

14256

No. \_\_\_\_\_

# Supreme Court of Illinois

Stoddard

---

vs.

Miller

---

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

14256

No. 74.

1862

Standard  
Miller

1862

Prepared

STATE OF ILLINOIS, } ss. The People of the State of Illinois,  
SUPREME COURT,

To the Sheriff of the County of *Ogle* ----- Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* ----- Court of *Ogle* - County, before the Judge thereof, between

*Edwin R. Stoddard*

plaintiff, and

*Joseph C. Jarvis & John T. Miller*

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

*Edwin R. Stoddard*

as we are informed by *his* - complaint, ----- the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

*Joseph C. Jarvis & John T. Miller*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Jarvis & Miller* -----

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *21<sup>st</sup>* day of *August* in the Year of Our Lord One Thousand Eight Hundred and ~~Fifty~~ *sixtyone*.

*L. Leland*  
Clerk of the Supreme Court.

Edwin R. Stoddard

Joseph C. Jarvis  
John F. Miller

Seis Facias

To Ap. Tm. 1862.

I have duly served the  
within on the within named

John F. Miller by reading  
the same in his presence  
<sup>and hearing</sup>  
this 21<sup>st</sup> day of March 1862

Service ————— 50  
Mileage ————— 100

John A. Hughes Sheriff  
By C. Barrett Deput  
The within J. C. Jarvis  
not found in my County  
# This 21<sup>st</sup> day of March 1862  
John A. Hughes Sheriff  
By C. Barrett Deput

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Ogle — Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Ogle County, before the Judge thereof, between Edwin R. Stoddard

plaintiff, and Joseph C. Jarvis & John T. Miller

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

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 judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plea 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 21<sup>st</sup> day of August in the Year of Our Lord one thousand eight hundred and fifty six one  
S. Island

Clerk of the Supreme Court.

74  
Edwin R. Stoddard

Jawis & Miller

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Wit of error

Filed Aug. 21. 1861.  
L. Island  
Clk.

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# SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

---

EDWIN R. STODDARD,  
Plff. in Error, }  
vs. JOSEPH C. JARVIS, } Error to Ogle.  
Deft. in Error. }

---

POINTS FOR DEFENDANTS IN ERROR.

## I.

The 26th Section of the Practice Act, 2 Purples' Stat. 825, expressly provides that the plaintiff, in an attachment suit, *shall* file his declaration at the return term of the attachment, and if he fails to do so, the defendant in attachment, by entering his appearance, shall be entitled to a judgment for costs; which judgment for costs this Court has intimated is a judgment of dismissal of the attachment. 18 Ills. 150.

## II.

In this suit, before the plaintiff had filed the declaration, the defendant filed his plea in abatement to the writ, taking issue on the affidavit. This plea was stricken from the files, on plaintiff's motion. The plaintiff not having filed his declaration until after the close of the first term of the Court, after the issue of the attachment, the defendant immediately moved to dismiss the suit, under the 26th Section of the Practice act, which motion was allowed, and the suit was dismissed.

## III.

The Proceeding by Attachment is severe, and the intention of the Legislature was to give defendants in attachment an early disposition of their suits and an early release of the property attached, if the suit should fail; and, to insure diligence in the plaintiff, it imposed upon him the penal consequence of having his suit dismissed if he failed to have his declaration on file, during the return Term of the attachment.

18 Dec 273

## IV.

The plea in abatement was properly filed before the motion to dismiss was made; it was necessary to plead it before any step was taken in the cause.

The motion to dismiss was made in time; it was made just as soon as the plea in abatement was disposed of.

The plea in abatement was no plea to the merits, and was not a plea to the declaration; it was a plea to the writ taking issue on the affidavit on which the writ was founded, and was filed before the declaration was.

It is true, that a personal service on a defendant in an attachment, does authorise a judgment *in personam* against him, but the reason of the rule established by the 26th Section of the Practice Act, is not in any manner changed by a personal service. The property seized by the attachment (which it is the object of this section to release) being still held by it, and not discharged by the personal service.

18 Dec 273

## V.

The authorities referred to by the plaintiff, are not in point, those relating to the 1st Point merely deciding that a motion to dismiss for want of security for costs must to be made at an early date and before pleading to the merits. And the other authorities merely decide that, when there is a personal service, judgment *in personam* can be rendered against the defendant.

The question as to the time when a motion to dismiss, like ours, should be made, and how the right to make it is effected by personal service, is not touched by these decisions.

JAMES M. WIGHT,  
*Att'y for Deft. in Error.*



Supreme Court  
Edwin R. Stoddard



Joseph C. Jarvis

Chief Justice  
Left in error

Given May 2, 1842  
J. C. Jarvis  
Clerk

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THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

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JAMES M. WIGHT,  
*Att'y for Deft. in Error.*

Supreme Court

Edwin R. Selden

3

Joseph C. Lewis

Bring & Authorities of

apt in Ord

Yielded May 2, 1862

J. Selden

clerk

III

VI

IV

JAMES M. HIGHT

# SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

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JAMES M. WIGHT,  
*Att'y for Def't. in Error.*

Supreme Court  
Edwin R. Stoddard  
3

Joseph C. Jarvis

Brigs & Authorities  
of Eye in Elbow

Filed May 2, 1842  
J. Leland  
Clerk

A.

1842 5 18

JAMES M. WHITT.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

EDWIN R. STODDARD,  
vs.  
JOHN T. MILLER &  
JOSEPH C. JARVIS.

ERROR TO OGLE.

This was an action of assumpsit.

- 2 Affidavit for Attachment.
- 4 Attachment Bond.

- 5 Writ of usual form, returnable at June Term upon the back of which
- 6 is the following return: "Served the within on the within Joseph C. Jarvis by reading the same in his presence and hearing this (7) seventh day of April, 1859.

Service.....	50
Mileage.....	1.00
Ret.....	10
	\$1.60

F. G. PETRIE, Sheriff.  
By JOHN A. HUGUES, Dep."

STATE OF ILLINOIS,  
Ogle County,

By virtue of the within writ of Attachment, I have this 6th day of April, A. D. 1859, levied upon the following described real estate, to wit: Lot three (3) in Block No. six (6) in the town of Lane in the County of Ogle and State of Illinois, according to the original plat of said town.

F. G. PETRIE, Sheriff.  
By JOHN A. HUGUES.

Filed April 16th, 1859.  
M. W. SMITH, Clerk. }



- 8 Plea in abatement of the writ, that defendant was not about to leave the State, with the intention &c., verified by affidavit. Filed Aug. 30th 1859.
- 9 Declaration in assumpsit.  
1st count. For work and labor on a school house wall, at a certain contract price.
- 11 2d. The common counts, copy of the account sued on attachee &c. Declaration. Filed September 9th 1859, being Sept. Term.
- 14 Motion by Pltff that the Plea in Abatement be stricken from the files.
- 16 Motion sustained by the Court.
- 15 Motion by Defts that cause be dismissed for want of a Declaration at the Return Term of said attachment
- 17 Motion sustained. Exception by Pltff and appeal prayed and allowed.

#### ERRORS ASSIGNED.

- 1st. The Court erred in dismissing the suit.
- 2d. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

#### POINTS.

1st. The motion to dismiss the suit because the Declaration was not filed at the Return Term, was a dilatory motion, and could not be made after Plea had been filed.

It is like a motion to dismiss for want of security for costs; it must be made at the First Term.

Adams vs. Miller, 14 Ill. 71.  
Adams vs. Miller, 12 Ill. 27.  
Edwards et al. vs. Helm, 4 Scam. 146.  
Trustees vs. Walters, 12 Ill. 151.

2d. There having been personal service, the action became a personal one, and is governed by the same rules of practice as other personal actions.

Rowley vs. Berrien, 12 Ill. 202.  
Young vs. Campbell, 5 Gilm. 83.  
Conn et al. vs. Caldwell, 1 Gilm. 536.

By taking issue on the declaration by filing plea, defendant admitted that it was correctly filed.

Donahor vs. Gardner, 24th Ill. 565.  
GLOVER, COOK & CAMPBELL,  
*For Appellants.*

Edwin R Stouder  
John Y Miller et al  
Abstract

1. The Court ruled in favor of the petitioners and the respondents.

2. The Court ruled in favor of the respondents and the petitioners.

3. The Court ruled in favor of the respondents and the petitioners.

4. The Court ruled in favor of the respondents and the petitioners.

5. The Court ruled in favor of the respondents and the petitioners.

6. The Court ruled in favor of the respondents and the petitioners.

7. The Court ruled in favor of the respondents and the petitioners.

8. The Court ruled in favor of the respondents and the petitioners.

9. The Court ruled in favor of the respondents and the petitioners.

10. The Court ruled in favor of the respondents and the petitioners.

Filed May 9, 1842  
J. L. Leland  
clerk

11. The Court ruled in favor of the respondents and the petitioners.

12. The Court ruled in favor of the respondents and the petitioners.

13. The Court ruled in favor of the respondents and the petitioners.

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15. The Court ruled in favor of the respondents and the petitioners.

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17. The Court ruled in favor of the respondents and the petitioners.

18. The Court ruled in favor of the respondents and the petitioners.

19. The Court ruled in favor of the respondents and the petitioners.

20. The Court ruled in favor of the respondents and the petitioners.

21. The Court ruled in favor of the respondents and the petitioners.

22. The Court ruled in favor of the respondents and the petitioners.

23. The Court ruled in favor of the respondents and the petitioners.

24. The Court ruled in favor of the respondents and the petitioners.

25. The Court ruled in favor of the respondents and the petitioners.

26. The Court ruled in favor of the respondents and the petitioners.

27. The Court ruled in favor of the respondents and the petitioners.

28. The Court ruled in favor of the respondents and the petitioners.

29. The Court ruled in favor of the respondents and the petitioners.

30. The Court ruled in favor of the respondents and the petitioners.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

EDWIN R. STODDARD,  
vs.  
JOHN T. MILLER &  
JOSEPH C. JARVIS.

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By taking issue on the declaration by filing plea, defendant admitted that it was correctly filed.

Donahor vs. Gardner, 24th Ill. 565.  
GLOVER, COOK & CAMPBELL,  
For Appellants.

Edwin R. Studdard  
v  
John J. Miller et al  
Abstract

- 1. Motion sustained. Exception by Bill and other parties and refusal to pay costs of said motion.
- 2. Motion by Bill that cause be dismissed for want of a Prosecution set aside.
- 3. Motion sustained by the Court.
- 4. Motion by Bill that the Bill in Attachment be stricken from the file.
- 5. The cause set aside by the Court and on stipulation of the parties the cause is set for trial on a bill passed with a certain number of copies.
- 6. Prosecution in remission.

THOMAS ASPENBURY

21. The Court gave its judgment in answer to the question.

22. The Court gave its judgment in answer to the question.

23. The Court gave its judgment in answer to the question.

24. The Court gave its judgment in answer to the question.

25. The Court gave its judgment in answer to the question.

FOINER

Transcript of *W. Miller*, 12th Dec. 1841.  
 Transcript of *W. Miller*, 12th Dec. 1841.  
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 Transcript of *W. Miller*, 12th Dec. 1841.

26. The Court gave its judgment in answer to the question.

27. The Court gave its judgment in answer to the question.



28. The Court gave its judgment in answer to the question.

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30. The Court gave its judgment in answer to the question.

Printed by G. B. GARDNER, 211 N. 3rd St.  
 Philadelphia, Pa. 1842.

Filed May 9, 1842  
 J. L. ...  
 MR


State of Illinois  In the Circuit Court  
Ogle County ss  of said Ogle County

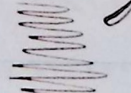
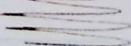
Transcript from the files and records of  
The Honorable the Circuit Court of Ogle County  
in the State of Illinois.



Be it known that in a certain cause  
lately pending and determined by the Honorable  
the Circuit Court of Ogle County in the State  
of Illinois <sup>vs</sup> Edwin B. Stoddard was Plain-  
tiff and John S. Miller and Joseph C. Jarvis  
defendants the following files and records of pro-  
ceedings appear as part of the records of said  
Court - to wit:

A precept for summons and attach-  
ment in said cause which is in the words &  
figures to wit:

In Ogle County ~~Circuit Court~~

 Of the first Term Oct 1854

State of Illinois   
Ogle County ss 

Edwin B. Stoddard   
ss 

v John F. Miller &  
Joseph C. Jarvis

Please <sup>return</sup> summons in the  
above entitled cause to <sup>said</sup> John F. Miller and  
a writ of attachment against the said Joseph  
C. Jarvis in a plea of trespass on the case on  
premises. Damages three hundred and forty  
dollars and fifty four cents

\$

Courts & ©

Wm W Smith Esq

of A. J. W. J.

Clerk of said Court

Filed April 6 1859

Wm W Smith Clerk

And further among the said files of said  
Court in said cause there appear an affidavit  
for a writ of attachment. Which is in the  
words and figures following to wit:

In Ogle County Circuit Court

Of the June Term A. D. 1859

State of Illinois

Ogle County ss

Edwin B. Stoddard first  
being duly sworn upon his oath deposes and  
says that John F. Miller and Joseph C. Jarvis  
are indebted to this affiant in the sum of three

hundred and forty dollars and fifty five cents  
which arose and accrued to this affiant by  
reason of labor done upon and materials fur-  
nished for the erection of a school house in  
the town of Flagg in the village of Lane in  
said County and State under contract made  
by the said John P. Miller and Joseph C. Jarvis  
with this affiant.

And this affiant further states that the  
said Joseph C. Jarvis is about to depart from  
this state with the intention of having his effects  
removed from this state.

Wherefore this affiant prays that a writ of  
attachment may issue against the said Joseph  
C. Jarvis as is by law provided

C. B. Stoddard

Subscribed & sworn to before  
me this 1<sup>st</sup> day of April  
1859 M. W. Smith Clerk

Filed April 1 1859

M. W. Smith Clerk.

And further among the files of said cause in  
said cause appears an attachment bond  
which is in the words and figures following  
to wit,

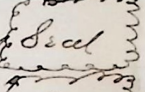


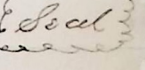
Know all Men by these Presents That we Edwin  
 R. Stockard and Alfred S. Hoadley are well  
 and firmly bound unto Joseph C. Jarvis implac-  
 ed with John F. Miller in the penal sum of Six  
 hundred and eighty two Dollars for the payment  
 of which well and truly to be made we bind  
 ourselves our heirs Executors and Administrators  
 jointly severally and firmly by these presents

Witness our hands and seals this sixth day of  
 April A.D. 1859

The Condition of the above Obliga-  
 tion is such, That whereas the above bounden  
 Edwin R. Stockard hath on the day of the date  
 hereof prayed an attachment out of the  
 Circuit Court of Ogle County of said State  
 at the suit of himself against the estate of  
 the above named Joseph C. Jarvis implac-  
 ed with John F. Miller for the sum of Three hundred and  
 forty dollars & fifty cents and the same being  
 about to be sued out of said Court returnable  
 on the second Monday of June next to the term  
 of the Court then to be holden at said County  
 and State. Now if the said Edwin R. Stockard  
 shall prosecute his suit with effect or in case  
 of failure there in shall well and truly pay  
 and satisfy the said Joseph C. Jarvis implac-  
 ed with John F. Miller all such costs in said suit  
 and such damages as shall be awarded against

The said Edwin R. Stoddard his heirs executors and administrators in any suit or suits which may hereafter be brought for wrongfully serving said attachment then the above obligation to be void otherwise to remain in full force and effect.

Edwin R. Stoddard 

Alfred S. Foadley 

Filed April 4 1854

M. W. Smith Clerk

And further among the files of said Court in said cause there appears a writ of attachment which is in the words and figures following to wit:

State of Illinois  The People of the State of  
Ogle County ss  Illinois, To the Sheriff of  
said County. Greeting.

Whereas Edwin R. Stoddard hath complained in writ to Mortimer W. Smith, Clerk of the Circuit Court of said Ogle County that John S. Miller and Joseph C. Jarvis are justly indebted to the said Edwin R. Stoddard to the amount of Three hundred and forty dollars and 54 cents and affidavit having been also made that the said Joseph C.

Jarvis is about to depart from this State with the intention of having his effects removed from this State and the said Plaintiff having given bond and security according to the directions of the act in such case made and provided; - We therefore command you that you attach so much of the estate real and personal of the said Joseph B. Jarvis to be found in your County as shall be of value sufficient to satisfy <sup>the</sup> said debt and costs according to the complaint; and such estate so attached in your hands to remain or so to be provided that the same may be liable to further proceedings thereupon according to law at a Court to be holden at Oregon in said Ogle County on the Second Monday of June next so as to compel the said Joseph B. Jarvis impleaded as aforesaid to appear and answer to the complaint of the said Edwin W. Stockard.

And that you also Summon -----  
 ----- as Garnishee to be and appear before the said Court on the first Monday of ----- next then & there to answer what may be objected against ----- when and where you shall make known to the said Court how you have executed this writ - And have you then and there this writ.

Witness My W. Smith Clerk of our said Court  
 and the seal there of this 24th day of April  
 A.D. 1859 M. W. Smith Clerk

Seal

Upon the back of said writ are the following  
endorsements and are in the words and figures  
following to wit:

Received this writ - April 11<sup>th</sup> 1859 at ten o'clock  
P.M.

J. G. Petrie

Shff

Served the writ on the within Joseph G. Jarvis  
by reading the same in his presence and bearing this  
17<sup>th</sup> month the day of April 1859

Service 50

Mileage 1.00

Per 10

\$1.00

J. G. Petrie Sheriff

By John A. Hughes dep

State of Illinois

Ogle County

By virtue of the within writ  
of attachment I have this  
11<sup>th</sup> day of April A.D. 1859 laid upon the following  
described real estate to wit, Lot Three (3) in Block  
No six (6) in the town of Lane in the County of  
Ogle and State of Illinois according to the  
original plat of said town

J. G. Petrie Sheriff

Filed April 11 1859

M. W. Smith Clerk

By John A. Hughes

8 And, further among the files of said Court in said cause appears a plea in abatement which is in the words and figures following to wit:

State of Illinois } Ogle County Circuit Court  
Ogle County ss } of the June Term for 1859

Joseph C. Jarvis }  
John P. Miller unpleaded }  
advs }  
Edwin W. Stoddard }

And the said Joseph C. Jarvis defendant in this suit by J. P. Miller his attorney comes and defends the wrong and injury when he and prays judgment of the above entitled cause because he says that on the sixth day of April A.D. 1859 the time when the affidavit upon which the attachment in this case was issued was filed, he the said defendant was not about to depart from this State with the intention of having his effects removed from this State.

And this he the said defendant is ready to verify. Wherefore the said defendant prays judgment of said affidavit to be set aside and that the same may be quashed.

Joseph C. Jarvis  
State of Illinois Ogle County ss  
Joseph C. Jarvis atty

The above named defendants being duly sworn  
on his oath deposes & says that the facts above  
stated in the plea by him subscribed are true  
in substance and in fact -

Subscribed & Sworn to      Joseph C. Jarvis  
before me this      day of June A.D. 1859  
In W. Smith Clerk      of W. Miller atty for  
By J. J. Smith dep      atty

Filed Aug 30 1859  
W. W. Smith Clerk

And further among the files of said Court in said  
Court appears a declaration which is in the  
words and figures following to wit -

In the Ogle County Circuit Court  
Of the September Special Term  
State of Illinois      A.D. 1859  
Ogle County ss

Edwin R. Stoddard Plaintiff  
in this by J. A. Mix his attorney complains of  
John S. Miller and Joseph C. Jarvis Defendants  
in this suit who have been summoned &c in a  
plea of trespass on the case on promises  
For that whereas heretofore to wit -

The first day of August in the year of our Lord  
 one thousand eight hundred & fifty eight in  
 the County of Ogle aforesaid in consideration that  
 the said Plaintiff at the special request of said  
 defendants would enter upon and perform the  
 labor of furnishing all the stone and other materials  
 and lay the same in good and substantial stone  
 wall under a certain School house in the town of  
 same in the County aforesaid which the said de-  
 fendants had the contract for building, the said  
 defendants promised and agreed to pay the  
 said Plaintiff the sum of eleven dollars per  
 cord so furnished & laid up. And the said defendants  
 further undertook & promised them and there  
 to pay said Plaintiff the further sum of thirty  
 cents per cord yard in consideration of said  
 Plaintiff's furnishing the materials & tacking &  
 plastering said School house. And defendants  
 undertook & promised to pay said Plaintiff so  
 soon as they should receive their pay from from  
 the School money of said town a part of which  
 they were to receive in a short time then thereafter  
 and the residue in one year. And the said Plaintiff  
 avers that the complying in the promises and  
 undertakings of said defendants did after-  
 wards to wit on the day & year aforesaid enter  
 upon the work of said defendants and fur-  
 nished & laid up twenty five cords & sixty four

hundredths of a cord of of stones in the found-  
ation of said School house and did furnish  
the materials of lime & plaster one thousand  
& twenty five yards in said School house. All  
of which was accepted by said defendants at  
the County of Ogle aforesaid.

And the said Plaintiff ever that long  
before the commencement of this suit the said  
defendants had received their pay from the  
School funds of said town.

By means whereof an action was deemed  
to said Plaintiff to demand and have of  
said Defendants the sum of three hundred  
& forty dollars & fifty four cents at the County  
aforesaid & in consideration the said defendants  
undertook & lawfully promised to pay said  
Plaintiff said sum of money when thereunto  
afterwards requested.

For that where as the said defendants  
afterwards to wit on the first day of April  
in the year of our Lord one thousand eight hundred  
and fifty nine to wit at said County  
became & were indebted unto said Plaintiff in  
a large sum of money to wit in the sum  
of three hundred & forty dollars & fifty four  
cents for money before that time lent and



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advanced to said defendants by said Plaintiff  
and at said defendants special instance and  
request, and also in the like ~~sum~~ sum of  
money before that time had and received by  
said defendants to and for the use of said  
Plaintiff also in the like sum for money before  
that time paid laid out cast and expended  
for said defendants by said Plaintiff at the  
like special instance and request of said de-  
fendants and also in like sum of money for  
interest due from said defendants to the Plain-  
tiff for and in respect of the Plaintiff having  
borne and given stay of payment of money  
due from said defendant to said Plaintiff at  
the defendants request for a long time then  
elapsed, and also in like sum for Wool Wares  
and Merchandize before that time sold and de-  
livered by said Plaintiff to said defendants at  
their like special instance and request: and  
also in the like sum for the labor care and  
diligence of said Plaintiff before that time  
done and performed by said Plaintiff for said  
defendants and 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  
Plaintiff on an account stated between them  
and being so indebted said defendants in  
consideration there of then and there undertook

and promised to pay said Plaintiff said several sums of money above mentioned when thereunto afterwards requested.

Yet the said defendants not regard-  
ing their said promises and undertakings but  
contriving &c although often requested so to  
do have not paid said Plaintiff ~~said~~<sup>said</sup> any or  
either of several sums of money above mentioned  
or any part thereof but so to do have hitherto  
wholly neglected and refused and still does  
neglect and refuse to the damage of said  
Plaintiff of the sum of three hundred forty  
dollars & fifty four cents and therefore he  
brings this suit &c

J. A. Mox

Plff. Atty

John B. Miller and Joseph C. Jarvis.

1854

To Edwin R. Stoddard atty

To Money lent & advanced	\$340.54
" " Had & received to & for the use of said Plaintiff	340.54
" " Paid laid out & expended	600.00
" Interest	340.54
" Goods wares & merchandize	600.00
" Labor and services	\$340.54 600.00
" Balance due in account stated	340.54 <del>600.00</del>

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" Mason work done on school house	
in Sawl furnishing & putting up 25.14	2582.00
cords of Stone at @11¢ per cord	
" Furnishing & plastering 1025 yards @30¢ per yd	307.50
" Putting up Chimneys.	\$ 10.00
" Furring & Strengthening joist	\$ 5.00
" Lath & Stucco	\$ 5.00

Filed Sept-9 1859  
 M W Smith Clerk

And further among the files in said Court in said cause there appears a "Motion" which is in the words and figures following to wit:

State of Illinois      Verdict Court of said County  
 Ogle County ss      March Term Ad 1850

Delwin B Stoddard  
 vs  
 John F Miller &  
 Joseph K Jarvis

And the Plaintiff <sup>and</sup> enters his motion to have the plea in abatement in this cause stricken from the files. And assigns the following causes.

1st Because said plea was not pleaded at the return term of the writ herein

- 2<sup>nd</sup> Because no proper time is given in said plea  
 3<sup>rd</sup> Because said plea is not in the proper cause  
 4<sup>th</sup> Because said plea is pled by atty  
 5<sup>th</sup> Because in and by said plea the said defendant pray judgment of the cause of action.  
 6<sup>th</sup> Because in and by said plea the defendant prays the affidavit may be quashed.  
 7<sup>th</sup> Because the jurat is defective  
 8<sup>th</sup> Because said plea is signed by atty.  
 And for many other causes apparent upon said plea

Y<sup>e</sup> A<sup>tt</sup>or<sup>ney</sup> for  
 P<sup>l</sup>ff

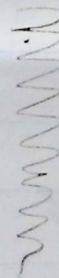
Filed March 21 1840

In W<sup>illiam</sup> Smith et al

And further among the files of said Court in said cause there appears an other "Motion" which is in the words and figures following to wit -

John B. Miller &  
 Joseph Jarvis  
 ads

Edwin B. Stoddard



In Attachment

And said defendants by Miller and Dutcher his attorneys come and

16 moves the Court to dismiss this suit for want of de-  
claration at the return term of said Attachment  
refused in this cause

By Miller & Dutcher

his Attys

Filed March 23 1840

In W. Seneca Co.

And afterwards to wit at the March Term Ad 1840  
of said Court and on Friday the 23rd  
day of said March the same being one  
of the days of the said March Term  
the following proceedings in said cause  
in said Court were entered of record  
to wit-

Edwin R. Stoddard

vs

Attachment

John F. Miller &  
Joseph C. Jarvis

This day comes the said  
Plaintiff by his Attorney and the said defendants  
come by Miller & Dutcher their attorneys and now  
comes on to be heard the motion of the said Plaintiff  
to strike from the files herein the plea in abatement  
filed herein by the said defendants and after argument  
of counsel and consideration by the Court it is ordered  
that the said motion be sustained. Whereupon the

said defendants enter their motion to dismiss this  
suit for want of declaration <sup>within</sup> at the return term and  
after argument of counsel and consideration by the  
court. It is ordered that said motion to dismiss  
be sustained to which ruling of the Court the said  
Plaintiff then and there excepts. And now the said  
Plaintiff prays an appeal of this cause to the  
Supreme Court which is allowed on his filing bond  
with Henry A. Mix or James V. Hall as se-  
curity in sum of one hundred dollars within  
thirty days from this date.

And now comes the said Plaintiff by Glover  
Cook & Campbell 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<sup>st</sup> The court erred in dismissing the  
suit
- 2<sup>d</sup> The court erred in rendering the Judgment  
aforesaid in manner & form aforesaid

Glover Cook & Campbell

State of Illinois }  
Ogle County ss }

I, Frederick G. Petrie Clerk, of the  
Circuit Court in and for said County

do hereby certify, that the foregoing is a full, true and  
complete Transcript of the Records and Files of a certain  
Cause lately pending in said Court, wherein Edwin R.  
Stoddard was Plaintiff, and John F. Miller and Joseph  
Harris were Defendants - and the whole thereof

Witness my hand and the Seal of our said  
Court at Oregon, this 12<sup>th</sup> day of March  
A. D. 1861 -

F G Petrie Clerk  
By B F Shurts Deputy



~~272~~  
Edwin H. Woodland

John Miller &  
Joseph Jarvis.

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Record etc

Filed April 18, 1861

L. Leland  
Clerk



State of Illinois  
Supreme Court  
Joseph C. Jarvis

and  
John F. Miller  
Appellees

vs  
Edward Stodetard

Appellant

Appeal  
from  
the Ogle  
County Circuit  
Court.

And the said  
appellees above named by James  
M. Wight <sup>his</sup> Attorney come  
and say, that there is no  
such error in the records  
and proceedings in the above  
entitled cause in the court  
below, as is by the appellant  
in his above assignment of  
errors thereof supposed.

James M. Wight  
Attorney for Appellee

170 74  
Supreme Court

Joseph C. Jarvis

and  
John P. Miller  
vs

Edward Stoddard  
Appellant

Respondent in Error

James M. Wright

Atty for Appellee