No. 8568

Supreme Court of Illinois

James P. Byrne

vs.

Charles Guard

71641 7

1 State of Illinois }
Hardin County } ss

Please before the honorable William K Parrish Judge of the 3rd Judicial circuit in the State of Illinois and presiding in the county of Hardin at the Elizabeth Town Court House on 4th day of April A D 1854 to wit

James P Byrne } In the Hardin Circuit
vs } Court August Term
Chalon Guard } In Assumpsit
Damages $4500.00

The Clerk of the Hardin circuit Court will please Issue summons in the above cause &c &c

John J Hardin
atty for plaintiffs

James P Byrne }
vs } In the Hardin Circuit
Chalen Guard } Court

I do hereby enter myself security for costs in the above cause and acknowledge myself bound to pay or cause to be paid all Costs which may accrue in this action Eether to the opposite party or to any of the officers of this Court in pursuance of the laws of this State this 25th day June 1853 John J Hardin

[8564-1]

2 State of Illinois }
Hardin County } set

The people of the State of Illinois To the sheriff of Hardin County Greeting we command you to summon Chalon Guard if to be found in your county to appear before the circuit court of said county, on the first day of the next term thereof to be holden at the court House in Elizabethtown on the second Monday in the month of August next to answer James P Byrne in a plea of assumpsit to his damage of $1500,00 dollars as is alledged and hereof make due Return to our said court as the Law directs

SS

Witness Jas M Farland clerk of our said Court and the Judicial seal thereof at Elizabethtown this 27th day of June A D 1853

Jas M Farland clerk

And afterwards to wit on the first day of July A D 1853 the following return was made to wit

Executed the within according to law by Reading the within Summons to Chalon Guard the defendant in this writ &c on the 1st day of July A D 1853 Lewis Lavender S H C Ills

State of Illinois }
Hardin County } SS In the Hardin Circuit Court August Term 1853

3 James P Byrn the plaintiff in this suit complains of Whelon Guard defendant in this suit Summons se of a plea of Trespass on the case on promises, For that whereas heretofore to wit on the 16th day September 1852 at Illinois Furnace Illinois, To wit at the county and state aforesaid The said plaintiff at the special instance and request of the said defendant largained in writing with the said defendant to buy of the said defendant and the said defendant then and there sold to the said plaintiff a Large quantity of Pig Mettal, to wit fifty Tons at the rate of Twenty one (21) dollars per ton to be delivered by the said defendant to the said to the said plaintiff on the 12th day November 1852 at Elizabethtown Illinois Towit at the County and State aforesaid and to be paid for by the said plaintiff to the said defendant on the delivery thereof aforesaid and in consideration thereof and that the said plaintiff at the Like special Instance and request to of said defendant had then and there undertaken and faithfully promised the said defendant to accept and receive the said pig Mettal and to pay him for the Same at the price aforesaid he the said defendant undertook and then and there faithfully promised the said plaintiff to deliver the said pig Mettal to the said plaintiff as aforesaid and although the said time for the delivery of the said pig Mettal as aforesaid has Long since elapsed and the said plaintiff has always been ready and willing

[8568-W]

4 To accept and receive the sd pig mettal and to pay for the same at the price aforesaid to wit at the county and state aforesaid whereof the said defendant has always had notice yet the sd defendant not regarding his said promise and undertaking but contriving and intending to deceive and defraud, the said plaintiff in this behalf, did not or would within the time aforesaid or at any time afterwards, deliver the said pig mettal or any part thereof for the for the said plaintiff at Elizabethtown to wit the County and State aforesaid or elsewhere altho often requested so to do but wholey neglected and refused so to do whereby the said plantiff has lost and been deprived of divers great gains and proffits which might and otherwise would have arisen and accrued to him from the delivering of the sd pig mettal to the sd plantiff as aforesaid, To wit at the County and state aforesaid To the damage of the sd plantiff of fifteen hundred dollars

2 Count For that whereas heretofore to wit on the 16th day September 1852 at Illinois Furnace Illinois to wit at the County and State aforesaid the said plaintiff at the special Interest and Request of the said defendant bargained with the said defendant to buy of the said defendant and the sd defendant then and there sold to the said plaintiff a Large quantity of pig Iron to wit Fifty tons at the rate of Twenty one dollars per ton to be

delivered by the said defendant to the plaintiff on the 14th day of November 1852 ~~and~~ Elizabethtown Illinois, to wit, at the County of and State aforesaid and to be paid for by the said plaintiff to the said defendant on the delivery thereof aforesaid, and in and in consideration thereof and that the said plaintiff at the like special instance and request of said defendant had then and there undertaken and faithfully promised the said defendant to accept and receive the said pig iron, and to pay him for the same at the price aforesaid, he the said defendant undertook and then and there faithfully promised the said plaintiff to deliver the said pig iron to the plaintiff as aforesaid, and although the said time for the delivery of the said pig iron as aforesaid hath long since elapsed and the said plaintiff hath always been ready and willing to accept and receive the said pig iron and to pay for the same at the price aforesaid whereof the defendant has always had notice — yet the said defendant not regarding ~~the~~ his said promise and undertaking but contriving and intending to deceive and defraud the said plaintiff in this behalf did not ~~or~~ or would within the

[8568-3]

time aforesaid or at any time afterwards deliver the said pig iron or any part thereof to the pltff. at Elizabethtown, to wit. the County and State aforesaid or elsewhere, altho often requested so to do but wholly neglected and refused so to do, whereby the said plaintiff has lost and been deprived of divers great gains and profits, which might and otherwise would have arisen and accrued to him from the delivery of the said pig iron to the said plaintiff as aforesaid, to wit: at the County and State aforesaid. To the damage of the plaintiff of Fifteen hundred dollars.

3d Count. For that whereas heretofore to wit on the 16th day September 1852 at Illinois Furnace, Illinois to wit at the County and State aforesaid. the said plaintiff at the special instance and request of the said defendant bargained in writing with the said defendant to buy of the said defendant and the defendant then and there sold to the plaintiff a large quantity of pig iron to wit fifty tons at the rate of twenty one dollars per ton, to be delivered by the defendant to the plaintiff on the 14th day of November 1852 at Elizabethtown Illinois, to wit at the County and State aforesaid, and to be paid for by the plaintiff to the defendant on the delivery thereof as aforesaid by the plaintiff placing to the

credit of the defendant the value of the said pig iron aforesaid at the price aforesaid on two promissory notes held by the plaintiff on said defendant executed by the defendant payable to the said plaintiff at the Bank of Evansville, to wit at the County and State aforesaid for $450 each one at 4 months and the other at 6 months and dated 5th May 1852, and in consideration thereof, and that the said plaintiff at the like special instance and request of said defendant, had then and there undertaken & faithfully promised the said defendant to accept and receive the said pig iron and to credit the same on his said notes, at the price aforesaid he the said defendant undertook and then and there faithfully promised the said plaintiff to deliver the said pig iron to the said plaintiff as aforesaid, and although the said time for the delivery of the said pig iron as aforesaid has long since elapsed and the said plaintiff has always been ready and willing to accept and receive the said pig iron, and to credit the same at the price aforesaid upon said notes whereof the said defendant hath always had notice. Yet the defendant

[8SCB-4]

not regarding his said promise and undertaking but contriving and intending to deceive and defraud the said plaintiff in this behalf did not, or would within the time aforesaid or at any other time afterwards deliver the said pig iron or any part thereof to the said plaintiff at Elizabethtown, to wit: at the County and State aforesaid or elsewhere, altho often requested so to do, but wholly neglected and refused so to do Whereby the plaintiff has lost and been deprived of divers great gains and profits which might and otherwise would have arisen and accrued to him from the delivery of the said pig iron to the plaintiff as aforesaid, to wit at the County and State aforesaid. To the damage of the plaintiff of ~~$~~ fifteen hundred dollars

John J. Hardin
Atty for Plff.

Copy of account

Chalon Guard

To James P. Byrne Dr.

To damages for failing to deliver on the 14th day of Nov 1852 - 50 tons of Pig iron at Elizabethtown Illinois $4500.00

And afterwards to wit the following endorsement was made to wit: "Filed July 5th 1853
Jas McFarlan clk.

(Copy of Contract Sued on)

"Illinois Furnace Sept. 16th 1852

J. P. Byrne of Evansville bot of Mr. C. Guard, Fifty tons of pig mettal to be delivered in Elizabethtown at the landing at the rate of twenty one dollars per ton, weighed when delivered on or before the 14th day of November 1852 the above mettal to be applied on notes and accounts against C. Guard

Chalon Guard"

James P. Byrne
vs
Chalon Guard } Assumpsit.

And the said defendant by his attorneys comes and defends the wrong & injury when &c and says the declaration in the above cause is not sufficient in law Wherefore &c.

Casey, Montgomery & ~~White~~ Parrish.
Logan & White

And afterwards to wit at a circuit Court held at the Court House in Elizabethtown on the 9th day of

August A.D. 1853 in and for the County of Hardin and State of Illinois the following order was made, to wit.

James P. Byrne } Plaintiff
vs. } Trespass
Chalon Guard } Defendant.

Now on this day came the said plaintiff by Hardin his attorney and upon his motion it is ordered that he has leave to amend his declaration filed in this cause, and this cause is continued &c.

And afterwards to wit;- at a Circuit Court held in and for the County of Hardin and State of Illinois at the Court House in Elizabethtown on the 10th day of August A.D. 1854 the following order was made to wit:-

James P. Byrne } Plaintiff.
vs. } Trespass
Chalon Guard } Defendant.

Now on this day came again the plaintiff by Hardin his attorney, and upon motion it is ordered that the defendant be ~~made~~ ruled to plead to the said plaintiffs bill by 2 o'clock this day &c.

And afterwards, to wit;- on the 11th day of August

AD 1854 at a Circuit Court held in and for the County of Hardin and State of Illinois at the Court House in Elizabethtown - the following order was made, to wit;

James P. Byrne
vs. } Trespass.
Chalon Guard

Now on this day came again the said plaintiff by Hardin his attorney as well also the defendant by Casey, Montgomery, Parrish, Logan & White his attorneys, and the said defendant by his attorneys files his demurrer to said plaintiffs declaration, Issue being joined thereon and the Court being sufficiently advised in the premises. It is therefore ordered that the said demurrer be overruled and this cause is continued at the plaintiffs costs &c.

And afterwards, to wit; on the 4th day of April 1855 the following order was made at a Circuit Court held in and for the County of Hardin and State of Illinois at the Court House in Elizabethtown to wit.

James P. Byrne
vs. } Trespass &c.
Chalon Guard

11

12

Now on this day came the plaintiff by Hardin & Freeman his attorneys as well also the defendant by Casey & Montgomery, Parrish, Logan & White his attorneys and the Judge having been of Counsel in this Cause the venue is ~~changed~~ therefore changed to the County of Gallatin &c.

State of Illinois }
Hardin County } ss.

I, Jas. McFarlan, clerk of the Circuit Court in and for the County & State aforesaid do hereby certify that the foregoing record of 9 pages contains a full and complete transcript of the case therein specified as full and complete as the same remains of record in my office

In testimony whereof I have hereunto set my hand and the judicial seal of said Court at Elizabethtown this the 23d day of ~~August~~ June 1854.

L.S.

Jas McFarlan, clk
By Jas B. Turner, D. C.

State of Illinois Gallatin County ss.
At a circuit court commenced and holden in the Court House at Shawneetown, ~~o~~in the County of Gallatin and State of Illinois on Monday the 23d Day of October A. D. 1854. The Honorable Downing Baugh presiding, John E. Hall clerk and Thomas Wilson Sheriff. Court was opened by Sheriff Wilson.

On Friday the fifth day of said term it being the 27th day of October 1854 the following order was made and entered of record.

James P. Byrne vs. Chalon Geard } Change of Venue from Hardin County. Trespass upon the case on promises.

On this day came the defendant by White his attorney, and on his motion the plaintiff is ruled to file a cost bond herein, which bond is filed.

And afterwards to wit at ~~a circuit court held in and for said County of Gallatin at the Court House in Shawneetown~~ on the ninth day of said term of said Court 1860 the following order was made and entered, to wit

13

[8568-6]

James P. Byrne
vs. } Trespass on the case on promises.
Chalon Guard

Ordered that this cause be continued by consent of parties.

And afterwards, to wit; at a Circuit Court commenced and holden at the Court House in Shawnetown on Monday the 11th day of December 1854. The Honorable Downing Baugh presiding.

On Tuesday the sixteenth day of December 1854. being the eighth day of said term the following order was made and entered

James P. Byrne
vs } Trespass upon the case on promises.
Chalon Guard

On this day came the defendant and excepted to the Depositions taken by the plaintiff in this cause, which exceptions are by the Court sustained, And it is further ordered that this cause be continued at the cost of the said plaintiff.

And ~~afterwards~~ the said defendant Chalon Guard on the 28th day of October 1854 filed in the said Circuit Court of Gallatin

County his pleas in said cause, in words and figures as follows to wit:—

" Chalon Guard }
vs. }
James P. Byrne } And the said defendant by White his attorney comes and defends the wrong and injury when &c. where &c and for plea says that he did not promise & undertake as he is charged in the said plaintiffs declaration & of this he puts himself on the Country

Montgomery & White, for defts.

And the pltff. doth the like

Olney & McAtee.

2nd. plea. And the said defendant by White his attorney comes and defends the wrong & injury when &c. where &c. and for plea says that since the commencement of this suit, he has fully paid and discharged the said demand mentioned in the said plaintiffs declaration. And this he is ready to verify. Wherefore he prays judgment &c.

Montgomery & White for defts.

traverse & issue

Olney & McAtee.

3d plea And the said defendant by Montgom-

15

[8569-2]

ery & White his attorneys, comes & defends the wrong & injury, when &c. where &c, and for plea says that in a certain action pending in the Circuit Court of Hardin County State of Illinois wherein the said plaintiff in this action, James P. Byrne was plaintiff and the said Shalon Guard was defendant, to wit on the 11th day of August 1853 judgment was obtained against the said defendant & in favor of the said plaintiff for the sum of two hundred & fifteen dollars upon certain notes declared on in that action by the said plaintiff, and which said notes are the identical notes referred to in the instrument sued on in this action - And which said judgment has been fully paid and satisfied & this he is ready to verify. Wherefore he prays judgment &c.

Montgomery & White for defts.

And afterwards to wit at a Circuit Court commenced and holden at the Court house in Shawneetown on ~~Monday~~ Tuesday the the fifth day of June 1855. On Wednesday the sixth day of June 1855 it being the ~~third~~ second day of said term the following order was made and entered.

James P. Byrne
vs. } Trespass on the Case on promises.
Chalon Guard

On this day came the plaintiff by Olney his attorney and demurs to defendants third plea herein. Which demurrer is by the Court overruled

And afterwards to wit on Thursday the seventh day of June 1855 being the third day of said term the following order was made and entered

James P Byrne
vs. } Trespass on the Case on promises.
Chalon Guard

Ordered that this cause be continued at the cost of plaintiff

And afterwards at the October Term 1855 of said Gallatin Circuit Court on Friday the 26th day of October 1855 being the fifth day of said term the following order was made and entered, to wit:-

James P. Byrne
vs. } Trespass upon the case on promises.
Chalon Guard

17

Ordered that this cause be continued at the costs of the plaintiff. It is therefore ordered that the defendant recover of the plaintiff his costs in this continuance, and that he have execution &c.

And afterwards at the June Term 1856 of the said Circuit Court of Gallatin County on Wednesday the 11th day of June 1856 being the third day of said term the following order was made and entered

James P. Byrne
vs. } Trespass on the case on promises.
Chalon Guard

On this day came the plaintiff by Olney & McCaleb his attorneys, and the ~~defendant by~~ plaintiff electing to stand by the demurrer to the defendants ~~name~~ third plea filed herein, and cause being submitted upon the issues presented the Court finds for the defendant. It is therefore ordered and adjudged that the defendant recover of the plaintiff his costs ~~and charges~~ in this behalf - and that he have execution therefor &c.

and afterwards to wit on the seventh day of June 1859 the said plaintiff filed in the office of the Clerk of ~~said~~ this Court the following notice, to wit,

State of Illinois Gallatin County, ss

To Chalon Guard

Sir:- You are hereby notified that on Tuesday the second day of the next term of the Circuit Court of Gallatin County Illinois, to be commenced and holden at the Court House in Shawneetown on Monday the sixth day of June next I shall by my attorneys make application to said Court to correct the judgment or final order entered by said Court on the 11th day of June 1856 in the case then pending in said Court wherein I was the plaintiff and you was the defendant in an action of assumpsit.

The said order or judgment is incorrect in this, That the words "and cause being submitted upon the issues presented the Court finds for the defendant." are improper and should be stricken out. The following entry was made on the judges docket by the then Judge of said Court at the time, to wit, on the 11th June 1856 in said Cause and is correct, to wit, "Plff. electing to stand by the dem^r to defts. 3^d Plea judg^t. is entered thereon for def^t. for costs. W." The said entry is a true statement of what was done in said Cause and the order of said Court should be amended so as to be in accordance

with said minutes. And application will be made as before stated to have said order amended conformable to said the said minutes and to the facts April 30th 1859

Yours &c,
James P. Byrne
by Olney & Bowman
his attorneys"

On the back of said notice were the following endorsements, to wit, I served this notice on Chalon Guard by delivering to him a true copy of the same this the 14th day of May ~~1859~~, 1859
John T. Walters, Shff
by J. S. Robenson Deputy

And on the said seventh day of June 1859 at the term of the said Circuit Court then being holden at the Court House in Shawneetown the said James P. Byrne upon the filing of said notice entered his motion in said Court according to the said notice, as follows to wit:

"James P. Byrne
vs.
Chalon Guard } motion

On this day comes the said James P. Byrne by Olney & Bowman his attorneys and enters his motion to correct the record in the case of said Byrne against said Guard disposed of at the June Term 1856 of this Court in accordance with the notice therein

Said cause having been continued at the October Term 1859

Afterwards, to wit at the June Term 1860 of said Circuit Court on Saturday the 23rd day of June 1860 ~~being the day of said Term~~ the following proceedings were had and entered in said Cause.

"James P. Byrne
vs.
Chalon Guard } Motion to correct judgment.

On this day came the parties by their attorneys and this cause being submitted to the Court and proofs heard It is ordered that the Clerk of this Court correct the judgment and final order mentioned in the notice in this cause in accordance with the facts as set forth in said notice, so that it shall sufficiently appear by said judgment or final order that the plaintiff electing to stand by his demurrer to defendants third plea judgment was entered thereon for defendants for costs And that the words in said judgment or final order as entered "and cause being ~~submitted~~ upon the issues ~~joined~~ presented the Court finds for the defendant" be stricken out ~~of said~~.

Whereupon the defendant excepts to the opinion of the Court in ordering said amendment to be made and by consent of parties leave is given to the defendant until the next term of the Court to file his bill of exceptions

[8568-10]

State of Illinois }
Gallatin County } ss.

I James Davenport clerk of the Circuit Court in and for said County do hereby certify that the foregoing ~~eighteen~~ (21) twenty-one pages are truly copied from the records and files of my said office and that the same is a true full and perfect copy of all the records, ~~filed~~ and proceedings.

In testimony whereof I have hereunto set my hand and afixed the seal of said Court at office in Shawneetown This 24th day ~~October 1857~~ June 1861

James Davenport clk

And the said James P. Byrne upon the foregoing record assigns the following errors, to wit;-

1st

The Court erred in overruling the plaintiffs demurrer to defendants third plea

2nd The Court erred in giving judgment in said Cause in favor of the defendant.

3d In not sustaining the plaintiffs demurrer to defendants third plea

~~25~~ ~~246~~ 19

James P. Byrne

vs.

Chalon Guard.

Error to Gallatin.

Filed 17. October 1857

N. Johnston Clk

October 26. 1857 – Recd of Plff in error $5 – as advance fees in this case –

Dis'd April Term 1860

Filed Sept. 4. 1861. Amt paid $5.00

by McStacy & Obley – Noah Johnston Clk

Plff in error has not given security for costs, overruled. Plaintiffs demurrer to defendants third plea, that the plaintiff in error ought to have recovered over.

McStacy & Obley for Plff.

This cause is withdrawn from the files of the Court by Order of the Court. Apr. 13, 1858

Noah Johnston Clk

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

The People of the State of Illinois,

To the Sheriff of Gallatin 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

James P. Byrne plaintiff and

Chalon Guard defendant it is said that manifest error hath intervened to the injury of said James P. Byrne 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 Chalon Guard

that he 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 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 Chalon Guard 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 Seventh day of June in the year of our Lord one thousand eight hundred and Sixty-One.

Noah Johnston
Clerk of the Supreme Court.

[85-68-12]

19

SUPREME COURT.

First Grand Division.

James P. Byrne

Plaintiff in Error,

VS.

Chalon Guard

Defendant in Error.

Serving	30
Ret	10
Mileage	75
P. B. Willis Shff	1,15

SCIRE FACIAS.

FILED.

Executed the within, by leading the same to Chalon Gard the within named defendant in the presence of Jacob P. Doe & Simon Sickelpitcher two good & lawful men in said county A.D. 1861

P. B. Willis Shff
by L. N. Spivey deputy

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 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*

James P. Byrne *plaintiff and*

Chelson Greene *defendant it is said manifest error hath intervened to the injury of the aforesaid* James P. Byrne *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 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.* John D. Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* Seventh *day of* June *in the year of our Lord one thousand eight hundred and* Sixty one

Noah Johnston
Clerk of the Supreme Court.

[8548-12]

19

SUPREME COURT.

First Grand Division.

James P. Byrne

Plaintiff in Error,

vs.

Chalon Guard

Defendant in Error.

WRIT OF ERROR.

Issued & FILED June 7th 1861 — N. Johnston Clk

State of Illinois Supreme Court
First Division

James P. Byrne
vs.
Chalon Guard } Error to Gallatin

The Clerk of said Court will please issue ~~in this cause~~ writ of error and Sci. fa in above styled Cause

McReaig & Olney
for plaintiff

First Division Supreme Court
State of Illinois November
Term 1861.

James P. Byrne, plaintiff
vs. Error to Gallatin
Chalon Guard, defendant

We do hereby enter ourselves security for costs in this cause and acknowledge ourselves bound to pay or cause to be paid unto the opposite party or to any of the officers of this Court all costs that may accrue in this action in pursuance to the laws of the state of Illinois. Dated this the 5th day of June 1861.

John Olney
G W McReaig

[8548-14]

19

James P. Byrne
Pltff in error

vs

Charles Gwall
Deft in error -

Error to Gallatin -

Praecipe and
Cost bond -

Filed June 7 1861 -
N. Johnston Clk

State of Illinois Supreme Court
First Division

1

James P. Byrne
vs.
Chalon Guard.
} Error to Gallatin

Abstract of Case.

This was an action of assumpsit commenced in the Circuit Court of Hardin County on to the August Term 1853 by Byrne against Guard. The Declaration contains three Counts

3 The first Count avers that defendant contracted in writing with the plaintiff to sell and deliver to plaintiff fifty tons of pig mettal at twenty-one dollars per ton to be delivered at Elizabethtown in the County of Hardin Illinois on the 14th day of November 1852, and to be paid for by plaintiff on delivery. Avers ability and

4 readiness of plaintiff to pay for and receive said pig mettal at the time and place specified - and the failure of defendant to deliver any part of the pig mettal

The second Count is like the first except that the contract was not in writing and

5 the thing sold was pig Iron.

6 The third Count avers that defendant bargained in writing with the plaintiff for the sale and delivery to plaintiff of fifty tons of pig iron at twenty-one dollars per ton to be delivered at Elizabethtown on 14th November 1852 and to be paid for by the plaintiff to the defendant on delivery thereof by

6 the plaintiff placing to the credit of the defendant the value of the said pig iron aforesaid at the price aforesaid on two promissory notes held by the plaintiff on said defendant for $450 each

Avers the readiness of plff to receive the iron and credit same at the time and place and failure of defendant to deliver the iron or any part of it.

11 The venue was changed to Gallatin County on the ~~27th October 1854~~ 4th April 1854

15 The defendant filed three pleas to plffs declaration.

1st The General Issue, to which the plaintiff added a Similiter

2nd Payment. To which the plaintiff took issue

16 3d Plea alleges "that in a certain action pending in the Circuit Court of Hardin County Illinois wherein Byrne was plaintiff and Guard defendant judgment was rendered on the 11th of August 1853 in favor of plaintiff for $215 upon certain notes declared on in that action and which notes are the identical notes referred to in the instrument sued on in this action. And which judgment had been fully paid"

17 ~~At the~~ The plaintiff filed his demurrer to said third plea which demurrer was by the Court overruled

18 And ~~judgment to~~ the plaintiff

electing to stand by his demurrer judgment was rendered ~~on~~ thereon in favor of the defendant for costs.

The clerk having improperly entered
19 said judgment, afterwards notice
20 having been given to the plaintiff
21 the entry of said judgment was corrected so as to correspond with the facts.

McKeaig & Olney
for plff.

[BULB-16]

19

Abstract.

James D. Byrne
Pltff in error
vs
Charles Gerald
Deft in error.

Filed 7th June 1861.
N. Johnston Clk

Shawneetown Ill June 4th 1861

Noah Johnson Esq. Dear Sir: Will you please file the accompanying Record and issue thereon immediately - forthwith - without delay - in a hurry and dont procrastinate - and be sure you get it all right at first, because there is no time to correct mistakes. The five years expires on the eleventh - this day week. If precipe and bond are not right - correct them Address Geo. W. McKeaig, Shawneetown Ill.

Yours

Enclosed $5 - McKeaig & Olney

I voted for you yesterday.

Olney

[8548-17]

19

1861

Byrne
vs
Guard

Exm to Gallatin

Dismissed

8568

Cost bill on page 473.