

No. **11979**

Supreme Court of Illinois

Edward^s, et al.

vs.

Vandermark.

71641  7

The Circuit Court for the County of Lake

John H. Sandemarle

^{vs}
Daniel Head

Churchell Edwards &

John Elliott

Now Comes the defendants in the above
entitled Cause and say that there is
manifest error in the proceeding had in
said Cause and assign the following
as Causes of Error therein.

First The Court erred in dismissing
the Case upon the evidence there
before the Court

Second The Court erred in dismissing
the appeal

Third The Court erred in requiring the affidavit
of William A. Boardman to show
the kind of action when the papers in
the Cause were on file & was the best
evidence of that fact.

Fourth The Court erred in dismissing the

in as much as ~~read as~~ ^{in as much as} the plaintiff had not filed
indorsions to the Court in accordance with the pro-
visions of the statute

Fifth The Court erred in deciding that an appeal
~~did not lay~~ in the Court not be taken
in this case & for that cause dismissing
the suit

Fry & Swank

Attys for Defts

And the said John H. Vanderveck by
J. L. Dickey his attorney comes & says There is
no such error or errors as alleged by plffs
in error & asks that said judgment ~~stand~~
in all things be affirmed J. L. Dickey for Deft
July 2nd 1852

Filed August 2, 1857.

J. Leland Clerk.

By P. K. Leland Deputy.

United States of America }
State of Illinois Lake County } ss

Pleas before the Honorable Hugh T. Dickey Judge of the seventh judicial Circuit of the State of Illinois

At a special term of a Circuit-Court for the County of Lake in said Circuit began and held at Waukegan in said County on the third day of March in the year of our Lord one thousand eight hundred and Fifty one and of the Independence of the United States the Seventy fifth

Said term of Court being held pursuant to a special order of the Honorable Hugh T. Dickey judge of the seventh judicial Circuit of said State and presiding judge of the Circuit Court of Lake County aforesaid bearing date on the sixteenth day of January A.D. 1851 and ^{calling} said special term to commence on the said third day of March for the trial hearing and determination of all pleas that may be depending in said Court Civil Criminal and Chancery due notice of said special term having been given by the Sheriff of said County according to the statute in such case made and provided

Present the Honorable Hugh T. Dickey Judge aforesaid Lyman Sprague Sheriff of Lake County

Attest. A. M. Cotes Clerk

Be it remembered that heretofore to wit on the 30th day of April A.D. 1851 the same being a day in the vacation between the March special term of the Circuit Court of

Lake County in the State of Illinois for the year
one thousand eight hundred and fifty one and
the June term of said Court for the same year
William A. Boardman Esquire, an acting justice
of the peace in and for the said County of Lake,
filed in the office of the Clerk of the said Cir-
cuit Court a summons, which is in the words and
figures following to wit:

State of Illinois }
Lake - County } ss The People of the State of Ill-
County Greeting inois to any Constable of said

We command you that you sum-
mons Daniel-Head Churchill-Edwards and John
Elliot personally to be and appear before me at
my office in Waukegan on the twenty fifth day
of March A.D. 1851. at one o'clock P.M. to answer
the complaint of John. H. Vandermark for a
failure to pay him a certain Demand not Ex-
ceeding one hundred dollars and hereof fail not but
make due return of this writ

Given under my hand
and seal this 18th day of March A.D. 1851.

William A. Boardman
acting Justice of the Peace

On the back of which said Summons
were indorsed at the time when the same
was so as aforesaid filed in the said office
of the said Clerk of said Court, the words
and figures following to wit: "John. H. Van-
dermark vs Danl Head Churchill Edwards John
Elliot Summons Demand \$100.00 Cost -, 75 Execu-
ted by reading in the hearing of Churchill Edwards

" John Elliot March 22nd 1851 Daniel Head not
found Fees 36 miles 1,80

" 2 Hrs 50
\$ 2.30

" Daniel Watters
Const "

And that the said William A. Boardman,
Esquire, an acting justice of the peace as aforesaid,
also at the same time when he so as aforesaid
filed the said Summons in the said office
of the said Clerk of said Court, to wit; on
the said thirtieth day of April A.D. 1851, the
same being a day in the vacation aforesaid
filed in the said office of the said Clerk of
said Court an appeal bond, which is in
the words and figures following, to wit:
" Know all men by these presents That we Churchill
" Edwards John Elliot & Eli Gage & D. B. Gage of the
" County of Lake and State of Illinois are held and
" firmly bound unto John Vandemark in the penal
" sum of ninety nine and 00/100 dollars current 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 several
" ly and firmly by these presents Witness our hands
" and seals this ninth day of April A.D. 1851 the
" condition of the above obligation is such that
" whereas the said John Vandemark did on the 25th
" day of March A.D. 1851 before William A. Boardman
" a Justice of the Peace in and for the County aforesaid
" recover a judgment against the above bound
" den Churchill Edwards and John Elliot impleaded
" with Daniel Head for the sum of thirty eight dol
" lars and seventy five cents and Eleven dollars

" and nine cents costs from which said judgment
 " of the said justice the said Churchill Edwards
 " & John Elliot have taken ~~and~~ ^{an} appeal to the circuit
 " court of said County and State Now if the said
 " Churchill Edwards & John Elliot shall prosecute their
 " Appeal with effect and shall pay and satisfy what
 " ever judgment may be rendered by the circuit court
 " upon dismissal or trial of the said Appeal in the
 " said circuit court then the above obligation to be
 " void otherwise to remain in full force and virtue
 " Taken and entered into before me at my office this
 " 11th day of April 1851 } Churchill-Edwards
 " W. A. Boardman } John A. Elliot
 " acting J.P. } Eli - Gage
 " } D. B. Gage

Seal
 Seal
 Seal
 Seal
 Seal

On the back of which said appeal bond was
 indorsed at the time when the same was so as
 aforesaid filed in the said office of the said
 Clerk the words and begins following, to wit:
 John-Undermark vs Churchill-Edwards & John
 Elliot appeal Bond filed April 11, 1851 W. A.
 Boardman a. J.P.

And that the said William A. Boardman,
 acting justice of the peace as aforesaid, also at
 the same time when he so as aforesaid filed
 in the said office of the said Clerk of
 the said Circuit Court the said Summons
 and appeal bonds, to wit, on the said thir-
 teenth day of April A.D. 1851, the same being
 a day in the vacation aforesaid, filed in
 the said Clerk's office a transcript and

certificates, which are in the words and figures following, to wit:

March 18th 1851

" John Vandemark

" Justice costs

vs.

" sums \$ 18 3/4

Daniel Heald
Churchill-Edwards

" two sub. 3 1/2

+ John Elliot

" Judgt 25

" Locketing 12 1/2

" Exp Wright

" costs 2 sub. 37

" 7 oaths 56

" Total justice 212 1/2

" Plffs wit

" Amos Boardman 50

" George Andrews 50

" Henry Vandemark 50

" Joseph Adams 50

" Defts wit

" - Clark co 50

" Knowlsey co 50

" E. H. Holmes co 50

" Elijah Andrews 50

" Nicky Cory co 50

" wit for 450

" Constable

" Con. Walters

" Shaws \$ 2,30

" on sub, 2,17

" Total amt 4,47

" \$11, 09 Total five Cents and costs of suit and that Ex-

" 1, 00 The Court

" \$12.09 Total

" Cost

Issued summons
this 18th March 1851 Returnable on the 25th
of March instant at one o'clock P.M.

Delivered to Danl Walters Constable Sum-
mons returned served on Churchill Edwards
and John Elliot on this 25th day March 1851

at the hour of one o'clock P.M. Plaintiff
appeared and the Defendants Churchill
Edwards and John Elliot appear by their
attorney and proceeded to trial and
after hearing the testimony the Court find
for the plaintiff in the sum of \$38.75

It is therefore ordered and
Con. Walters considered that the Plaintiff have and
Shaws \$ 2,30 recover of and from the said Defendants
Churchill Edwards and John Elliot the
sum of thirty Eight Dollars and Seventy
five Cents and costs of suit and that Ex-
ecution issue therefor

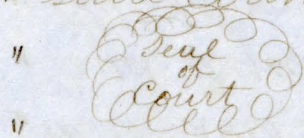
W. A. Boardman
affidavit filed April 11th 1851 papers
sent up 30 April 1851 W. A. Boardman
State of Illinois
Lake County
I William A Board-
man are acting justice
of the Peace in and said County do cer

" certify that the foregoing is a true and correct Trans-
" script from my Pocket of the record and proceedings
" had before me in a certain cause between John van-
" demark Plaintiff and Churchill Edwards and John
" Eliot impleaded with Daniel Head Defendants and
" I further Certify that I here transmit the Papers in
" said suit Given under my hand and seal this 30
" day of April 1851 W. A. Boardman
" acting Justice of the Peace

And that afterwards, to wit: on the said
thirtieth day of April A.D. 1851, the said
being a day in the vacation aforesaid, the
said Clerk of the said Circuit Court issued a
Summons, which is in the words and figures
following, to wit:

State of Illinois }
Loke County } The people of the State of Illinois to
the Sheriff of said County Greeting
" We command you that you summon John H. Vander-
" mark and Daniel Head if they shall be found in your
" County personally to be and appear before the Circuit
" Court of said County on the first day of the next
" term thereof to be holden at the Court House in Wauke-
" gan in said County on the first Monday of June
" next and abide by and perform the judgment of said
" Circuit Court in the case of an appeal to said Court
" from a judgment of William A. Boardman Esquire
" acting Justice of the peace in and for said County
" by Churchill Edwards and John H. Elliott in a suit
" wherein the said Vandemark was plaintiff and Daniel
" Head Churchill Edwards and John H. Elliott were de-
" fendants at which time and place said appeal is
" returnable And have you then and there this writ

" with an endorsement thereon in what manner you
" executed the same. Witness Augustus B. Cotes Clerk
" of said Court and the seal thereof at Waukegan in
" said County this Thirtieth day of April A.D. 1851



A. B. Cotes Clerk "

And that afterwards, to wit: on the twenty
seventh day of May A.D. 1851, the same being
a day in the vacation aforesaid, the Sheriff
of the said County of Lake by J. Moulton,
his deputy, returned the said summons into
the office of the said Clerk of the said Cir-
cuit Court with an endorsement thereon,
which is in the words and figures fol-
lowing, to wit: "Served the within writ on John
" A. Vandemark by reading it in his presence and
" hearing this 21st day of May 1851 Not served on
" Daniel Head he not being found in my County
" Fees travel 12 miles Service 4/ Return 10 & 1/20 L. Sprague
" Sheriff By J. Moulton, Deputy "

" United States of America }
" State of Illinois Lake County } ss

" Pleas before the Honorable
" Hugh J. Dickey Judge of the seventh judicial Cir-
" cuit of the State of Illinois

" At a Circuit court for
" the County of Lake in said Circuit begun and
" held at Waukegan in the County aforesaid on
" the second day of June in the year of our Lord
" One thousand eight hundred and Fifty one and
" of the Independence of the United States the seven-
" ty fifth

" Present the Honorable Hugh J. Dickey

"Judge aforesaid Symon Sprague Sheriff of Lake
County—

"Attest Augustus B. Cotes Clerk"

And be it
also remembered that afterwards to wit on the
13th day of June A.D. 1851 the same being a day
of the June term of the said Circuit Court for the
said last mentioned year the said John A. Van-
demark by Henry W. Blodgett, his Attorney, filed
in the office of the said Clerk of the said Circuit
Court an affidavit which is in the words and
figures following to wit

"John Vandemark

Apud primum
W. A. Boardman

"
" Daniel Head
" Churchill Edwards
" + John Elliot

W. William A. Boardman

"being duly sworn doth depose and say that the
"above entitled cause was once tried before me
"as a Justice of the Peace That the case made
"before me by the parties was an allegation of
"the Plaintiff against the Defendants that De-
"fendants had previously in the capacity of Dro-
"vers Driven off certain Cattle of the Plaintiff un-
"der the provisions of the Statute in regard to Dro-
"vers This was the subject matter Tried before me
"and none other the Daniel Head one of said Defen-
"dants was not served with process the cause was
"tried against the other Defendants who appeared
"that is one in person + by counsel + the other by coun-
"sel as I understood then
"Subscribed + sworn to before W. A. Boardman"
"me June 13th 1851 A. B. Cotes Clerk"

And that afterwards, to wit: on the said
thirteenth day of June A.D. 1857, the said
being a day of the said Term of
said Circuit Court for said last mentioned
year, the following, among other proceedings,
were had in said Court and entered of
Record, to wit:

" John ^{H.} Vandemark
" vs
" Daniel Head, and
" Churchill Edwards
" and John H. Elliott,
" Appellants

Appeal

" Now comes said plaintiff
" by Chadbourne his attorney and enters his motion
" to dismiss the appeal herein for want of jurisdic-
" tion of this Court and the Court being fully ad-
" vised in the premises it is ordered that the said
" appeal be and the same is hereby dismissed "

John H. Vandemark }
" vs }
Daniel Head and
Churchill Edwards }
and John H. Elliott }
Appellants }

Sauke County Circuit Court
Appeal

State of Illinois }
Sauke County } ss. J. Augustus

B. Bates, Clerk of the Circuit Court in and for
said County of Sauke, do hereby certify the
foregoing to be a true transcript from the records
of my office and papers on file therein, of

the proceedings and judgment of the said Circuit Court in the above entitled Cause and of all the papers on file in my said office in said Cause except Subpoenas and Receipts for Subpoenas therein.

In witness whereof, I have hereunto set my hand and the Seal of said Court at New Regan, in said County, this twenty third day of July A.D. 1857

A. B. Coates, Clerk

Fees for transcript & cost \$2.75

Chas. Will Edwards et al.

vs

John H. Vandemark

Transcript

Filed August 2, 1857.

L. Leland Clerk

By P. H. Leland & Co.

Fees \$2.75

Know all men by these presents-
That we Churchill Edwards John Elliott and
Parnell Munson of the County of
Lake and State of Illinois are
held and firmly bound unto John H.
Bandomack of Lake County
and State aforesaid, in the penal sum of
two hundred dollars; to the true payment
whereof, well and truly to be made to the
said John H. Bandomack his executors
and administrators, we bind ourselves, our
heirs, executors and administrators jointly
and severally, firmly by these presents. Sealed
with our seals. Dated this 2^o day of August
in the year of our Lord eighteen hundred and fifty
one.

The condition of this obligation is such, that
whereas, at the June Term of the Circuit Court
of Lake County in the State of Illinois in the
year of our Lord eighteen hundred and fifty one
a cause brought up to said Circuit Court on appeal
in which the said Churchill Edwards & John H. Elliott
were ~~appellants~~ and the
said John H. Bandomack was appellee, was
dismissed; and whereas the said Churchill Edwards
& John H. Elliott
have sued out a writ of error from the Supreme
Court of the State of Illinois for the Third
Grand Division to the said Circuit Court of
Lake County, which said writ of error is to be
made a supersedeas upon condition that the
said Churchill Edwards & John H. Elliott
do enter into bond in the sum
of two hundred dollars conditioned as the law
directs. Now, therefore, if the said Churchill
Edwards & John H. Elliott
shall well and truly pro-
secute their said writ of error, and if the

Said Churchill Edwards & John H. Elliott
shall pay whatever judgment shall be rendered against them, and
all costs, interest and damages, in case the
said judgment shall be affirmed in the
said Supreme Court, then the above obligation
to be void, otherwise to be and remain
in full force and virtue.

Churchill Edwards

John H. Elliott

Parry Munsan



Churchill Edwards et al,
John H. Edwards et al,
Bond.

Filed August 2, 1857.

W. Edmund Clerk
D. J. K. Edmunds et al.

State of Illinois
County of Lake Parnell Munson

he is the same person who signed the annexed and being
duly sworn doth depose and say that, &
that he is a permanent resident of the
County of Lake State of Illinois and that
over & above all of his debts & liabilities
he is now properly situated in said
County to the amount of Two thousand
Dollars free & clear of & from any and
all incumbrance and that he
is the owner of Real Estate in said
County to the amount above spec-
tional & personal property to the
amount of at least one thousand
Dollars all free & clear of incumbrance
& that he intends to remain a perma-
nent resident of said County

Subscribed and
sworn to before
me this 5th day of August A.D. 1857
Parnell Munson
C. P. Perry
Notary Public

Churchill Edwards & Co.,
vs
John H. Vandemark
Affidavit of due try.

Filed August 7th 1857.
L. Island Clk.
By P. H. Island Depy.

Waukegan Aug 29th 1851
Friend Seland

Enclosed you will
please find a transcript of a Cause which
I wish to take to the Supreme Court on
a writ of error and wish to make the writ
a supersedeas. The errors are assigned and
attached. The Bond you will also find
which is as good as any Bond can be
for the makers are all men of large
property & permanent residents of our County.
You will also find \$5. enclosed to
you as fees. Now I acknowledge
that I am a little green in this business
and would like to get you to do me
a favor if you will. I wish that you
would present the record to Mr. Eaton
to obtain the writ for me if he will
allow it. The execution will be out
on the 14th of August & I want the super-
sedeas before that time. If you will
be kind enough to attend to it for me
& let me know the result as soon
as possible you will much oblige
Yours Respectfully
W. S. Sears

The Circuit Court for the County of Lake
John H. Vandemark

^{vs}
Dorrie Head
Churchill Edwards &
John Elliott

To the Hon. Samuel
H. Treat John L. Bates & Lyman Trumbull
Justices of the Supreme Court of the State of
Illinois Your petitioners Churchill
Edwards & John Elliott comes into the
supreme Court aforesaid & file in the
office of the Clerk thereof a true & perfect
transcript of the proceedings had in the above
entitled Cause in the Lake County Circuit
Court and ask for a writ of error on
the same & that the said writ of error
may be made a supersedeas in said
Cause the errors being assigned upon the
face of said transcript

Churchill Edwards
John Elliott
By Perry & Sons
their Attys.

Edwards et al.
^{vs}
J. H. Vandemark
Petition.

Filed July 30, 1857.

Waukegan Aug. 6th 1851

Seland Esq

Dear Sir

Enclosed you
will please find the Bond all correct &
an affidavit of the sum. Will you please
see the mit Matter all correct so that I can
have it sworn as soon as the 14th inst as
that will be the time that the execution
runs out.

Yours Respectfully
W. S. Sears

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Lake* — 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 *Lake* county, before the Judge thereof, between —

Churchill Edwards & John H Elliott, appellants,
and John H Vandemark, appellee —
~~plaintiff~~ and

~~defendant~~ it is said manifest error hath intervened, to the injury of the aforesaid
appellants —

as we are informed by *their* complaint, and we being willing that error, if any there be, should be
corrected in due form and manner, and that justice be done to the parties aforesaid, command you that
if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the
Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same,
under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county
of La Salle, on the *second Monday in June* 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. SAMUEL H. TREAT, Chief Justice of our said
Court, and the seal thereof, at Ottawa, this *second*
day of *August* in the year of our Lord one thousand eight
hundred and fifty *one*.

L. Leland Clerk of the Supreme Court.
By *P. K. Leland* Deputy.

Lake County.

Churchill Edwards et al,
^{vs}
John H Vandemark
Writ Error.

This writ of error is made
a supersedeas & is to be obeyed
accordingly. L. Leland Clk.
By P. K. Leland Depy.

Filed August 2^d 1857.
L. Leland Clk.
By P. K. Leland Depy.

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Lake* 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 *Lake* county, before the Judge thereof, between *Churchill Edwards & John H. Elliott* appellants, and *John H. Vandemark* appellee

~~defendant~~, it is said that manifest error hath intervened, to the injury of the said *appellants*

as we are informed by *their* 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 *John H. Vandemark*

that *he* 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 *second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* 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 *John H. Vandemark* notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *second* day of *August* in the year of our Lord one thousand eight hundred and fifty one.

S. Leland Clerk of the Supreme Court.
By P. K. Leland Deputy.

Churhill Edwards et al,
vs.
John H Vandemark
Deine Facias

To June Term 1852.

Execute the within
writ by Selling in
the hiring of the
within named

John H Vandemark
This 1st day of Sept
A.D. 1851

Services	50
Travel & meals	13 0
return	1 0
	\$ 1, 9 0

Symon Sprague
Sheriff By
Edmund Dwyer

Filed June 3^d 1852.
L. Selayd Clk.
By P. H. Seland Esq.

Lake County.

Churchill Edwards et al,

^{vs}
John H Vandemark

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11979

1852

Prepared