


No. 170

Supreme Court of Illinois

John Ankeny

vs.

James Pierce

(379)  7

Pleas in the Jackson Circuit Court at their
April term in the year of our Lord one thou-
sand Eight hundred and twenty Eight before
the Honorable Thomas C. Browne Presiding
Judge of the said Court

Be it remembered that heretofore to wit on the 12th
day of March in the year of our Lord one thousand
Eight hundred and twenty Eight James Peice by his
Attorney R. J. Hamilton came and filed in the office
of the Clerk of the Jackson Circuit Court a process in
the following words to wit. "James Peice versus
John Arkency In Assumpsit Damages \$150
The Clerk of the Jackson Circuit Court will issue a
summons in the above entitled Cause returnable
to the April term of said Court March 11th 1828
Hamilton P. L.

And afterwards to wit on the said 11th day of March
in the year of our Lord one thousand Eight hundred
and twenty Eight agreeable to the order in the
said Process there was issued a summons directed
to the Sheriff of Jackson County and made return-
able as therein mentioned with said summons
in these words to wit. "State of Missouri Jackson
County, The People of the State of Missouri to the
Sheriff of Jackson County - greeting. We Com-
mand you to summon John Arkency to appear be-
fore the Circuit Court for Jackson County on the
first day of their term to be held at the Court
house in the town of Brownsville in and for said
County on the second Monday of April next to an-
swer the Complaint of James Peice in a Plea of
assumpsit Damages one hundred and fifty dol-
lars and have you then there this writ. Wit-
ness Thomas C. Browne Presiding Judge of our
L. S. [176-1]

Said Court and the Clerk provide Seal no official Seal being provided at Brownsville this Eleventh day of March one thousand eight hundred and twenty eight.

J. McCannery Clerk

Which said Summons being put into the hands of the Sheriff of Jackson County was by him returned with the following indorsement to wit Executed the 17th of March 1828

J. Gregg, Sheriff of J.C.

And afterwards to wit on the 25th day of March in the year of our Lord one thousand eight hundred and twenty eight the said James Peine by his said Attorney R. J. Hamilton came and filed in the office of the Clerk of the said Jackson Circuit Court his Bill of Complaint or Declaration against the said John Arkney which is in the following words to wit in State of Missouri. In the Jackson Circuit Court of April term in the year of our Lord one thousand eight hundred and twenty eight. James Peine by Richard J. Hamilton his Attorney complains of John Arkney in Custody &c. for that whereas the said John Arkney on the nineteenth day of February in the year of our Lord one thousand eight hundred and twenty seven in the County of Jackson and State aforesaid and within the Jurisdiction of this Court made his certain promissory note in writing bearing date the day and year aforesaid and thereby then and there promised to pay on or before the first day of January next (meaning thereby the first day of January in the year of our Lord one thousand eight hundred and twenty eight) to the said James Peine one hundred dollars in merchandise delivered in Brownsville for value received. By means whereof the said John Arkney then and there became liable to pay to the said James Peine the said sum of one hundred dollars in merchandise in the said note specified according to the tenor and effect of the said note and being so liable he the said John Arkney in consideration thereof afterwards to wit on the day and year last aforesaid

Said at the County and State of our said and within the Jurisdiction of our said undertook and then and there faithfully promised the said James Peine to pay him the said sum of one hundred dollars in merchandise in the said note specified according to the tenor and effect of the said note. Yet the said John Wukeny not regarding his said promise and undertaking so by him made as aforesaid but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said James Peine in this behalf hath not as yet paid the said sum of one hundred dollars in merchandise or any part thereof to the said James Peine although often requested so to do but hath hitherto wholly neglected and refused and still neglects and refuses so to do to wit at Brownsville in the County and State of our said and within the Jurisdiction aforesaid to the damage of the said James Peine one hundred and fifty dollars and therefore he sues - and whereas also the said John Wukeny afterwards to wit on the day and year last aforesaid in the County and State of our said and within the Jurisdiction aforesaid was indebted to the said James Peine in the further sum of one hundred dollars to be paid on or before the first day of January in the year of our said one thousand eight hundred and twenty eight for a certain promissory note before that time due and owing from the said John Wukeny to the said James Peine and by the said James Peine given up to the said John Wukeny at his special instance and request and being so indebted he the said John Wukeny in consideration thereof afterwards to wit on the day and year last aforesaid in the County of State of our said and within the Jurisdiction aforesaid undertook and then and there faithfully promised the said James Peine to pay him the said last mentioned sum of money when he the said John Wukeny should be thereunto afterwards requested - and whereas also the said John Wukeny afterwards to wit on the day and year last aforesaid at the County and State of our said and within the Jurisdiction aforesaid accounted with the said

James Peirce of and concerning severall other sums of money
from the said John Ankeney to the said James Peirce
before that time due and owing and then in arrears and
unpaid and upon such accounting the said John
Ankeney was then and there found to be in arrears
and indebted to the said James Peirce in the further
sum of one hundred dollars in much and more and be-
ing so found in arrears and indebted he the said John
Ankeney in consideration thereof afterwards to wit on
the day and year last aforesaid at the County and
state aforesaid and within the Jurisdiction aforesaid
undertook and then and there faithfully promised the
said James Peirce to pay him the said last mentioned
sum of money when he the said John Ankeney sho-
uld be therunto afterwards requested. And then the said
said John Ankeney not regarding his said several
promises and undertakings but continuing and pro-
vulgently intending craftily and subtly to deceive and
deprive the said James Peirce 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 James
Peirce although often requested so do do but the said John
Ankeney to pay him the same hath hitherto wholly
neglected and refused and still doth neglect and refuse to
the damage of the said James Peirce one hundred and fifty
dollars and therefore he sues - Hamilton for Plaintiff.

And afterwards to wit at a Court Court held at the Court ho-
use in the town of Brownsville in and for the said County
of Jackson ^{on Wednesday the 16th day of April 1825} came as before the said James Peirce by the said
R. J. Hamilton his attorney as the said John Ankeney
by Young and McLean his attorneys and the said
deposition by his said attorney filed his several
pleas of non assumpsit and payment which said
pleas are in the words following to wit - "State of Illinois
Jackson County and Circuit April term 1825 John An-
keney adon James Peirce. In Assumpsit. And the said
Ankeney by Young and McLean his attorneys comes

and depends the wrong and injury when so, and says that the
plaintiff his action aforesaid ought not to have or main-
tain against him because he says that he did not in-
dertake or promise in manner and form as the said
Pence hath above complained against him and of this
he puts himself upon the Country &c.

Mr. Lean & Young for Deft.

And the said Plaintiff doth the like.

And for a further plea in this behalf as to the first
count in the plaintiffs said Declaration says that
the said Plaintiff his action aforesaid ought not to
have or maintain against him because he says that
he the said Defendant on the first day of January A.D. 1828
in the said writing mentioned mentioned paid to the said
Plaintiff the said sum of one hundred dollars with all
damages due thereon according to the form and effect
of the said instrument of writing to wit at the County and
Court aforesaid and thus he is ready to verify wherefore
he prays judgment if the said Plaintiff ought to have or
maintain his aforesaid action thereof against him &c.

Mr. Lean & Young for Deft.

And the said Plaintiff as to the plea of the said Defendant by
him secondly above pleaded saith that the said Plaintiff
by reason of anything by the said Defendant in his
plea alleged ought ^{not} to be barred from having and main-
taining his aforesaid action thereof against him the said
Defendant because he says that the said Defendant did
not pay unto him the said Plaintiff the said sum of
one hundred dollars in the said writing mentioned with
all damages due thereon in manner and form as the
said Defendant hath above in his said plea in this be-
half alleged and thus he the said Plaintiff prays may
be acquitted of by the Country. Plaintiff for Plaintiff

And the said Defendant doth the like &c.

And afterwards to wit on the same day and good last
before the said Plaintiff filed his answer against the
said Defendant and notice also that on the trial of
said Suit he should give the said amount as spe-
cial matter by way of set-off. Which said Statute

an amount as in the words following words to wit -
 John Winking ad. James Peire. In Assumpsit -

Mr James Peire will take notice that I will
 on the trial of the above entitled cause give the follow-
 ing amount marked it and hence annofed and the
 items therein mentioned as special matter by way
 of set off and defence to your said demands in
 said declarative mentioned - John Winking by Mr.
 Sean & Young his attorney

James Peire in acct with J. Winking - I -

1825	Oct 5th 1/2 Gal. Whiskey 37 1/2 19th Whis. 18 3/4 1/2 pt. 80 12 1/2 =	68 3/4
	" 12th 2 Bostons Whis 37 1/2 20th 400.75	1.12 1/2
	Do. 1/2 pt. 1/2 pt. Bann 25 1/2 10.00 State paper 400th per 2d.	5.25
	Car 5.00	
	" 2 1/2 Bushels meal 62 1/2 4 days work per I mean 2.00	2.62 1/2
	" 10 Cash paid Han 68 3/4 to 4th pack to Han 12 1/2 =	7.00
1826	May 14th to apt. of Wyer 25 4 yds Domestic 1.00 3 Do	2.50
	Russia Lard 75 19th Whis 25	
	June 12th 19th Whis 25 18th 1/2 pt Whis. 12 1/2	37 1/2
	" 19th do 1 Horse Saddle & Bridle 35.00 Car 3.00	38.00
	" " 70 9th Packer 25 July 6th 4 pt. 1/2 pt. 50 -	75
	July 9th Cash 25 pink Whiskey 25 Sugar 12 1/2	62 1/2
	" 22nd Cash in state paper 4.00 = 2.50	257
	Aug 23rd 1/2 bushel Salt 37 1/2 Sept. 7th 68 1/4 Bushel Salt 47	47.80
	47.43	
	Sept. 7th 2 pt. Shaw Leathers 2.00 29th 15th horse -	252.00
	250.00	
	Nov. 18th to 3 weeks board at 1.50 pr week. 4.50	4.50
	Dec. 1th 65 bushels & 11th Salt 65.22	65.22
1827	28 1 pt. Shaw 2.00 Jan. 1th 1/2 pt. Whis. 12 1/2	2.12 1/2
	Feb 1th 19th Whis. 25 - 25 1/2 Salt 50 1/2 pt. Whis. 12 1/2	87 1/2
	" 19th to goods from Halls Store 100.00	100.00
	Apr 25th to 1/3 expense of turning well	32.57 1/2
	" to 117 lbs Salt 23 1/4 July 30th 48 lbs Salt 86	3.20
	Sept. 10th 75 lbs Salt 1.50 16th. Clussee 1.50	3.00
	" to Damage of Sheep 80 1/2 bushel Salt 50	1.00
	13th 2 Bushels Salt pr. Shaw 2.00 75 lbs Salt pr 80 1.50 =	3.50
		876.73

Shaw being found as of our aid ~~on motion~~ By or-
 der of the Court there came the Jurors of a Jury to wit

Harrison Hicks, Abraham Kimmon, James Weather, Benjamin Bradshaw, David Reynolds, John Butcher, John Sumner, John Bittle, Richard Lee, Thomas Morrow, William W. Brewer & Gasper Summers who being duly tried and sworn to try the jury found upon the pleas aforesaid do on their oaths say we the jury find for the Plaintiff and assess his damages at Eighty five Dollars Sixty Six and two third cents.

During the trial of this case the Defendant by his attorney presented to the Court a Bill of exceptions to the opinion of the Court which was signed Seal and ordered to be filed and made a part of the record which said Bill is in the following words to wit-

John Dukenny adon James Pease. In Case - Be it remembered that on the trial of this cause the Defendant proved the delivery of a Stud Horse to the Plaintiff at two hundred and fifty dollars and also the delivery of a hundred and twenty Bushels of Salt at Seventy five cents per bushel and other demands for goods to one hundred dollars delivered to Plaintiff by the Defendant anterior to the execution of the note sued on. The Plaintiff moved the Court to instruct the Jury that the execution of the note sued on in this case was evidence of a settlement of all demands due from Plaintiff to Defendant up to the date of the note sued on unless the Defendant had shown by evidence that these demands were not settled at the execution of said note which instruction the Court gave. In which opinion of the Court the Defendant by his Council excepts to. Given under my hand and Seal this 17th day of Nov. 1828.

Thomas E. Browne

And afterwards to wit on the 21st at a Court held in and for the County of Jackson on Thursday the twenty eighth day of April one thousand eight hundred and twenty eight came again the parties by their attorneys and the Defendant moved the Court here to grant a new trial in this case and filed his reasons for such new trial which said reasons are in these

would to wit " April Term 1828 John Arkney advs.
James Piver. In Case in the Jackson Circuit Court
In this case the Defendant moves the Court for a
new trial for the following reasons to wit First
The verdict is contrary to Law. Second, The verdict is
contrary to evidence. Third, The Court misdirected the
Jury - The misdirection of the Judge caused led in this
to wit that under the plea of payment and notice
of Set off in this case that they were to disallow all
demands of the Defendant anterior to the date of
the note in this case and that note in this case
was evidence of a settlement of all accounts and de-
mands due from Plaintiff to Defendant up to the
date of said note unless the Defendant should prove
to the contrary - Young & Miller for Arkney -

Which said motion for a new trial being after due
consideration is overruled by the Court whereupon on
motion of the Plaintiff, Allowance is ordered and con-
sidered by the Court that the said Plaintiff do recover
of the said Defendant the said sum of Eighty five and
sixty six and two thirds cents so as aforesaid by the Jury afore-
said assessed for his damages as well as the Costs and Char-
ges about this his said expense and have execution there-
for - Whereupon the Defendant prayed an appeal from
the Judgment of this Court to the Supreme Court of this
State and tendered George and Edward Schwantz as his
Security on such appeal whereupon it is ordered by the Co-
urt that such appeal be granted upon condition that
within the term of twenty days from this date the said
Defendant do file in the Clerk's office of this Court his
bond in the sum of two hundred dollars conditional ac-
cording to Law with the said George and Edward his Se-
curity - And after ward, to wit on the first day of May
A. D. 1828 the said Defendant agreeable to the condition
above mentioned and upon which the said appeal was
granted came and filed his bond in the Clerk's office wh-
ich said bond is in the word following to wit -

" Know all men by these Presents that we John Arkney Geo-
rge Schwantz and Edward Schwantz are held and firmly

bound unto James Peine his heir and assigns in the penal sum of two hundred dollars lawful money of the United States for the payment of which we bind ourselves our heirs executors and administrators jointly and severally ^{family} by these presents. Made and Sealed with our Seals and dated at Brownsville this 19th day of April A.D. 1828 the condition of the above obligation is such that whereas the above bound John Arkney has taken an appeal to the Supreme Court from the judgment of the Circuit Court for Jackson County rendered on the 17th day of April A.D. 1828 for Eighty five dollars Sixty six and two third cents damages and costs of suit in favour of the Plaintiff in a case in which James Peine is Plaintiff and John Arkney defendant - Now if the said John Arkney shall and do faithfully and Diligently prosecute his said appeal before the said Supreme Court and in case the said Judgment of the said Jackson Circuit Court be affirmed by the said Supreme Court if he pay or cause to be paid the amount of the said Judgment and all costs in law and damages that here or shall arise thereon then this obligation shall be void and of no effect else remain in full force and virtue. John Arkney

Executed before me at my office in Brownsville
 J. McAnring
 Clerk of the Circuit Court
 of Jackson County

George Schwaite
 Edward Schwaite

On which Bond was the following instrument
 "Cin. Court James Peine vs John Arkney Appraisment
 Bond Filed May 1. 1828 J. McAnring Clerk

I Mac Manning Clerk of the Circuit Court for Jackson County do hereby certify that the cost in the foregoing case has been duly taxed by me and entered on my fee book of which the following is a true copy to wit -

James Peine vs John Arkney - Appraisment -
 Filing process 6 1/4 Summons 50 filing 6 1/4 Entries 1.62 1/2
 attorney's filing declaration and note 12 1/2 Docketing 0.12 1/2
 12 1/2 entering appearance 12 1/2 Calling and Swearing 0.25
 ing Jury 18 1/4 Sweearing six witnesses 37 1/2 entering - 0.56 1/4
 1.56 1/4

viduit 12% filing 6% order for Judgment 25 Judgment 8.43 1/4	1.56 1/4
25 Certifying Satisfaction 25	2.50
	2.50
	5.50
Attorney's fee 2.50 Sheriff's fee 3.00	
Shuff's Cost on Summons 68 3/4 Summons	
May 50 Calling Same 12%	1.31 1/4
Dependant's Cost	
Returning attorney 12% Subpoena 50 filing 0.62 1/2	
6 1/4 Certifying appearance 12% filing three papers 0.18 3/4	
or 18 3/4 order to file bill 25 filing 6 1/4 filing - 0.50	
reason 6 1/4 order 25 order 25 Bond 50 filing 1.06 1/4	
6 1/4 Return party mine	
Certificates 50	0.50
	\$ 9.06 1/4

State of Missouri }
 Jackson County } I, J. M. Manning, Clerk of the Circuit
 Court of Jackson County, do hereby cer-
 tify that the foregoing is a full and true Record of the
 proceedings had in this case before the said Court as app-
 ears from the Records and papers on file and now re-
 maining in my office -

Given under my hand and private Seal and of-
 ficial Seal being provided at Brownsville this
 nineteenth day of June in the year of our Lord
 one thousand eight hundred and twenty eight

J. Manning Clerk

Seal

James James

M.

John Shubrey

in Abraham's

Record

Obtained from Jackson

County Court

File Dec 1, 1828

J. M. Duncan

Young - X

X

State of Illinois Sec.

THE PEOPLE OF THE STATE OF ILLINOIS

TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Jackson,*

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 *Jackson* county, before the Judge thereof, between *James Piere* plaintiff

and *John Anthony*

defendant , it is said manifest

error hath intervened to the injury of the aforesaid *John* 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 plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Vandalia in the county of Fayette, on the *first* *Monday of Decr.* 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, *James M. Duncan*, Clerk of our said court, and the seal thereof at Vandalia, this *25th* day of *November* in the year of our Lord one thousand eight hundred and *twenty eight.*

James M. Duncan
by *H. Eady* Depy.

John Auker

vs.

James Pierce

Writ of Error in
Court Cases.

Filed Dec. 8. 1828.

J. M. D. clk

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THE PEOPLE OF THE STATE OF ILLINOIS

State of Illinois }
Supreme Court } Sct. December Term 1828.

John Ankeny }
James Pierce } ~~In Error~~ On appeal.

afterwards, to wit, on the first Monday of December 1828 at the December Term of the Supreme Court before the Judges thereof in Vandalia came the said John Ankeny by McLean & Young his attorneys, and says that in the record, and proceedings aforesaid, and also in giving the judgment aforesaid there is manifest error, in this, to wit;

1st That the judgment of the Court ^{below} upon the Demurrer of the defendant to the replication of the plaintiff to the defendant's 3rd plea, ought to have been in favor of the said Ankeny, and not in favor of the said Pierce. and that 2^d Demurrer should have been sustained.

2nd That the judgment of the Court ~~below~~ on the Demurrer of the said plaintiff Pierce, to the fifth plea of him the said Ankeny, ought to have been in favor of the said Ankeny, and not in favor of the said Pierce. and that the said Demurrer was improperly sustained, when in point of law it should have been overruled -

For which errors, and other errors in the record, and proceedings aforesaid, the said Ankeny prays that the judgment of the Court below, in the matter aforesaid may be reversed, annulled, and vacated, and that he may be restored to all things lost by occasion of the same &c.

McLean & Young - for
the plaintiff Appellant.

Supreme Court

John Anthony &
James Pierce ^{vs} Appeal.

Assignment of Errors

McLean & Young
for appellant.

Filed Dec 5 1828
J. M. Munan

(Covenant)

State of Illinois }
Supreme Court }

at December Term 1828

John Ankeny
vs
James Pierce

Appeal from the Jackson Circuit Court.

Statement of the Case.

On the 12th day of March 1828 - James Pierce commenced an action of assumpsit in the Jackson Circuit Court against John Ankeny, on a promissory note for the payment of the sum of \$100. in Merchandize. The note is dated the 19th February 1827, and payable, on, or before the 1st January 1828. To the declaration filed by the plaintiff in this cause the defendant Ankeny filed 2 pleas - The first non-assumpsit, and the second Payments with notice of set-off; to both of which pleas the plaintiff took issue to the Country &c; at the trial of the cause before the jury, the defendant Ankeny proved the delivery of a stud horse to the plaintiff of the value of \$250 - also the delivery of 150 bushels of salt at 75 Cents to the bushel; and other demands for goods to the value of \$100, delivered to the plaintiff Pierce by the defendant Ankeny anterior to the execution of the note sued on. The plaintiff's counsel then moved the Court to instruct the jury, that the execution of the note sued upon in said suit, was evidence of a settlement of all demands due from the plff. to the deft. up to the date of the said note; unless the defendant could shew by evidence that said demands were not settled at the time of the execution of the said note. Which instructions the Court gave; and the said defendant not being able to shew that said demands were not intended to be included in the settlement at the execution of said note, they were accordingly rejected by the Jury, and a verdict rendered in favor of the plaintiff. To which opinion of the Court the defendant by his counsel excepted, which exceptions were reserved by bill &c - At the same term of the said Circuit Court the defendant Ankeny by his counsel moved the Court for a new trial -

= assigning for reason the misdirection of the Judge to the
Jury as aforesaid, and for other reasons which are
stated in the records. Which motions the Court
overruled, and proceeded to pronounce judgment
upon the said verdicts of the jury for the sum of
\$85.66 $\frac{2}{3}$ cents, and costs of suits - From which said
judgment this appeal is prosecuted &c -
To shew that the Court misdirected the Jury &c
See

McLean & Young
for appellant
3

Supreme Court.

John Aukery
vs
James Pierce

appeal

Statement of the Case

McLean & Young
for Appellant
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Pleas in the Circuit Court of Jackson County
at their April term of the said Court in the year
of our Lord one thousand eight hundred and
twenty eight before the Honorable Thom-
as B. Browne Presiding Judge of the said
Court.

Be it remembered that heretofore to wit on the 14th
day of March A.D. 1828 James Peine by Richard J. Ham-
ilton his attorney came and filed in the Clerk's Of-
fice of the Jackson Circuit Court his Petition which
is in the words and figures following to wit.

" April Term of the Jackson Cir Ct. 1828.

James Peine } Action of Covenant Damages
vs. John Ankney } two hundred dollars - The Clerk of
the Jackson Circuit Court will
issue a summons in the above entitled Cause
March 13th 1828. Hamilton P. J. -"

And agreeable to the order in the said Petition con-
tained afterwards to wit on the 15th day of March
A.D. 1828 there was issued from the said Clerk of said
a summons directed to the Sheriff of the said Jack-
son County and made returnable returnable as
therein mentioned which said summons is in the
words following that is to say -

" State of Illinois for the People of the State of Illinois to the
Jackson County } Sheriff of Jackson County - Greeting

We command you to summon John Ankney to ap-
pear before the Circuit Court of Jackson County on
the first day of their term to be held at the Court
house in the town of Brownsville in and for said
County on the second Monday of April next to an-
swer the complaint of James Peine in a plea
of Covenant damages two hundred dollars
and have you there then this writ.

Witness Thomas B. Browne presiding Judge of
L.S. our said Court and the Clerk's private Seal
no official Seal being provided at Brownsville

this fifteenth day of March one thousand eight hundred and twenty eight - J. Manning Clerk,
which said writ of Summons being put into the hands of the Sheriff of the said County of Jackson was by him returned to the said Clerk's office with the following instrument to wit " Executed the 15 of March 1828 Serving - so Returning 12 1/2 miles 6 1/4 = 68 3/4
J. Grigg, Sheriff of J. Co. - "

And afterwards to wit on the 25th day of March A. D. 1828 the said James by the said Richard J. Haxelton his attorney came and filed in the said Clerk's office his certain Bill of Complaint or Declaration against the said John Makeney which said Bill or Declaration is in the following words to wit " State of Illinois. In the Jackson Circuit Court of April term in the year of our Lord one thousand eight hundred and twenty eight. James Pierre complain of John Makeney in Custody &c. of a Plea of Breach of Covenant. For that whereas heretofore to wit on the seventeenth day of February in the year of our Lord one thousand eight hundred and twenty seven at Brownsville in the County of Jackson by certain articles of agreement then and there made concluded and agreed upon between the said James of the one part and the said John Makeney of the other part one part of which said articles of agreement sealed with the seal of the said John the said James brings here into Court the date whereof is the same day and year aforesaid the said ^{James} do for and in consideration of the profits therein after mentioned agree and do hereby Lease unto the said John his heirs and assigns one half of the Salt water in the salt water well at the Big Muddy Saline near the said town of Brownsville together with the privileges appertaining to the one half of the said water for and during the full term of the lease of the said James for the said Big Muddy Saline from the govern^{or} of this State

And he the said James also agreed and thereby granted to the
said John his heirs and assigns a full privilege of the timber
upon the Reserve for the said Saline for the purpose of
boiling his said half of the said Salt water - And the
said John did thereby for the Privileges therein above men-
tioned and above herein ~~etc~~ recited or therein to be
mentioned agree bind himself and his heirs and assigns to pay
the said James his heirs and assigns the following
rents to wit for the first year which was to be con-
sidered to have been commenced and received from the
Eighth day of January in the year first aforesaid
one thousand and fifty Bushels of good merchantable
Salt to be delivered at the Salt house of the said
John at his furnace at San Saline in good Barrels
at or before the first day of November then
next as by the said Articles of agreement reference
being thereunto had will amongst other things more
fully and at large appear - By virtue of which said
deed the said John afterwards to wit on the same
day and year first above mentioned entered into and
upon all and singular the said devised premises with
the appertinances and tenements and was possessed thereof
for the said term so granted thereof to him as aforesaid
and although the said James hath always from the
time of making the said articles of agreement hitherto well
and truly performed fulfilled and kept all things in the
said articles of agreement contained on his part and be-
half to be performed fulfilled and kept according to the
tenor and effect true intent and meaning of the said
articles of agreement to wit at Snowsville aforesaid
yet protesting that the said John hath not performed
fulfilled and kept any thing in the said articles of agree-
ment contained on his part and behalf to be per-
formed fulfilled and kept according to the tenor and
effect true intent and meaning thereof - The said James saith
that after the making and entering into the said arti-
cles of agreement and during the said term thereby gra-
anted to wit on the Eighth day of January in the year
one thousand eight hundred and twenty eight at

Brownsville aforesaid a large quantity of Salt to wit the quantity of one hundred and fifty bushels of the rock aforesaid for one year of the said term then elapsed became and was and still is in arrears and unpaid to the said James nor did he the said John pay the said James his heirs or assigns the said one hundred and fifty bushels of good merchantable Salt nor did he deliver the same at the Salt house of him the said John at his said furnace at said Saline in good Barrels at or before the said first day of November then next ensuing the date of the said articles of agreement or at any time since that day withate and still wholly refuses so to do (altho. to do the same the said John hath been often requested to wit on the first day of January in the year one thousand eight hundred and twenty eight at Brownsville aforesaid) contrary to the tenor and effect true intent and meaning of the said articles of agreement and of the said Covenant of the said John by him in that behalf so made as aforesaid to wit at Brownsville aforesaid - And so the said James in fact saith that the said John (altho. often requested so to do) hath not kept said Covenant so by him made as aforesaid but hath broken the same and to keep the same with the said James hath withate wholly ^{neglected} ~~refused~~ and refused and still both neglect and refuse to the damage of the said James of two hundred dollars and therefore he brings his suit &c.

Hamilton for Plaintiff -

And the said Articles of agreement prospect of which was made as mentioned by the said Plaintiff in his said Bill of Complaint or Declaration is in the words and terms following to wit: "Articles of Agreement made and entered into between James Peice of Jackson County Missouri of the first part and John Arkney of the same place in which it is agreed by and between the said Parties as follows to wit - The said James Peice the said Party of the first part for and in consideration of the profits herein after mentioned agrees and does hereby Lease unto the said John Arkney his heirs and assigns one half of -

The salt water in the salt water well at the Big Muddy Saline near the town of Brownsville together with the privilege appertaining to the one half of the said water for and during the full term of the lease of the said James Pierce for the said Big Muddy Saline from the government of this State - He also agrees to and with hereby grants to the said John A. Dukerney his heirs and assigns a full privilege of timber upon the residue for the said saline for the purpose of loading his said half of the said salt water - And the said John A. Dukerney partly of the said surface for the privileges above mentioned or to be mentioned agrees and binds himself to pay the said James Pierce his heirs and assigns the following rents to wit - for the first year which is to be considered to have been commenced and removed from the Eighth day of January 1827 one hundred and fifty Bushels of good merchantable Salt to be delivered at the Salt house of the said John A. Dukerney at his place at said Saline in good Barrels at or before the first day of December next and it is also understood and agreed by and between the said Parties that in case the ^{3rd} Salt water in the said well remain in the same condition as it now is then the rents for the said one half of the said water shall be one hundred and fifty Bushels for each and every year to be delivered on or before the first day of December each year in good Barrels at his said Salt house - If the quality of the said Salt water be impaired by the completion of the contract between the said James Pierce and Martin M. Wood and William Beath for boring the said well to the depth of two hundred feet - At the expiration of the said first year and if the said water be impaired the rents shall be as follows and depend upon the following circumstances to wit - Whereas the said Wood and Beath are to sink the said well to the depth of two hundred feet and they are not bound to the said Pierce to go any deeper neither is the said Pierce bound to them to assist in going any deeper than the said two hundred feet when the said two hundred

are finished and no further boring having been done if
the water be so improved that on a furnace of Sixty Kettles
such as are now in use can be made one hundred and
fifty bushels per week then the rents shall be five hun-
dred bushels per each and every year payable at the
end of each month in equal instalments at said Salt
house in Barnet, and if so improved that can be
made on like furnace from two hundred to two hun-
dred and fifty Bushels per week then the rents shall be
Seven hundred and fifty Bushels per month delivered as above men-
tioned and if the said water shall have been still fur-
ther improved then the rents shall be increased in the
same proportion - And further it is distinctly under-
stood and agreed by and between the said parties that at
the time of the completion of the said two hundred feet
if the rent as above regulated do stand at any thing
less than five hundred bushels of Salt and the said Wood
and Coalth or the said Arkney or the said Wood Coalth
and Arkney shall go on and bore deeper (which they
have the privilege of doing be the quality of the water
what it may) and make improvement in the said wa-
ter what so ever such improvement may be the rents
shall be increased agreeable to the said improvement
according to the arrangement above made with this
proviso that the said rents shall in no case exceed five
hundred bushels per year and if the rents exceed one
hundred and fifty bushels per year shall be paid in
thirteen equal monthly instalments in the manner and
at the place as above provided - And at the time of the
completion of the said two hundred feet if the rents as above
agreed upon stand at five hundred bushels of Salt per
annum or more then if the said Arkney Wood & Coalth
or any of them shall go on and bore deeper and shall
make further improvement on the said Water then the
said rents shall not be increased but shall stand and
remain as they did at the time said two hundred feet
were completed and before said improvements were made
and be payable as and at the times and place above pro-
vided - It is further agreed that if in boring deeper than the

well is at this time the present water be decreased in quantity or quality then the rents above mentioned shall be decreased accordingly - And further it is agreed that if by freezing of the pipes or some other unavoidable accident the said Arkency shall have not have salt on hand for the payment of any of his said rents he the said Arkency shall have a reason able time after the commencement of working his said furnace to enable him to pay the said Rents. And it is further agreed that if at any time it shall become necessary to test the quality of the water in the bottom of the said well or if the said parties of Arkency and Pease or either of them be desirous of testing the said water and for doing so it be necessary to tube the said well then the said Arkency shall be at one third of the expense in tubing the same and the said James Pease shall be at the expense also of one third part of the said tubing which tubing shall be under the superintendence of the said Pease - And it is understood that the testing of said water shall be on a furnace of John Arkency which said furnace of said Arkency the said Pease shall have the use of at any week by giving said Arkency seven days notice (unless otherwise agreed) within said week the said Arkency shall supply the said furnace with wood and water and hands to tend and give the superintendence of the same to said Pease for the said week one week for the purposes above mentioned and the salt then made shall be for the use of said Arkency on such a furnace as is mentioned on the second page of this agreement or if on a less or greater furnace than in the same proportion.

In testimony of the above see the said parties do hereunto set our hands and seals this 17th day of July - A. D. 1827.

Witness
R. J. Hamilton
John W. Blackstone -

James Pease
by
Richard J. Hamilton
John Arkency by
J. W. Blackstone -

on the first page the word "Salt house of the" and on the second page "such as are now in use" & "per week"

and on the third page "than the well is at this time" &
"of" and on the fourth page "one of the said Pieces" &
"to said Piece" & "on" & "of Feb" all intended before signing

^{Wm. J. Chamming -}
And afterwards to wit at a Circuit Court held at the
Court house in and for the said County on Thursday the
seventeenth day of April in the year of our Lord
one thousand eight hundred and twenty eight the
Parties came as well the said Plaintiff by R. F. Hamilton
his attorney as the said Defendant by Wells and M. Scan-
lin attorney, and the said Defendant by his said Attor-
ney, and filed his first second third fourth and fifth
Pleas and which said third plea is in the words follow-
ing to wit - "and for further plea in this behalf the de-
fendant says the plaintiff his action against him to
have and maintain ought not because he says that
the said article of agreement in the Plaintiff's decla-
ration mentioned was made and entered into by the said
defendant without any good or valuable consider-
ation and this he is ready to verify wherefore &c.
Henry and M. Scanlin"

And also the defendant's said fifth plea is as aforesaid &
filed in in these words to wit "and for further plea
in this behalf the said defendant says he ought not
to be charged with the said damages by reason of the
said supposed breach of covenant by virtue of the said
supposed article of agreement Because he says that
the said supposed article of agreement in the said decla-
ration mentioned was obtained from the said defen-
dant by the said plaintiff (and others in collusion
with him) by fraud cover and misrepresentation that
is to say by the said plaintiff (and others in collusion
with him) falsely and fraudulently representing to the
said defendant that the said plaintiff was Lessee of
the said Big muddy Saline for the term of ten years
from the day of February 1825 until the day
of February 1835 by grant from the governor of
the state of Illinois made and entered into by author-
ity of and in persname of and agreeably to the pro-

=visions of an act of the General Assembly of the State
of Illinois entitled an act to authorize the Govern-
or to lease the Big-Muddy Saline approved January
30 1825 and that the said Article of agreement was
executed by the said Defendant in confidence of
the said false and fraudulent representations do
with at the County &c. aforesaid Wherefore the said
Defendant saith that the said Article of agreement
in the said Declaration mentioned was and is void
in Law and this the said Defendant is ready to ver-
ify wherefore &c. Young and McLean

And the said Plaintiff says that he ought not to be
barred by any thing in the Plea of the said Defendant
set forth by above Plea because he says that the mat-
ters and things therein contained are not sufficient
in Law to bar or preclude him the said Plaintiff
from having and maintaining his aforesaid ac-
tion there against him the said Defendant and
that the said Plaintiff is not bound by the Law of the
Land to answer the same - and this he is ready to
verify wherefore for want of a sufficient plea in this
behalf he the said Plaintiff prays Judgment and his
damages by reason of the not performing and breach
of the said several Covenants in the said Declaration
mentioned to be adjudged to him &c.

Plaintiff for Plaintiff -
and the said Defendant saith that his said plea by
him set forth by above Plea and the matters therein con-
tained in manner and form as the same are above
pleaded and set forth are ~~set forth~~ sufficient in Law
to bar and preclude the said Plaintiff from having
or maintaining his aforesaid action there against
him the said Defendant and that he the said De-
fendant is ready to verify and prove the same when
and where and in such manner as the said Court
here shall direct and award wherefore inasmuch as
the said Plaintiff hath not answered the said plea
nor hath to in any manner denied the same the said

defendant prays Judgment and that the said Plaintiff
may be barred from having or maintaining his aforesaid
action there against him the said defendant &c.

And after argument and due consideration it is ordered
and considered by the Court that the answer to the
defendant said fifth plea be sustained - And when
upon the said defendant withdrew his first second &
fourth pleas above pleaded - And for Replication to the
said defendant's third plea the said Plaintiff says that he
the said Plaintiff by reason of any thing by said defend-
ant in his said plea thirdly by him above pleaded al-
leged ought not to be barred or precluded from having
and maintaining his aforesaid action there against
him the said defendant because he says that the
said agreement was made and taken into for the con-
sideration of the said Plaintiff's agraving and loading unto
the said defendant his heirs and assigns the one half
part of the Salt water in the Salt water well at the
Big Muddy Saline near the town of Brownsville to geth-
er with the privileges appertaining to the one half of the
said water for and during the full term of the Lease of
the said Plaintiff for the said Big Muddy Saline from
the Governor of this State of Illinois and also for the
said Plaintiff agreeing and granting unto the said
defendant his heirs and assigns a full privilege of
timber upon the reserve for the said Saline for the
purpose of boiling his said half of the said salt wa-
ter as set forth in the said agreement in said
declaration mentioned as by reference thereto will
more fully appear which this Plaintiff is ready to ver-
ify wherefore he prays the Judgment of the Court and
his damages by him sustained on the occasion of the non-
performance and breach of the said several covenants in
the said declaration mentioned to be redressed to him.

Itaem Ita pro Plaintiff

And the said defendant saith that the said Replication of the
said Plaintiff to the said third plea of him the said defen-
dant and the matters and things therein contained is

manner and form as the same are above pleaded and set forth are not sufficient in the Law for the said Plaintiff to have or maintain his aforesaid action thereof against him the said Defendant and that he the said Defendant is not bound by the Law of the Land to answer the same and that he the said Defendant is ready to verify wherefore for want of a sufficient replication in this behalf he the said Defendant prays Judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him -

Young & Co. Law for Def.

And the said Plaintiff says that the said Replication to the Defendants said third plea and the matter therein contained in manner and form as the same are above stated and set forth are sufficient in the Law for him the said Plaintiff to have and maintain his aforesaid action thereof against him the said Defendant and the said Plaintiff is ready to verify and prove the same as the Court here shall deem and award. wherefore in as much as the said Defendant has not answered the said Replication to the Defendants said third plea nor wither to in any manner denied the same the said Plaintiff Prays Judgment and his Damages by reason of the not performing and breach of the said several Covenants in the said Declaration mentioned to be adjudged to him &c.

Hanilton for Plaintiff -

And after argument heard it is ordered and Considered by the Court that the said Demurrer to the Replication to the Defendants third plea as above pleaded be overruled - And the said Defendant abiding the decision made upon the Demurrer thereupon on motion of the Plaintiffs attorney by order of the Court there came the Jurors of a Jury to wit George B. Greenwood Harrison Hicks Jaiduck Jope David Reynolds Thomas Elton or Richard Lee George Schwartz John Zimmerman James Wetheren William Gaston John Jope, Reppel B. Greenwood who being duly tried and sworn to assess the Damages sustained by the Plaintiff herein do on their oathes say wth the Jury ass^{ts} the Plaintiffs dan-

=ages at ninety three dollars and seventy five cents which upon it is ordered and considered by the Court that the Plaintiff receive & recover of the said defendant the said sum of ninety three dollars and seventy five cents so as aforesaid assessed by the Jury aforesaid for his damages aforesaid as well as the costs and charges about his suit in this behalf expended and have execution therefor.

And the said defendant came into Court and prayed an appeal from the Judgment of this Court to the Supreme Court of this State and offered George Schwartz and Edward Schwartz as his Security on the said appeal which said application is granted and the said appeal is granted on condition that the said Plaintiff do file in the office of the Clerk of this Court his bond in the sum of two hundred dollars conditioned according to Law within the space of twenty days with George Schwartz and Edward Schwartz security.

And afterwards to wit on the first day of May 1828 the aforesaid to the condition upon which the said appeal was granted the said defendant filed in the office of the Clerk of this Court his Bond with George and Edward Schwartz his Security which said Bond is in the words following to wit.

Know all men by these presents that we John Wukeny George Schwartz and Edward Schwartz are held and firmly bound unto James Peire his heirs and assigns in the personal sum of two hundred dollars for the payment of which we bind ourselves our heirs executors and administrators jointly and severally firmly by these presents. Made and Sealed with our Seals with our Seals and date at New Orleans this 17th day of April A.D. 1828. The condition of the above obligation is such that whereas the above named John Wukeny has taken an appeal to the Supreme Court of the State of Louisiana from the Judgment of the Circuit Court for Jackson County rendered on the 17th day of April A.D. 1828 in favour of the Plaintiff for the sum of ninety three dollars and seventy five cents damages and costs of Suit in a case in which the said James Peire was Plaintiff and John Wukeny Defendant. Now if the said John Wukeny shall and do faithfully and diligently prosecute his said appeal before the said Supreme Court and in case

Ankeny Dependant. Now if the said John Ankeny shall and do faithfully and diligently prosecute his said appeal before the said Supreme Court and in case the said judgment of the said Jackson Circuit Court be affirmed by the said Supreme Court if the pay or cause to be paid the amount of the said judgment and all costs in court and damages that have or shall come thereon then this obligation shall be void and of no effect else remain in full force and virtue.

Executed before me at my office in Brownsville
 I, William Clark
 of the Circuit Court of Jackson County

John Ankeny
 George Schwack
 Edward Schwack

And on the Back of which is the following indorsement -
 in Cir. Court. James Pierce vs John Ankeny Covenant -
 Bond Filed May 1, 1828 J. Williamson Clark

I, J. Williamson Clark of the Circuit Court of Jackson County do certify that the costs in the above and foregoing suits have been duly taxed by me and entered on my fee Book of which the following is a true transcript to wit -

James Pierce vs John Ankeny, Covenant	
Filing process 6 $\frac{1}{4}$ Summons 50 filing 6 $\frac{1}{4}$ Return of 0.62 $\frac{1}{2}$	
attorney 12 $\frac{1}{2}$ filing declaration and exhibits 12 $\frac{1}{2}$	1.25
ocketing 12 $\frac{1}{2}$ entering appearance 12 $\frac{1}{2}$ filing do-	1.25
mon 6 $\frac{1}{4}$ order on return 25 filing repli-	1.31 $\frac{1}{4}$
cation 6 $\frac{1}{4}$ order 25 taking and swearing in	1.31 $\frac{1}{4}$
ry 18 $\frac{1}{4}$ Swearing from 25 entering verdict 12 $\frac{1}{2}$	1.50 $\frac{1}{4}$
Judgment 25 filing our paper the entering sales	1.31 $\frac{1}{4}$
portion of Judgment 25	0.25
	<u>2.87$\frac{1}{2}$</u>

Attorney's fee 2.50 Days fee 3.00 5.50

Sheriff, Cost. on Summons 68 $\frac{1}{4}$ Summonsing Jury
 50 Calling Jury 12 $\frac{1}{2}$ 1.31 $\frac{1}{4}$

Defendants Cost. Entering attorney 12 $\frac{1}{2}$ Entering 0.12 $\frac{1}{2}$
 appearance of Dependant 12 $\frac{1}{2}$ filing filing fine - 0.12 $\frac{1}{2}$
 papers 31 $\frac{1}{4}$ Subpoena 50 filing 6 $\frac{1}{4}$ Order 25 Bond 1.12 $\frac{1}{2}$
 50 filing 6 $\frac{1}{4}$ making out Record Twenty - 0.51 $\frac{1}{4}$
 folio - 8.75 - Certificate 50 9.25

11.18 $\frac{3}{4}$
20.87 $\frac{1}{2}$

State of Missouri }
 Jackson County } J. Williamson Clark of the Circuit

Court for Jackson County do hereby certify that the foregoing is a full and true record of the proceedings had in this case before the said Court as appears from the Records and papers on file and now remaining in my office -

Given under my hand and private seal no official seal being provided at Brownsville this seventeenth day of June one thousand eight hundred and twenty eight
J. Manning Clerk

Seal

James Pierce

vs.

John Shubert

the covenant

Return

Taken from the
papers of James Pierce

Given Dec 7 1828

J. H. Luman

X

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State of Illinois Act.

THE PEOPLE OF THE STATE OF ILLINOIS

TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Jackson*

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 *Jackson* county, before the Judge thereof, between *James*

Pierce _____ plaintiff

and *John Aukery* _____

defendant , it is said manifest

error hath intervened to the injury of the aforesaid *John* 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 Vandalia in the county of Fayette, on the *first* *Monday of December* _____ 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, *James M. Duncan*, Clerk of our said court, and the seal thereof at Vandalia, this *25th* _____

day of *November* _____ in the year of our

Lord one thousand eight hundred and *twenty eight*.

James M. Duncan, clk
by A. Sady Depy

The Court of Appeals

and published in the year of our Lord one thousand eight hundred and thirty seven

Printed by J. M. Smith, Clerk of the Court, and John Wilson

to be done according to law
John Anthony
James Pierce
West of end

TO THE CLERK OF THE SUPREME COURT FOR THE COUNTY OF
THE PEOPLE OF THE STATE OF ILLINOIS
JANUARY 1837

James Pince } Appeal
at
John Ankeny } And the said Appellee, by David J. Baker his
attorney comes and says that there is no error
in the record & proceedings aforesaid in the giving of the judg-
ment aforesaid, and prays that the court may please
examine as well the record & proceedings aforesaid
the matters aforesaid above assigned for error & that
the judgment aforesaid may be in all things affirmed,
David J. Baker
Atty for said Appellee

[170-18]

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James Pince } Appeal
at
John Ankeny } And the said Appellee James Pince by
David J. Baker his attorney comes & says that there
is no error in the record & proceedings aforesaid in the
giving of the judgment aforesaid, and prays that the court
may please to examine as well the record & proceedings of
aforesaid as the matters aforesaid above assigned for error & that
the judgment aforesaid may be in all things affirmed,
David J. Baker
Atty for said Appellee

D70-192

Supreme Court
James P. Pierce } Appeal
vs
John Aukley }
Pondor

in Error

D. J. Baker Atty
for Appellee

Folio Dec 18, 1828
J. M. Duncan

Supreme Court
James P. Pierce }
vs
John Aukley } Appeal
Pondor in Error

D. J. Baker Atty
for S. P. Appellee

Folio Dec 18, 1828
J. M. Duncan