot be found and is not now among the papers on file in said office

Samuel L. Saul.

Subscribed and sworn to before me

this 8th day of March AD 1858

Charles J. Beaman
Notary Public

And after words to wit on the 2nd day of March 1858 The said Plaintiff filed an affidavit in the Court which said affidavit was in the words and figures following to wit.

State of Missouri }
Livingston County }

In the County Court then of }
the December Term A.D. 1857.

Benjamin H. Evans }
vs }
Almon J. Tombs }
vs }
Arms Edwards. }

Action of debt

Charles J. Beattie being first duly sworn declares and says on oath that he knows the declaration filed by the Plaintiff in the above entitled case at the Term of the Court upon which the same has been set from among the files of the said Court and that the declaration ^{now} presented to the Court is a true copy of the original declaration and substantially the same as the original declaration

Charles J. Beattie

Subscribed and sworn to before

me this 2^d day of March A.D. 1858

Samuel S. Lane

Clerk of County Court Livingston Co. Mo.

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Afterwards to wit on the 2nd day
of March 1858 the following pro-
ceedings were had and entered
of record to wit:

Benjamin F. Evans

vs

Almon Tombsbury & Action of Debt
Mrs Curwles

No 112

On this day came the Plain-
tiff by his attorney C. J. Beattie
and is appearing by affidavit of
the clerk of this court filed here-
with by the said plaintiffs attorney
that the declaration filed here-
in has been lost, on motion of
the said attorney it is ordered
that he be allowed to file with
the papers in this case a copy of
said declaration, whereupon the
said Plaintiff filed his declaration
in said court None pro Tunc
which declaration is heretofore set
forth in words and figures on
page 3.

Afterwards to wit on the 2nd day
of ~~December~~ ^{December} 1851 the county
court of said county was duly
organized for the transaction
of judicial business

Present Hon. Jonathan Saff Judge
R. B. Harrington Clerk
E. R. Maples Sheriff

And afterwards Town on the Third day of December 1861 the said Plaintiff filed in said court a Mandate from the Supreme Court of the State of Illinois of the Third Grand Division thereof, which said Mandate was in the words and figures following to wit

Benjamin F. Edwards

vs

Mrs Edwards in person
with Almon J. Downey

Error to bring down

Opinion of the Court

by Eaton Chief Justice.

The declaration in this case, is no a penal bond and is not objectionable in every particular.

The court below in whose purports to be a bill of exceptions in forms this court that the demurrer was sustained because the declaration does not aver that the bond was entered into upon a sufficient consideration.

The real import of the consideration and it was unnecessary to aver any other.

The judgment will be reversed and the case remanded with instructions to the county court to enter judgment for the Plaintiff on the demurrer and to take care in quest of the Plaintiff's damages.

and to avoid execution in proper form
I Lorenz's Clerk of the
Supreme Court of the State of
Illinois do hereby certify that
the foregoing is a true copy of
the final order of the said Su-
preme Court in the above en-
titled case of Record in my office.

In testimony whereof I have
set my hand and affixed
the seal of the said Supreme
Court at Alton on this Twenty
seventh day of November in
the year of our Lord one thousand
and eight hundred and
sixty one

I Clerk of
The Supreme Court



Afterwards to wit on the 5th day of
December 1861 the following
proceedings were had and entered
of record

B. H. Evans

vs

Almon Tomberly &
Amos Cawwas

{ Action of Debt

{ On this day comes the
~~said~~ plaintiff by C. J. Beattie Esq
his attorney upon the writ from
the supreme court reversing the
prior judgment in this case
in this case and is opposing to

The court that there is ~~one~~ amount
 of debt and damages unknown
 to the court it is ordered that the
 Clerk make an assessment there
 of, and now the Clerk having
^{in writing} made an assessment thereof to
 the amount of Two hundred and
 forty eight dollars and eighty six
 cents debt and sixty three dollars
 and forty one cents damages
 ordered by the court that the
 said assessment be approved
 and it is ordered by the court
 that judgment be entered a-
 gainst the said defendant Mrs.
 Edwards upon the demand for
 the said sum of Two hundred and
 forty eight dollars and eighty
 six cents debt and sixty three
 dollars and forty one cents dam-
 ages also costs of suit here in
 and further ordered that exe-
 cution issue therefor

afterwards to wit on the 4th day
 of June 1862 the following pro-
 ceedings were had and entered
 of Record

Benjamin F. Cross }
 do } Acting for debt
 Almon Armstrong & }
 Mrs. Edwards }

B

And ^{now} ~~upon~~ this 4th day of June
 comes the said Plaintiff by G. L.
 Fleming his attorney and presents
 to the court herein the mandate
 of the Supreme Court of the April
 Term 1862 reversing the judgment
 of this court in the above en-
 titled cause entered at the de-
 cember term 1861 therefore or-
 dering further proceedings here-
 in. And the said Plaintiff also
 presents the mandate of ~~the~~
 said Supreme Court made at
 the April Term 1861 ordering
 this court to enter judgment
 for the Plaintiff on December
 and to take an inquiry of Plaintiff's
 damages, and it is hereby ordered
 by this court that Plaintiff here-
 in have judgment against the
 said Defendant Moses Edwards
 on the demand filed herein
 and on motion of the said Plam-
 iff by his attorney it is ordered
 by the court that a jury of twelve
 good and lawful men come
 and assess the said Plaintiff's
 damages herein namely O. S. Gray,
 G. G. Walling, Nelson Beck Abrahamson
 of Perntook John Ellis, S. R. Nelson
 Elias Long, H. D. Challis, Thos Crowell
 A Hinkey and John Lewis who
 were duly sworn to well and truly
 assess the damages herein

and after hearing the evidence
 adduced and the argument of
 of counsel as say. "The jury
 has found for the Plaintiff two
 thousand and forty eight dollars
 and eighty six cents for his
 debt and two thousand and
 forty eight dollars and eighty
 six cents for his damages herein"
 And it is further ordered by the
 court that the said party must
 be satisfied by paying the amount
 of damages herein and for his
 costs and charges by him here-
 in expended and that he have
 execution therefor against the
 said defendants Amos & Edwards

and afterwards to wit ~~on~~ the 1st day
 of September A.D. 1862 the following
 proceedings were had here in
 and entered of Record

Benjamin F. Coons

vs

Almon J. Strawberry &
 Amos Edwards

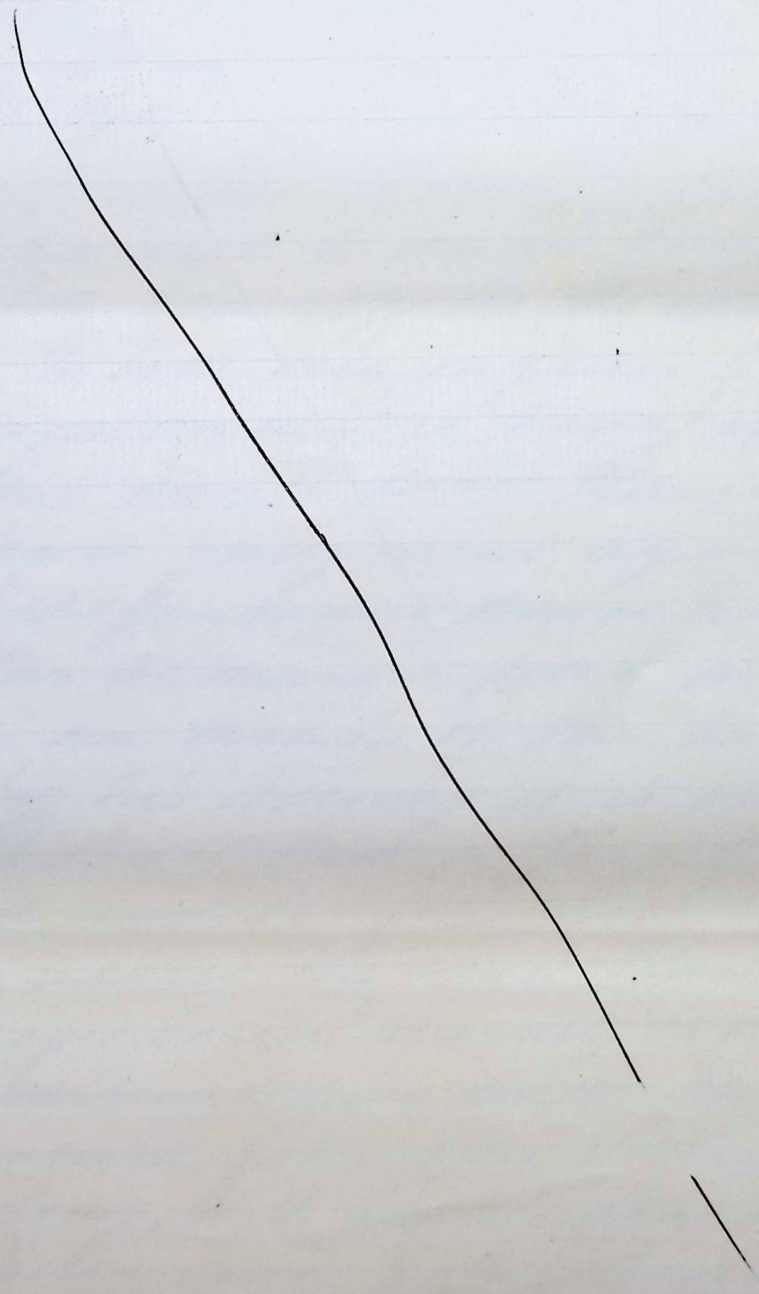
} Assumpsit
 }
 } And now

on this day comes the said
 Plaintiff by his attorney and
 also comes the said defendants
 by their attorney and the said
 Defendant by their attorney

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enter their motion herein to set
aside the judgment rendered
in this case at the last term
of this court and also enter
their motion to reinstate this
case and also that a charge
of venue be granted in this case
based upon an affidavit filed
herein which affidavit is in
the words and figures following
to wit



Benjamin F. Evans

vs

Almon J. Lounsbery &

Amos Edwards

In the County Court
of Livingston
County

Amos Edwards being first duly sworn seith on oath that he is one of the defendants in the above entitled cause, that said cause was taken to the Supreme Court of the State of Illinois from a former judgment of this Court, that said cause was heard in the said Supreme Court at the April term thereof A. D. 1862, that for many years it has been the practice of said Court not to decide any cause tried before them until the last day of the term at which the same is argued, that affiant did not know that any different course had been taken in in this cause, that to day he has been informed that to day he has been informed that the errors in this case were confessed & the judgment reversed on call, that he did not know that fact before, nor had he in any way any ^{intention} ~~intention~~ of it, that as he is informed, said judgment was reversed about the 28th of April 1862, that before the commencement of the June Term A. D. 1862 of this Court and during the week before said term affiant went to

Pontiac to examine and see whether
 this case had been brought down
 from the Supreme Court - and found
 that it had not; said case was not
 brought down from the said Supreme
 Court until the third day of the same
 Term of this Court. A. D. 1862 as af-
 fiant is informed & believes, and
 judgment was rendered against this
 affiant by default on the same day
 of said Term, affiant had no notice
 of any kind whatever that said
 case had been brought down to
 this Court from the Supreme Court,
 and the judgment was rendered
 without any knowledge by or intimation
 to this affiant that the case would
 be filed at said Term in this Court.
 That the present Judge of this Court
 was one of the counsel of affiant in
 said suit; and affiant had no
 idea that the case would be tried
 before said Judge, and he is informed
 by counsel and verily believes that
 it could not legally be done,
 affiant verily believes that he has a good
 and meritorious defense to this suit
 as he is advised by counsel & verily
 believes that said plaintiff and
 said attorney applied to affiant
 to sign the bond upon which this
 suit is brought; and then & there
 falsely and fraudulently represented
 to affiant that the firm of Counsel

Leonsbury were only indebted in the sum of one hundred and eighty six dollars and sixty five cents, and that said firm had owned one hundred barrels of cement worth three hundred dollars and one hundred barrels of salt, and a quantity of sugar and twelve half barrels of whitefish, which fish worth ninety six dollars, and that all this property was at Waukena, and that all said property had been turned over by said plaintiff to said Leonsbury and was then in the possession of Leonsbury out of which he could pay the debts of said firm, and that the agreement of Leonsbury to pay said debts was a part of the consideration given by him for Evans share of said property, said representations were made by both said plaintiff and said Leonsbury and were the inducement to appoint to sign said bond and he would never have signed the same but for the fact that he relied upon the said false and fraudulent representations, and the truth was at that time that said firm of Evans & Leonsbury owed a much larger sum than the sum of one hundred and eighty six dollars and sixty five cents, neither had they any

such property as is above described
 or any of it, nor had such property
 been turned over by said Evans to
 said Lowmber or any part thereof,
 nor had said Lowmber any such
 property or any part thereof. That
 said plaintiff owes said defendant the
 costs of said suit in the Supreme Court
 in this case, which said plaintiff is in-
 formed & believes amounts to
 about twenty dollars, said plaintiff
 is insolvent & not in this State,
 that he left the State some time
 before the said June term of this
 court, and said plaintiff prays that
 the judgment herein entered at
 said June term be set aside and
 he be permitted to file his pleas
 and make his defense herein.

Amos Edwards

Subscribed and sworn
 to before me this 4th day
 of July 1862

Robert B. Harrington
 Clerk Co. Court.

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and afterwards to wit on the third day of September A.D. 1862 the following proceedings were had here in and duly entered of Record

Benjamin S. Evans

vs

Almon J. Tombsberry & Amos Edwards

Plaintiff
Defendant

Now on this day again comes the parties herein by their attorneys and the case upon well considered of the motions entered by defendants at a former day of this Term, It is ordered by the Court that the said motions be and the same are hereby ordered overruled

To which ruling of the Court defendants except.

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And now comes Amos Edson's
 plaintiff in error and says that
 in the record & proceedings aforesaid
 and in the rendition of the Judgment
 aforesaid there is manifest error
 in this to wit:

1 There is no finding of the
 debt. The Court did not find it and
 the finding of the Jury is void for
 the record shows that they were only
 sworn to assess the damages.

2 There is no judgment except the
 award of final execution which
 is erroneous.

3 The Judgment should have been for
 the debt to be ascertained upon
 the payment of damages, and it
 is not so.

4 The Court erred in rendering the
 Judgment aforesaid in manner & form
 aforesaid.

5 The Court erred in annulling
 the motion to set aside the Judgment.

State of Illinois } } S.D.
County of Sangamon }

I Robert B. Worthington
Clerk of the County Court in and
for said County and State do hereby
certify that the foregoing Transcript
is a full true perfect and correct
copy of the Records and proceedings
and papers on file in and appertain-
ing to said Cause wherein Benjamin
H. Evans is Plaintiff and Amos
Edwards impleaded with Almon J.
Lounsbury is Defendant as appears
from the Records and files of said
Cause remaining in my Office

In testimony whereof I have
hereto set my hand and
affixed the Official Seal of
my Office at Pontiac this 30
day of October A.D. 1862

Robert B. Worthington
Clerk



Let a supersedeas issue in this cause
Bond \$5000 B.C. look surety

J. H. Carter

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Benjamin F. Edwards

05

Almon, Lonsberry &
Parks & Edwards,

Copy of Record

Filed Apr. 15. 1862.
L. Island
Ch.