No. 8733

Supreme Court of Illinois

C.C.Vanlandingham

vs.

E. Ryan

71641 7

Fee of $5. paid by Mr Freeman, Oct. 17. 1855.

Fee $12. Freeman to Ray

[8733-1]

State of Illinois
Gallatin County } SS

Be it remembered that at a circuit Court begun and held at the Court House at Shawneetown at the dates hereinafter designated by the Pleadings in and for the County of Gallatin and State of Illinois, the Hon Saml S Marshall then presiding Judge, John C Hale Clerk and Richard Richeson Sheriff the following Pleadings were had in a certain suit pending in said Court wherein Ebenezer Z Ryan Survivor of Albert G Healdwell and E Z Ryan was Plaintiff and Oliver C Vandingham was Defendant, to wit,

State of Illinois, Gallatin County, ss.
In the Circuit Court of said County.

Ebenezer S. Ryan Survivor of
Albert G. Caldwell & E. B. Ryan } Proceeding by
against } Attachment
Principe Oliver C. Vanlandingham

The clerk will issue attachment in this cause upon affidavit filed returnable to next Term of the Court.

Wm. Thomas, Atty for Plff

Debt. $4000.
Damages $4000.
Filed 2nd May 1853.
S E Hall Clerk

Bond for costs

State of Illinois Gallatin County ss.
In the Circuit Court of said County

Ebenezer S Ryan Surviving
Assignee of the Bank of Illinois
against } Proceeding by Attachment.
Oliver C. Vanlandingham

I do hereby enter my self security for costs in this cause and acknowledge bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court pursuant to the laws of this state, dated this 2nd May 1853

Wm Thomas

Filed 2nd May 1853
S E Hall Clerk

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State of Illinois Gallatin County, S.S.

Affida=vit for Attachmt.

William Thomas being sworn states, that on the fifth day of March 1841 one Oliver C. Vanlandingham by his promissory note of that date promised to pay the President directors and Company, of the Bank of Illinois Six Months after the date thereof the sum of Two Thousand dollars with interest at the rate of eight per cent per annum, from due untill paid, without defalcation, That on the fifth day of May 1841 the said Vanlandingham by his certain other promissory note of that date promised to pay to the said President Directors and Company, of the Bank of Illinois, Six Months after the date thereof, Two Thousand dollars with interest at the rate of six per cent per annum, from due untill paid, without defalcation, that on the tenth day of April 1845 the said President, Directors and Company, by their certain instrument in writing called an assignment, assigned the said two promissory notes to Albert G. Caldwell and Ebenezer E. Ryan under and according to the provisions of the Statute in that case made and provided, that in June 1851 the said Albert G Caldwell departed this life, and the said Ryan is the surviving assignee of said notes, the said Thomas further states on or about the 10th day of July

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1851 there was collected on said two notes two hundred and twenty six dollars 50 cents for which sum said Vandandingham is entitled to credit, that said two notes amounting together to Four Thousand dollars with interest from the time they severally become due subject to the credit aforesaid remain, unpaid and the amount now due including interest to this date is Seven Thousand three hundred and twenty seven dollars thirty four cents, The said Thomas further states that said Vandandingham does not reside in the state of Illinois, but resides, as deponent is informed and believes in the state of Louisiana and owns real estate situate in the County of Gallatin aforesaid — The said Thomas further states that he is the authorized attorney in fact of said Ryan in respect to the collection of said notes and is authorized to prosecute suit or suits thereon, in the name of said Ryan, he therefore as such attorney in fact makes this affidavit and asks that an attachment be issued in favor of said Ryan against said Vandandingham pursuant to the statute

Subscribed & Sworn to, before me this 2d day May 1853 J E Hall Clk } Wm Thomas

Filed 2nd day May 1853
J E Hall Clk }

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Attch't Bond

Know all men by these presents that we Ebenezer J Ryan William Thomas and Alexander Kirkpatrick are held and firmly bound unto Oliver C Vanlandingham in the penal sum of Fourteen thousand Eighhundred and fifty four dollars sixty eight cents lawful money of the united states for the true payment whereof we bind ourselves our heirs. Jointly and severally firmly by these presents sealed with our seals and dated this Second day of May 1853 The Condition of this obligation is such that whereas the above bounden Ebenezer J Ryan as survivor of Albert G Baldwell and E J Ryan assignee of the Bank of Illinois, hath on the day of the date hereof prayed an attachment out of the circuit Court of said County at the suit of said Ebenezer J Ryan against the above named Oliver C Vanlandingham for the sum of Seven thousand three hundred twenty seven 34/100 dollars, and the same being about to be sued out of said Court, returnable on the first Monday of July next to the term of the Court there to be holden,

Now if the said Ebenezer J Ryan shall prosecute his suit with effect, or in case of failure thereof shall well and truly pay and satisfy the said Vanlandingham all such Costs in said suit and such

damages as shall be awarded against the said Ryan his heirs executors or administrators in any suit or suits which may hereafter be brought for wrongfully suing out the said Attachment, then the above obligation to be void, otherwise to remain in full force and effect

E B Ryan (Seal)
by his Attorney in fact
Wm Thomas
Wm Thomas (Seal)
Alex Kirkpatrick (Seal)

Filed 2nd May 1853
D E Hall Clk

Attachmt State of Illinois
Gallatin County } Set

The People of the State of Illinois to the Sheriff of Gallatin County greeting Whereas William Thomas Attorney in fact for Ebenezer B Ryan hath complained on oath to the Clerk of the Circuit Court of Gallatin County that Oliver C Vanlandingham is justly indebted to the said Ebenezer B Ryan surviving a firm of the Bank of Illinois to the amount of $327 dollars 34 cents and oath having also been made that the said Vanlandingham does not reside in this state, and said Ryan having given bond and security according to the direction of the act in such case made and provided. We therefore command you that you attach so much of the estate, real

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or personal of the said Oliver C Vandingham to be found in your county, as shall be of value sufficient to satisfy the said debt and costs according to the complaint, and such estate so attached in your hands to secure or so to provide, that the same may be liable to further proceedings thereupon according to law at a Court to be holden at Shaemstown for the county of Lancaster the first monday in July next so as to compel the said Vandingham to appear and answer the complaint of the said Ebenezer Ryan when and where you shall make known to the Court how you have executed this writ, and have you then and there this writ,

{seal in Court} Witness John E Hall clerk of the said Court this 2nd day of May in the year of our lord 1853

J E Hall clk

Levy of I have this day levied this Attachment on the attachment, following lots of land to wit,

S W q	Sec	4	T	9,	S W q		
E p S E.	"	5	"	9	"	" 9	"
W p N W.	"	7	"	9	"	" 9	"
part of N W.	"	1	"	10	"	" 9	" 135 acres
W p	"	2	"	10	"	" 9	"

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SW qr Sec 9 T. 10. S R. 9 E
SE " " 9 " 10 " " 9 "
part SE " 13 " 10 " " 9 " 36 acres
NW. " 9 " 9 " " 9 "
In Lots in Shawneetown numbered 1148, 1156 & 1168
Out Lots in Shawneetown numbered 168, 196 & 198. also
SE. SE. Sec 11 T 10 S R 9 E
NW NE " 14 " 10 " " 9 "
NE frl " 13 " 10 " " 9 "
E½ NW " 13 " 10 " " 9 "
NW SE " 7 " 9 " " 9 "
E½ NE " 14 " 10 " " 9 " May 3th 1853
R Richson Sheriff G. C. Ills.

State of Illinois, Gallatin County } set

Declaration

In the Gallatin Circuit Court, July Term 1853,

Ebenezer Z Ryan Survivor of Albert G Caldwell and Ebenezer Z Ryan assignee of the President Directors and company of the Bank of Illinois appointed and qualified as such assignee and duly invested by assignment with the personal estate, rights, Credits and debts of said Bank at Shawneetown and the branch at Lawrenceville under and by virtue of an act of the general assembly of the state of Illinois, entitled "an act Supplemental to an act entitled an act to reduce the public debt, one million of dollars and put the Bank of

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of Illinois into liquidation" approved
28th day of February 1845 and the statute
in such case made and provided
Complains of Oliver C. Vandandingham
defendant attached &c of a Plea of
Debt, and the said Plaintiff demands
of the said defendant the sum of Four
Thousand dollars which the said
defendant owes and unjustly detains
from him as aforesaid
for that whereas the said defendant
by the name of O.C. Vandandingham
heretofore and before the said assignm
ent to wit, on the fifth day of March 1841 at
Shawnetown to wit, at the County aforesaid
by his certain promissory note in writing
the date whereof is the day and year last afore
said thereby then and there promised to
pay Six Months after the date thereof to the
said President Directors and Company of the
Bank of Illinois by the name and description
of the President Directors &c of the Bank of
Illinois, the sum of Two Thousand dollars
part of the sum above demanded, with int
erest at the rate of eight per centum per
annum, from date until paid for the value
received and then and there delivered the
same to the said President, Directors and Com
pany of the Bank of Illinois at Shawnetown
and afterwards on the fifth day of May
1841 at the County aforesaid the said defendant

by his certain other promissory note the date whereof is on the day and year last aforesaid, thereby then and there promised to pay to the said President Directors and Company of the Bank of Illinois six months after the date thereof for Two Thousand Dollars the remainder of the Debt above demanded, with interest thereon at the rate of six per cent per annum from date until paid and then and there delivered the said promissory Note to the said President Directors and Company of the Bank of Illinois, and afterwards on the 10th day of April 1845 at the County aforesaid — the said President Directors and Company of the Bank of Illinois by their instrument in writing called an assignment, assigned the said two promissory Notes made as aforesaid to Albert G Caldwell and Ebenezer S Ryan, pursuant to the statute in that case made and provided whereby the legal title to said promissory notes and the right of action thereon became and was vested in said Caldwell and Ryan — which has survived to said Ryan said Caldwell being dead, of all which the defendant has had notice to wit at the County aforesaid, yet the Plaintiff avers that the defendant has not paid the

sums of money in said promissory notes specified or either of them either to the said President Directors & Company of the Bank of Illinois of the Bank of Illinois or to the said Caldwell and Ryan or either of them - but to pay the same or any part thereof the said Defendant has hitherto wholly failed and refused and yet doth fail and refuse to the damage of the Plaintiff Four Thousand dollars and therefore he sues

Wm Thomas
Atty for Plff

Copy of 1st Note, $2000,

Bank of Illinois Shawneetown
5th March 1841

Six Months after date I promise to pay to the President Directors &c. of the Bank of Illinois Two Thousand Dollars with interest at the rate of eight per centum per annum from date until paid without defalcation for value received

O. C. Vandandingham

2nd Note $2000,

Bank of Illinois
Shawneetown May 5th 1841.

Six Months after date I promise to pay to the President Directors &c of the Bank of Illinois Two Thousand Dollars with interest at the rate of Six per centum per annum

from due until paid without defalcation for value received,

Filed 2nd May 1853 } O. C. Vandandingham
S. Hall Clerk }

"Wednesday 13th July 1853"

Order of Court,

Ebenezer S. Ryan surviving assignee of the Bank of Illinois
v.
Oliver C. Vandandingham } Attachment

The Said Plaintiff by W. Thomas Crews and files the certificate of the publisher of the Southern Illinoisan a public newspaper published weekly in the Shawneetown, showing that notice of the pendency of this suit, was published in said paper on the 6th day of May 1853, and the publication thereof continued four successive weeks, thereafter, which notice not having been published sixty days before the first day of the present term it is ordered that this cause be continued,

State of Illinois } In the Circuit Court of
Gallatin County } said County,

Notice

Ebenezer S. Ryan assignee of the Bank of Illinois against } Proceeding by Attachment,

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Oliver C. Vanlandingham

The said defendant is hereby notified that an attachment has been sued out against him in the above entitled cause for the sum of $327.34 cents, alleged to be due on the promissory notes directed to the sheriff of Gallatin County aforesaid returnable before the said Circuit Court of Gallatin County, on the first Monday in July next which has been returned by the said sheriff served upon the real estate of said defendant. and said defendant is further notified that unless he appears before the said Court to which said Attachment is returnable as aforesaid and plead to the action of said Ryan Judgment will be entered against him by default, and the estate attached ordered to be sold in satisfaction thereof

Witness John E Hall, Clerk of said ~~Circuit~~ Court this 2nd day of May 1853. J E Hall, Clerk.

Certificate of Publication

State of Illinois, Gallatin County, ss

We William Edwards & Son publishers of the Southern Illinoisan a public Newspaper published weekly in Shawneetown Illinois, do certify that the notice hereon attached in the ~~County~~ Case of Ebenezer J Ryan Survivor of

Caldwell & Ryan assignees of the Bank of Illinois against Oliver C. Vandandingham was published in said paper on the 6th day of May 1853. and the publication thereof continued four weeks in succession the last publication was made on the 27th day of May 1853.
Given under our hands this 7th day of July 1853

Publication fee $2,50 — Wm. Edwards & Son
Paid by W. Thomas Trustee — Pub. & Illinois
of the Bank of Illinois
Filed 13th July 1853 — Wm. Edwards & Son
J. E. Hall Clerk

Tuesday 18th October 1853.

Order of Court — Ebenezer E. Ryan Surviving assignee of the Bank of Illinois
v
Oliver C. Vandandingham — Attachment

And the said defendant by Freeman his Attorney moves the Court to quash or set aside the notice in this cause, which motion is by the Court overruled,

Plea 1st — O. C. Vandandingham
Ats } Plea
E. E. Ryan assignee &c } Gallatin Circuit Court
October Special Term 1853

And the said defendant comes and defends the wrong and injury when &c and prays Judgment of the said writ and declaration herein

because he says that the debt demanded in said Declaration is the sum of $4000 and the amount of damages alleged in said declaration is the sum of $4000. and he says that the amount shown by said writ to be due from said defendant to said Plaintiff is the sum of $732.34 Cents by reason whereof he says there is a variance between said writ and declaration and this he is ready to verify wherefore he prays Judgment of the said writ and declaration and that the same may be quashed &c

Filed 21st Oct 1853
I S Mace Clk

O C Vandeveighan
By Freeman Atty

Friday 21st October 1853

Ebenezer Ryan Surviving Cashier of the Bank of Illinois
vs
Oliver C. Vandeveighan

Order of Court

Attachment,

On this day the defendant files a plea in abatement, alleging a variance between the declaration and writ of attachment which plea the Plaintiff moves to strike from the files upon the ground that such a plea is not admissable in this cause, which motion of the Plaintiff to strike said plea in abatement being

Counsel is sustained and the said Plea is accordingly ordered to be stricken from the files. The defendant then filed Pleas numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 & 12.

Plea 1. C. C. Cunningham } Gallatin Circuit Court
acts } Oct Special Term 1853
E. S. Ryan Survivor &c }

And the said Defendant comes and defends the wrong and injuries when &c and for Plea in this behalf says actio non, because he says he does not owe the said several sums of money in the Plaintiffs said declaration demanded in manner and form therein alleged and this he prays may be inquired of by the Country whereof &c

And the Plff. doth the like } Freeman
Thomas }

Plea 2. And for other and further Plea herein the said defendant says actio non, because he says that the said supposed promissory note in said declaration described as being as being of the 5th of May 1841 is not his act and deed and this he prays may be inquired of by the Country whereof &c

Freeman

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Plea 3, And for other and further Plea in this behalf

the said defendant says actio non because he says that neither one of the said supposed promissory notes in the Plaintiffs said declaration specified is his act and deed and of this he puts himself upon the Country, whereof &c

Freeman

Plea 4 And for other and further plea in this behalf, the said defendant says actio non, because he says there was no consideration for the execution of the said two notes specified in said declaration nor either of them and this he prays may be inquired of by the Country whereof &c.

Freeman

Plea 5. And for other and further plea in this behalf, the said defendant says actio non because he says that the said Plaintiff heretofore to wit in the April Term 1853 in the Circuit Court in and for the County of Vanderburgh in the State of Indiana at Evansville in the County of Vanderburgh aforesaid, impleaded the said defendant in a certain Complaint for the detaining and not paying the very same identical debt, and for and in respect of the same identical causes of action in the said declaration

mentioned, and such proceedings were thereon had in the said Complaint in the said Circuit Court of Vanderburgh, that afterwards to wit on the 2d day of May 1853 the said defendant by the consideration and judgment of the said Circuit Court of Vanderburgh County, recover in the said Complaint against the said Plaintiff for his, the said defendants costs, by him expended about the said suit in the said Circuit Court of Vanderburgh County. And by the consideration and judgment of said last mentioned Court the said Plaintiff took nothing by his said suit in the said last mentioned Court, whereof the said plaintiff was convicted, as by the record and proceedings thereof still remaining in the said Circuit Court of Vanderburgh County will more fully and at large appear, which said judgment still remains in full force and effect not the least reversed, satisfied or made void, and the said defendant avers that at the time of the commencement of the said suit in the said Circuit Court of Vanderburgh County aforesaid the said Plaintiff was and still is a non resident of the state of Indiana

aforesaid and this the said defendant is ready to verify, whereupon he prays judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him &c

Freeman

Plea 6. And the said defendant for other & further plea in this behalf says actio non because he says the consideration of one of the said notes sued on herein has wholly failed & this he is ready to verify whereupon &c

Freeman

Plea 7 And the said defendant for other and further plea in this behalf says actio non, because he says that the said Plaintiff heretofore to wit, in the April Term in the year of our Lord one thousand eight hundred and fifty three, in the Circuit Court of the County of Vanderburgh in the State of Indiana before Alvin P Posey Judge of the said last mentioned Circuit Court at Evansville in the said County of Vanderburgh impleaded the said defendant in a certain amended complaint for the detaining and not paying

the very same identical debt and for and in respect of the same identical causes of action in the said declaration mentioned, and such proceedings were thereupon had in the said suit upon the said amended complaint in the circuit court of Vanderburgh County that afterwards to wit, at the same term and on the 2nd May 1853, the said defendant by the consideration and judgment of the said court ~~[illegible]~~ recovered in the said suit upon the said amended complaint for his the said defendants costs in that behalf expended, and the said defendant avers that at the time of the commencement of the said suit in the said circuit court of Vanderburgh County the said plaintiff was and still is a mere resident of the state of Indiana aforesaid and by the judgment and consideration of the said last mentioned court, the said plaintiff took nothing by his said suit in the said last mentioned court, whereof the said plaintiff was convicted as by the records and proceedings thereof still remaining in the said circuit court of Vanderburgh County at Evansville

aforesaid recov fully and at large appear which said Judgment still remains in full force and effect not in the least reversed satisfied or made void and this the said defendant is ready to verify wherefore he prays Judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him &c Freeman

Filed 27th Oct 1853
J E Hale Clk.

O. C. Vanlandingham
act.
E. E. Ryan Survivor &c

In the Gallatin Circuit Court October Special Term 1853.

Plea 8.

And the said defendant for eighth and further plea in this behalf says actio non, because he says that both of the said promissory notes in said declaration mentioned were executed by said defendant upon his subscription to the Capital Stock of the said Bank of Illinois and for no other purpose or Consideration, and he says that said notes were and are what are called & denominated Stock Notes of said Bank and the said defendant avers that at the time of the Commencement of this suit there were no debts nor causes of action existing against

the President Directors &c of the said Bank of Illinois, now against the appellees thereof, and this he is ready to verify wherefore &c Duncan

Plea 9 And the said defendant for ninth & further plea in this behalf says actio non because he says that the said Plaintiff Ebenezer T Ryan heretofore to wit in the April term in the year of our Lord 1853. in the Circuit Court in and for the County of Vanderburgh in the State of Indiana at Evansville in the said County of Vanderburgh sued the said defendant in a certain amended complaint for the detaining and not paying the very same identical debt, and for and in respect of the same identical causes of action in the said declaration mentioned, and the said defendant says that at the time of the commencement of the said proceedings in the said suit in the said Circuit Court of Vanderburgh County he the said defendant was and still is a non resident of the said State of Indiana and he says that his attorneys Somers & Blythe by his authority entered his the said defendants appearance therein and he avers that said suit and proceedings in the said Circuit Court herein last mentioned, were commenced

by foreigne attachment levied upon the real estate of said defendant in the said County of Vanderburgh and he says that there never was a true service of process upon him had in the said suit herein last mentioned and such proceedings were thereon had in and upon the said amended Complaint in the said Circuit Court of Vanderburgh County aforesaid, that afterwards to wit in that same term and on the 2nd day of May in the year of our Lord 1853 by the Consideration & Judgment of said Circuit Court of Vanderburgh County the said Complaint of the said Plaintiff therein was not sufficient in law to maintain his action aforesaid therein against the defendant and it was further considered by said Circuit Court last aforesaid, that the Plaintiff take nothing by his said suit last aforesaid and that the said defendant recover of the said Plaintiff his costs in that behalf by him expended, whereof the said Plaintiff was convicted as by the record & proceedings thereof still remaining in the said Circuit Court of Vanderburgh County at Evansville aforesaid more fully and at large appear which said Judgment still

remains in full force and effect not in the least reversed satisfied or made void, and the defendant avers that at the time of the commencement of said suit in the said Circuit Court of Vanderburgh County aforesaid the said Plaintiff was and still is a non resident of the state of Indiana aforesaid and this the said defendant is ready to verify wherefore &c

Freeman

Plea 10. And the said defendant for tenth or further plea in this behalf says actio non, because he says that the said Plaintiff and Albert G. Caldwell his co-appellee in his lifetime heretofore to wit in the April Term in the year of our Lord 1858 in the circuit court in and for the County of St Clair in the state of Illinois impleaded the said defendant in a certain plea of debt, for the detaining and not paying the same identical debt, and for and in respect of the same identical causes of action in the said declaration mentioned and such proceedings were thereon had in the said plea in that Court, that afterwards to wit in that same Term the said Caldwell and Ryan by the consideration and Judgment of the said Court recovered in the said plea against

the said defendant the same identical debt of $4000, in the said declaration mentioned as also the sum of $3263,00 for their damages by them sustained as well by the detention thereof as for their costs and charges by them about their suit in that behalf expended. whereof the said defendant was convicted as by the record and proceedings thereof still remaining in the said Circuit Court of St Clair County more fully and at large appears which said judgment still remains in full force and effect, not in the least reversed satisfied or made void and this the said defendant is ready to verify wherefore &c.

F Freeman

Plea 11. And for other and further plea in this behalf the said defendant says that before the commencement of this suit to wit on the day of 185 he paid to the said Plaintiff the sum of $300, on the said debt in the said declaration mentioned and this he is ready to verify wherefore &c

F Freeman

Plea 12, And for other or further plea in this behalf the said defendant says actio non

because he says that before the commencement of this suit to wit on the day of 185 he paid to said Plaintiff the said sum of $400.00 sued for herein together with all interest which had accrued thereon and this he is ready to verify wherefore

Filed 27th Oct 1883 } Freeman
J E Hall clk }

In Gallatin County Circuit Court.

Demurrer to 2nd Plea.

Ebenezer J Ryan Survivor of Caldwell & Ryan
agst
Alex C Vandandingham

} In Debt
Proceeding by Attachment.

And the said Plaintiff for answer to the second plea in that behalf pleaded says that he ought not to be barred or precluded of his action aforesaid by reason of anything contained in said plea because he says the matters and things contained in said plea are not sufficient in law and this he wherefore and the said Plaintiff here sets down as causes of demurrer to the plea aforesaid to wit, because it does not appear from said plea to which count or what part of the declaration it applies or proposes to answer,

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Second, because said plea does not

answer any allegation contained in the declaration

Third, because the plea alledges that a "promissory note described as being of the 5th May 1841" is not the act and deed of the defendant, when there is no allegation in the declaration that any promissory note is the deed of the defendant

Joinder in demurrer, Thomas pqr

Tillman,

Filed 28th Oct 1853
J E Hall

In Gallatin County Circuit Court

Demurrer to 3rd Plea.

Ebenezer E Ryan Survivor of Caldwell & Ryan
against
Oliver C. Vandandingham

In Debt &c

And the said Plaintiff for answer to the third plea of said defendant, filed herein says, that he ought not to be barred of his action aforesaid by reason of anything contained in said plea because he says the matters and things contained in said plea are not sufficient in law to bar the action aforesaid and this &c wherefore &c and the said Plaintiff here sets down for causes of demurrer to said plea

First the said plea does not answer any count in the declaration or state to what count or part of the declaration it is intended to apply

Second, the said plea proposes to make two issues or one issue in respect to the causes of action

Third the said plea alleges that neither of the said supposed ~~notes~~ promissory notes in the declaration specified is his act and deed, when there is no allegation in the declaration that any promissory note is or was the deed of the said defendant, Thomas pp

Joinder in demurrer,

Inman

Filed 28th Oct 1853
J. Stace Clerk

E. J. Ryan Survivor
v
Olivia C Vanlandingham } Proceeding by Attachment

Demurrer to 4th Plea.

And the said Plaintiff for answer to the fourth plea of said defendant says that the matters and things stated in said plea are not sufficient in law to bar or preclude the action aforesaid, and this he whereupon &c

Joinder demurrer, Thomas & Deming pp

Inman

[8733-E]

Demurrer to 5th Plea. And the said Plaintiff for answer to the defendants fifth plea in that behalf pleaded says - that the matters and things contained in said plea are not sufficient in law to bar or preclude the action aforesaid and this he is ready to verify &c

Thomas Jeyr

Joined in demurrer
Freeman

Demurrer to 7th Plea. And the said Plaintiff for answer to the defendant seventh plea in that behalf pleaded says that he ought not to be barred or precluded of his action aforesaid by reason of any matter or thing stated in said plea, because he says the matters and things contained in said plea are not sufficient in law and this he is ready to verify, Thomas Jeyr

Joined in demurrer
Freeman,

Filed 28th Oct 1853
J E Hall Clerk

Demurrer to 9th Plea. E. E. Ryan Survivor of Caldwell & Ryan agst O. C. Vandandenigham } In Debt.

And the said Plaintiff for answer to the ninth plea in that behalf pleaded says that he ought not to be barred of his action aforesaid by reason of any matter or thing contained in said plea because he says the matters and things contained in said plea are not sufficient in law to bar the action aforesaid and this he whenforce prays judgment if demurrer

Thomas Jagger

Freeman

Filed 28th Oct 1853
S E Hall Clerk

Replication to 8th Plea

Ebenezer E Ryan Survivor of Caldwell & Ryan against O. G. Vandandenghan } In Debt

And the said Plaintiff for replication to defendants eighth plea in that behalf pleaded says that true it is both of the said promissory notes in the declaration mentioned were made by said defendant upon his subscription to the capital stock of the said Bank of Illinois and that said notes are and were what are called and denominated stock notes of said Bank — yet it is not true that at the time of the commencement

of this suit there were no debts or causes of action, existing against the President directors and Company of the Bank of Illinois nor against the assignees thereof as alleged in said Plea and of this he prays an enquiry by the Country

Filed 28th Oct 1853 } Thomas & Denning Pltfs
A E Hall Clk }

Rejoinder to Replication

And the said defendant for rejoinder to the Pltff said replication to the said defts said 8th Plea, says that the replication is not good and sufficient in law and this he is ready to verify wherefore

Filed 29th Oct 1853 } Wingate & Freeman
A E Hall Clk } for Deft

Replication to 11th Plea

Ebenezer J Ryan Survivor &c
agst
O. C. Vandandingham } In Debt

And the said Plaintiff for replication to defendants eleventh plea in that behalf pleaded says, that said defendant did not before the commencement of this suit pay to the Plaintiff the sum of three hundred dollars on the said debt in the declaration mentioned or any part thereof as in said plea is alleged and of this he

prays an enquiry by the Country
and the Plff. likewise } Thomas Pryor
Freeman for Plff }

Rejoinder to Replication

And the said defendant for rejoinder to the said Plaintiffs said replication to the said defendants eleventh Plea by him herein pleaded says that the said replication is not good and sufficient in law and assigns as special grounds of demurrer, that said replication does not set forth that no part of said $300, has been paid, and this he is ready to verify wherefore &c
Filed 28th Oct 1853 } Wingate & Freeman
J. W. Hall Clerk }

Replication to 12th Plea.

Ebenezer S. Ryan Survivor
of Caldwell & Ryan } In Debt, &c
vs
Olivia C. Vanlandingham }

And the said Plaintiff for replication to the defendants twelfth plea in that behalf pleaded says that the said defendant did not before the commencement of this suit pay to the said Plaintiff the said sum of $4000 sued for herein together with all interest, which had accrued thereon or any part thereof as in said Plea is

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alledged end of this he prays an inquiry
by the Country Thomas Pegg
Filed 28th Oct 1853 } and the Plff likewise
S E Hall Clk } Freeman

Demurrer to Replication

And the said defendant for rejoinder
to the said Plffs said replication
to said defendants said 12th plea herein
says that the said replication to ~~said~~
~~defendants said~~ is not good and
sufficient in law and as special
ground of demurrer says that said
Replication should set forth that the
first of the said debt sued for had
been paid and this he is ready to
verify wherefore &c
Filed 29th Oct 1853 } Pringle & Freeman
S E Hall Clk } }

In the Gallatin Circuit Court

Replication

Ebenezer Ryan survivor of }
Caldwell & Ryan assignees }
against } In Debt.
O. C. Vanlandingham }

And the said
Plaintiff for replication to the tenth
Plea by the defendant above pleaded
says that the said Plaintiff by reason
of anything by the defendant in that

plea alleged ought not to be barred from having and maintaining his aforesaid Action thereof, against the said defendant because he says that there is not any record of the said supposed felony in the said plea mentioned remaining in the said Circuit Court of St Clair County Illinois in manner and form as said defendant in his said plea has alleged and this he is ready to verify whereof whereupon

Filed 28th Oct 1853
S E Hall Clerk

Thomas Jeff

2nd Replication

Ebenezer E Ryan Survivor of Caldwell & Ryan
against
O. C. Vanlandingham

In Debt.

And the said Plaintiff by leave of the Court for further replication to the tenth plea in that behalf pleaded, says that before the commencement of this suit and in the life time of said Albert G Caldwell the said Caldwell & Ryan by their Attorney filed an affidavit before the Clerk of the Circuit Court of St Clair County Illinois setting forth that said defendant O. C.

[8733-18]

Vandandingham was indebted to them the amount due and payable on the promissory notes in the declaration mentioned, and that said defendant was a non resident of the state and thereupon the said Clerk issued an attachment against the lands tenements goods, chattels &c of the said defendant, which was levied on real estate and returned and the defendant was then notified of the issuing and return of said attachment and of the pendency of the suit by publication in a newspaper as required by the statute which was the only notice to defendant of said proceeding, that the said defendant failed to appear before the said circuit court of St. Clair County to answer to the attachment aforesaid and judgment was therefore entered against him by default upon the notice so published as aforesaid and no other, for the debt claimed by said Plaintiff and the damages sustained by reason of the non payment thereof with an award of execution &c as provided for by the statute which is the same judgment and note other mentioned and specified

in the Plea aforesaid, all which the Plaintiff is ready to verify &c whereupon &c

Filed 28th Oct, 1853
S E Hall clerk

Thomas & Gage

Demurrer to Replication

And the said defendant for rejoinder to the said Plaintiffs said second replication to the defts said tenth plea herein, says the said replication is not good and sufficient in law and this he is ready to verify whereupon &c

Filed 29th Oct 1853
S E Hall clerk

Weigate & Freeman
for Deft.

Joinder to Demurrer

Ryan Survivor &c
v
Vanlandingham

In Debt.

And the said Plaintiff says that the matters and things contained in the second replication to the tenth plea filed herein are sufficient in law and this &c whereupon &c

Thomas & Gage

Joinder

E E Ryan
v
Vanlandingham

In Debt

And the said Plaintiff says that the matters and things contained

in the replication to the eighth Plea filed herein are good and sufficient in law and this &c wherefore &c

Thomas &c

Ryan
v
Vandandingham } In Debt.

Trinda &c.

And the said Plaintiff says that the matters and things contained in the replication to the eleventh plea herein are good and sufficient in law and this &c wherefore &c. Thomas

Ryan Lawrence &c
v
Vandandingham } In Debt.

Trinda &c

And the said Plaintiff says that the matters and things contained in his replication to the twelfth plea filed herein are sufficient in law and this &c wherefore &c Thomas

O. C. Vandandingham
v
O. E. Ryan & ptes &c } Plea 13.

And the said Defendant for 13th and further plea in this behalf

says actio non, because he says that the said Plaintiff Ebenezer J Ryan hereto fore to wit in the April Term in the year of our Lord 1853 in the Circuit Court in and for the County of Vanderburgh in the State of Indiana at Evansville in the said County of Vanderburgh, which said Court was then and there a Court of record, being a superior Court of General Jurisdiction impleaded the said Defendant in a certain amended Complaint for the detaining and not paying the very same identical debt and for and in respect of the same identical Causes of action in the said declaration mentioned, and the said defendant says that at the time of the Commencement of the said proceedings in the said suit in the said Circuit Court of Vanderburgh County he the said defendant was and still is a non resident of the said State of Indiana and he says that his Attorneys Lowe & Blythe by his authority entered his the said defendants appearance therein, that is to say his the said defendants said Attorneys by his authority at that same time and on the 25th day of April 1853, filed his demurrer to the said Plaintiffs said amended Complaint

in the said Circuit Court of Vanderburgh County in the words following to wit

"Ebenezer J. Ryan } In the Vanderburgh
v. } Circuit Court
"Oliver C. Vanlandingham } April Term 1858.

"The Defendant demurs to the Plaintiffs "Complaint for the following Causes viz;

"1st The Legislative Council and House of "Representatives of the Illinois Territory had "no power to charter any bank for any "purpose

"2nd As to the first note mentioned in "said Complaint the said Bank had no "right or authority to receive or contract "for eight per cent interest thereon and "said note is therefore void

"3rd The said exhibit "C" filed with the com "plaint shows that the power to sue "was vested in two persons and that "there could be no survivorship and "that exibit together with the exibit F "filed with said Complaint show "that the power of the said agent to "collect debt or in anywise manage "or contract the business of said "Bank in their own names or otherwise "ceased on the first day January 1857. and "prior to the commencement of this "suit."

"4th It does not appear that the stock
"holders or directors or any other persons
"ever acted upon or accepted the act of
"the legislature a copy of which is
"filed by the Plaintiff marked exhibit
"No 2. Therefore the defendant alleges
"that there was no corporate body known
"as the President Directors and Company
"of the Bank of Illinois, capable of
"contracting at the time said two
"notes were given. Jones & Blythe
"Attys for Deft"

And the said defendant avers that the
said suit and proceedings in the said
circuit Court herein last mentioned
were commenced by foreign Attachment
levied upon the real estate of said
defendant in the said County of Vand
erburgh and he says that there never
was actual service of process upon him
had in the said suit herein last mention
ed and he avers that at the time of the
commencement of the said suit and
proceedings in the said Circuit Court
of Vanderburgh County the said Plaintiff
was and still is a non resident of the
said State of Indiana, and was then
and still is a resident of the said
State of Illinois, and such proceedings
were therefore had in and upon the
said amended complaint in the said

Circuit Court of Vanderburgh County
that afterwards to wit in that same
term and on the 2d day of May in the
year of our Lord 1853, by the consideration
and Judgment of said Circuit Court of
Vanderburgh County, the said Com-
plaint of the said Plaintiff therein was
not sufficient in law to maintain
his action aforesaid therein against the
defendant, and it was further considered
by said Circuit Court last aforesaid
that the Plaintiff take nothing by his
said suit last aforesaid and that the
said defendant recover of the said
Plaintiff his costs in that behalf by him
expended whereof the said Plaintiff
was convicted as by the record and
proceedings thereof still remaining
in the said Circuit Court of Vanderburgh
County at Evansville aforesaid more
fully and at large appears which said
Judgment still remains in full force
and effect not in the least reversed
satisfied or made void, Then the
said defendant avers that the said
Judgment of the said Circuit Court
of Vanderburgh County was rendered
upon the right of action of the
said Plaintiff upon the said causes
of action in the said declaration

Complaint sued for, which he avers was the very same identical causes of action in the said declaration mentioned and none other and he avers that on the trial of the said demurrer the merits of the said Plaintiffs said cause in the said circuit court of Vanderburgh County were fully and fairly tried, and all this the said defendant is ready to verify wherefore &c

Wingate & Freeman
Attys for Deft.

Demurrer to 13th Plea

O. E. Ryan Survivor &c of Caldwell & Ryan
v
O. G. Vanlandingham
} In Debt.

And the said Plaintiffs for answer to the thirteenth plea in that behalf pleaded say that the matters and things contained in said plea are not sufficient in law to bar or preclude the action aforesaid and this &c whereof &c

Considered demurrer,
Freeman & Wingate
for Deft.

Thomas Pfs

Saturday October 29th 1853.

Order of Court. Ebenezer E Ryan Surviving apignee of the Bank of Illinois
v
Olive C. Vanlandingham } Attachment

The Plaintiff files his Joinder to the 1 plea demurrer to the 2, 3, 4, 5, 6, 7 & 9 — Replication to the 8, 11 & 12 by leave of the Court he files 2nd replication to the 10th plea the defendant files demurrer to the replications to the 8, 11 & 12 pleas and also a demurrer to the second replication to the 10th plea and files his joinder to the 1 replication to the said 10th plea and the Plaintiff joins in the demurrer to the replication. the said defendant by leave of the Court filed a plea No 13 to which Plaintiff filed a demurrer which was joined by the defendant. whereupon the questions of law arising upon the issues aforesaid being argued the Court took time to consider of the same and the cause is continued

Thursday 13th July 1864

Order of Court. E E Ryan Surviving apigee of Bank of Illinois
v
O C. Vanlandingham } Attachment

Ordered that this cause be continued

Replication to 4th Plea.

Ryan
v
Vandandingham } In Debt.

And the said Plaintiff for replication to the defendants fourth plea in that behalf pleaded says that the said notes in the declaration mentioned were not made for any Consideration good or valuable as in said plea is alledged, and of this he prays an enquiry by the Country.

Thomas for Plff.

Joinder to Replication

Vandandingham
acts } Gal. Cir Court,
Ryan Survivor &c }

And the said Defendant for rejoinder to the Plaintiffs replication to the 4th plea says the said replication is not good and sufficient in law and this he is ready to verify, wherefore, And assigns as specific grounds of demurrer that it is not sufficient to say that the Notes were not given for the Consideration, but should also aver that they were given for a good and valuable Consideration

Freeman for Deft.

Replication to 13th Plea.

Ryan assignee of Bank
agst } In Debt.
Vandandingham

and the said Plaintiff for first replication to defendants thirteenth plea in that behalf pleaded says that the said Plaintiff by reason of anything by the defendant in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the defendant because he says there is no such record of the said supposed recovery in the said plea mentioned remaining in the said Circuit Court of Vanderburgh County in the state of Indiana in manner and form as said defendant in his said plea has alleged and this he is ready to verify or otherwise

Stevens for Plff

2nd & Replication to 13th Plea

In the Gallatin Circuit Court

Ryan assignee
&
Vandeandingham

} In Debt.

And the said Plaintiff for second replication to the defendants thirteenth plea in that behalf pleaded protestando says. that he ought not to be barred or estopped by reason of anything contained in said plea because he says that true it is that to the term

185. of the circuit Court of Vanderburgh County Indiana, he impleaded the said defendant for the detaining and not paying the debt aforesaid, and caused to be sued out of said Court a foreign attachment against the estate of said defendant upon a complaint filed in said Court against the said defendant. And that such proceedings were thereon had in said Court upon the complaint and proceedings aforesaid as at the April Term 1853. of the said Court, the said Court decided and adjudged upon a special demurrer filed to the complaint aforesaid, that the matters and things contained in said complaint were not sufficient in law to entitle the Plaintiff to maintain the complaint aforesaid and thereon adjudged that the said Plaintiff should pay the costs of said proceeding, yet the said Plaintiff avers, that no issue of fact or of law was formed or made before the said Court in the said proceedings was there any trial or judgment upon the Question as to whether or not the said defendant owed to and unjustly detained from the Plaintiff the debt in the declaration mentioned all which he is ready to verify, wherefore he prays judgment of the Court & Thomas for Plff

(8733-34)

Thursday 26th Oct 1854

Order of Court

Ebenezer J Ryan Surviving Assignee of the Bank of Illinois
vs
Oliver C. Vantandingham

Debt.

The Questions of the law arising upon various pleadings in this Cause having been argued at a former term and taken under advisement by the Judge then presiding, and not having been decided, and now decided by said Judge by consent of parties and his decision entered as the Judgment of this Court — The Court overrules the demurrers to the second third & fourth pleas, and allows plaintiff to reply. The Court sustains the demurrer to the fifth sixth and seventh Pleas, and decides the eighth Plea bad and insufficient upon the demurrer to the replication to said plea, the Court sustains the demurrer to the ninth plea overrules the demurrer to the second replication to the tenth plea and decides said replication good the Court sustains the demurrer to the replications to the eleventh and twelfth pleas, and allows the Plaintiff to amend said replications, the Court overrules the demurrer to the thirteenth plea

upon which decision and judgment the Plaintiff joined the second and third pleas filed a replication to the fourth plea, amended the replication to the eleventh & twelfth Pleas by interlineation in each replication and by leave of the court filed two replications to the thirteenth plea and cause continued by agreement.

Wednesday 13th December 1854.

Order of Court

Ebenezer E. Ryan Survivor of
Albert G. Caldwell & E. E. Ryan
assignees of the Bank of Illinois
v
Olivia C. Vandandingham

Debt

On this day came the Plaintiff by Thomas his Attorney and by leave of the Court the Plaintiffs amended the second replication to the 13th Plea by striking out part of the same.

Joinder to 1st & 2d Rep.

O. C. Vandandingham
ats
Ryan assignee &c

Gallatin Cir Court

And the said defendant for rejoinder to Plaintiffs said 1st and 2nd replications to the defts said 13th Plea herein says, the said replications are

not good and sufficient in law and this he is ready to verify when force. Freeman

special causes of demurrer, that said 1st replication concludes with a verification when it should conclude to the country, it is not an affirmative replication, Freeman

that said 2nd replication also concludes with a verification when it ought to conclude to the country. Freeman

And the said Plff says that the matters and things contained in each of the said first and second replications to defendants thirteenth Plea are good and sufficient in law and this he is ready to verify when force

and defendant likewise Thomas for Plff,

Filed 13th Decr 1854.

Thursday 14th Decr 1854

Order of Court

Ebenezer T Ryan Survivor of A G Caldwell & E T Ryan assignees of the Bank of Illinois
vs
Oliver C. Vandandingham } Debt

This day came again the parties aforesaid and deptes filed

defendants demurrer to the 1st & 2nd replication to the 13th Plea which was joined by the Plaintiff and the questions of law arising thereon being argued and considered it is ordered that said demurrer be severally overruled.

Rejoinder to 1st Replication.

O. B. Vanlandingham
vs
E. E. Ryan & others

In the Gallatin Circuit Court

And the said defendant for rejoinder to the said Plaintiffs said first replication to the said defendants said, 13th Plea herein says that the said Plaintiff ought not by reason of anything in said replication contained to maintain his said action against him because he says that there is such a record of the said Judgment remaining in the said Circuit Court of Vanderburgh County in the State of Indiana as he the said defendant hath above in his said 13th Plea in that behalf alleged, and this the said defendant is ready to verify by the said record and he prays that the said record may be seen and ~~examined~~ inspected by the Court here and because the said defendant hath not the said record now ready here in Court, it is told

by the said Court here to the said defendant. That he have the said recorded here on Monday the 7th day of this present term, of this said Court the same day is given the said Plaintiff herein &c

Freeman atty for Deft

and Plff. likewise

Thomas Page

Filed 15th Dec 1854
J E Hall Clk

Joinder to 2nd Rep.

O. C. Vanlandingham
vs
E. B. Ryan &c

In the Gallatin Circuit Court

And the said defendant for rejoinder to the said Plaintiffs said 2nd replication to the said 13th Plea herein says that the said Plaintiff ought not by reason of anything in his said 2nd replication contained maintain his action against him because he says that there was an issue of law formed and made upon the demurrer filed by said defendant in the said proceeding in the said Circuit Court of Vanderburgh County in the State of Indiana as in said 12th Plea he hath alleged and he avers that by the consideration and judgment of the said Circuit Court

of Vanderburgh County upon the
said issue of law in the state of
Indiana the said Complaint of the
said Plaintiff Unrein was not suff
icient in law to maintain his said
action aforesaid in the said Circuit
Court of Vanderburgh County against
the said Defendant and it was further
considered by the said Circuit Court
last aforesaid that the said Plaintiff
take nothing by his said suit in
the said Circuit Court of Vanderburgh
County. and that the said Defendant
recover of the said Plaintiff his Costs
in that behalf by him expended whe
of the said Plaintiff was convicted as
by the said record and proceedings
thereof. still remaining in the said
Circuit Court of Vanderburgh County
more fully and at large appears
which said Judgment still rem
ains in full force and effect not
in the least reversed satisfied or made
void and the said Defendant avers
that the said Judgment of the said
Circuit Court of Vanderburgh County
was rendered upon the right of action
of the said Plaintiff upon the said
causes of action in the said amended
Complaint sued for in the said
proceedings in the said Circuit Court

of Vandenburgh County which said right of action was and is the very same identical causes of action in the said declaration mentioned and none other, and he avers that on the trial of the said demurrer the right of the said Plaintiff to recover the said debt sued for in the said proceedings against the said defendant in the said Circuit Court of Vandenburgh County was fully and finally tried and he avers that on the trial of said issues of law the merits of controversy therein were fully and fairly tried upon the facts as therein by the said Plaintiff alleged. and this the said defendant is ready to verify wherefore he prays Judgment &c

Filed 15th Dec 1854 } Freeman atty for Deft.
J E Hall clk }

Demurrer to Joinder

Ryan Survivor of Caldwell & Ryan
vs
Vandandeingham } In Debt

Ona the said Plaintiff for answer to the rejoinder of the defendant to the second replication to the defendants thirteenth plea says that the matters

and things contained in said rejoinder are not sufficient in law and this he
and the said plaintiff now sets down
for causes and grounds of demurrer first
the said rejoinder neither admits or
denies the allegations in the replication
that new issue of fact or of law was formed
or made before the said Court in the
said proceedings nor was there any
trial or judgment upon the questions as
to whether or not the said defendant owed
to and unjustly detained from the Plain
tiff the debt in the declaration mentioned
second, the said rejoinder does not ans
wer the replication in respect to the
question of fact relied on in said
replication
third, the said rejoinder is evasive & double
fourth, the said rejoinder sets out the fact
of a judgment having been rendered upon
the question of the sufficiency of a Complaint
to entitle the Plaintiff to recover, and
not upon the question as to whether or
not the defendant owed to and unjustly
detained from the Plaintiff the debt in
the declaration mentioned,
fifth the said rejoinder sets out a
was what was tried and adjudged by
the Court without producing or avow
ching the record or alledging any
fact upon which such trial or judgment

could have been had whereupon the said Plaintiff prays Judgment &c
19. Dec. '54. Thomas for Plff

Thursday 21st Decr 1854

Order of Court

Ebenezer Ryan Surviving Assignee of the Bank of Illinois
vs
O. C. Vanlandingham } Debt.

In this case the defendant at a former day of the term filed a rejoinder to the Defendants first replication to the 13th Plea. also a rejoinder to the 2nd replication to said plea to which last rejoinder the Plaintiff filed a special demurrer which being joined and the questions of law arising thereon being argued the Court on this day decides and that the said demurrer be and the same is hereby sustained and the said rejoinder is adjudged insufficient,

Ryan
v
Vanlandingham } In Debt.

Demurrer

And the said Plaintiff for answer to the defendants secondary rejoinder to the second replication to the twelfth plea says that the matters and things

contained in said rejoinder are not suffi
cient in law. and for causes of demurrer
the Plaintiff says
first, the said rejoinder does not answer
the replication
second, it does not propose any fact
for the Trial of the Court.
third. the Rejoinder is double wherefore
(23 Dec 1854) Thomas

Saturday 23rd Decr 1854

Order of Court

Ebenezer T. Ryan. Surviving assignee of the Bank of Illinois
vs
Oliver Vanlandingham

Debt

The Defendant having by leave of the Court amended the rejoinder, to the 2nd replication to the 13th Plea and an enterlineation. the Plaintiff on this day filed a special demurrer to said rejoinder as amended which being found the Court upon Consideration thereof orders that the demurrer be sustained and that said rejoinder is insufficient in law,

Saturday Decr 23d 1854

Order of Court

(8733-29)

Ebenezer T. Ryan Surviving assignee of the Bank of Illinois
vs
Oliver C. Vanlandingham

Debt
Procueding by Attachment

this day came again the parties and by their Attorneys who agreed that both matters of law and fact be tried by the Court whereupon the testimony being heard upon all the issues the Court finds for the Plaintiff upon the issue mentioned record found by the first replication to the twelfth plea as well as upon all the issues in the cause whereupon it is considered by the Court that the Plaintiff recover of the defendant $4000. the debt in the declaration mentioned also the sum of $3414.71/100 damages sustained by reason of the non payment of said debt. together with his costs herein expended, and the Court orders that a special execution be issued directed to the sheriff of Gallatin County requiring him to make sale of the following lands and tenements levied by the attachment herein to wit

S W qr Sec 4	Town	9	S R	9 E					
E½ SE	"	5	"	9	"	"	9	"	
W½ NW	"	7	"	9	"	"	9	"	
pt NW	"	1	"	10	"	"	9	"	135 acres
W½	"	2	"	10	"	"	9	"	
SW	"	9	"	10	"	"	9	"	
SE	"	9	"	10	"	"	9	"	
pt SE	"	13	"	10	"	"	9	"	36 acres

N.W. N.W. Sec 9 Town 9 S Range 9 East
In Lots in Shawnetown No 1148, 1156 & 1168. Out
Lots in Shawnetown No 168, 196 & 198, also
S.E. S.E. Sec 11 Town 10 S Rang 9 East
N.W. N.E. " 14 " 10 " " 9 "
N.E. fract " 13 " 10 " " 9 "
E½ N.E. " 13 " 10 " " 9 "
N.W. S.E. " 4 " 9 " " 9 "
E½ N.E. " 14 " 10 " " 9 "

The Defendant exhibited his bill of exceptions which was signed & sealed by the Court and ordered to be made a part of this record,

Bill of Exceptions

E. J. Ryan assignee } Gallatin Circuit Court
Bank of Illinois }
v. } At Dec Term 1854
Olin C. Vandandingham }

Be it remembered that on this day this Cause came on to be tried before Hon Downing Baugh Judge, without the intervention of a Jury, — The Plaintiff offered in evidence two Notes which are in words & figures following to wit,

121 Note [8733-38]

Bank of Illinois Shawnetown
$2000, 5th March 1841
Six Months after date I promise

to pay to the President Directors and Company of the Bank of Illinois, Two thousand dollars for which interest at the rate of eight per centum per annum from date until paid without defalcation for value received

O. C. Vandandingham

2nd. Bank of Illinois Shawnetown

Note $2000, May 5th 1841

Six months after date I promise to pay to the President Directors &c. of the Bank of Illinois Two thousand dollars with interest at the rate of six per centum per annum from date until paid without defalcation. for value received

O. C. Vandandingham

Exceptions to which said Notes the defendant objected and the Court overruled the defendants said objection and received said Notes in evidence — to which opinion of the Court in overruling said objection the defendant at the time excepted — And the Plaintiff then offered in evidence a schedule of debts assigned by the Bank to A G Caldwell which ~~the~~ said schedule is in words and figures following to wit

Schedule

Schedule of the effects of the President Directors and Company of the Bank of Illinois at Shawneetown this day assigned and delivered to Albert G Caldwell assignee under the act of the general assembly of the State of Illinois entitled "an act supplemental to an act to reduce the state debt one million one of dollars and put the Bank of Illinois into liquidation approved 28th February 1845, which he the said Albert G Caldwell as such assignee is to dispose of collect and account for according to the agreement between the said President Directors and Company of the Bank of Illinois and the said Albert G Caldwell this day entered into and under the provisions of said act" in which schedule there is listed two notes of O. C. Vandandingham in the words following

Stock Notes	When Due	Amount
"No 6953 O. C. Vandandingham	5th Nov. '41	$2000.00
" 6952 Same	5th Sept. '41	2000.00"

To which is added a receipt of Albert G Caldwell in the words following.

Received of the President Directors and Company of the Bank of Illinois by virtue of an assignment to me this day made, the Notes Bills, accounts, Books

papers, Judgments Mortgages described in the foregoing schedule which I am to account for as assignee of said Bank.

Shawneetown Illinois Albert G Caldwell
10th April 1845. Assignee

And to which is also added a certificate with the seal of the Bank affixed thereto in the words following

Bank of Illinois Shawneetown
10th April 1845

The President Directors and Company of the Bank of Illinois do hereby certify that the above is the original receipt and schedule executed to us by A G Caldwell assignee of the Bank of Illinois at Shawneetown, and we do hereby certify that the said schedule contains a full and correct statement of the assets and liabilities belonging to said Bank at Shawneetown as appears from the Books of the Bank and so far as is known to the President and Cashier of said Bank — In testimony whereof we have hereunto affixed the corporate seal of said Bank and signed the same by the President and Cashier of said Bank — James Dunlap President

(seal) John Liddall Cashier

Exceptions to the introduction of which schedule in evidence the defendant at the time objected and the Court overruled the defendants said objection and received said schedule in evidence to which opinion of the court in overruling said last mentioned objection and receiving said schedule in evidence the defendant at the time excepted — And the Plaintiff then offered in evidence a deed of assignment which is in words and figures following viz.

Assignment This assignment made this 10th day of April in the year ~~of our Lord~~ 1845 between the President Directors and Company of the Bank of Illinois of the first part and Albert G Caldwell of Shawnetown and E. J. Ryan of Savanaville of the second part witnesseth, that whereas by the provisions of an act, entitled An act Supplemental to an act, to reduce the Public debt One Million of dollars and put the Bank of Illinois into Liquidation approved February 28th 1845 it is provided that in case the said Bank of Illinois shall accept the provisions of said act the said Bank shall within thirty days after such acceptance make an assignment of all the effects of said Bank

(3733-32)

both real and personal of every kind and discription to assignees in said act named. And that all the personal estate rights and credits and all debts of every kind due to said Bank at Shawneetown and branch at Lawrenceville shall be assigned to the said Albert G Caldwell and E J. Ryan. And whereas the President and Directors of said Bank by an act and order of the Board of Directors thereof, duly tested by the corporate seal thereof, which act and order is hereto annexed and referred to as part of this instrument. And on the 19th day of March 1845 duly accepted the provisions of said act according to the requirements thereof and hereby authorize and empower James Dunlap President of said Bank and John Liddall Cashier thereof, within thirty days after the date of said order to make the transfer and assignment of the effects of said Bank to said assignees under the corporate seal of said Bank Now therefore in consideration of the premises, the said President Directors and Company of the Bank of Illinois do hereby transfer and assign unto Albert G Caldwell and E J Ryan all the personal estate rights and credits

notes, Bonds, Judgments and debts of every kind due to said Bank at Shawneetown and the Branch at Lawrenceville. To Have and To Hold the said articles of personal property unto the said Albert G Caldwell and E J Ryan and the survivors of them and their successors in office as assignees of said Bank of Illinois forever. In testimony whereof the said President directors and Company of the Bank of Illinois have hereunto affixed their corporate seal and executed this Conveyance by the signatures and seals of the said President and Cashier of said Bank on the day and year first above written

{seal} James Dunlap President (seal)
John Lodwall Cashier (seal)

Bank of Illinois

Shawneetown 19th March 1848

Whereas an act of the Legislature of the State of Illinois, at its late session was enacted entitled "an act supplimental to an act to reduce the public debt one million of Dollars and put the Bank of Illinois into Liquidation" and which was duly approved by the Council of Revision on the 28th day of February 1845 it is ordered that the terms and provisions of said act be accepted and that the President and Cashier of said Bank

within thirty days from this date under the Corporate seal of said Bank assign all of its effects real and personal of every description to assignees according to the terms provisions and instruction of said act, and that in making the same the said President and Cashier deliver to said assignees, so far as the same is deliverable all the Moonies, Books, Notes, Bills of Exchange papers Choses in action, deeds, title papers and personal property of the said Bank and that the said President and Cashier be invested with full power to do whatsoever the can, in the consummation of the provisions of said act according to its true intent and meaning.

(Seal)

A true copy from the Minute Book of the Record of Directors of the Bank of Illinois

John Siddall Cashier

Exceptions to the introduction of which said deed of assignment in evidence the said defendant at the time ~~exceptions~~ objected, and the Court overruled said last mentioned objection and received said deed of assignment in evidence the defendant at the time excepted and thereupon the Court found a

verdict against the defendant as follows to wit

Saturday 23rd Decr 1854

Ebenezer J. Ryan surviving
Assignee of the Bank of Illinois
v
Olivia C. Vansandingham

Debt
Proceeding by Attachment

order of Court

This day came again the parties and by their attorneys who agreed that both matters of law and of fact be tried by the court, whereupon the testimony being heard upon all the issues the court finds for the Plaintiff upon the issue mentioned in record found by the first replication to the thirteenth plea, as well as upon all the issues in the cause, whereupon it is considered by the court that the Plaintiff recover of the defendant $4000, the debt in the declaration mentioned also the sum of $3414,7100 damages sustained by reason of the non payment of said debt, together with his costs herein expended and the court orders that a special execution be issued directed to the sheriff of Gallatin County requiring him to make sale of the following lands and tenements levied by the attachments herein to wit,

S W qr	Sec	4	Town	9	S Range	9	East	
E½ S E	"	5	"	9	"	" 9	"	
W½ N W	"	7	"	9	"	" 9	"	
Lot N W	"	1	"	10	"	" 9	"	135 acres
W½	"	2	"	10	"	" 9	"	
S W	"	9	"	10	"	" 9	"	
S E	"	9	"	10	"	" 9	"	
Lot S E	"	13	"	10	"	" 9	"	36 acres
N W. N W	"	9	"	9	"	" 9	"	

Sec Lots in Shawnetown no 1148, 1156 & 1168.
Out Lots in Shawnetown no 168, 196 & 198 also
S E S E. Sec 11 Town 10 S Range 9 East
N W N E " 14 " 10 " " 9 "
N E fract " 13 " 10 " " 9 "
E½ N E " 13 " 10 " " 9 "
N W. S E " 4 " 9 " " 9 "
E½ N E " 14 " 10 " " 9 "

The defendant exhibited his bill of exceptions which was signed and sealed by the Court and ordered to be made a part of this Record,

Exceptions

And thereupon the defendant moved for a new trial & in arrest of Judgment upon the following grounds.
1st because said finding was contrary to law
2d because said finding was contrary to the evidence

which were

motion the court overruled and rendered a Judgment as follows to wit—

Saturday 23d Decr 1854

Ebenezer S. Ryan Surviving assignee of the Bank of Illinois
v
Olivia C. Vanlandingham

Order of Court.

Debt
Proceeding by Attachment

This day came again the Parties and by their Attorneys who agreed that both matters of law and of fact be tried by the Court whereupon the testimony being heard upon all the issues the court finds for the Plaintiff upon the issue tendered by the record, joined by the first replication to the thirteenth plea as well as upon all the issues in the cause, whereupon it is considered by the Court that the Plaintiff recover of the defendant $4000. the debt in the declaration mentioned also the sum of $3414.71/100 damages sustained by reason of the non payment of said debt together with his costs herein expended and the Court orders that a special execution be issued directed to the Sheriff of Gallatin County requiring him to make sale

[p133-35]

of the following lands & tenements levied by the attachment herein to wit.

SW qr sec 4 Town 9 S Range 9 East
E½ SE " 5 " 9 " " 9 "
W½ NW " 7 " 9 " " 9 "
pt NW " 1 " 10 " " 9 " 135 acres
W½ " 2 " 10 " " 9 "
SW " 9 " 10 " " 9 "
SE " 9 " 10 " " 9 "
pt SE " 13 " 10 " " 9 " 36 acres
NW NW " 9 " 9 " " 9 "
In Lots in Shawnetown No. 1145, 1156 & 1168
Out Lots in Shawnetown No 168, 196 & 198 also
SE SE Sec 11 Town 10 S Range 9 East
NW NE " 14 " 10 " " 9 "
NE fract " 13 " 10 " " 9 "
E½ NE " 13 " 10 " " 9 "
NW SE " 4 " 9 " " 9 "
E½ NE " 14 " 10 " " 9 "

The defendant exhibited his bill of exceptions which was signed sealed by the court and ordered to be made a part of this record

Exceptions to which opinion of the court in overruling such motion for a new trial & in finding the verdict and rendering the judgment aforesaid the defendant at the time excepted, and the foregoing was all the evidence in the case, and the defendant prays this his

bill of exceptions to be signed and sealed by the Court and incorporated in the record which is done at the same time

D. B. Lough (Seal)

Filed 26th Dec 1854,
J E Hall Clerk,

State of Illinois }
Gallatin County } Sct.

I John E Hall clerk of the Circuit Court for the County of Gallatin and state of Illinois, do certify that the foregoing 70 pages contain a true and complete record in a certain suit in said Court, wherein Ebenezer Ryan survivor of Albert Gladwell & E Ryan was Plaintiff and Oliver C Vanlandingham was defendant, all of which appears from the records & files of my office

Given under my hand and the seal of said Court at Shawnetown this 3rd day of May AD 1855

J E Hall Clk

Clerks fee for record $12.00

State of Illinois, In the Supreme Court,
1st Grand Division

Oliver C. Vandandingham, pltff in Error,
vs.
Ebenezer Z. Ryan, Survivor of Albert G. Caldwell & E. Z. Ryan &c Deft in Error

} Error to Gallatin Co.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this court in pursuance of the laws of this State.

Dated this 16th day of Oct, 1855

Filed 23d Oct. 1853. N. L. Freeman.

N. Johnston clk

State of Illinois, In the Supreme Court,
1st Grand Division

Oliver C. Wantandingham
vs.
Ebenezer G. Ryan, survivor of Albert G. Caldwell & E. G. Ryan, assignees of the Bank of Illinois,
} Error to Gallatin Co.

And the said plaintiff in error comes and says there is manifest error in the record and proceedings herein, in this,

1st In overruling the motion of said pltff. to quash the notice of publication.

2. The Circuit Court erred in striking from the files the plea in abatement in said suit.

3. In sustaining a demurrer to the 5th plea.

4 In sustaining a demurrer to the 6th plea

5. In sustaining a demurrer to the 7th plea

6 In deciding the 8th plea to be bad.

7 In sustaining a demurrer to the 9th plea

8 In overruling the demurrer to the 2nd replication to the 10th plea.

9. In overruling the several demurrers to the 1st & 2nd replications to the 13th plea.

10 In sustaining a demurrer to the rejoinder to the 1st replication to the 13th plea

11 In sustaining a demurrer to the rejoinder to the 2nd replication to the 13th plea.

[5133-27]

12. In sustaining a demurrer to the amended rejoinder to the 2nd replication to the 13th plea.

13 In overruling the objection of the defendant below to the introduction of the two notes in evidence.

14 In overruling the objection of the defendant below to the introduction in evidence the schedule mentioned in the bill of exceptions.

15 In overruling the objection of the defendant below to the introduction in evidence of the deed of assignment mentioned in the bill of exceptions.

16 The court below erred in finding the issues for the plaintiff below.

17 The court erred in not finding the issues for the deft below.

18 The Circuit Court erred in refusing to grant the defendant below a new trial

19 And to arrest the judgment.

1st because the finding was contrary to law.

2nd because the finding was contrary to evidence.

20 In rendering a judgment against the deft below.

And for other and manifest error on the face of said record he prays &c

N. L. Freeman Atty
for pltff in error

And the said Defendant says there are no such Errors as pltff has alleged
Wherefore &c

W. Thomas Atty

No. 30

G. C. Vanlandingham

vs

E. J. Ryan, Ad. &c.

Filed Oct. 23. 1855.

N Johnston Clk. S. C.

" "

Prepaid $5.00

Will Clerk Supr. Ct. please issue process to Lawrence Co. against Ryan

Freeman

In Supreme court.

Vanslandingham

v. Error from Galleatin

Ryan & Spiegel for

Questions

1. The motion to Quash notice,

Revised Statute 66 Sec 13.

Morris v Trustees of Schools 15 Ills 266. as to Notice.

Randolph v Emmick 13 do. 346. – as to facts, –

Questions above Waived

2. The plea in Abatement.

12 Ills 203. proves, that if the plff declares for any other causes of action, than that stated in affidavit, it may be taken advantage of by plea in Abatement,

Palmer v Logan.

11 Ills 575. – plea not before the court, – the party should have brought it by exception.

This court will presume decision right.

Understood yields this point

3. Sustaining demurrer to 5th plea. 17. 47

"impleaded the deft in a certain Complaint for the detaining and not paying the very Second Identical debt, and for and in respect to the Second Identical causes of action in the declaration Mentioned, and Such proceedings thereupon had, in fact that on the 2 day of May 1853 recovered his costs, and by the consideration of the court, the deft and by the consideration of the plff took nothing by his said Suit, whereof he" not State that process was served 'on appearance Entered.

[8733-39]

4 Sustaining Demurrer to 6 plea.
That the consideration of over the notes has wholly failed & this Verify &c.

Waived by Underwood

5 Sustaining Demurrer to 7th plea.
"Pltff impleaded defendant by amended complaint, for the detaining, and not paying, the very same identical debt and for and in respect to the very same identical causes of action in the declaration mentioned & such proceedings were had, as that on the 2 May 1853, the defendant by the consideration & judgment of the Court recovered in said suit, for his costs in that behalf expended. – the pltff was, and still is, a Vagrant of Indiana, & by the judgment & consideration of the court the pltff took nothing by his said suit," not stating that any process was served or appearance entered.

6. Reciting 8 plea bad.
"Both of the said promissory notes, were executed by said defendant upon his subscription to the capital stock of the Bank of Illinois, and for no other, that said notes were and are what are called and denominated stock notes of said Bank, And the deft avers that at the time of the commencement of this suit, there were no debts nor ~~claims~~ causes of action existing against, the President Directors & company of said Bank nor against the Assignees thereof."
The Replication admits character of note, but denies that there were no debts, causes of action &c. – Act of 28 July 1845 – p. 247.
Objections to this plea. 1st It assumes a Breach of Trust by the Trustee in bringing suit, – 2 It proposes an issue requiring a settlement of the Bank accounts, – whereas the remedy of the party is in Equity only.
3 matter in abatement only.
Act of 1849 page 39. Authorizes suit.
7. Sustaining Demurrer to 9th plea,
"That to the April Term 1853 of the court of Indiana, the Pltff impleaded the deft in a certain amended complaint for the detaining & not paying the sums Identical debt, and for and in respect to the same causes of action in the declaration mentioned. Deft was a Nonresident of Indiana. that Jonas A Blythe entered his appearance, said suit was by foreign Attachment no actual Service, & such proceedings were had as that on the 2 May 1853 the court decided the complt

not sufficient in law. to maintain the action aforesaid. — And it was further considered that the pltff take nothing by his suit and that deft recover costs.

8 Demurring Demurrer to 2 Replication to 10 plea, —

This plea, sets up proceedings in Attachment in St Clair County Ill & judgment for pltff, without showing service of process, or appearance,

The Replication sets out proceeding by foreign Attachment in St Clair county & judgment without service of process or appearance, and order to sell property attached, —

Waived by Underwood.

9th Overruling Demurrers to 1 & 2
Replications to 13 plea.
This plea set up Judgment in Indiana,
copies demurrer filed to complaint
No actual Service of process, suit by
Foreign Attachment, appearance entered,
and such proceedings had on that suit
was untrue, that the Complaint was insuffi
= cient, — plea avers, that Judgment was
upon the right of action of plff, that
on the trial the merits of the case was
tried &c
1 Replication, — No such Record,

2 Replication, true it is plff commenced
action &c, the court decided upon
special demurrer that the Complaint
was insufficient & ordered plff to
pay costs, — but that no issue of fact
or law was formed or made before the
court, nor was there any trial or
Judgment upon the Question, as to
whether or not the said defendant owed to
and unjustly retained from the the
plff the debt in the declaration
mentioned & this he whatever day

10 Sustaining demurrer to rejoinder to the 1 replication to 13 plea.
This refers to the joint demurrer to 1 & 2 Replication, the party afterwards filed a good rejoinder & issue was made up, of Nullitel Record.

11 Sustaining demurrer to 2 Replication to 13 plea. See Replication copied, the party amended the ~~rejo~~ rejoinder, See below,

12 Sustaining demurrer to amended Rejoinder to 2 replication to 13 plea.
"The amended rejoinder sets out, "that there was an issue of Law formed and made upon the demurrer filed by defendant in the court &c, as in the 12th plea he hath alleged, and he avers, that by the consideration and judgment of the court, upon the said issue of Law, the complaint

of the plaintiff therein was not sufficient in Law to maintain the action. and it was further considered & that the plaintiff take nothing by his Suit and that deft recover his costs. as appears &c

And deft avers that the said Judgment was rendered upon the right of action of the pltff upon the said causes of action ~~in~~ the said amended Compltt Said for &c, which said right of action was and is the same identical causes of action in the declaration mentioned, And he avers, that on the trial of said demurrer, the right of the pltff to recover the debt &c was fully and ~~fairly~~ finally tried, and he avers that on the trial of said issues of Law, the merits of the controversy therein, were fully and fairly tried upon the facts, as therein by the pltff alleged, & this he is ready to verify. &c

Causes of Demurrer.

1. does not answer the replication
2 does not propose any issue for the trial of the court,

13 Overruling objections to notes as evidence. (Waived by Underwood)
The Record does not show what the objections were.

14. Overruling objections to the introduction of schedules &c —
No objections stated.
Waived by Underwood

15. Overruling objections to Assignment
No objections stated.
Waived by Underwood

16. Finding issues for pltff, upon the evidence, — Waived by Underwood
(No evidence offered under plea of judgment in Indiana)

17. Issues should have been found for pltff (Waived)

18. Refusing new trial
(Waived)

19. Arresting judgment.
Waived

20. Rendering judgment agst. defts. &c. — Waived

Upon the Questions arising upon
the pleading as to 5.th 7.th 9.th 10.th 13.th
2 Denio 51 – 8 Wendale 35. 10 Wendale 84.
2 Hill 481. 4 Barbour Sup C R 36.
5 Barbour Supreme C R 469.
Welch vs Skyles 3 Gilleman 198
1 Chitty pleading top page 198. the law Condensed.
1 Starkie on Evidence top page 262. 263.

Smith vs Sherwood 4 Conn R 278.

In Supreme Court.

November 1855.

Vanland in error

" Error from Gallatin.

Ryan & Spigner &c

The points relied on, grow out of the disposition of the 5th 7. 8. 9. 10 & 13 pleas, filed by defendant.

to the 5th plea, — which proposes to estop the pltff by the ~~[illegible]~~ Bring of suit in Indiana, — without alleging service of process or appearance, or what was alleged in the complt or that any fact was tried by the Court; The Court sustained a demurrer,

Objections to this plea, — 1 It does not shew what was alleged in the complaint.

2 It does not shew upon what facts the Judgt was entered,

3 It does not shew, that any appearance was entered or that any issue was joined

4 It does not shew any decision, that deft did not owe the debt, or that he was not bound to pay, or that pltff had no right to recover upon the note.

4 Conn R 278. 1 Chitty's pleading top page 198.

1 Starkie on Evidence top page 262-263.

Binsler v Dawson 4 Scamm 539.

to the 7 plea, substantially the same as 5th a demurrer in like manner was sustained,

This plea is liable to the same objection as 5th

What the plea should cover. Cutler v Cone 2 Blackford 179.

Judgment for deft on Demurrer no bar to subsequent action. Stevens v Dunbar 1 Blackford 56

[8733-49]

The 9th plea, sets out a judgment in Indiana, in which defendant appeared, and the court decided, upon demurrer, that the matters contained in complaint is not sufficient, — Demurrer sustained.
This plea shews judgment on demurrer & not upon any question on which the right to recover could depend. —
This judgment is upon the pleading & not upon the question of right to recover on the notes, — the plea does not shew the allegations of complaint, nor of course the facts on which court acted. —
This court will presume that complaint was so defective in form or substance that no judgment could have been entered.
13th plea sets out Record of judgment in Indiana, the appearance of party, Demurrer, and judgment on Demurrer, that complaint was insufficient, —
To this plea, (after overruling demurrer) two Replications were filed.
1 Nulla Tiel Record.
2. That no issue of law or fact was formed or decided, upon the question, whether or not deft owed to, and unjustly detained from pltff the debt in the declarations mentioned &c.
Rejoinder, & Demurrer, sustained to Rejoinder
This Replication proper Welch vs Skyles 3 Gill 198.
Binsler vs Dawson 4 Scam 539.

8 pleas, — stock note, & no Indebtedness.
Replication admitting stock note, but claiming, that there was no Indebtedness &c. Demurrer to Replication, sustained to plea, upon the Ground, that court of Lord not competent to settle the Question involved, Hill on Justice 518.

Defts Authorities upon pleas.
In Young v Rennard 2 Hill 480-1.
The Question was as to the Effect of a Former recovery when offered in evidence under the Gen'l issue
the court say, "A former recovery in which the same matter was tried upon the Merits, between the same parties, may be given in evidence" shewing that the matter must be "tried upon the Merits"
the plea should therefore shew, a trial, or Judgment upon some fact, or issue.

[8733-48]

2 Ulner 50-51. Harrison v Wood.
the Record of a former Recovery offered
in evidence and rejected
because it appeared that the cause
was dismissed, –
This shews, that the plea should set forth
~~facts~~ the facts on which the court acted,
and such a judgment as would
estop the party.
See also 4 Barbour Supreme C Rp 44.

Lewis v Lewis 5 Barbour S. C Rp 473.
The former judgment no estoppel, or bar,
unless upon the points litigated again.

Jeffs authorities

Birkhead vs Brown 5 Sandfords R 145.

"The Rule is," that as between the parties and privies a judgment is conclusive, as to any question upon which the right of the plaintiff to recover, or the validity of a defence in another suit, is found to depend, and upon the determination of which it appears from the Record or is shown by extrinsic proof that the judgment was in reality founded."

At page 162 the distinction is taken, between what operates as a bar & what as Estoppel, the judgment raises the Bar,
The matter alleged by the party, and upon which the judgment proceeded that creates the Estoppel.

At page 150 Exceptions admitted to the General Rule.
"Cases in which the first judgment was given only for faults in pleading, or other matters of form, not at all affecting the merits and however excepting" &c

[8783-46]

Baker vs Rand 13 Barbour Supreme Court 160

At page 160

"It has been decided, that where by the pleadings a claim or defence was inadmissible, even though litigated, the judgment was no bar to the claim or defence, if disallowed.

page 162 As a general rule if the cause goes off on a technical defect, and not on the merits, the judgment in the first suit is not a Bar," 1 Greenleaf 530

Shields vs Taylor & a 13 Smedes & Marshalls.

plea of former recovery.

Defts "alleged that they had been sued by pltff in the United States Court, on the same cause of action, and obtained a judgment in their favor by which they were discharged from all liability on account of the demand sued on in this action"

The Question is not settled by any of these decisions as to what a plea should allege to operate as an Estoppel,

The decisions are upon Questions relating to the Effect of Judgments in evidence, — upon pleading, or under the General issue, &c.

That the Judgment must be upon some Question of fact, on which the right to recover depended, is not questioned by any of these decisions,

10 Smedes & Marshall 554.
554.
upon statements of pleas which could have been true,
see what plea must allege,

The court will not Reverse a judgment if it appears from the Record, that the plaff in Error has suffered no Wrong. Thomas v Watson 5 Gilman 30.
In the case upon the court, there has been a trial upon the issues of Nullitie Record & judgment for deft in Error, — Will the court Reverse the judgment to permit the party to try a question of fact which has in the Same case been twice and rightly decided against him.

Arnoux v Rublin & Bains 15 Cranc 341.
A party cannot avail himself of an Error, unless to his prejudice.

Schlencker &c v Risley 3 Scam 484.
Exception to decision refusing to admit evidence of General reputation to prove the official character of Justice & Constable. After decision parties proved by Record testimony their character &c
As the decision of the court did not prejudice the party in the final result of the trial, judgment will not be Reversed."
So in the case at bar, — the party has had the benefit of his Record upon the issues of Nullitie Record. and there is no complaint of Error in that decision

The Issues tried by the court were.
1 upon plea of Nil debet Joinder
2 upon plea of former Recovery in St Clair
& replication of Nullid Record.
3 upon plea of payment of part
4 upon plea of payment in full
5 upon plea of Nullid Record to 13th plea
The Record would have been evidence
upon the first & fifth issues above.
and those issues being found for pltff.
the court will not Pronounce Judgment
to prevent further controversy.

W Thomas

No 33.

Vanlandingham
v.
Ryan et ux. & Ux. of Ux. of Ux.

Brief of points
by W. Thomas for
Defendant

In Supreme court

November 1855.

Oliver C Vandenburgh

against — Error to Galloway

Elanzer & Rogers Survivors

of Galloway & Rogers

The plaintiff assigns the Error, if any,

in respect to the sufficiency of the

Sheriffs return on the Attachment

to authorize the giving of notice and

proceeding in the cause

Also the Error, if any, in giving

final judgment in the cause

upon all the issues of law and

decided. — Nov. 19th 1855.

Green an

Wm H Underwood

Attys. for pl Ff.

No 30

Vanbeuningham

vs. } Stipulation

Ryan Senior &

Coldwell & Ryan

8734

State of Illinois – Supreme Court –

I, Walter B. Scates, Chief Justice of the Supreme Court of the State of Illinois, do hereby certify that Noah Johnston, whose genuine signature appears to the foregoing certificate, was at the time of making said certificate and still is the Clerk, duly elected, & commissioned, of the Supreme Court of said State in and for the first Grand Division – and I further certify that the foregoing attestation of said Clerk is in due form –

Given under my hand this
day of June 1886 –

Shawneetown
Apl. 19th 1856

Maj Noah Johnston
Mt Vernon - Ill -

My dear Sir

I have never ascertained the result of the case of Vanlandingham v. Ryan, argued at the last term Sup. Court - The letter you sent me was forwarded to Cin. but I did not get it. Will you be so good as to inform me how it was decided.

I have called for your acct at the Illinoisan office several times, and they have promised to make it out, but have not yet - They say I can get it in a day or two now. I will see what they say about it when made out, and let you know, and then, if you say so, will pay it -

I shall send you a copy of my digest the first opportunity, which you will please accept, as a slight token of my remembrance of your kindness to me - By the way, if I should send you a few copies, do you think any could be sold - and would you let them be put in your office -

Very truly yours
N. L. Freeman

(9733-58)

N L Freeman

STATE OF ILLINOIS
SUPREME COURT, } SS.

WRIT OF ERROR.

THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of Gallatin 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 Gallatin county, before the Judge thereof, between Ebenezer J Ryan, Survivor of Albert G Caldwell and E J Ryan, Assignees of the Bank of Illinois, plaintiff, and Oliver C Vandenburgh

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

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 Count, 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 Mount Vernon, in the county of jefferson, on the 2d Monday of November 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. WALTER B. SCATES Chief Justice of our said court, and the seal thereof, at Mount Vernon this 23d day of October in the year of Our Lord One Thousand Eight Hundred and Fifty-five.

Noah Johnston
Clerk Supreme Court.

(8733-53)

Vanlandingham

vs

Byers &c

Writ of error

Filed 23. Oct. 1855

A Johnston Clk

Shawneetown
June 12/56

Maj Johnston

Dr Sir – I have this moment recd a letter from New Orleans requesting a copy of the record in the case of Ryan vs Vanlandingham as soon as possible –

Will you be so good as to have a record made out, including the record taken from this court & the entire proceedings in Sup. Court & certified according to the act of Congress – allow me to ask very particular attention to the certificates – Send the record to me & as soon as recd I will remit the fee – Please do so as soon as possible –

Yours truly
N. L. Freeman

[8533-54]

[illegible] A. E. [illegible]
June 12. Asking for
copy of record.

Answered
June 16. Saying the
record will be made -
and asking to furnish
form for certificate

Shawneetown
May 28th 1856

Maj. Noah Johnston
Mt Vernon - Ills.

Dear Sir - Your favor of the 26th inst. is just recd. The position which I occupy as regards the Vandandingham case, as I understand it, is this - the Bank obtained a judgment against Van. in the Circuit Court which remains in full force, and upon which an execution may issue at any time. Van. prosecuted a writ of error and procured a reversal, but there was no supersedeas, & consequently nothing to stay proceedings below. and nothing to prevent an execution from issuing even now, upon the original judgt below - it seems therefore, to me, not to be the interest of Thomas to bring the judgt of reversal here and overturn his own judgment, but is indispensable for me to do so, in order to protect Van against the issuing of an execution. If I had taken an appeal, which would have operated as a supersedeas, or if I had procured a supersedeas upon the record which I took up, & had obtained a reversal, then perhaps it would not have been incumbent upon me to bring down the judgt of reversal, because the proceedings being stayed once by the supersedeas, would

Continue so - and Thomas would have to get the case re-instated on the docket, so as to get another trial. But as it is now I can see nothing to prevent an execution from issuing here against Van at any moment. I should be delighted if it were otherwise, so that I could help you compel Saint Thomas to disgorge some of his ill gotten gains -

I have not yet heard from New Orleans whether I will need a full record for that place -

Truly & respectfully yours
N. L. Freeman

N. L. Freeman
Rhenne Lute
31 May 1856

Shawnetown, Ills
May 19th 1856

Maj. Noah Johnston
Mt Vernon, Ills.

Dr Sir – Your kind favor of the 14 inst. was duly recd. As the Van-landingham case is reversed, it will be necessary to have a copy of the judgt and opinion to enable us to re-instate the case on the docket here – I have not yet heard from New Orleans, whether we will need a copy of the whole record.

That part of the opinion which you were kind enough to give me, will, I think, insure me partial success, at least –

Very truly yours
N. L. Freeman

[9133-56]

Freeman

~~Answered~~

28
8
224
14
238
4
1904

Note in Answer - 26. May 56 -
Saying - if you want the
Bond I will send it - But
if not will hold it till the
fee is paid by Thomas -

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Lawrence **County,**

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Gallatin County, before the judge thereof, between Ebenezer Z Ryan, Survivor of Albert G Caldwell and E Z Ryan, assignees of the Bank of Illinois, plaintiff, and Olivia C Cunningham

defendant, it is said that manifest error hath intervened to the injury of said Olivia C Cunningham 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 Mt. Vernon, 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 Ebenezer Z Ryan, Survivor &c.

that he be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Ebenezer Z Ryan notice, together with this writ.

Witness, the Hon. ~~Samuel H. Treat,~~ Walter B Scates Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this 23d day October in the year of our Lord, one thousand eight hundred and fifty-five

Noah Johnston
Clerk of Supreme Court.

{8733-57}

C. C. Blackburn Sheriff
by
E. F. Green
Deputy
Serving 50c
Returning 10
1 Mile travel 5
Postage 8
68

This further certifies that the
Sheriff of Cook County is a
resident of the State of Illinois

Executed this writ October 27th 1855 by delivering a copy of the within, and reading the same to Ebenezer Z Ryan the within named defendant
fees paid by plantiff

John W Watts S.L.C
By C. L. Durkee, Dep't

No 30

Vanlandingham
vs
Ryan &c

1 Record
1 Opinion
2 Abs
1 Stipulation

Filed

Prepared

8733

No 30

C. C. Vanlandingham

vs.

E. F. Ryan &c.

Received & Filed &c

Copy Rec'd & Opinion
sent to Hd Commissioner
31st May 1860
Fee $2.50 with
charge in file

8733