No. 8608

Supreme Court of Illinois

T. J. Evans

vs.

George H.Gill et al

71641 7

State of Illinois
Marion County } ss

Pleas and proceedings in the Circuit Court in and for the County of Marion and State of Illinois in a certain cause heretofore pending in said Court Between George H Gill and Charles J Gill, Merchants of the City of St Louis in the State of Missouri trading and doing business in said City under the name style and firm of "Gill & Brother" Plaintiffs, and Thomas J Evans and Warren W Smalley Defendants.

Be it remembered, that the said George H Gill and Charles J Gill merchants as aforesaid trading as aforesaid as "Gill & Brother" on the twenty fourth day of February A.D. 1858 filed in the Office of the Clerk of Marion County Circuit Court their Declaration against the said Defendants Thomas J Evans and Warren W Smalley, which Declaration is in words and figures as follows, to wit.

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State of Illinois
Marion County } ss

2

Of the March Term of the
Marion County Circuit
Court A.D. 1858.

1st. George H Gill and Charles J Gill merchants of the City of St Louis in the State of Missouri trading and doing business in said City under the name style and firm of "Gill & Brother" plaintiffs in this suit by O'Melveny & Hickey their attorneys complain of Thomas J Evans and Warren W Smalley defendants in this suit of a plea of trespass on the case on promises. For that whereas the said defendants heretofore to wit on the 19th day of May A.D. 1857 at the Town of Centralia County of Marion in the State of Illinois made their promissory note in writing the said Thomas J Evans executing the same by his abbreviated signature thus "Thos. J Evans" and the said Warren W Smalley executing the same by the initials of his Christian name thus "W. W. Smalley" bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay eight months after the date thereof to the order of Franklin Field and William G. Goodale describing

them in the said note, thus "Field & Goodale" the sum of Two hundred and fifty Dollars for value Received, and then and there delivered the said promissory note to the said "Field & Goodale" And the said Field and Goodale to whom or to whose order the payment of the said sum of money in the said promissory note specified was to be made after the making of the said promissory note before the payment of the said sum of money therein specified to wit on the 1st day of Jany AD. 1858 at the City of St Louis in the State of Missouri, to wit at the County of Marion in the State of Illinois aforesaid indorsed the said promissory note, by which said indorsement they the said "Field & Goodale" then and there ordered and appointed the said sum of money in the said promissory note specified to be paid to the said plaintiffs and then and there delivered the said promissory note so indorsed as aforesaid to the said plaintiffs by means whereof and by force of the Statute in such case made and provided the said Defendant then and there became liable to pay to the said plaintiffs the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note, and being so liable they the said Defendant in consideration

4th thereof afterwards to wit on the day and year aforesaid at the County and State aforesaid, to wit, at the County of Marion in the State of Illinois undertook and then and there faithfully promised the said pltffs to pay them the said sum of money in the said promissory note specified according to the tenor and effect thereof. Nevertheless &c.

2d. And Whereas also the said defendants heretofore to wit on the 19th day of May AD. 1857 at the Town of Centralia County of Marion in the State of Illinois made their certain other promissory note in writing (the said Deft. Thomas J Evans executing the same by his abreviated signature thus, "Thos J Evans" and the said Marion W Smalley executing the same by the initials of his christian name, thus "W W Smalley") bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay Nine months after the date thereof to the order of "Field & Goodale" (meaning Franklin Field & William G Goodale) the sum of Two hundred and fifty Dollars for value Recieved, and then and there delivered the said promissory note to the said "Field & Goodale".

5th

And the said "Field & Lyndale" to whom or to whose order the payment of the said sum of money in the said promissory note specified was to be made after the making of the said promissory note before the payment of the said sum of money therein specified ~~was to be made~~ to wit on the 1st day of January 1858 at St Louis Missouri, to wit at the County of Marion & State of Illinois aforesaid, indorsed the said last mentioned note by which said indorsement they the said Field & Lyndale then and there ordered and appointed the said sum of money in the said last mentioned promissory note specified to be paid to the said plaintiffs, and then and there delivered the said promissory note so indorsed as aforesaid to the said plaintiffs by means whereof, and by force of the Statute in such case made and provided the said Defts then and there became liable to pay to the said plaintiffs the said sum of money in the said last mentioned promissory note specified, according to the tenor and effect of the said last mentioned promissory note, and being so liable they the said Defendants in consideration thereof, afterwards, to wit on the day and year aforesaid at the County & State aforesaid, to wit, at the County of Marion in

[8608-2]

6th the State of Illinois aforesaid undertook and then and there faithfully promised the said plffs. to pay them the said sum of money in the said promissory note specified according to the tenor and effect thereof Nevertheless &c.

3d And whereas also afterwards, to wit, on the 23d day of February A.D. 1858 at St Louis aforesaid, to wit, at the County of Marion in the State of Illinois the said Defendants were indebted to the said plaintiffs in the further sum of Five hundred Dollars lawful money for divers goods wares and merchandize by the said plaintiffs before that time sold and delivered to the said Defendants and at their special instance and request and being so indebted they the said Defendants in consideration thereof, afterwards to wit on the day and year last aforesaid at the County and State last aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said last mentioned sum of money when they the said Defendants should be thereunto afterwards requested. Nevertheless &c.

4th And whereas also afterwards, to wit, on the

day and year last aforesaid at the County and State last aforesaid the said Defts were indebted to the said Pltffs in the further sum of five hundred Dollars like lawful money for so much money by the said Pltffs before that time lent and advanced to the said Defts at the special instance and request of the said Defts and being so indebted they the said Defts in consideration thereof afterwards to wit on the day and year last aforesaid at the County and State aforesaid undertook and then and there faithfully promised to the said plaintiffs to pay them the said last mentioned sum of money, when they the said Defts should be thereunto afterwards requested. Nevertheless &c.

5th And whereas also afterwards to wit, on the day and year last aforesaid at the County & State last aforesaid the said Defendants accounted with the said plaintiffs of and concerning divers other sums of money from the said Defendants to the said plaintiffs before that time due and owing and then in arrear and unpaid, and upon such accounting the said Defendants were then and there found to be in arrear and indebted to the said plaintiffs in the further sum of Five hundred Dollars of like lawful money

8th

and being so found in arrear and indebted they the said Defendants undertook and then and there faithfully promised the said Plaintiffs to pay them the said last mentioned sum of money when they the said defendants should be thereunto afterwards requested. Nevertheless the said Defendants not regarding their said several promises and undertakings but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiffs in this behalf have not as yet paid the said several sums of money mentioned in the 1st. 2d. 3d. 4th & 8th Counts of this Declaration or any or either of them or any part thereof to the said plaintiffs although often requested so to do, but the said Defendants to pay them the same have hitherto wholly neglected and refused, and still do neglect and refuse to the damage of the said plaintiffs of big hundred Dollars. And therefore they bring their suit &c

O'Mahoney & Hickey for Pltff.

Copy of Note declared on in 1st Count.

"$280 0/100 Cantaba May 19th 1857

Eight months after date the promise to pay to the order of Field & Goodale Two hundred and fifty 0/100 Dollars for value Received negotiable and payable without defalcation or discount and with Interest from at the

9th

rate of per cent per annum

Thos J Evans

W W Smalley "

Upon the back of which note is the following Endorsement, to wit "For value Received we do hereby assign the within note to Gill & Brother this 1st day of January 1858 Field & Goodale".

Copy of Note declared on in 2d Count.

$250 00/100 Leavenworth May 19th 1858

Nine months after date we promise to pay to the order of Field & Goodale Two hundred and fifty Dollars for value Received negotiable and payable without defalcation or discount and interest from at the rate of per ct per annum

Thos J Evans

W W Smalley."

Upon the back of which note is the following Endorsement, to wit. "For value Recd we do hereby assign the within note to Gill & Brother this 1st day of Jany 1858. Field & Goodale".

Thomas J Evans & W W Smalley

1858 To Gill & Brother Dr.

To Goods Wares & Merchandize	$500.00
To Money loaned & advanced	500.00
To Money due on accounting	500.00

[P108-5]

10th

Afterwards to wit on the twenty fourth day of February A.D. 1858 upon the filing of said Declaration, the said plaintiffs filed in said office of the Clerk of said Circuit Court their Bond for costs, which is in words and figures as follows, to wit.

State of Illinois
Marion County

George B Gill & Charles J Gill merchants trading & under the name & style of "Gill & Brother"
vs
Thos J Evans & W W Smalley

In March Term
Marion County Circuit Court A.D. 1858.

Trespass on the Case on promises
Damages $600.00

I do hereby enter myself security for costs in the above entitled cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party, or to any of the officers of this Court in pursuance of the laws of this State. Dated this 23d day of February A.D. 1858

W W O'Melveny.

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And afterwards to wit on said twenty fourth day of February A.D. 1858 and upon the filing of said Declaration and Bond for costs, the said plaintiffs by their attorneys filed in the Office of said Clerk a Precipe, which is in words and figures as follows.

State of Illinois } Marion County Circuit
Marion County } Court March Term
A.D. 1858.

George H Gill & Charles
I Gill partners trading
&c under the name and
Style of Gill & Brother
vs
Thomas J Evans & Warren
W Smalley

Trespass on the Case
on promises
Damages $600.00

The Clerk of Circuit
Court will please
issue summons to the Defts in the above
entitled cause returnable to first day of
next Term
February 24th 1858

O'Melveny & Stickney
for plff.

Whereupon the Clerk of said Circuit Court issued a summons under the official seal of said Circuit Court of Marion County which summons is in words and figures as follows, to wit.

[EC1084]

12th Summons

State of Illinois
Marion County } ss

The People of the State of Illinois
To the Sheriff of Marion County. Greeting

We command you to summon Thomas J Evans and Warren W Smalley if to be found in your County, to appear before the Circuit Court of Marion County, on the first day of the next Term thereof to be holden at the Court House in Salem on the second Monday in the month of March next, to answer George A Gill and Charles J Gill partners do trading under the name & style of "Gill & Brother" of a plea of Trespass in the case on promises to his damage the sum of Six hundred dollars as they say and hereof make due return to our said Court as the Law directs

Witness D A W Ragan Clerk of our said Court, and the Official seal thereof at Salem this 24th day of February A.D. 1858.

L S

D W Ragan Clerk

Upon which Summons so issued and sealed as aforesaid the Sheriff of said

County of Marion made the return en-
" 13 - dorsed on back of said Summons, which
Return of said Sheriff is in words and
figures as follows, to wit.

I have served the within Summons by
Reading to T. J Evans Feb 25th 1858. &
to Smalley Feb 27th 1858.

Service	1.00	W. T. Eastland Shff
30 Miles	1.50	By J. Shultz Dpy.
Retg	10	
	$ 2.60.	

And thereupon afterwards, to wit, at the
March Term of said Circuit Court A.D. 1858
to wit on the ninth day of March A.D.
1858. The said Circuit Court rendered
and made the ~~following~~ judgment or
order in the above entitled cause, which
said judgment or Order is duly entered
of Record in the Office of the Clerk of said
Marion County Circuit Court and is
in the words and figures following to wit.

At a Circuit Court continued and
holden at the Court House in the
Town of Salem in and for Marion
County Illinois on Tuesday
March 9th A.D. 1858.

[9108-7]

Pag 14th Present.

Hon H K S. O'Meluey Circuit Judge
A W Ragan Circuit Clerk
William F Eastland Sheriff.

George W Gill & Brother vs Evans & Smally	Assumpsit.

And now at this day came the plaintiffs by O'Meluey and Stickney their attorneys, and it appearing to the Court that said defendant Thomas J Evans only was duly served with process herein, and the said defendant Thomas J Evans being three times solemnly called as well as the said defendant Smally came not, but make default. It is therefore considered by the Court that Judgment for default of plea be entered against said defendant Thomas J Evans which is done. And this action being on Promissory Notes, and it being uncertain what the damages for principal and Interest are upon said notes It is Ordered by the Court that the Clerk assess said damages and report same to this Court. Whereupon the Clerk reports said damages at the sum of Five hundred and four dollars and eighteen cents. And

On reading and considering the foregoing record and errors assigned, I do allow the same - the Clerk will make the writ of error to operate as a supersedeas on the plff. in error executing a bond in the penalty of Six hundred and fifty Dollars with Robert S. Nelson and William Stoker his securities, conditioned according to law. Given under my hand as Judge of the Supreme Court this 15th day of June 1858

Sidney Breese

Illinois Circuit Court
March Term 1858

Gill & Bro
vs
Evans & Shradley

Record
Certified copy.

" 15th the Court being fully advised of the premises Orders and adjudges that the plaintiffs do have and recover of and from the said defendants Thomas J Evans said sum of Five hundred and four dollars and eighteen cents ($504.18) together with their costs in this behalf expended, and may have execution therefor &c. It was further Ordered that the writ of fieri facias issue against defendant Finally returnable the first day of next Term to show cause why he should not be party to said Judgment.

I A W Eagan Clerk of the Circuit Court within and for the County of Marion do hereby certify that the above and foregoing is a correct copy of the Record in the above entitled cause. In testimony whereof I have hereunto signed my name and affixed the seal of said Court this 5th day of May A.D. 1858.

A. W. Eagan Clk

Thos J. Evans & W. H. Smalley
vs
G. H. & C. J. Gill
In Supreme Court
1st Division
Assignment of
Errors

A - 3

Thomas J. Evans
vs
George H. Gill and
Charles J. Gill

Filed 28th June 1858.
N. Johnston Clk

Prepaid $5.00
Do Cert 12.54 on Abstracts $3.00

In the Supreme Court. First Grand Division
November term 1838

Thomas J. Evans &
Warren W Smalley, Pltff in Error
vs } Error to Marion
George H. Gill &
Charles J Gill } defendants in Error

And now on this day comes Pltffs in Error by W. Stokes & J. J. DeCompth their attorneys and says that in the Service and process in the above styled Cause there is manifest Error in this The Judgment therein was Rendered in favor of the Plaintiffs whereas the Judgment of the Court ought to have been Rendered in favor of the defendants

And for assigning Errors specially by the Sd defendants, first that it does appear from the Record that Thomas J. Evans was served with process on the 25th day of Feby 1838 and Warren W. Smalley was served with said process on 27th day of Feby 1838. Said defendants both having been served with process upon a joint liability, That in nine days after Service of Process on deft Smalley & on the second day of the term of Court Default was taken against defts for want of Plea they being 3 times Called, and Judgment Entered against deft Thomas J. Evans upon the joint liability

2nd That the Court Erred in Rendering Judgment against Thos J. Evans alone when deft Smalley had been served with process although the Service was not in time

3rd The Court Erred in Ordering the writ of Scirifacias to issue against deft Smally returnable to first day of next term of Court to show cause why he should not be made party to Judgment against Thos J. Evans said Smally having already been served with one process duly issued in same cause as shewn by the Record

4th The The Order of the Court rendering Judgment against Thomas J. Evans alone when the Record shews service upon the joint obligee and awarding Execution to the Plffs with Scirifacias to deft Smally is contrary to law

5th That the Court manifestly Erred in not continuing the cause for want of timely service on deft Smally And for these and divers other Reasons in said ~~process~~ Record and process contained, the Plffs in Error says that there is manifest error therein and that in the Rendition of said Judgment rendered therein the said Circuit Court of Marion County Manifestly Erred wherefore for these causes as aforesaid the Plffs pray that the Judgment and order aforesaid be annulled Reversed and be held for naught &c

Lecompte & Stokes attys
for Plffs

13th Ills Rep Davidson vs Bond Page 84

Joinder in Error
Nelson for Defts

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

Error to Marion—Abstract of Record.

THOMAS J. EVANS & WARREN W. SMALLEY.

vs.

Page of Record.

GEORGE H. GILL & CHARLES J. GILL.

1. Shows style of cause, filing of declaration in Marion county Circuit Court by Gill & Brother, on 4th day of February, 1858, against Thomas J. Evans & Warren W. Smalley.

2. Shows term of Court to be March Term, 1858, and that Gill & Brother complain of plea of trespass on the case on promise, and that Evans & Smalley on 19th day of May, 1857, executed their promissory note jointly, the manner of executing said note, the date of said note as aforesaid, and that said note was payable eight months after date to Franklin Field and William G. Goodale.

3. Shows the note to be made to Field & Goodale for the sum of $250, the delivery of said note to Field & Goodale, and that Field & Goodale to whom or to whose order said note was payable, indorsed the said note on 1st day of January, 1858, to Gill & Brother, and avers the liability of Evans & Smalley to Gill & Brother according to the tenor and effect of said note.

4. Avers promise of Evans & Smalley to pay Gill & Brother said note, also 2d count charging Evans & Smalley with the execution of certain other promissory note on 19th day of May, 1857, in writing, signed by abbreviated names of Evans & Smalley, thereby promising to pay nine months after date thereof to Field & Goodale the sum of $250 for value received, and the delivery of said note to Field & Goodale.

5. Shows the endorsement by Field & Goodale, to whom and to whose order the said note was payable, to the said Gill & Brother after the making of the note, and before the payment thereof on the 1st day of January, 1858, at the county of Marion, in the State of Illinois, the order of Field & Goodale to pay to Gill & Brother—the delivery of said note after indorsement to Gill & Brather—the promise of Evans & Smalley to pay Gill & Brother, and the liability of Evans & Smalley by force of the statute according to tenor and effect of said note.

6. Is common count for the sum of $500 for goods sold and delivered to Evans & Smalley by Gill & Bro. on the 25th day of February, 1858, at request of Evans & Smalley and promise to pay upon request.

7. Is common count for $500 money, loaned by Gill & Bro. to Evans & Smalley at their instance and request on 23d February, 1858, to be paid on request, also a count on an account stated for the sum of $500, said accounting being on 23d day of February, 1858.

8. Shows undertaking of Evans & Smalley to pay the money in count on an account stated upon request, and the breach of the several promises in said several counts mentioned and concludes to damage of Gill & Brother of $600, and signed by O'Melveny & Stick-

Page of Record.

ney, Attorneys for Gill & Bro., also copy of note sued on for $250, executed by Thos. J. Evans and W. W. Smalley, jointly, to Field & Goodale, on 19th day of May, 1857, payable eight months after date.

9. Shows the endorsement of said note by Field & Goodale to Gill & Bro., the 1st day of January, 1858, also copy of 2d note sued on, executed by Evans & Smalley, jointly, payable to Field & Goodale, executed on 19th day of May, 1858, payable nine months after date, for $250; also, endorsement of said note by Field & Goodale to Gill & Bro. on 1st day of January, 1858; also, copy of account sued upon goods sold, $500; money loaned, $500; money due on accounts, $500.

10. Shows filing of bond for costs by Gill & Bro. in the case on 24th February, 1858, in Clerk's office, also copy of Bond in common form signed by W. W. O'Melveny, security.

11. Shows filing of precipe by Attorneys for Gill & Bro. for $600—damages for issuing of summons returnable to March term of Circuit Court, 1858, and issuing of the summons by the Clerk of Marion Circuit Court against defendants, Evans & Smalley.

12. Shows copy of summons against Thomas J. Evans and Warren W. Smalley, directed to Sheriff of Marion county, Illinois, in favor of George H. Gill and Charles J. Gill, trading under the style of Gill & Bro., for $600 damages, returnable to 1st day of March term, 1858.

13. Shows the return of the Sheriff of Marion county on said summons in words and figures following: "I have served the within summons by reading to T. J. Evans, February 25th, 1858, and to Smalley Feb'y 27th, 1858, W. J. Eastland, Sh'ff, by J. Shultz, Dpt'y," with the fees attached; also, that at March Term, 1858, of the Circuit Court, to-wit: on the 9th day of March, 1858, the said Circuit Court rendered and made the judgment or order which is entered of Record by the Circuit Clerk of said Court; also, at Circuit Court continued and held at the court house in Salem, in and for Marion county, Ills., on Tuesday, March 9th, A. D., 1858.

14. Shows Judge H. K. S. O'Melveny present, Eagan, Clerk, and Eastland, Sh'ff, present.

GEORGE H. GILL & BRO., vs. EVANS & SMALLEY. Assumpsit.

The coming of Gill & Bro. by Attorneys, and it appearing to the Court that Thomas J. Evans only had been duly served with process, and the said Thomas J. Evans, defd't, being three times solemnly called, as well as the said defd't, Smalley, came not, but made default—also, the rendering of judgment by the Court against Thos. J. Evans, action being on promissory note, is referred to Clerk to assess damages reported by Clerk at $504 18.

15. Shows the rendition of final judgment by the Court, upon report of Clerk, at $504 18 together with costs, against said defd't, Thos. J. Evans, and order of execution thereon, also order of writ of scire facias against Smalley, returnable the 1st day of next term to show cause, &c.; also, certificate and seal of Clerk of Circuit Court of Marion county, Illinois, with signature.

LECOMPTE & STOKER, Atty's

for plaintiff in error.

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Evans & Smalley
vs
Gill & Gill

Abstract

Filed Nov. 11 - 1859 -
A. Johnston Clk

State of Illinois } March Term A.D. 1858. of the
Marion County } Marion Circuit Court -

George H. Gill and
Charles J. Gill
vs
Thomas J. Evans &
Warren W. Smalley } Assumpsit -

Judgment for $504-18. in favor of Pltffs and against Thomas J. Evans -

State of Illinois S.
Supreme Court of said State } 1st Grand Division

Thomas J. Evans
vs
George H. Gill and
Charles J. Gill } Error to Marion

Clerk of said Supreme will file Record - Bond - Abstract and this Precipe - and issue Writ of Error - Make a Supersedeas, and file the same - and issue Certificate to Sheriff and Circuit Clerk in the above styled cause - Also Sci fa to Stff of Marion County

T J Evans
Per Miller & Stites

[8L08-12]

No 21 43

Thomas J. Evans
vs } Bill
George H. Gill &
Charles J. Gill

Error to Marion

Filed 28th June 1858
N. Johnston

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

Error to Marion—Abstract of Record.

THOMAS J. EVANS & WARREN W. SMALLEY.

Page of Record.

VS.

GEORGE H. GILL & CHARLES J. GILL.

1. Shows style of cause, filing of declaration in Marion county Circuit Court by Gill & Brother, on 4th day of February, 1858, against Thomas J. Evans & Warren W. Smalley.

2. Shows term of Court to be March Term, 1858, and that Gill & Brother complain of plea of trespass on the case on promise, and that Evans & Smalley on 19th day of May, 1857, executed their promissory note jointly, the manner of executing said note, the date of said note as aforesaid, and that said note was payable eight months after date to Franklin Field and William G. Goodale.

3. Shows the note to be made to Field & Goodale for the sum of $250, the delivery of said note to Field & Goodale, and that Field & Goodale to whom or to whose order said note was payable, indorsed the said note on 1st day of January, 1858, to Gill & Brother, and avers the liability of Evans & Smalley to Gill & Brother according to the tenor and effect of said note.

4. Avers promise of Evans & Smalley to pay Gill & Brother said note, also 2d count charging Evans & Smalley with the execution of certain other promissory note on 19th day of May, 1857, in writing, signed by abbreviated names of Evans & Smalley, thereby promising to pay nine months after date thereof to Field & Goodale the sum of $250 for value received, and the delivery of said note to Field & Goodale.

5. Shows the endorsement by Field & Goodale, to whom and to whose order the said note was payable, to the said Gill & Brother after the making of the note, and before the payment thereof on the 1st day of January, 1858, at the county of Marion, in the State of Illinois, the order of Field & Goodale to pay to Gill & Brother—the delivery of said note after indorsement to Gill & Brather—the promise of Evans & Smalley to pay Gill & Brother, and the liability of Evans & Smalley by force of the statute according to tenor and effect of said note.

6. Is common count for the sum of $500 for goods sold and delivered to Evans & Smalley by Gill & Bro. on the 25th day of February, 1858, at request of Evans & Smalley and promise to pay upon request.

7. Is common count for $500 money, loaned by Gill & Bro. to Evans & Smalley at their instance and request on 23d February, 1858, to be paid on request, also a count on an account stated for the sum of $500, said accounting being on 23d day of February, 1858.

8. Shows undertaking of Evans & Smalley to pay the money in count on an account stated upon request, and the breach of the several promises in said several counts mentioned and concludes to damage of Gill & Brother of $600, and signed by O'Melveny & Stick-

Page of Record.

ney, Attorneys for Gill & Bro., also copy of note sued on for $250, executed by Thos. J. Evans and W. W. Smalley, jointly, to Field & Goodale, on 19th day of May, 1857, payable eight months after date.

9. Shows the endorsement of said note by Field & Goodale to Gill & Bro., the 1st day of January, 1858, also copy of 2d note sued on, executed by Evans & Smalley, jointly, payable to Field & Goodale, executed on 19th day of May, 1858, payable nine months after date, for $250; also, endorsement of said note by Field & Goodale to Gill & Bro. on 1st day of January, 1858; also, copy of account sued upon goods sold, $500; money loaned, $500; money due on accounts, $500.

10. Shows filing of bond for costs by Gill & Bro. in the case on 24th February, 1858, in Clerk's office, also copy of Bond in common form signed by W. W. O'Melveny, security.

11. Shows filing of precipe by Attorneys for Gill & Bro. for $600—damages for issuing of summons returnable to March term of Circuit Court, 1858, and issuing of the summons by the Clerk of Marion Circuit Court against defendants, Evans & Smalley.

12. Shows copy of summons against Thomas J. Evans and Warren W. Smalley, directed to Sheriff of Marion county, Illinois, in favor of George H. Gill and Charles J. Gill, trading under the style of Gill & Bro., for $600 damages. returnable to 1st day of March term, 1858.

13. Shows the return of the Sheriff of Marion county on said summons in words and figures following: "I have served the within summons by reading to T. J. Evans, February 25th, 1858, and to Smalley Feb'y 27th, 1858, W. J. Eastland, Sh'ff, by J. Shultz, Dpt'y," with the fees attached; also, that at March Term, 1858, of the Circuit Court, to-wit: on the 9th day of March, 1858, the said Circuit Court rendered and made the judgment or order which is entered of Record by the Circuit Clerk of said Court; also, at Circuit Court continued and held at the court house in Salem, in and for Marion county, Ills., on Tuesday, March 9th, A. D., 1858.

14. Shows Judge H. K. S. O'Melveny present, Eagan, Clerk, and Eastland, Sh'ff, present.

GEORGE H. GILL & BRO., vs. EVANS & SMALLEY. Assumpsit.

The coming of Gill & Bro. by Attorneys, and it appearing to the Court that Thomas J. Evans only had been duly served with process, and the said Thomas J. Evans, defd't, being three times solemnly called, as well as the said defd't, Smalley, came not, but made default—also, the rendering of judgment by the Court against Thos. J. Evans, action being on promissory note, is referred to Clerk to assess damages reported by Clerk at $504 18.

15. Shows the rendition of final judgment by the Court, upon report of Clerk, at $504 18 together with costs, against said defd't, Thos. J. Evans, and order of execution thereon, also order of writ of scire facias against Smalley, returnable the 1st day of next term to show cause, &c.; also, certificate and seal of Clerk of Circuit Court of Marion county, Illinois, with signature.

LECOMPTE & STOKER, Atty's for plaintiff in error.

4

Evans & Smalley

vs

Gill & Gill

Offer

8608

Abstract

all

1859

Filed Nov. 11 – 1859 –

A. Johnston Clk

In the Supreme Court of the State of Illinois.

FIRST GRAND DIVISION, AT MOUNT VERNON.

NOVEMBER TERM, A. D., 1860.

THOS. J. EVANS, *et al*,
vs.
GEORGE H. GILL, *et al.*
} *Writ of Error.*

The Court erred in rendering judgment at the return term of the process against the defendant, Evans, in the judgment alone on a joint contract when the defendant Smalley had been served with process, but not served with the process ten days before the commencement of the term, and there having been no waver of the ten days notice on the part of the defendant in the suit, against whom judgment was rendered.

Revised Statute of Illinois, 1858, p. 242, Section 6; 3d Scam. R., p. 501, 12th Illinois R. 84; 2d Tidd's practice, 1188.

It was error to order a scire facias against the defendant Smalley, who had been served with original process. Revised Statute of Illinois, 1858, p. 242, Sec. 6; 2d Tidd's practice 1188.

It was error to render judgment against one of two defendants on a joint contract without a return of non est inventus on the process as to the other, and where the return showed a service of process on both. 3d Scam. R., p. 501.

W. STOKER, *Attorney for Plaintiff.*

Russell & Wall, Printers, Guardian office, Mt. Vernon.

3

Evans

vs

Gill

Brief

Centralia Ills. Jany 9th/60

Major N. Johnson Clk of Supr. Court
Mt. Vernon Illinois

Dear Sir In the Case of Thomas J Evans Plff in Error vs. G H & Co J. Gile Defts in Error, I desire to enter the appearance of the Defts in Error as their attorney; You will please enter the appearance therefor, and issue, & enclose to me & directed to the Defts in Error, a notice to Evans Plff in Error notifying him that the appearance has been so entered. Your early attention to this will oblige your friend

W. M. O'Melveny
atty for for Defts in Error

3

Evans
vs
Gill

Filed Jany 10. 1860.
N. Johnston Clk

In the Supreme Court of the State of Illinois.

FIRST GRAND DIVISION, AT MOUNT VERNON.

NOVEMBER TERM, A. D., 1860.

THOS. J. EVANS, *et al*,
vs.
GEORGE H. GILL, *et al.*
} *Writ of Error.*

The Court erred in rendering judgment at the return term of the process against the defendant, Evans, in the judgment alone on a joint contract when the defendant Smalley had been served with process, but not served with the process ten days before the commencement of the term, and there having been no waver of the ten days notice on the part of the defendant in the suit, against whom judgment was rendered.

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It was error to render judgment against one of two defendants on a joint contract without a return of non est inventus on the process as to the other, and where the return showed a service of process on both. 3d Scam. R., p. 501.

W. STOKER, *Attorney for Plaintiff.*

Russell & Wall, Printers, Guardian office, Mt. Vernon.

Brief

Thomas J. Evans
vs
George H. Gill et al } Error

No 4 Suggest death of Charles J. Gill
affidavit of Nonresidence & continued
for Publication

[8464-18]

In the Supreme Court 1st Grand
Division A.D. 1860 Nov. term.

Thomas J. Evans pltff in error & deft
in the Court below

vs

George H. Gill
Surviving partner of
George H. Gill &
Charles J. Gill late
partners doing business
under the firm & style
of ~~Chamberlin~~ Gill & Brother deft in Error
& pltff in the Court below

} error to Marion

The Clerk of the Supreme
Court will please issue a
Summons to Sheriff of Marion
Ills (& instruct him how to serve writ)
in the above Cause and also
give Notice in the Mt Vernon
News paper & send Copy to pltff
in error

R. Mulvon attorney
for deft in Error

[8608-13]

3

Thos. J. Evans
v
Gill & Bro
precipe

Filed June 14. 1860.
N. Johnston Clk

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

The People of the State of Illinois,

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

George H. Gill & Charles J. Gill

plaintiffs and

Thomas J. Evans & Warren N. Smalley

defendants it is said that manifest error hath intervened to the injury of said Thomas J. Evans 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 George H. Gill - Surviving partner of George H. Gill & Charles J. Gill - late partners doing business under the firm and style of Gill and Brother that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said George H. Gill notice together with this writ.

WITNESS, the Hon. John D. Caton Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty sixth day of June in the year of our Lord one thousand eight hundred and Sixty.

Noah Johnston
Clerk of the Supreme Court.

[1808-807]

3

SUPREME COURT.

First Grand Division.

Thomas J. Evans

Plaintiff in Error,

VS.

George H. Gile
Surviving partner &c

Defendant in Error.

SCIRE FACIAS.

FILED.

Return the Defendants Gile & Bates
are not found in my County
July 16 - 1860
Jos Smith Sh
Marin Co Cal

STATE OF ILLINOIS, } ss. 1st Grand Division
SUPREME COURT. }

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Marion 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 Marion County, before the judge thereof, between George H. Gill and Charles J. Gill - Plaintiffs - and Thomas J. Evans and Warren W. Swalley defendants, it is said that manifest error hath intervened to the injury of said Thomas J. Evans 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 Mt. 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 George H. Gill and Charles J. Gill

that they be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the ~~Second Monday in November~~ first Sunday after the next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said George H. and Charles J. Gill notice, together with this writ.

Witness, the Hon. ~~Sidney H. Thomas~~ John D. Caton, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this 23d day of June in the year of our Lord, one thousand eight hundred and fifty-eight.

Noah Johnston
Clerk of Supreme Court.

[8608-21]

3

Thomas J. Evans
vs } Sci fa
George H. Gill &
Charles J. Gill

Served the within
Sci. fa. as directed
June 25th 1858
on pltffs atty.

Service	50
Mileage	75
Ret	10
	$1.35

W. J. Eastland Shff
By J. Shultz Dep

The Bail of Geo. Gill has been claimed and filed in this Court, has been found a Sufficient, and is held to adjudge by the Court.

H. Schnauber Clk

STATE OF ILLINOIS
SUPREME COURT, } SS. 1st Grand Division

WRIT OF ERROR.

THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of Marion 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 Marion county, before the Judge thereof, between George H. Gill and Charles J. Gill — plaintiffs, and Thomas J. Evans and Warren W. Smalley — - - - - - - - - - — defendants it is said manifest error hath intervened, to the injury of the aforesaid Thomas J. Evans ———— as we are informed by his complaint, and we being willing that error, should be corrected if any there be, 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 the Supreme Count, 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 1st Tuesday after the 2d Monday of November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

Witness, the Hon. John D. Caton ~~WALTER B SCATES~~ Chief Justice
of our said court, and the seal thereof, at Mount Vernon this
23d day of June
in the year of Our Lord One Thousand Eight Hundred
and Fifty-Eight.

Noah Johnston
Clerk Supreme Court.

This writ of error is made a Supersedeas, and is to be obeyed accordingly." N. Johnston Clk

3 ~~24~~

Thomas J. Evans
vs } Writ of error - made
a Supersedeas
George H. Gill &
Charles J. Gill

Issued - made a Supersedeas,
and filed 23d June 1858.
N. Johnston Clk

Dr to $5.00

For the above notice to

C. V. Satterfield & Bro

publishers of the Star.

Oct 5, 1860

Due

$5.00

State of Illinois, ss,

In the Supreme court of said State.

First Grand Division.

Thomas J Evans, plt'ff in error, vs George H Gill, surviving partner of George H Gill & Charles J Gill late partners doing business under the firm & style of Gill and brother defendant in error.	On writ of error from judgment of Marion circuit court.

An affidavit having been filed setting forth that the said defendant is not a resident of this state, but of the city of saint Louis in the state of Missousi, he the said defendant is hereby notified that the Record of the circuit court in the foregoing cause, has been filed in the clerk's office of this court, and a writ of error and scire facias sued out, the scire facias directed to the sheriff of Marion county, commanding him to summon said defendant to appear before this court on the first day of the next term, to be commenced and holden at the court house at Mount Vernon, on the first Tuesday after the second Monday in November next, and show cause if any he has, why said judgment shall not be reversed; and unless he do so appear the cause will proceed as if he had been personally served with process.

Witness Noah Johnston clerk of said court this 26th day of June A D 1860.

Noah Johnston, clerk.

R. S. Nelson atty for p'ff.

June 29 1860.

State of Ills }

In the Supreme Court
1st Grand Division

Thomas J. Evans plff
in Error
vs

George H. Gill surviving partner of George H. Gill & Charles J. Gill late partners doing business under the firm & style of Gill & brothers defendant in Error } on writ of Error from Judgment of Marion Circuit Court

This affiant R. S. Nelson being first duly sworn according to Law, deposes and says that he did three days before the first day of the term of this Court mail a copy of the Mt Vernon Star a weekly newspaper published at Mt Vernon containing the annexed Notice ~~sworn~~ marked so ~~as to call the attention~~ so, as to call the attention of the defendant to the Notice - to the defendant George H. Gill at his residence at St Louis Mo. & further this affiant says not

R. S. Nelson

Subscribed & sworn to before me this 14th Nov 1864
Noah Johnston

[Closed]

Thomas S. Evans
pltff in error
vs
George H. Gill
affidavits

Filed Nov. 13. 1860
N. Johnston Clk

State of Illinois. S.S.
In the Supreme Court of said State.
First Grand Division.

Thomas J. Evans - Pltff in error
vs
George H. Gill - Surviving partner of George H. Gill & Charles J. Gillett partners doing business under the firm & style of Gill and Brother - Defendant in error

} On writ of error from judgment of Marion Circuit Court.

An affidavit having been filed setting forth that the said Defendant is not a resident of this state, but of the City of Saint Louis in the State of Missouri, he the said defendant, is hereby notified that the Record of the Circuit Court in the foregoing cause, has been filed in the Clerk's office of this Court, and a writ of error and scire facias sued out, the scirefacias directed to the Sheriff of Marion County, commanding him to summon said Defendant to appear before this Court on the first day of the next ~~Assembly~~ Term, to be commenced and holden at the Court house at Mount Vernon, on the first Tuesday after the second Monday in November next, and show cause if any he has, why said judgment shall not be Reversed, and unless he do so appear the cause will proceed, as if he had been personally served with process.

Witness Noah Johnston Clerk of said Court this 10th day of June A.D. 1860.

Noah Johnston Clk

Richard J. Nelson
Atty for Pltff in error

[8608-24]

3

Thos. J. Evans
by
George A. Gill

Mr Nelson to pay
Penalty fee.

[608-25]

Know all men by these presents
that We Thomas J. Evans Warren W. Smalley
Robert S. Coleman & William Stokes
are held and firmly bound unto George
H. Gill & Charles J. Gill in the penal sum of
Six hundred and fifty for the payment of
which well and truly to be made we bind
ourselves our heirs and executors jointly
severally and firmly by these presents In
Witness Whereof we have hereunto set
our hands and affixed our seals this the
day of June AD 1838

The condition of the above obligation is
such that Whereas at the March term of the
Marion County Circuit Court began and held
on the eight day of March 1838 on the second day
of the term thereof court on the 9th day of March
1838 in a plea wherein George H. Gill & Charles
J. Gill was plaintiffs and Thomas J. Evans &
Warren W. Smalley were defendants a judgment
was entered of record against the said Thomas
J. Evans for the sum of five hundred and four
dollars and eighteen cents with costs of suit
together with order of scirifacias against the
said Warren W. Smalley from which judgment
& order the said Evans & Smalley have prayed
a writ of Error to the Supreme Court with
order of supersedas
Now if the said Plff in Error shall prosecute
their said writ with effect and in case
the judgment of the circuit court should ~~not~~
be ~~reversed~~ affirmed shall pay or cause to
be paid the judgment of the circuit court with
costs interest and whatever damage may

[PLOB-06]

be sustained then this obligation to be void. Otherwise to remain in full force and virtue.

J. J. Evans (L.S.)
W. W. Smalley (L.S.)
R. R. Volsmar (L.S.)
William Staten (L.S.)

[208-2-1]

10 ~~27~~ 3

Thos. J. Evans & W. W. Smoot

vs

G. H. & G. J. Gill

Bond

In Supreme Court

Filed 23d June 1858

N. Johnston Clk

State of Illinois } In the Supreme Court of the
Jefferson County } State of Illinois Jany 9th/60

Thomas J Evans Pltff in Error } Error to Marion
vs
G. H. & Ch. J. Gill Defts in Error } I do hereby Enter
the appearance of the said G. H. & C J Gill Defendants
in Error in the above entitled Cause and ask the
Clerk of said Court that the said Thomas J Evans Pltff in Error
be notified thereof

W. W. O'Melveny Attorney
for Defts in Error

[PL03-28]

3

Thomas J. Evans

vs

G. H. & Ch. J. Gill

Filed Jany 10. 1860

N. Johnston Clk

Thos. J. Evans Etal
vs
George H Gill Etal } Writ of Error

The Court Erred in rendering judgment at the return term of the process against the defendant Evans (in the judgment) alone, on a joint contract, when the defendant Smalley had been served with process but not served with the process ten days before the commencement of the term, and there having been no waiver of the ten days notice on the part of the defts in the suit against whom judgment was rendered

Rev Statute of Ills 1858 & 242 Sec 6 3d Scam R & 501 12th Ills R 84 2nd Tidds Practice 1188

It was Error to order a Scirfacias against the deft Smalley who had been served with original process, Rev Statute of Ills ~~242 Sec 6~~ 1858 Page 242 Sect 6 2nd Tidds Practice 1188

It was Error to render judgement against one of two defts on a joint contract without a return of non est Inventus on the process as to the other, and where the return showed a service of process on both 3d Scam R Page 501

W Stokes atty
per Leff

[9108-97]

D. J. Evans Exrs
vs
G. H. Gill Exr &c
In Error
Brief of
Deft

Thomas J. Evans ~~Et al~~
vs
George H. Gill & Bro } Writ of Error

And now comes W Stoker atty per Deff and after being duly sworn deposeth & says that he is informed & verily believes that the said defts are residents of the City of St Louis in the State of Missouri & now residents of the State of Illinois. And further affiant states that he is informed & verily believes that since the suing out of the writ in this cause to wit since the last term of this Court Charles J. Gill one of the defendants has deceased.

Sworn to & subscribed before me this 15th day of Nov AD 1875

W. Stoker

Noah Johnston Clk

[8608-31]

Thos. J. Evans Etal
vs
George H. Gill Etal
Affidavit of
Non residence

3

Filed Nov. 15. 1859—
A. Johnston Clk

No 3

Nov. Term 1860

T. I. Evans

vs

Geo. H. Gill et al

Error to Macon

Rev. & Remanded

8608