No. 8636

Supreme Court of Illinois

Jesse Edens

---

vs.

Deborah Williams

No 1

State of Illinois } ss
Washington County }

The People of the State of Illinois: To the Sheriff of said County Greeting: We Command you to Summon Jesse Edens if to be found in your County to appear before the Circuit Court of Washington County on the first day of the next term thereof to be holden at the Court House in Nashville in said County on the second Monday in the month of April next to answer Deborah Williams in an action of trespass on the case— damages $350.00 and hereof make due return to our said Court as the law directs

Witness John N Vernor Clerk of our said Court and the Judicial seal thereof at Nashville this 23d day of March A D 1864

Jno N Vernor Clerk

50 cts in my hands to pay Stamp.

Served March 25— 1864 by reading the within to the within named Jesse Edens as I am herein commanded

James Garvin Sheriff

Summons Return April Term 1864

Service	50	110
10 miles	50	85
return	10	85
	110	280

[illegible]

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State of Illinois } Of the April Term of
Washington County } the Washington Circuit
Court A.D. 1864

Deborah Williams Plaintiff by E. McVicker
her attorney complains of Jesse Edens
Defendant being Summoned &c. of a plea
of trespass on the case. For that whereas
heretofore to wit on the 23rd day of November
A.D. 1863 at the town of Ashley to wit at
the County of Washington & State of Illinois
in consideration that the said Plaintiff
at the especial instance & request of
the said Defendant would sell & deliver
to one ~~to~~ D. H. Phelps for the use and
benefit of him the said Defendant her
interest in a certain quantity of goods
to wit a certain lot or quantity of Household
& Kitchen furniture beds & bedding, stoves Glass-
ware. guns ware. cutlery, provisions,
liquors &c. then & there being in a certain
house or building in the town of Ashley
in said County of Washington & State of
Illinois occupied & kept as a hotel or
tavern & known & designated as the
"Ashley Hotel" and which said goods were
then & there jointly owned by the said
Plaintiff & the said Defendant

at a certain rate or price then & there agreed upon by & between the said Plaintiff & the said Defendant, to wit at the rate or price fixed upon each article of said goods upon an invoice or inventory then & there taken of said goods, amounting in the whole to a large sum of money to wit the sum of five hundred & fifty dollars lawful money of the United States he the said Defendant undertook & then & there faithfully promised the said Plaintiff to pay her for her interest in said goods whenever after such sale and delivery he the said defendant should be thereunto required. And the said Plaintiff in fact sayeth that she confiding in the said promise & undertaking of the said defendant did afterwards to wit on the day & year aforesaid at the town of Ashley to wit at the County of Washington and State of Illinois aforesaid sell & deliver her interest in the said quantity of goods to the said E H Phelps for the use & benefit of the said defendant on the terms aforesaid, whereof the said defendant then & there had notice: And although the said Plaintiff at the time of the sale & delivery of her said interest in said quantity of goods & afterwards to wit on the day & year aforesaid at the town of Ashley to wit at the County of Washington & State of Illinois aforesaid

requested the said defendant to pay to her the said plaintiff the said price of her said interest in said goods so sold & delivered to said D W Phelps at the especial request & for the use & benefit of him the said defendant as aforesaid. Yet the said defendant not regarding his said promise & undertaking; but contriving & wrongfully & unjustly intending, craftily & subtly to deceive and defraud the said Plaintiff in that behalf, did not, nor would when he was so requested as aforesaid or at any time before or afterwards pay the said Plaintiff the said price of her interest in the said goods or any part thereof but hath hitherto wholly neglected & refused & still neglects & refuses so to do & by reason whereof she the said Plaintiff hath lost & been deprived of the use & benefit of the price of her said interest in said goods, so by her sold & delivered which the said defendant ought to have paid as aforesaid to wit. at the County of Washington & State of Illinois aforesaid, And whereas also the said defendant afterwards to wit on the day & year last aforesaid at Ashley to wit at the County of Washington & State of Illinois aforesaid was indebted to the said plaintiff in the further sum of $55 00/100 like lawful money, for divers goods wares & merchandize by the said plaintiff before that time bargained & sold to the said defendant & at his like special instance

& request & being so indebted he the said defendant in consideration thereof afterwards to wit on the day & year last aforesaid at Ashley, to wit at the County of Washington & State of Illinois aforesaid undertook & then & there faithfully promised the said Plaintiff to pay her the said last mentioned sum of money when he the said defendant should be thereunto afterwards requested—

And whereas also the said defendant afterwards to wit, on the day & year last aforesaid at Ashley to wit at the County of Washington & State of Illinois aforesaid was indebted to the said Plaintiff in the further sum of $350.00 for divers goods wares & merchandize by the said Plaintiff before that time sold & delivered to the said defendant & at his like special instance & request & being so indebted he the said defendant in consideration thereof afterwards to wit, on the day & year last aforesaid at Ashley to wit at the County of Washington and State of Illinois aforesaid, undertook & then & there faithfully promised the said Plaintiff to pay her the said last mentioned sum of money when he the said Defendant should be thereunto afterwards requested. And whereas also the said defendant afterwards to wit on the day & year last aforesaid at Ashley to wit at the County of Washington & State of Illinois aforesaid was indebted

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to the said plaintiff in the further sum of
$53-00/00 of like lawful money for money by
the said Plaintiff before that time lent & advanced
to the said defendant, & at his like Special instance
& request & being so indebted he the said defendant
in consideration thereof afterwards, to wit, on the
day & year last aforesaid at Ashley to wit, at the
County of Washington & State of Illinois, undertook
& then & there faithfully promised the said
Plaintiff to pay her the said last mentioned
sum of money when he, the said Defendant
should be thereunto afterwards requested -
And Whereas also the said defendant afterwards
to wit, on the day & year aforesaid at Ashley
to wit, at the County of Washington & State of
Illinois aforesaid accounted together with the
said Plaintiff of & concerning divers other sums
of money, before that time due and owing from
the said defendant to the said Plaintiff & then
being in arrear & unpaid: & upon such accounting
the said defendant was then & there found to be
in arrear & indebted to the said Plaintiff in the
further sum of $530/00 of like lawful money
& being so found in arrear & indebted he the said
defendant undertook & then & there faithfully
promised the said plaintiff to pay her the said
last mentioned sum of money when the said
defendant should be thereunto afterwards requested -
Nevertheless the said defendant not regarding

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his said several promises & undertakings but contriving & fraudulently intending craftily & subtly to deceive & defraud the said Plaintiff 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 Plaintiff although often requested so to do, but the said defendant to pay the same hath hitherto wholly neglected & refused & still doth neglect & refuse To the damage of the said Plaintiff of $300 & therefore she brings her suit &c

E M Vance

attorney for Plaintiff

Account Sued on

Jesse Edens

To Deborah Williams Dr.

To House-hold & kitchen furniture, beds & bedding, Stoves cooking utensils, glass ware, queens ware, cutlery provisions liquors &c. Sold & delivered to E W Phelps, at your request & for your use & benefit $530 00/100

To goods wares & merchandize bargained & sold 5 30 00/100

To goods wares & merchandize sold & delivered 5 30 00/100

To money lent & advanced you 5 30 00/100

To amount due on settlement 5 30 00/100

Filed March 23rd 1864

J A Vernor clk

[illegible]

Jesse Edens } In the Washington County
vs } Circuit Court April term
Deborah Williams } thereof A D 1864

And the said Jesse Edens by his attorny J M Durham comes and defends the wrong and injury when &c and sayeth that he did not undertake or promise in manner and form as the said Deborah Williams hath above thereof complained against him and of this he puts himself on the country &c

J M Durham
atty for Plaintiff

Filed April 13 1864 Jno Vernor Clk

Deborah Williams } In the Washington County Circuit
vs } Court April term A D 1864
Jesse Edens }

To Deborah Williams Plaintiff

in the above cause you are hereby notified that I Jesse Edens defendant in the above cause relies for defence in the above styled cause upon payments made at the request of the said plaintiff and her agent Kelley R Williams to the following persons towit to plaintiff five hundred dollars to one William McSogan fifty dollars the firm of Gravy & Pare fifty dollars to Levi Alden fifty dollars to Sawyers fifty dollars to Charles Cop fifty dollars to Richard S Borean three hundred dollars & the payment

Filed April 13 1864 Jno Vernor Clk

J M Durham
atty for Defendant

Page 1

At the regular term of the Circuit Court for the County of Washington State of Illinois held at the Court House in Nashville County seat of said County on Monday the 29th day of August A.D 1864 there being present the Honorable Sylas L Bryan Judge of the Second Judicial circuit Amos Watts States attorney James Garvin Sheriff and John A Vernor circuit Clerk officers holding said Court.

Deborah Williams
vs
Jesse Edens
} Trespass on case &c

And now at this day August 30 1864 this cause is called and by agreement of parties is submitted to the Court for trial the Court ~~after~~ on hearing the evidence and arguments of Counsel and being fully advised in the premises enters Judgment for the Plaintiff for the sum of $ 482.90 Whereupon said defendant by Durham his attorney moves the Court for a new trial which motion the Court refuses Ordered by the Court that the Plaintiff have & recover of and from the said defendant the full sum of $ 482.90 and all of her proper cost in this suit expended and have execution therefor &c

Deborah Williams
vs
Jesse Edens
} Assumpsit

And at this day Tuesday April 12th comes the Plaintiff per his attorney and the Defendant by his attorney moves the Court to quash the writ which motion was refused Demurrer to Declaration was then entered Demurrer overruled afterwards on same day came the Defendant and moves the Court for a continuance of this suit which is allowed by the Court founded on affidavit &c

Deborah Williams } August term AD 1864
vs } Action of assumpsit in the
Jesse Edens } Washington County Circuit Court

Be it Remembered that on the trial of the above entitled cause at the August term of the Washington County Circuit Court AD 1864 Plaintiff introduced as a Witnes to maintain the issue on his part before the court Zachariah Williams who state that Plaintiff & one Richard Boreau were partners and kept the Ashley Hotel Ashley Illinois & that plaintiff owned ninty five dollars worth of the Hotel furniture more than half & that the defendant Edens bought the interest of the said Boreau in the Hotel property & became the partner of Plaintiff on or about the first day of September AD 1863 and agreed to pay Plaintiff ninty five dollars for the amount that she owned in the property more than Boreau whose interest defendant had bought & that about the 23 day of November 1863 Plaintiff sold her interest in the Hotel property to one Phelps as the agent of Defendant Edens & the furniture was invoiced to the said Phelps & that Defendant agreed to pay for the same & the amount of the invoice was $670.90 cts & that witnes as a mode of fixing the liabitity of defendant deducted $95 from $670.90 & divided the remainder and added the product to the $95. Owned by Plaintiff more than half

of Hotel furniture which defendant agreed to pay Plaintiff $382.97 but defendant had not promised to pay the amount fixed by witness but agreed to pay Plff for her interest in partnership property according to invoice & her interest was $93 more than one half but the way witness fixed the liability defendant to Plaintiff was witnesse way of computing defendants liability to Plaintiff & that witness did not help make the invoice but could read writing & had seen the amount at the foot of the invoice & that one John M Hunter was clerk & that Phelps took possession of the goods & remained in the Hotel until the time of his death & assisted to keep the same but witness heard Phelps say he bought the property from Plaintiff for defendant & had heard Edens say the same—

Plaintiff introduced as a witness Notley R Williams who Stated that he as the agent of Plaintiff sold to one Phelps agent of Dft, the interest which Plaintiff owned in Hotel furniture in Ashley and that the amount of the invoice was about $670.90 & that the said Phelps was the agent of Edens that Phelps was to pay as the agent of Edens one half of the amount of the invoice & that Plaintiff & Defendant were partners and kept the Hotel together & that Edens was to pay for half of the Hotel furniture invoiced to Phelps but did not at the time of the invoice was made because he said he wanted to get a five hundred dollar bill

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charged & that affiant went to Tamaroa the next day after the goods were invoiced to look after a place & came home & was sick for a few days & then went to defendant for the money & he then refused to pay & said he had paid some loans which he would not allow & that he as the agent of Plaintiff loned defendant $70 to pay Boren for his interest in the property defendant had bought of Boren in the Hotel furniture & that he as the agent of Plaintiff paid off a note of $32. which Boren owed a Grocery & Edens had agreed to pay the same for Boren when he purchased the interest of Boren in the Hotel furniture & that plaintiff & defendant were indebted to William McSorgan for about thirty dollars worth of furniture that they had bought of him for the Hotel & they might owe Wm S Allen for stone goods but that he thought he paid the account was not certain did not owe anything for the rents of the Hotel for they had advanced more rents than was due & that while Plaintiff & Defendant were keping Hotel together he acted as the agent of Plaintiff his mother & that at the time he loned the Seventy dollars to defendant & paid the thirty two dollar note Plaintiff was sick but the money loned & the money paid belonged to Plaintiff

[illegible]

The Defendant introduced Serg't Blankenship to maintain the issue on his part who state there was a reputed sale by the Plaintiff of her interest in the Hotel furniture about the 23 day of November 1863 to one Phelps together with a Saloon that belonge to Plaintiff & Defendant that the Saloon was kept in the Hotel previous to the reputed sale to Phelps & was owned by Plaintiff & Defendant as partners together with the Hotel furniture and previous to the reputed sale to Phelps Plaintiff & Defendant kept the Hotel which is called the "Ashley House" & the Saloon together & he believed the firms name was Williams & Edens & that Saloon effects were included in the sale of Plaintiff. That Phelps remained in the Hotel & assisted to keep the same but in what capacity witness could not say & the saloon until he died which was about three months after the reputed sale. That he did not know any thing of his own knowledge more than he had heard Phelps say that he bought the interest of Plf. in the Saloon & Hotel & that he was frequently about the Hotel

The Defendant introduced as a witness Andovill Winters who stated that he did not know much about the matter but that Phelps was said to have bought an interest in the Hotel but he could not state from his own knowledge whether he held in his own right or was the agent of Edens

Page 15 That the above was all the evidence given in on the trial of the above cause.

That a jury was waived & the cause tried by the Court and judgement was rendered for the Plaintiff for the sum of $482.90cts damages and that at the time of the rendering of said judgement Defendant by his attorney J McDurham made motion for a new trial on the following grounds to wit that $95- of the judgement was for advancements of Stock in trade by one Partner to the joint stock for which assumpsit would not lie against a copartner. That $287.90 or thereabouts was for partnership property sold by one member of the firm to another when there was no proof of dissolution of the firm & a settlement of all the partnership accounts & a final balance agreed upon & a promise to pay the balance so found. That $30. of the judgment is for money paid when there was no count in the declaration for money paid. That the evidence does not sustain the finding of the court which said motion for new trial was overruled. And in as much as the matters aforesaid do not appear of Record the counsel for the defendant presents this bill of exceptions and prays that the same may be signed by this court & made a part of the record in said cause: and it is accordingly done

Filed Sept 10 1864
JM Vernor clk

Silas D Bryan (seal)
Judy 2nd Jud. Cir. Ills.

[8631-8]

State of Illinois } ss
Washington County }

I John A Vernor Clerk of the Circuit Court for the said County and State do hereby certify that the foregoing is a true and perfect transcript and copy of the record of the cause of which the same purports to be for which the following precipe was filed with me to wit:

"State of Illinois } ss
Washington County }

Deborah Williams } In the Circuit Court To August Term A D 1864

vs

Jesse Edens }

John A Vernor Esq. Clerk of the Circuit Court for the said County

Will you please make up an authenticated copy of the record in the above cause and will insert: 1st a copy of the procp 2nd the Pleadings of the parties respectively 3rd the judgement of the Court 4th all the orders made by the Court 5th the Bill of Exceptions. And oblige

J.M. Durham
Atty for Deft."

So far as the above precipe required of me the same having been copied and compared from the records and papers of the said cause in my office

Witness John A Vernor clerk of the said Court & the seal thereof affixed this 12th day of October A D 1864

J A Vernor Clk

Fees $5.50
Not Paid
J.A.V.

State of Illinois } In the Supreme Court to
Ist Grand Division } November Term A.D. 1844

Jesse Edwards Plff in Error
vs
Deborah Williams Defendant } Assignment of Errors
And now the said Plaintiff in error comes and says that in the aforegoing record & proceedings there is manifest error in this to wit

1st That the court below erred in refusing to quash writ.

2d That the Court erred in giving judgment for Plaintiff for $248.90 or thereabouts the same being for sales of co partnership property sold by Plaintiff to her copartner when there was no proof of dissolution or settlement of partnership accounts or a final balance agreed upon or a promise to pay a final balance found due.

3d That the Court erred in giving judgment for $176 or thereabouts by Plaintiff to the copartnership stock in trade.

4th That the Court erred in giving judgment for Plaintiff for $30 or thereabouts for money paid when there was no count in the declaration for money paid

5th That the Court erred in giving judgment for Plaintiff for $30 or thereabouts where there was money paid when there was no proof of a request to pay.

6th That the Court erred in giving judgment for Plaintiff in the sum of one interest of Pff in partnership property sold sold by Plaintiff & her copartner on a special count for goods jointly owned.

[81824-J]

4th That the Court erred in giving judgment ~~for~~ on evidence of an interest of Plaintiff in copartnership property in common counts.

5th That the Court erred in not assessing the Plaintiff's

6th That the ~~Court erred~~ judgment of the Court below is erroneous.

7th That the Court erred in overruling Defendants motion for a new trial.

By reason whereof the Plaintiff prays that said judgment be reversed

By J. M. Durham Atty for Pltff in Error

D. Williams Pltff in Error
vs
Jesse Edens Deft in Error

Petition & Assignment of Errors
from the Washington Co
Circuit Court

Copy of Record
J. M. Durham
Atty for Pltff in Error

Filed Oct. 19th 1864
N. H. Swanson Clk

Paid by Durham $20.00
Refunded $6.50 - Z.
Ellis Durham Nov. 16th 1864

State of Illinois } In Supreme Court
1st Grand Division } Nov. Term A.D. 1864
D. Williams } Appeal in Error
ats } Now comes deft in error
Jesse Edens } & says that in the record & proceedings aforesaid & in the giving judgt. aforesaid in manner & form as alleged there is no error & prays that said judgt may be affirmed & costs adjudged &c

By P. E. Hosmer Atty for Deft in Error

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 Washington 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* Washington *county, before the Judge thereof between*

Deborah Williams *plaintiff and*

John Edens *defendant it is said manifest error hath intervened to the injury of the aforesaid* Defendants *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 Tuesday after the Second Monday in 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.* P. H. Walker *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* Nineteenth *day of* October *in the year of our Lord one thousand eight hundred and* Sixty four.

Noah Johnston

Clerk of the Supreme Court.

[9436-16]

27-

SUPREME COURT.

First Grand Division.

Jesse Edens

Plaintiff in Error,

VS.

Deborah Williams

Defendant in Error.

WRIT OF ERROR.

Issued & FILED. Oct. 19-
1864.
N. Johnston Clk
By

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

The People of the State of Illinois,

To the Sheriff of Washington 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 Washington county, before the Judge thereof between

Deborah Williams plaintiff and

Jesse Edens defendant it is said that manifest error hath intervened to the injury of said Jesse Edens 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 Deborah Williams

that She 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~~ Mount, to hear the records and proceedings aforesaid, and the errors assigned, if She 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 Deborah Williams notice together with this writ.

WITNESS, the Hon. P. H. Walker Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this Nineteenth day of October in the year of our Lord one thousand eight hundred and Sixty four

Robt. D. Rushton

Clerk of the Supreme Court.

(8636-11)

27

SUPREME COURT.

First Grand Division.

Jesse Edens

Plaintiff in Error,

VS.

Deborah Williams

Defendant in Error.

Service	50
11 miles	55
return	10
	$1.15

SCIRE FACIAS.

FILED Nov 3 64

N. Johnston Clk

~~Nashville Ills Nov 3 1864~~
~~I do hereby appoint Samuel Dunham~~
~~Special Bailiff to serve the within writ~~
~~James Garvin Sheriff~~
~~Washington Co Ills~~

Served the within by reading
November 2nd 1864 to the within
named Deborah Williams
James Garvin Sheriff
Washington Co Ills

State of Illinois } In Supreme Court
First grand Division } To October term A.D. 1864

Jesse Edens } Plaintiff in Error
vs } Error to Washington County
Deborah Williams } Defendant in Error

Judgment in Assumpsit
At the August term of the Washington County Circuit court A.D. 1864 for $82.90 & Cost of suit.

Noah Johnson Esq Clerk of the Supreme Court 1st grand division will please issue writ of error to the Circuit Court of Washington county against Deborah Williams at the suit of Jesse Edens returnable on the first day of the next term of the said Supreme court

Dated at Ashley Ills October 5th 1864

J H Dunham
attorney for Plff in Error

[illegible]

27

Jesse Eelms
vs
Deborah Williams

Precipe for
writ of error

J. M. Durham
Att for Pff in Error

Filed. Oct. 19 - 1864.
N. Johnston Clk

SUPREME COURT OF ILLINOIS----FIRST GRAND DIVISION.

NOVEMBER TERM, A. D., 1864.

Jesse Edens, Plaintiff in Error.
VS.
Deborah Williams, Defendant in Error.

ABSTRACT OF PLAINTIFF IN ERROR.

Page 1

This was an action of Assumsit, commenced by summons, by the Defendant in Error, against the Plaintiff in Error, in the Washington County Circuit, April Term, 1864. The Declaration contained five counts, first, a special count for interest in goods, jointly owned by Plaintiff and Defendant. Second—a common count for goods, bargained and sold. Third—a common count for goods sold and delivered. Fourth—a common count for money lent. And Fifth—a common count on account stated. The Defendant's Attorney made motion to quash writ, which the court refused, and then demurred to, which the court overruled, and the Defendant then plead the general issue. The cause was tried by the court. The Plaintiff introduced, as a witness, Zachary Williams, who stated that Plaintiff, and one, Richard Boren, were partners, and kept the "Ashley Hotel," and that Plaintiff owned $95 worth of the Hotel furniture more than half—and that Defendant, Edens, bought the interest of Boren in the Hotel property, and became the partner of Plaintiff, and agreed to pay Plaintiff $95 for the amount of property which she owned more than Boren, and that Nov. 23, 1863, Plaintiff sold her interest in the hotel property to one. Phelps, as the Agent of Edens, and the property was invoiced to the said Phelps, the amount of which was $670,90, and that witness, as a mode of fixing the liability of Defendant, deducted $95 from $670,90, and divided the remainder and added the product to the $95, but that Defendant had not promised to pay the amount fixed by witness, but agreed to pay for her interest in the partnership property. Phelps took possession of the property and remained in the hotel until the time of his death and assisted to keep the same; but witness had heard Phelps say that he bought the property from Plaintiff for Defendant and had heard Edens say the same. The Plaintiff introduced, as a witness, Notley R. Williams, who stated that he, as the Agent of Plaintiff, sold to one, Phelps, Agent of Defendant, the interest which Plaintiff owned in hotel furniture, the amount of which was about $670,90, and that Phelps was to pay, as the Agent of Edens' half, one half of the amount of the invoice, and that he as the Agent of Plaintiff loaned Defendant $70, and that he as the Agent of Plaintiff, paid off a note of $32 which Boren owed a grocery and Edens had agreed to pay, and he, Edens, had agreed to pay the same when he purchased the interest of Boren. The evidence of Plaintiff's witnesses, so far as the same is material to the Defendant, is that of Zachary Williams, who stated that Plaintiff and Defendant were partners and that on 23d of Nov., 1863, Plaintiff sold her interest in the hotel furniture to one, Phelps, as the Agent of Defendant, and that the property was invoiced to Phelps and he remained in possession till his death, and that Defendant did not promise to pay the amount fixed by witness but agreed to pay for the interest of Plaintiff in the co-partnership property; and Notley R. Williams stated that he, as the Agent of Plaintiff, sold to one Phelps, as the Agent of Defendant, the interest of Plaintiff in hotel property; and he went to defendant a few days after the sale and he refused to pay, and said he had paid some claims which he would not allow, (that is, meaning that Edens had paid some co-partnership debts which he, witness, as the Agent of Plaintiff, would not allow Edens credit for,) and that Plaintiff and Defendants were indebted to one William M. Logan for about thirty dollars worth of furniture that he had bought for the hotel, and that they might owe one William G. Alden something for store goods, and that they did not owe anything for rents as they had advanced more rents than was due for hotel. The Defendant introduced as a witness L. F. Blankinship, who stated that Plaintiff and Defendant owned the hotel, and kept the same as partners, that the name of the hotel was the "Ashley House," and the firm name was "Williams & Edens," That there was a reported sale of the interest of Plaintiff in the hotel furniture to one Phelps, and that he had heard Phelps say that he had bought Plaintiff's interest in the hotel and saloon.

Page 12 shows that Edens agreed to pay according to invoice & when the invoice was made exception for not keeping because he wanted to get a $500 bill changed

The court rendered judgment for Plaintiff for $482,90 and cost, and Defendant's Attorney made motiont for a new trial, which motion the court overruled, to which ruling Defendant's Attorney then excepted and tendered Bill of Exception which the court signed and sealed.

ERRORS ASSIGNED.

That the court below erred in refusing to quash writ. That the court erred in giving judgment for $289,-90, or thereabouts, the evidence being for interest in co-partnership property, sold by Plaintiff to her co-partner when there was no proof of a dissolution or a settlement of all the partnership accounts or a final ballance agreed upon, or promise to pay a final ballance found due.

That the court erred in giving judgment for $95, or thereabouts, for advancements made by Plaintiff to the co-partnership stock in trade.

That the court erred in giving judgment for Plaintiff for $30, or thereabouts, for money paid when there was no count in the declaration for money paid. That the court erred in giving judgment for $30, or thereabouts, for money paid when there was no proof of a request to pay.

That the court erred in giving judgment on evidence of an interest of Plaintiff in partnership property sold by Plaintiff to her co-partner on a special count for goods jointly owned.

That the court erred in giving judgment on evidence of an interest of Plaintiff in co-partnership property on common counts.

That the court erred in not non-suiting the Plaintiff.

That the judgment of the court below was erroneous.

That the court erred in overruling Defendant's motion for new trial.

The pleadings of the Plaintiff were defective. That they contained no special count for an interest in goods sold that were owned in co-partnership, or not stating special facts which create a liability in such cases, as one partner cannot sue his copartner at common law 'indebitatus assumsit,' we have no enabling statute. That the evidence of the Plaintiff is insufficient in this that there is no proof of a dissolution of the co-partnership of Williams & Elens, or that the partners accounted together, or that there was a final ballance struck in favor of Plaintiff and an express promise to pay the ballance so found, and that $32 paid there was no proof of a request to pay.

As to first error. The court below ought to have quashed the writ, there being no revenue stamp on it, the paying of fifty cents into the hands of the Clerk is no more a compliance with the Revenue Law than the Plaintiff having that sum in his own pocket. If the law is at all obligatory the writ was void. The error appears on the record. As to the record error, George Davenport, vs. Hezekiah H. Sear, et al, 2 Scam. page 495. The court says: The law in relation to partnership transactions is well settled that one partner cannot bring an action of assumsit against his late co partner, unless, upon a dissolution of the co-partnership, and the parties account together, and a ballance being stated, one or the other expressly promise payment. The ballance so found must be a final ballance of all the partnership accounts ballances; which are struck preparatory only to final account, are not sufficient to form the subject matter of an action. The evidence in this case is more defective than in the case above referred to; in that case there was a dissolution and ballance struck, and debts due to and from the firm—page 498—and in this case Notley R. Williams testifies that the firm owe Wm. M. Logan about $30 for furniture bought for the hotel, and that they advanced rents, but says nothing of the dissolution of the firm or ballance struck. In the same case the court say the testimony of the second witness is equally defective, "he does not prove a final settlement of the partnership and a promise to pay a specific sum to the Plaintiff—p. 499. That proof of sale of an interest in goods owned in co partnership to a co-partner is not sufficient to recover on first count in Plaintiff's declaration being special for goods jointly owned by Plaintiff and Defendant. That a joint possession or purchase constitutes a joint ownership and is an interest in certain goods in specie, but to constitute a copartnership there must be a communion in profits. That the interest of one member of a copartnership is not an interest in any particular goods in specie, but only an interest on final settlement of all the co partnership accounts. The interest of each partner in the partnership property is his share in the surplus, after the partnership is settled, and all just claims satisfied; and it follows that no suit at law can be maintained by one partner against his co-partner until a final settlement has been made and the ballance ascertained and a promise contracted to pay it."—p. 37. 3. Kent's Com. One partner having only his separate interest in the surplus, cannot, of course, sell or mortgage his own individual interest in a specific part—Manson, vs. Blogett, 8, N. H. 238. The American courts fully recognize the doctrine that during the existence of the partnership, or even after its dissolution, before the business is wound up, and a final ballance ascertained, no action at law can be maintained between the partners—Heskill, vs. Adams, Peck 59—1. Parson Com. N. Z. page 158. The reason is that such transaction creates no debt to pay. The act of one party is the act of the other—the payment or receipt of one is the payment and receipt of the other—the promise of one party is the promise of the other. The premise of one partner to pay his co partner for his interest in certain goods, belonging to the co-partnership is, in law, a promise to pay whatever is due on final adjustment of the partnership accounts, and is not different from the case where one partner borrows money, or takes up goods from the stock in trade, and charges himself therewith. The law implies nor raises no objection to pay only what may be due on final settlement. The parties must first account to the firm there among themselves. The reason and wisdom of the law is amply vindicated in the case at bar, for if Plaintiff recovers, the partnership effects pass into the hands of Plaintiff and leave Defendant without remedy to pay the firm debt to Logan—Story on Part., 221.

As to the fifth error assigned, To "support the court for money paid there must be a request of the Defendant, either expressed or implied,—Chitty Ple., 350. It is not sufficient to prove merely the Defendant's liability to a third person, and the Plaintiff has dischargee such liability. It is necessary to establish that he did so at the request of the Defendant—Chitty on Contracts, 592. The Plaintiff's fifth count is an account stated, and from the proof the Plaintiff cannot recover on this count. It lies only with reference to admissions of former transactions—1st Chitty's Plea., 359. There must have existed some prior demand between the parties with respect to which the parties accounted, and a mere agreement to pay a sum of money cannot be converted into an account stated—Chitty on Contracts, 649.

The fourth count for money lent the Plaintiff at most cannot recover but $70. To recover in this count there must be an actual lending of money—1st Chitty's Plea., 350.

And we have seen upon good authority, as well as sound reason "one partner having only an interest in the surplus cannot sell—an undivided interest in a specified part, and the principle applies with greater force where one partner sells to his co-partner. One partner cannot sue his co-partner for goods sold—Chitty on Contracts, page 237.

J. M. DURHAM, Attorney for Plaintiff in Error.

27

Jesse Eclus
vs
Deborah Wellman
Adminx of
Olf N. Eclus

27–15

Filed, Nov. 16. 186[illegible]
A. Johnston Clk

Jesse Edens
vs
Deborah Williams

In Supreme Court
1st Grand division
Argument for Defts in error

(Defts has no authorities not cited by Plff)

The Overruling motion to Quash writ was not excepted to. The motion disclosed no reasons therefor nor is the motion & exception to overruling them preserved by Bill of Exceptions & therefore is no part of the record Besides by pleading guilty issue objection to writ was waived

One partner can sue another when it would not involve a consideration of partnership transactions See Chitty on Contracts pages 236-7-8 & 239 note 1 referred to in Plff's brief

In case at bar Edens bought out Bowen & agreed in consideration thereof to pay Defft $95.00 & then bought out Defft & agreed to pay her one half of the invoice price thereof (see page 12 of record) to wit $335.46 and when called on to pay after the invoice was furnished Edens excused himself by saying he had to get a $500 bill changed (see page 12 record last lines) these two items are recoverable on counts for goods sold. Then the proof is that Defft loaned Plff $70 & paid a 30$ note for Edens which Edens agreed to repay her & these items are recoverable under the Counts for money

[81 36-15]

but & account stated. These items do not involve a consideration of partnership transactions at all. The other partnership property debts due & owing & affairs are left by the parties for future adjustment.

Courts cannot make contracts but enforce them made. Here Plf. bought out interest of Deft. in certain goods & chattels & agreed to pay according to invoice & got possession & then refused to pay. He promised to pay according to invoice & only wanted to get a Doubtful changed, & did not promise to account on final settlement of all partnership matters, that was not the contract under which Plf obtained possession of this property. If the argument was to take the goods at invoice price & allow you so much on final settlement of all partnership transactions then Plf's objection & law would apply or if Plf had taken the goods & converted them to his own use or sold them & put money in his pocket assumpsit would not lie. But that is not this case. This was a withdrawal of part of partnership assets on dissolution of the partnership pro tanto & an adjustment & promise to pay

As to any debts owed by firm Plf has

no right to presume deft will not pay her
show. The law presumes she will. That
was a matter Pff. ought ~~to have~~ if at all
to have mentioned when he made the Contract
& insisted then to have it a part of the
Contract but did not do so now seems
deft. unable to pay & then says she will not
pay he is afraid after he has got all
her property by false & corrupt promises
so it is insisted judgment for deft
is correct

R. E. Hosmer
Pres deft in error

[illegible]

27

Jesse Evans

vs

Deborah Williams

Argument for Defft.

Filed. Nov. 18. 1864.

N. Johnston Clk

SUPREME COURT OF ILLINOIS----FIRST GRAND DIVISION.

NOVEMBER TERM, A. D., 1864.

Jesse Edens, Plaintiff in Error.
VS.
Deborah Williams, Defendant in Error.

ABSTRACT OF PLAINTIFF IN ERROR.

Page 1

This was an action of Assumsit, commenced by summons, by the Defendant in Error, against the Plaintiff in Error, in the Washington County Circuit, April Term, 1864. The Declaration contained five counts, first, a special count for interest in goods, jointly owned by Plaintiff and Defendant. Second—a common count for goods, bargained and sold. Third—a common count for goods sold and delivered. Fourth—a common count for money lent. And Fifth—a common count on account stated. The Defendant's Attorney made motion to quash writ, which the court refused, and then demurred to, which the court overruled, and the Defendant then plead the general issue. The cause was tried by the court. The Plaintiff introduced, as a witness, Zachary Williams, who stated that Plaintiff, and one, Richard Boren, were partners, and kept the "Ashley Hotel," and that Plaintiff owned $95 worth of the Hotel furniture more than half—and that Defendant, Edens, bought the interest of Boren in the Hotel property, and became the partner of Plaintiff, and agreed to pay Plaintiff $95 for the amount of property which she owned more than Boren, and that Nov. 23, 1863, Plaintiff sold her interest in the hotel property to one. Phelps, as the Agent of Edens, and the property was invoiced to the said Phelps, the amount of which was $670,90, and that witness, as a mode of fixing the liability of Defendant, deducted $95 from $670,90, and divided the remainder and added the product to the $95, but that Defendant had not promised to pay the amount fixed by witness, but agreed to pay for her interest in the partnership property. Phelps took possession of the property and remained in the hotel until the time of his death and assisted to keep the same; but witness had heard Phelps say that he bought the property from Plaintiff for Defendant and had heard Edens say the same. The Plaintiff introduced, as a witness, Notley R, Williams, who stated that he, as the Agent of Plaintiff, sold to one, Phelps, Agent of Defendant, the interest which Plaintiff owned in hotel furniture, the amount of which was about $670,90, and that Phelps was to pay, as the Agent of Edens' half, one half of the amount of the invoice, and that he as the Agent of Plaintiff loaned Defendant $70, and that he as the Agent of Plaintiff, paid off a note of $32 which Boren owed a grocery and Edens had agreed to pay, and he, Edens, had agreed to pay the same when he purchased the interest of Boren. The evidence of Plaintiff's witnesses, so far as the same is material to the Defendant, is that of Zachary Williams, who stated that Plaintiff and Defendant were partners and that on 23d of Nov., 1863, Plaintiff sold her interest in the hotel furniture to one, Phelps, as the Agent of Defendant, and that the property was invoiced to Phelps and he remained in possession till his death, and that Defendant did not promise to pay the amount fixed by witness but agreed to pay for the interest of Plaintiff in the co-partnership property; and Notley R. Williams stated that he, as the Agent of Plaintiff, sold to one Phelps, bs the Agent of Defendant, the interest of Plaintiff in hotel property; and he went to defendant a few days after the sale and he refused to pay, and said he had paid some claims which he would not allow, (that is, meaning that Edens had paid some co-partnership debts which he, witness, as the Agent of Plaintiff, would not allow Edens credit for,) and that Plaintiff and Defendants were indebted to one William M. Logan for about thirty dollars worth of furniture that he had bought for the hotel, and that they might owe one William G. Alden something for store goods, and that they did not owe anything for rents as they had advanced more rents than was due for hotel. The Defendant introduced as a witness L. F. Blankinship, who stated that Plaintiff and Defendant owned the hotel, and kept the same as partners, that the name of the hotel was the "Ashley House," and the firm name was "Williams & Edens," That there was a reported sale of the interest of Plaintiff in the hotel furniture to one Phelps, and that he had heard Phelps say that he had bought Plaintiff's interest in the hotel and saloon.

The court rendered judgment for Plaintiff for $482,90 and cost; and Defendant's Attorney made motion for a new trial, which motion the court overruled, to which ruling Defendant's Attorney then excepted and tendered Bill of Exception which the court signed and sealed.

[8626-ILA]

ERRORS ASSIGNED.

That the court below erred in refusing to quash writ. That the court erred in giving judgment for $289,-90, or thereabouts, the evidence being for interest in co-partnership property, sold by Plaintiff to her co-partner when there was no proof of a dissolution or a settlement of all the partnership accounts or a final ballance agreed upon, or promise to pay a final ballance found due.

That the court erred in giving judgment for $95, or thereabouts, for advancements made by Plaintiff to the co-partnership stock in trade.

That the court erred in giving judgment for Plaintiff for $30, or thereabouts, for money paid when there was no count in the declaration for money paid. That the court erred in giving judgment for $30, or thereabouts, for money paid when there was no proof of a request to pay.

That the court erred in giving judgment on evidence of an interest of Plaintiff in partnership property sold by Plaintiff to her co-partner on a special count for goods jointly owned.

That the court erred in giving judgment on evidence of an interest of Plaintiff in co-partnership property on common counts.

That the court erred in not non-suiting the Plaintiff.

That the judgment of the court below was erroneous.

That the court erred in overruling Defendant's motion for new trial.

The pleadings of the Plaintiff were defective. That they contained no special count for an interest in goods sold that were owned in co-partnership, or not stating special facts which create a liability in such cases, as one partner cannot sue his copartner at common law 'indebitatus assumsit,' we have no enabling statute. That the evidence of the Plaintiff is insufficient in this that there is no proof of a dissolution of the co-partnership of Williams & Elens, or that the partners accounted together, or that there was a final ballance struck in favor of Plaintiff and an express promise to pay the ballance so found, and that $32 paid there was no proof of a request to pay.

As to first error. The court below ought to have quashed the writ, there being no revenue stamp on it, the paying of fifty cents into the hands of the Clerk is no more a compliance with the Revenue Law than the Plaintiff having that sum in his own pocket. If the law is at all obligatory the writ was void. The error appears on the record. As to the record error, George Davenport, vs. Hezekiah H. Sear, et al, 2 Scam. page 495. The court says: The law in relation to partnership transactions is well settled that one partner cannot bring an action of assumsit against his late co partner, unless, upon a dissolution of the co-partnership, and the parties account together, and a ballance being stated, one or the other expressly promise payment. The ballance so found must be a final ballance of all the partnership accounts ballances; which are struck preparatory only to final account, are not sufficient to form the subject matter of an action. The evidence in this case is more defective than in the case above referred to; in that case there was a dissolution and ballance struck, and debts due to and from the firm—page 498—and in this case Notley R. Williams testifies that the firm owe Wm. M. Logan about $30 for furniture bought for the hotel, and that they advanced rents, but says nothing of the dissolution of the firm or ballance struck. In the same case the court say the testimony of the second witness is equally defective, "he does not prove a final settlement of the partnership and a promise to pay a specific sum to the Plaintiff"—p. 499. That proof of sale of an interest in goods owned in co-partnership to a co-partner is not sufficient to recover on first count in Plaintiff's declaration being special for goods jointly owned by Plaintiff and Defendant. That a joint possession or purchase constitutes a joint ownership and is an interest in certain goods in specie, but to constitute a copartnership there must be a communion in profits. That the interest of one member of a copartnership is not an interest in any particular goods in specie, but only an interest on final settlement of all the co partnership accounts. The interest of each partner in the partnership property is his share in the surplus, after the partnership is settled, and all just claims satisfied; and it follows that no suit at law can be maintained by one partner against his co-partner until a final settlement has been made and the ballance ascertained and a promise contracted to pay it."—p. 37. 3. Kent's Com. One partner having only his separate interest in the surplus, cannot, of course, sell or mortgage his own individual interest in a specific part—Manson, vs. Blogett, 8, N. H. 238. The American courts fully recognize the doctrine that during the existence of the partnership, or even after its dissolution, before the business is wound up, and a final ballance ascertained, no action at law can be maintained between the partners—Haskill, vs. Adams, Peck 59—1 Parson Com. N. Z. page 158. The reason is that such transaction creates no debt to pay. The act of one party is the act of the other—the payment or receipt of one is the payment and receipt of the other—the promise of one party is the promise of the other. The premise of one partner to pay his co partner for his interest in certain goods, belonging to the co-partnership is, in law, a promise to pay whatever is due on final adjustment of the partnership accounts, and is not different from the case where one partner borrows money, or takes up goods from the stock in trade, and charges himself therewith. The law implies nor raises no ~~objection~~ to pay only what may be due on final settlement. The parties must first account to the firm there among themselves. The reason and wisdom of the law is amply vindicated in the case at bar, for if Plaintiff recovers, the partnership effects pass into the hands of Plaintiff and leave Defendant without remedy to pay the firm debt to Logan—Story on Part., 221.

As to the fifth error assigned, To "support the court for money paid there must be a request of the Defendant, either expressed or implied,—Chitty Ple., 350. It is not sufficient to prove merely the Defendant's liability to a third person, and the Plaintiff has dischargee such liability. It is necessary to establish that he did so at the request of the Defendant—Chitty on Contracts, 592. The Plaintiff's fifth count is an account stated, and from the proof the Plaintiff cannot recover on this count. It lies only with reference to admissions of former transac ions—1st Chitty's Plea., 359. There must have existed some prior demand between the parties with respect to which the parties accounted, and a mere agreement to pay a sum of money cannot be converted into an account stated—Chitty on Contracts, 649.

The fourth count for money lent the Plaintiff at most cannot recover but $70. To recover in this count there must be an actual lending of money—1st Chitty's Ples., 350.

And we have seen upon good authority, as well as sound reason "one partner having only an interest in the surplus cannot sell—an undivided interest in a specified part, and the principle applies with greater force where one partner sells to his co-partner. One partner cannot sue his co partner for goods sold—Chitty on Contracts, page 237.

J. M. DURHAM, Attorney for Plaintiff in Error.

Jesse Edens
vs
Sebastian Sullivan
Abstract
Affidavit

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Indiana, Nov. 16, 1864
A. Johnston Atty

Jesse Edens Plaintiff in Error

vs

Deborah Williams Defendant in Error

Written Argument of Pff in Error

The Pff below attempted a copartnership settlement in an action of Assumpsit

The Pff in error relies for the reversal of the judgment of the Court below on the variance between the evidence and the matter counted on in Pff declaration and insufficiency of the evidence. Every sentence of the testimony goes to prove that the goods sold was the interest of Pff below & Def in Hotel Furniture owned by them in copartnership

The Pff in error insists that Pff interest was not the value of half of the invoice price of the goods but that the suppleas or final adjustment of all the partnership accounts and before that interest can be ascertained an adjustment must be made. Defendant in error insists that her

[0436-18]

Mires vs Mires

half the invoice price of the goods as was the decision of the Court below This was certainly erroneous and the Court did not clearly comprehend the nature of the interest the Plf below in the partnership property. The law was with perspicuity and accuracy express the nature of ownership of one partner in the copartnership property by Chief Baron Mcdonald Taylor v Ford 4 Jersey Report (Eng R.) 96. "We are of the opinion that the Corpus of partnership property effects is joint property and neither partner has any thing in that Corpus but the interest of each is an interest only in his share of what remains after the partnership accounts are taken". You Kent & Story adopt the above as the true principle of the law. And from the above it necessarily follows that a special count for a joint ownership or a common count for goods sold is by one partner against his copartner for copartnership goods is bad as the "partner has only a share in the surplus after accounts are taken". He has no property in any particular goods in specie.

Now in the above case had the plaintiff below Counted for an intest in goods owned in copartnership it would of been bad on general demurs as there would have to be an additional averment of a final adjustment of the partnership accounts a final balance ascertained and a promise contracted to pay it and all of which would be necessary to be proved and from the above it is patent that both the pleadings and Evidence were insufficient to sustain the judgment of the court below and that there is gross and manifest error in the judgment and proceedings of the Court below and so far as the evidence relates to the partnership effects it is at variance with the counts also insufficient to entitle the plaintiff to recover were there proper Counts in the declaration and to grant Def in error thereon evidence warrants and for more it would still be insufficient in law. That it was proper for the Def below to plead the general (for any doubt exist in the opinion of the court) the following authority are cited, Pearson v. Skelton 1 Mees or

[illegible]

v Welsh side Page 5 of Same Journal &
Hartnell 186.

It takes each item of the evidence
to make the amount of the judgment
$4 & 2.70. to wit $28 & 70 $75. $10. $32.

So much of
the judgment as relates the the amount
of $32 or thereabouts was certainly erroneous.

1 That there was no count in the Declaration
for money paid.

2 The Evidence was insufficient had there
been such count as it was for the payment
of a debt of a third person when there was
no request to pay.

3 If there was no request to pay the payment
would not discharge the liability of the
If ~~as a~~ debtor & Williams can
recover the amount back from the Creditor
for the case is not different in effect where any
person other that the maker pays of a
promissary note it is not a payment in law
but that it is an endorser or guaranto &
there only when their respective liabilities
4 It was the debt of a third person & there
was no proof of a written promise or any
valid consideration for the payment
5 It was a liquor debt & only 6 cts
recoverable & the amount above that
person void

There was proof of $95. of interest of Ogg below more than half of the stock in trade which defendant promised to pay but this promise was made after the copartnership was formed and the commingling of the stock made therefore the promise to pay not enforcable at law before dissolution & final adjustment of the copartnership account. But it cannot be contended that advancements of stock in trade is goods & chattle therefore the count in the Sec. is accordingly bad and there is a variance between the count. It should be born in mind that the evidence was for the sale of the interest of the Ogg below in the copartnership goods which interest has never been ascertained and from the very nature of the subject matter cannot be known or any certain interest without account for by taking account the other part may be the debtor besides in this case. Where partners merchandizing take up goods and charge them to themselves there is an implied promise

[8436-35]

to pay the amount to the firm yet the promise is no enforceable at law before dissolution and final account yet there may reason why the firm should recover that the Plf below in this case for in the former the effects pass into the control of the firm in the other they pass out of the hands of the firm and cannot be reached by the partnership creditors and leaves them & the Plf in error without remedy. The evidence is about as conclusive that Phelps bought the interest of Plf Lee as that Defendant bought them. The buying for a person is not necessarily buying as the agent but the buying with a view of a sale. The real facts were that the sale was to Phelps in his own right. The Plf Lee cannot properly recover but $70 dollars for money lent. There was no such evidence will warrant a verdict for or the account stated.

As to the first error
There was no evidence tending

affixed to the Summons the Return
Law makes the writ void

If the Court is not decided
at this Term the Plff can
obtain a Supersedeas

Respectfully submitted

J. M. Graham
Att'y for Plff's Exrs

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Jesse Edens
vs
Silas Williams
Written Argument
of Plaintiff
2 pp

Julia, Nov. 18. 1864.
A. Johnston Atty

Supreme Court First Grand Division

Nov. Term 1854

Jesse Edens Plaintiff in Error

vs

Deborah Williams Defendant in Error

On this the 17th day of November A.D. 1854 Comes the Plaintiff in Error by his atty makes application for a writ of Supersedeas in the above Cause and assigns the the following among many others that is to say That the same should be granted

That there is manifest error patent in the judgments & proceedings in the Court below in this that one item ordered upon which the judgment was rendered to the amount of $875. for a failure Pltf in error to pay Plt below that sum which was the debt of Boone & which Pltf in Error had agreed to pay for Boone being for that amount which Williams moved in the

[illegible]

partnership property of Barent Williams which Williams owned more than Baron

There is no Count in Pl's Dec. counting on this Promise of Pl's to pay the Debt of Baron & Pl's below nor any other sufficient Count for her to recover.

If the Court does not take the above view of the testimony which was what the Witness meant to express then the next conclusion is that it was an advancement of Williams & 1195 to the Stock in trade of the firm of Williams & Edens for which Assumpsit would not lie untill the Partners took account See 221 Stats Rep. nor was there any sufficient Count for the Pl's below to recover taking that view of the subject.

There was five counts in the Declaration first a count for interest in goods jointly owned not in copartnership as the Evidence shows & for goods bargained & sold this Count is not good where the Promise is for goods

sold & delivered & for goods sold & delivered but this advancement of Stock in trade is not goods sold & delivered & count for money lent & an account Stated which lies only for some prior for which the parties account

That the Evidence for Def orthwaite's interest in copartnership property which Pff below rec'd Def below & there was no final adjustment & ascertainment what that interest was for which assumpsit will not lie.

That the Evidence prov'd Def orthwaite money paid for Pff & there was no proof of a request to pay nor was there any counts in the Pff declaration for money paid which failed under the evidence

J. M. Dunlap
Atty for Pff in error

27

Jese Egglens
vs
J. Williams
Motion
for
Supersedeas

Filed, Nov. 18. 1864
N. Johnston Clk

1864.

27 ——— 15

Edens
vs
Williams

~~8776~~
8436

Opinion Ho. with
Reporter.