No. 8719

Supreme Court of Illinois

Alexander Frazen

vs.

Wm. Resor & Co.

71641 7

State of Illinois
Pulaski County.

Plea at Mound City, before the Circuit Court of said County, commencing on the Second Monday in the month of April, in the year of our Lord One Thousand eight hundred and fifty eight (A.D. 1858).

Be it remembered, that heretofore, to wit, on the Eleventh day of December, A.D. 1857, came Henry M. Smith, Attorney for William Rice, Jacob Rice and Charles McVallum, and filed with the Clerk of said Court a certain affidavit, marked Exhibit A. — And thereupon a Capias issued in the words —

"State of Illinois } ss
Pulaski County }

The People of the State of Illinois to the Sheriff of said County Greeting. — We command you that you take Ezra Drake and Abraham Fraser, if they may be found in your County, and them safely keep that you have their bodies before the Circuit Court of Pulaski County on the 1st day of the next Term thereof, to be holden in the Court House at Mound City in and for said County on the

[8719-17]

on the same Monday in the month of August next, To answer Co William Rees, Jacob Rees & Charles McValeur, Copartners in trade under the name, style and discription of Wm. Rees & Co., of a plea of Trespass on the Case upon promises, to their damage as is alleged, Six hundred dollars, and have you then and there this writ,

Witness, Jas. M. Danielly, Clerk of said Circuit Court and the seal thereof hereto affixed in North Carolina, 15th Dec. A.D. 1857.

James M. Danielly
Clerk"

And which said Capias was duly returned, with the following endorsement thereon, made —

"Served by reading to one of the within named, to wit, Alexander Frasure, December the 31st, A.D. 1857.

Thomas Smith, Sheriff.

Shff. fees for serving & taking bond — 100
Mileage and writ — *60
1,60

T. Smith, Sheriff"

And thereafterwards, to wit, on the same day of January, A.D. 1858, came the said William Rees, Jacob Rees and Charles M. Vallean, by Henry M. Smith, their attorney, and filed their Declaration against Ezra Decker and Alexander Frazer, the defendants, which declaration is in words and figures —

"State of Illinois } At the April
Pulaski County } Term of the
Pulaski Circuit
Court, A.D. 1858,

William Rees, Jacob Rees and Charles M. Vallean, merchants, negotiating jointly in trade under the firm of Wm. Rees & by Henry M. Smith, their attorney, complains of Ezra Decker and Alexander Frazer, merchants negotiating in trade under the
X firm of Decker & Frazer, in custody &c., of a plea of trespass on the case on promises. For that whereas the said defendants, by the name of their said firm of Decker & Frazer, on the sixth day of September in the year of our Lord one thousand eight hundred and fifty six, at Cincinnati, to wit at the County of Pulaski and State of Illinois, made their certain promissory

[8719-2]

note in writing, and then and
there delivered the same to the said
plaintiffs, bearing date the day
and year last above mentioned,
by which said promissory note
in writing the said defendants
promised, six months after the date
thereof, to pay to the order of said
plaintiffs, by the name of their said
firm as aforesaid, Five hundred Sixty
16/100 dollars value received which, by
means whereof, and by force of the statute
in such case made and provided, the said
defendants became liable to pay to the
said plaintiffs the said sum of money in
said promissory note specified, according
to the tenor and effect of the said promissory
note, and being so liable, they, the said
defendants, in consideration thereof
afterwards to wit, on the day and
year aforesaid undertook, and
then and there faithfully promised
the said plaintiffs to pay them the said
sum of money in the said promissory note
specified, period of six months has
long since elapsed — yet though often
requested so to do, the said defendants
did not nor would they or either of
them pay the said plaintiffs the said
sum of $ 568 16/100, mentioned in
said promissory note or any part
thereof — but so to do this

where
when

without wholly neglecting and refusing and still neglect and refuse to the damage of the said plaintiffs of $600 and therefore they sue &c.

2d. Count } And for that whereas also the said defendants, afterwards, to wit, on the 6th day of September, 1856, at Cincinnati, Ohio, aforesaid, in the County of Franklin and State of Illinois, by their certain other promissory note in writing of their date, for value received, promised to pay to the order of Wm. Rice & Co. the pltffs. by the name of their said firm Four Thousand Sixty eight 1/100 Dollars value received six months after the date thereof, which period hath elapsed. Nevertheless the said defendants, not regarding their said second promise and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiffs in this behalf, hath not as yet paid the said several sums of money, or any or either of them or any part thereof to the said plaintiffs, although often requested so to do, but the said defendants to pay them the same hath altogether wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiffs of $600.00, and therefore they sue &c.

Henry M. Smith,
Atty for Plaintiffs.

(8719-3)

Copy of the note sued on in 1 & 2 Counts.

$568 16/100. Cincinnati, Sept. 6th 1856.

Six months after date we promise to pay to the order of Wm. Rees & Co. or, Five hundred Sixty eight 16/100 dollars value received.

Rubes & Frazer

Indorsed Rec March 6/8/57.

Credit on the back thereof as follows, to wit,

Received on the within note One hundred Seventy seven 36/100 dolls.

Cincinnati, May 2. 1857.

A true copy.

Henry M Smith,
Attorney for Plaintiffs."

Met on Tuesday, the second day of the said term aforesaid - the following new special Count was made and entered of record.

William Rees & Co
vs
Egra Rubes
Alabama Frazer
} Assumpsit

on motion of defendants to discharge bail - the said motion was returned and the bail discharged. And at another day, to wit, on Wednesday, the third day of this term - the following other proceedings were had in this cause, viz -

William Rees
Jacob Rees
Charles M. Vallean
firm of Wm. Rees & Co.
vs
Ezra Decker
Alexander Hagen

Assumpsit.

Again at this day came the parties - and the demurrer filed in the cause being before the Court - it was returned. Whereupon plaintiffs asked leave to amend declaration which was granted - and thereupon declaration was amended - when the defendants again interposed demurrer. And at another day, to wit, on Friday of this Term - the following proceedings and judgment of the Court were pronounced and made a matter of record therein. viz -

William Rees
Jacob Rees
Charles M. Vallean
firm of Wm. Rees & Co.
vs

[8719-4]

Ezra Decker
Alexander Frazer } Assumpsit

And at this day
came the parties - and demur to
amended declaration nothing disp
"ased of - but left the Court for its
decision - Whereupon ordered that
suit dismissed be overruled and
thereupon the defendants being
three times solemnly called - came
not but made default -

It is therefore considered by the
Court that plaintiffs have judgment.
"ent. But in as much as the
malpractices should be for damages,
and on an unsealed instrument,
nothing in computation let the
Clerk assess and report the same.
Who assessed and reported the damages
to be $423 60/100. It is therefore consid
"ered and adjudged by the Court that
the plaintiffs do recover of the said defen
"dants the sum of $423 60/100 damages and
Cost of suit.

And at another day, to wit, on
Saturday, the Sixth day of Nov
the following other proceedings
in this latter suit had and made
a matter of record - viz -

William Ross,
Jacob Ross,
Columbus M. Ballew,
Firm of Wm. Ross & Co.

vs

Ezra Brehm
Alexander Kruger.

} Assumpsit.

And at this day again come the defendants and moved to set aside the default. And thereupon the plaintiffs by their attorney being in court and said motion for default being submitted to the court without argument. The Court on consideration thereof being satisfied that the receipt mentioned in the affidavit is for the same payment endorsed on the note. The said receipt being produced to the court and it appearing that for one dollar, ~~[illegible]~~ and the amount ~~of the judgment~~ endorsed on the note being likewise one dollar. The said motion to set aside the said default was overruled. Whereupon the defendants prayed an appeal which is allowed on the defendants giving bond in two thousand dollars within thirty days, conditioned as the law directs, with James H. Brown and John Dreyer as security.

And as another cause, to wit, A suit was filed in the Clerk's Office of said Circuit Court, on the fifth day of May A.D. 1858, the said

[2071-5]

defendant Frazer filed in the Circuit Court Clerk's Office his appeal bond which bond is as follows—

Know all men by these presents that we, Alexander Frazer, James H. Brown and John Donigan, James Goodloe, George Mutz, Wm. Hunter & R. C. Goodloe of the Pulaski County, Illinois, are held and firmly bound unto William Rice and Company in the penal sum of Ten Thousand dollars, well and truly to be paid to the said William Rice and Company, their, executors and assigns, hereby binding ourselves, our heirs, executors, and administrators jointly, severally and firmly by these presents. Sealed with our seals and dated this fifth day of May in the year A.D. Eighteen hundred and fifty eight (1858).

The condition of the above obligation is such that whereas the said William Rice and Company did, at the April term of the Circuit Court within and for the County of Pulaski and State of Illinois, recover a judgment against the above bounden Alexander Frazer as one of the firm of "Becker and Frazer", for the sum of Four hundred and twenty three $\frac{60}{100}$ dollars

from which judgment the said Alexander Frazer has taken an appeal to the Supreme Court of the State of Illinois. Now if the said principal shall prosecute his said appeal with effect, and will and truly pay and satisfy the said William Rees and Company whatever judgment, cost, interest, and damages maybe rendered against the said Alexander Frazer in case the said judgment shall be affirmed, then this obligation to be void, otherwise to remain in full force and effect.

Alexander Frazer (Seal)
Geo. Mitz (Seal)
Wm. Hunter (Seal)
R. V. Goodlow (Seal)
James H. Brown (Seal)
John Donigan (Seal)
James Goodlow (Seal)

The following on the Pleadings in the above styled Cause,

Demurrer,

"Dreher & Frazier
ads
William Rees & Co.
} Assumpsit

Pulaski Circuit Court
April Term, 1858.

[8719-6]

And now comes the defendant and defends &c., and says they, the said plaintiffs ought not to have and maintain their said action because the said 1st and second counts in their said declaration are not suffi-cient in law, and they the said defendant pray judgement, &c.

W. Hunter,
Atty for Deft.

And the said defendants assign the following cause – to wit,

That the said plaintiffs amended the said Declaration by interlineation.

Amendment – "That said Defendants on the day and year aforesaid "promised, &c., should be last aforesaid or specify the day on which promise was made.

Wm. Rees & Co.,
vs.
E. Dreher & Alexander Frazer

Circuit Court, Pulaski County, Illinois.

And the said Alexander Frazer one of the said defendants, comes and says – That the said plaintiffs ought

not to have their suit action aforesaid against the said defendants, because he says the declaration aforesaid and the matters and things therein contained are not sufficient in law to maintain the action aforesaid, and that they are not bound in law to answer the same, and this he is ready to verify. and states and shows the following causes of demurrer.

1st. That the said Declaration does not state that the said defendant became liable to pay the said sum of money in said note and declaration specified, according to the tenor and effect of the said promissory note.

2nd. That it does not state that the defendant, being so liable, in consideration thereof afterwards promised to pay the said sum of money in said note and declaration specified.

Whereof he prays judgment, and that the said plaintiffs may be barred of their action against the said defendants.

Wm. Hunter
Atty for Deft."

I, James M. Davidge, Clerk of the Circuit Court of the County aforesaid, do certify that the above is a true copy

[2175-I]

of the original Writ, Declaration, judge-
ment, order, appeal bond and Pleadings
in the above entitled Cause.

Witness James M. Davidge
Clerk of the Circuit Court
of said County, and the
seal of said Court hereto
affixed at N. Columbia
this 14th October A.D. 1858.

James M. Davidge, Clk
By C. P. McMann D.C.

Know all men that we Alexander Frazier George Mertz, R. Vivian Goodloe William Hunter James A Brown Charles McFerell & James Goodloe of the County of Pulaski and State of Illinois are held and firmly bound unto William Resor and Company of the City of Cincinnati and State of Ohio in the penal sum of One thousand dollars, well and truly to be paid to the said William Resor and Company their heirs executors and assigns hereby binding ourselves our heirs executors and Administrators jointly Severally and firmly by these presents Sealed with Seals and dated this 24th day of January A.D. 1859 one thousand eight hundred and fifty nine. The Condition of the above obligation is such that whereas, the said William Resor and Company did at the April Term of the Circuit Court within and for the said County of Pulaski, and State of Illinois, Recover a Judgment against the above named Alexander Frazier and Ezra Dreher, Partners, under the name and Style of Dreher and Frazier for the Sum of Four Hundred and twenty three, and 60/100 dollars. And the said Alexander Frazier having applied to the ~~said~~ Supreme Court of the said State of Illinois for a Writ of Error to reverse the said Judgment and to operate as a Supersedas in the said Cause until the same shall be finally decided by the Supreme Court aforesaid; Now if the said Alexander Frazier shall prosecute his said proceeding in Error with effect, and shall well and truly pay to the said William Resor and Company all such costs, debt, damages, and penalties as may be rendered against upon the final trial dismissal or hearing of said Cause

in Error then this obligation to be void otherwise in full force and effect

Alex. Frazer seal
George Mertz seal
J. C. Goodloe seal
Wm Hunter seal
James H. Brown seal
C. W. Ferrell seal
James Geddes seal

State of Illinois }
Pulaski County } Sct.

I R. C. Daniel, City Clerk of Mound City, State and County aforesaid do certify that the Tax Book of Mound City for the year 1858. exhibits that the above named persons are taxed with Real Estate to the amount of Thirteen Thousand six hundred & twenty dollars ($13620) and Personal Estate amounting to Six Thousand four hundred dollars, ($6400) making an aggregate of Twenty Thousand and twenty dollars ($20020)

Witness my hand and the Corporate seal of Mound City, this 28th day of January 1859

R. C. Daniel
C. C.

Wm Nelson Clerk
vs
Orlando & Frazer
Bond in Error
from Writ of Injunction

Alexander Frazier } Plaintiff in Error } From
vs } } Pulaski
William Resor & Co } Defendants in Error } Circuit

To the Honorable judges of the Supreme Court of the State of Illinois

Alexander Frazier of Pulaski County Illinois Complains that at the April Term of the Circuit Court within and for the County of Pulaski aforesaid William Resor & Co Company recovered a Judgment against Ezra Dreher and this appellant, under the name and Style of Dreher and Frazier for the Sum of Four Hundred and twenty three & 60/100 dollars.
That said Judgment is unjust and erroneous as will appear by the transcript of the Record of said Cause herewith filed and attached
The said Alexander Frazier therefore prays that a Writ of Error may issue in the said Cause to operate as a Supersedas.
And assigns the following Causes of Error

1st That no service was had upon Dreher nor did he appear in the cause at all either in person or by attorney. 11 Ills 118.
3 Scam 501, 540
1 " 331.

2d That there is no return of process whatever as to Dreher, yet judgment against both Defendants. 3 Scam 501 Ibid
2 Truman 12 1312 Sec 22 Breeze 3.

3d That Judgment was rendered on the Same Declaration to which Demurrer was sustained.

4th That it does not appear when the "amended declaration" was filed, nor what that amendment was

5th Judgment was rendered by Default, on the day and at the same time that demurrer was overruled without rule to plead.
Scates Statute 261
Breese R 206.

6th That amount of judgment is in figures only $423 40/100

7th Plaintiffs declare against both Dicher and Frazier as in Custody without stating in the Custody of what officer (The writ showing no return as to Dicher)
1st Chitty Pleading 281-2-3 (note)

8th That the declaration does not state which of the Defendants were brought into Court
Hildreth vs Becker & Harvey
2d Johnson Cases 339
1st Chitty Plead 283 (note)

9th That the service of Capias on Frazier "by reading" is void. Breese R 3.
XI Ills 215 11 (2d) Scam. 376

10th That the said judgment was given in favor the said William Resor & Company when by the law of the land it should have been rendered in favor of the said Alexander Frazier, who therefore prays said judgment may be reversed
Wm Hunter atty for
Alexander Frazier
Sandor in Error
Nelson for defts

48719-10

On inspecting the foregoing record and the errors assigned thereon, I do allow the same — The Clk. will make the writ of error a supersedeas on the plff. in error executing a bond in the penalty of one thousand Dollars with Geo. Metz, R. V. Goodloe William Hunter, James A. Brown, C. M. Ferrel his sureties conditioned according to law. Jan. 31. 1859

Sidney Breese Judge
of Sup. Court

Jno H. McClure

Filed Feby 10. 1859
T. Schuyler Clk
Refund $5.00

Alexander Trogen
Plaintiff in Error
vs
William Pleasants
Jacob Pleasants
Edwin M Wallace
Supreme Court

No 20

Frazier
vs
Rice & Co } error to Pulaski

November term Supreme
Court State of Illinois 1st Grand Division
1859

This affiant R. S. Nelson being
first duly sworn according to law upon
oath says that he cannot join in error
in the above cause because he
does not think that the record
appears the same in every particular
as it was when filed in this Court.

That the only point in the
case is as whether the defendants entered
their appearance or not and this
affiant was instructed by his client
that they did file a demurrer to
an amended declaration but since
the last term of Court a demurrer appears
to be filed on behalf of the defendant
& not defendants the important letter
S being apparently scratched
out & affiant after he did not see
it done nor know who attended it
yet he does believe from what
he recollects about the case that
the letter was attached to the

Wood dept at the last term of this Court this affiant therefore prays a writ of Certiorari to the Clerk of Pulaski Circuit Court to send up a true Copy of the record and by this Honorable Court on inspection does not think there is an apparent allegation he is willing to join in error.

He makes this affidavit because he believes the Clerk Copy dofs in every tenor the question of appearance of plff is in error in the Court below

Sworn to and Subscribed before me 17th Nov 1859.
Ar Johnston CK

Thos A J Walker

Filed Nov 20 1859

Alexander Frazier } Supreme Court
vs } State of Illinois
William Resor et al } March Term

Appeal From Pulaski County

William Hunter attorney for appellant
moves the Court to grant an extension
of the time for filing the Record

affidavit on file

4 Scam. 581

[8719-12]

Alexander Frazier
v
Wm Rosar Exr

Motion for further time to file Record

Filed Nov. 11. 1858.
N. Johnston Clk

Mound City Ills
January 25th 1859

Hon Sidney Breese

Dear Sir, Enclosed I send transcript for Error, If you allow the writ and will notify me I will at once mail the Clerks fee to him.

Very Respectfully
Yours
Wm H Hunter

[8719-13]

Mound City Feb 8th 1859

Noah Johnson Esq
Clerk Supreme Court
Mount Vernon

Dear Sir Please find Enclosed Precipi & affidavit for notice by Publication, also $5.00 dollars for your docket fee

Respectfully Yours
Wm H Hunter

[8719-14]

The State of Illinois Supreme Court
First Grand Division November Term
1859

William
Alexander Frazer
Plaintiff in Error
vs
William Rizor et al
Defendants in Error

Error to
Pulaski
Affidavit

William Hunter being first duly sworn declares on oath that he was the attorney for Alexander Frazer, the Plaintiff in this Suit in the Circuit Court of Pulaski County where this Cause was orginally determined that he was not employed by Eyra Decker the other defendant in the said Court below in the said Cause that this affiant never had any authority to appear for the said Decker or enter his appearance for him, that he had never seen the said Decker to his Knowledge and never had any Communication with him whatever either directly or indirectly, that he never assumed any authority so to appear for the

[8719-15]

for the Said Dreher in the Said Cause that he was employed by and appeared upon behalf of Frazier alone.

That as to the alledged erasure of the letter S. in the Record on file, the best remembrance of this affiant is that Shortly after the transcript was obtained from the Clerk of Pulaski Circuit Court affiant discovered that the word defendants was used in the Record in more than one instance and that he called the attention of the Said Clerk to it, that upon examination made by the Clerk and a comparison with the original papers and the Said Demurrer the Said erasure was either made by the Clerk or by his authority and in his presence that the Record on file has not been altered since it was filed in this Court

Wm Hunter

Sworn to and Subscribed before me this 18th day of November 1859

N. Johnston Clk

20

Alexander Frazier
vs
Wm Rieser Exr

Affidavit of
Wm Hunter

Filed Nov. 18. 1859 –
A. Johnston Clk

Alexander Frazier } Supreme Court of
vs } the State of Illinois
William Resor & co } Mount Vernon.

Appeal from Pulaski County.

William Hunter attorney for the said Alexander Frazier being duly sworn declares on oath that at the September Term A.D 1858 of the Circuit Court of the said County of Pulaski a Judgment was rendered against the said Frazier in favor of the said William Resor & co for the sum of $400 dollars or thereabouts. that said Frazier as defendant therein, had, filed a demurrer to the declaration of the said Plaintiff which demurrer was overruled by the Court, that said Defendant filed during the said Term a bill of exceptions to the ruling aforesaid which was signed by the Judge thereof and appeal prayed, that an appeal Bond was filed by the said Frazier within thirty days from the said Term of Court which Bond was approved by the Clerk of the Court aforesaid, that a transcript of the Record in said Cause was ordered and affiant received written notice from the said Clerk that the same, completed, that the said Clerk promised this affiant

[8719-18]

that he would forward the said transcript and papers to this Court sufficiently early for hearing of the Cause at this Term of Court and that the fees of the said Clerk were paid for the same some twenty days since, that to the surprise of this affiant he learned for the first time on the first day of this Term, that the said Transcript had not been received, Wm Hunter

affiant prays the time for filing the said transcript may be extended to a future day

Sworn to and subscribed before me this 11 day of November A.D., 1858

Noah Johnston Clk

Alexander Frazer
vs
William Rezor et al

Affidavit

Filed Nov. 11. 1854.
A. Johnston Clk

Wm Hunter
Atty

IN THE SUPREME COURT OF ILLINOIS.

First Grand Division.

Alexander Frazier, plaintiff in error.

vs.

William Resor, Jocob Resor, and Charles M. Vallam, partners in trade, under the name and style of "William Resor & Company," defendats in error.

ERROR TO PULASKI.

Notice is hereby given to the said defendants in error, that the record in the above entitled cause, with an affidavit, showing that they are not residents of this State, but of the City of Cincinnati, in county of Hamilton and State of Ohio, has been filed in the office of the clerk of said Supreme Court, upon which a writ of error and of Scirefacias have issued, and made returnable to the next term of said court, to be commenced and holden at Mount Vernon, on Tuesday the 15th day of November next, at which time and place they, the said defendants in error, are required to appear and join in the errors assigned; and on failure to do so, their default will be entered.

Witness, Noah Johnston, clerk of the said Supreme Court, at Mount Vernon, this 23d day of May, A. D, 1859.

NOAH JOHNSTON, Cl'k.

We the undersigned publishers of the Mt. Vernon Star, do hereby certify that the attached notice has been published in the above named paper for five consecutive weeks, commencing on the 27th day of May and ending the 24th day of June 1859.

Lewis & Sam Jones

Mt Vernon July 27 - 1859

Printers fee $3.00

[8719-12]

No 20

Inquire
of
Reese & Co

Notice and
Certificate

Filed July 28. 1859.
A Johnston Clk

Printer fee $3.00
Paid by Clk

Mound City Ills Feb 12th 1859

Noah Johnson Esq
Clerk Supreme Court
Mount Vernon Ills

Dear Sir Your favor of the 10th containing papers in case of Frazer vs Resor Ills is received by this morning's mail, I shall be pleased to carry out your instructions which for your kindness in furnishing please accept my thanks,
This is my first case in the Supreme Court of this State, and for any hints in practice, which you may be good enough to give me at any time, I shall always be grateful.

Very Truly Yours
Wm Hunter

Would it be too much to ask you to send me a copy of the Errors I had assigned in the Petition. If I took a copy I have mislaid it, I was perplexed with business and a sick family when I prepared the case and cannot now lay my hand on it or remember the points. I wish to make abstract W.H.

I am at a loss to know whether the Record will be held to be a complete Record or whether another must be sent up

L8719-28

No 20

Forward
by
Rheinstein

Alexander Frazier
Plaintiff in Error
vs
William Resor
Jacob Resor &
Charles M Vallan
Partners in trade under
the name and Style of
William Resor and Company
Defendants in Error

Supreme Court of
the State of Illinois
First Grand Division
at Mount Vernon
November Term A.D. 1859

In Error to Pulaski County
Circuit Court to reverse
Judgment in Assumpsit rendered at the September
Term A.D. 1858 of the Circuit Court of Pulaski
County, for Damages $423 60/100 dollars and costs
dollars in favor of William Resor, Jacob
Resor and Charles M Vallan, Partners in trade
under the name and Style of William Resor and
Company against Ezra Decker and Alexander
Frazier

Issue a Writ of Error and Supersedas in the
above case to the Circuit Court of Pulaski
County against William Resor Jacob Resor &
Charles M Vallan Partners in trade under the
name and Style of William Resor and company
at the suit of Alexander Frazier returnable next
Term

[8719-21]

Wm Hunter attorney for
Alexander Frazier
Plaintiff in Error.

To the Clerk of the
Supreme Court of
the State of Illinois
First Grand Division
at Mount Vernon
February 3d 1859.
Mound City Illinois

[87-19-21]

The State of Illinois
Pulaski County } ss

Before the undersigned, Mayor of Mound City in said County and State, personally came Alexander Fraser, plantiff in the above entitled cause, who being duly sworn according to law declares on oath that William Resor Jacob Resor and Charles M Vallan, defendants in the above cause in error, resides out of the said State of Illinois, so that process cannot be served upon them or either of them; that the said defendants as this affiant is informed and believes are residents of the City of Cincinnati, in the County of Hamilton, and State of Ohio

A. Fraser

Sworn to and subscribed before me this 7th day of February A.D. 1859.

M. D. Harrell
Mayor

[8719-23]

No 31 30

Supreme Court
State of Illinois

3d Grand Division

Alexander Fraser
Plaintiff in Error
vs.
William Riser
Jacob Riser &
Charles Ballum
Partners under style of
Wm Riser & Co.
Defendants in Error

Praecipe in Error, and
Affidavit for notice by
Publication

Filed July 10. 1859.
N. Johnston Clk

STATE OF ILLINOIS — IN THE SUPREME COURT — FIRST GRAND DIVISION — NOVEMBER TERM, 1859.

ALEXANDER FRAZIER, Plaintiff in Error.

vs.

Page of Record.

WM. RESOR, JACOB RESOR & CHARLES M. VALLAU, Partners under the name and style of William Resor & Company, Defendants in Error.

1. This was an action of assumpsit, brought in the Circuit Court of Pulaski county, by Wm. Resor & Co., against Ezra Dreher and Alexander Frazier. Affidavit for Capeas ad Respondendum filed 11th of December, 1858.

1.—2. December 15th. Capias issued for Dreher & Frazier, returnable at the April term, 1858 Capias returned endorsed, "Served by reading to one of the within named, to-wit: Alexander Frazier, December the 31st, 1857. THOMAS SMITH, Sheriff."

Sheriff's Fees for Serving and taking Bond, - - - -	$1 00
Mileage and Writ, - - - - - - - - - -	60
	—— $1 60

January 2d, 1858. Declaration filed, and which complains of Dreher & Frazier as in custody, &c., of a plea of trespass on the case on promises.

3.—4. First Count—States that by their firm of Dreher & Frazier (deft's) on the 6th day of September, 1856, at Cincinnati, to-wit: At Pulaski county, and made their promissory note of that date, and then and there delivered it to Wm. Resor & Co., by which they promise to pay six months after date $560 16-100 dollars, value received; by means whereof, &c., they became liable to pay, and in consideration promised to pay,—the period of six months had elapsed, and that though requested, refuse to pay.

4. Second Count states that on the 6th September, 1856, at Cincinnati, &c., at venue, &c., by their certain other promissory note of that date, Dreher & Frazier promised to pay to the order of Wm. Resor & Co., $568 16-100 dollars, value received, six months after date, which period has elapsed, that Defendants have not paid, though often requested, and still refuse to damage of Resor & Co. $600, therefore, they sue by

HENRY M. SMITH.

5. Copy of note for $568 16-100 dollars made by Dreher & Frazier, dated September 6, 1856, due in six months, with a credit of $177 35. Tuesday, 2d day of April term, 1858, Frazier by att'y moved to discharge bail, which motion was sustained.

6. Wednesday, 3d day of term, demurrer to declaration sustained—leave to amend declaration.

7. Friday, 5th day of the term, demurrer to amended declaration overruled, and afterwards on the same day judgment against both defendants rendered by default for $423 50-100 dollars damages and cost.

Saturday, the 6th day of the term, motion to set aside default overruled. Frazier prayed an appeal, which was allowed on giving bond in one thousand dollars in thirty days.

WM. HUNTER, Attorney for plaintiff in error.

20 - 14

Alex. Frazier
vs
Wm Ross & Company

Abstract

Filed Nov. 11 — 1859 —
N. Johnston Clk

Miami City Oct 19th 1859

Noah Johnson Esq

Dear Sir Enclosed I send One Dollar for printing abstract in Case of Alex Frazier vs Wm Rezor Hev I have not been able to get all my cases ready in consequence of sickness in my family & absence, and money for your fees or my own is almost out of the question in this Community Your Docket fee of $5 00 in this Case of my memory serves me is paid

Respectfully Yours

Yours Wm Hunter

The brief I will have printed here unless I can get money to send you

STATE OF ILLINOIS — IN THE SUPREME COURT — FIRST GRAND DIVISION — NOVEMBER TERM, 1859.

ALEXANDER FRAZIER, Plaintiff in Error.

vs.

Page of Record.

WM. RESOR, JACOB RESOR & CHARLES M. VALLAU, Partners under the name and style of William Resor & Company, Defendants in Error.

1. This was an action of assumpsit, brought in the Circuit Court of Pulaski county, by Wm. Resor & Co., against Ezra Dreher and Alexander Frazier. Affidavit for Capeas ad Respondendum filed 11th of December, 1858.

1.—2. December 15th. Capias issued for Dreher & Frazier, returnable at the April term, 1858 Capias returned endorsed, "Served by reading to one of the within named, to-wit: Alexander Frazier, December the 31st, 1857. THOMAS SMITH, Sheriff."

Sheriff's Fees for Serving and taking Bond, - - - -	$1 00
Mileage and Writ, - - - - - - - - - -	60
	—— $1 60

January 2d, 1858. Declaration filed, and which complains of Dreher & Frazier as in custody, &c., of a plea of trespass on the case on promises.

3.—4. First Count—States that by their firm of Dreher & Frazier (deft's) on the 6th day of September, 1856, at Cincinnati, to-wit: At Pulaski county, and made their promissory note of that date, and then and there delivered it to Wm. Resor & Co., by which they promise to pay six months after date $560 16-100 dollars, value received; by means whereof, &c., they became liable to pay, and in consideration promised to pay,—the period of six months had elapsed, and that though requested, refuse to pay.

4. Second Count states that on the 6th September, 1856, at Cincinnati, &c., at venue, &c., by their certain other promissory note of that date, Dreher & Frazier promised to pay to the order of Wm. Resor & Co., $568 16-100 dollars, value received, six months after date, which period has elapsed, that Defendants have not paid, though often requested, and still refuse to damage of Resor & Co. $600, therefore, they sue by

HENRY M. SMITH.

5. Copy of note for $568 16-100 dollars made by Dreher & Frazier, dated September 6, 1856, due in six months, with a credit of $177 35. Tuesday, 2d day of April term, 1858, Frazier by att'y moved to discharge bail, which motion was sustained.

6. Wednesday, 3d day of term, demurrer to declaration sustained—leave to amend declaration.

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Saturday, the 6th day of the term, motion to set aside default overruled. Frazier prayed an appeal, which was allowed on giving bond in one thousand dollars in thirty days.

WM. HUNTER, Attorney for plaintiff in error.

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Alexander Forgier

vs

Wm Reson & Company

Abstract

Filed Nov 11-1859-

A. Johnston Clk

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Sheriff of Pulaski 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 Pulaski county, before the Judge thereof between William Rison, Jacob Rison & Charles M. Dallon Partners in trade under the name and style of William Rison & Company plaintiffs and Ezra Decker and Alexander Frazier

defendants it is said that manifest error hath intervened to the injury of said Alexander Frazier 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 Mount 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 William Rison, Jacob Rison and Charles M. Dallon

that they be and appear before the justices of our said Supreme Court: at the next term of said Court, to be holden at **Mount Vernon,** in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they 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 Defendants in error notice together with this writ.

WITNESS, the Hon. John D. Caton Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twelfth day of February in the year of our Lord one thousand eight hundred and fifty-seven

Noah Davis

Clerk of the Supreme Court.

(8719-26)

SUPREME COURT.

First Grand Division.

Alexander Forquier

Plaintiff in Error,

VS.

William Rosenthal

Defendant in Error.

SCIRE FACIAS.

FILED.

The plaintiff in error has leave to file a supplemental bill of exceptions in this cause, as requested in the motion for a supersedeas herein, and is to be charged for all costs in the cause.

Chas. P. Kellogg
Clerk

The defendant in error has leave to file a supplemental bill of exceptions in this cause, as requested in the motion for a supersedeas herein.

Oct 14 1859

A C Bradley
Clerk

PLAINTIFF'S BRIEF OF POINTS AND AUTHORITIES.

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—OF NOVEMBER TERM, 1859.

ALEXANDER FRAZIER, Plaintiff in Error, vs. WILLIAM RESOR, JACOB RESOR & CHARLES M. VALLE Defendants in Error.	Error to Pulaski.

Plaintiff assigns for error.

1st. That there was no service upon, nor appearance by Dreher in the Court below.

XI Ills. 118, I Scam. 331, III Scam. 501 540.

2nd. That there is no return of process as to Dreher, yet judgment is rendered against Dreher and Frazier by default.

III Scam. 501, Breeze 3, Freeman 1312.

3rd. That judgment was rendered on the same declaration to which demurer was sustained.

4th. It does not appear when the amended declaration was filed; nor what that amendment was.

5th. That the amount of the judgment is in numerals only $423,60-100.

6th. Plaintiff declares against both Dreher and Frazier as in custody without stating in the custody of what officer, the writ showing no return as to Dreher.

I Vol. Chitty's Plead. 281-2-3.

7th. That the declaration does not state which of the defendants was brought into Court.

I Chitty Plead. 283, Hildreth vs Becher & Harvey, II Johns. Cas. 339.

8th. That the Capias and service by reading is void.

Breeze 3, XI Ills. 215, III Scam. 376.

WM. HUNTER, *Att'y for Pl't'ff in Error.*

20-14 20

State of Illinois
Supreme Court
1st Grand Division
Nov. Term 1859

Alexander Frazier
vs
Wm Risor & Co

Plaintiffs Brief

Filed Nov. 16. 1859
A. Schuster Clk

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Pulaski 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* Pulaski *county, before the Judge thereof between* William Reson, Jacob Rison and Charles M. Dillon Partners in trade under the name and style of William Rison & Company *plaintiffs and* Ezra Baker and Alexander Fougier

defendants it is said manifest error hath intervened to the injury of the aforesaid Alexander Fougier *as we are informed by* his *complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at* **Mount Vernon,** *in the County of Jefferson, on the* first Tuesday after the second 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.* John D. Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* tenth *day of* February *in the year of our Lord one thousand eight hundred and* fifty three.

Noah Swayne
Clerk of the Supreme Court.

[8719-38]

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SUPREME COURT.

First Grand Division.

Alexander Frazier

Plaintiff in Error,

VS.

William Reed & Co

Defendants in Error.

WRIT OF ERROR.

Issued & **FILED** - July 10. 1859 -
and made a Supersedeas -
N. Johnston Clk

"This Writ of Error is Superseded, but to be obeyed accordingly" N. Johnston Clk

PLAINTIFF'S BRIEF OF POINTS AND AUTHORITIES.

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—OF NOVEMBER TERM, 1859.

ALEXANDER FRAZIER, Plaintiff in Error, vs. WILLIAM RESOR, JACOB RESOR & CHARLES M. VALLE Defendants in Error.	Error to Pulaski.

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I Chitty Plead. 283, Hildreth vs Becher & Harvey, II Johns. Cas. 339.

8th. That the Capias and service by reading is void.

Breeze 3, XI Ills. 215, III Scam. 376.

WM. HUNTER, *Att'y for Pl'tiff in Error.*

[8719-29]

State of Illinois 20
Supreme Court
First Grand Division
November Term 1859

Alexander Frazer
vs
Wm Reson Heo

Plaintiffs Brief

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Filed Nov 16 1859
N. Johnston Clk

No 20 – 14 –

Nov Term 1859.

Frazier

vs

Reason & Co

Error to Pulaski

Affirmed

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