

Case No. 8,556.

LOVING ET AL. V. FAIRCHILD.

{1 McLean, 333.}¹

Circuit Court, D. Ohio.

Dec. Term, 1838.

PLEADING—AMENDMENT—AFFIDAVIT TO PLEA.

This is an action of assumpsit, brought by the plaintiffs [O. Loving & Co.] against the defendant [Oliver Fairchild], as the acceptor of a bill of exchange. The declaration having been filed, the defendant filed his plea of non-assumpsit, without annexing to it an affidavit, as the statute requires, that the instrument on which the action is brought, was not executed by him. And a motion was made by Mr. Fox for leave to amend the plea by annexing such affidavit to it, as the rule of the court, which adopts the statute, requires.

Mr. Wright, opposed the motion.

OPINION OF THE COURT. The present motion cannot be distinguished from other motions, for leave to amend the pleadings. And this court have always been liberal in allowing amendments for the advancement of justice, where they are applied for in reasonable time. Leave is given to amend the plea by annexing an affidavit to it, at the costs of the defendant.

¹ [Reported by Hon. John McLean, Circuit Justice.]