

12000

No. _____

Supreme Court of Illinois

ILAN
Gillman, et al.

vs.

Gray, et al.

71641  7

Name

John Gillman et al.

25
Daniel S. Gray et al.

1852

12000

x

John Gillilan &
Horace Hubbard }
 21 }
Daniel S Gray & }
Ralph Gray } Error to Name

And now comes the plaintiff in error by Mblum & Murphy their attys and assigns for error the following

- 1st The Court erred in admitting the note in evidence when objected to on account of variance
- 2^d The Court erred in overruling the motion for a new trial
- 3^d The Court erred in rendering judgment for the defendant in error

Mblum & Murphy for
Plaintiffs

The declaration avers the note upon which suit is brought was made by defendants 22^d June 1850. in which they promised to pay plaintiffs \$125. for value received

The note offered is made payable to Daniel S Gray & Son on first day of July next

No averment in Name that plaintiffs were doing business - name of Daniel S Gray & Son

State of Illinois

Kane County Circuit Clerk's Office
Geneva Dec 13th 1851

Be it remembered that on the 5th day of June A.D.
1851 there was filed in the Clerk's Office of Kane County,
Circuit Court, a Receipt in the words & figures
following to wit:

Daniel S. Gray

Ralph Gray

"

John Gillilan

Horace Hubbard

} Kane Circuit Court for
August Term 1851

The
Clerk will please issue
a Summons to Sheriff of

Kane County in Assumpsit, Damages \$200.

June 5th 1851

Plato for Sheriff.

And afterward, to wit, on the same day a Sum-
mons issued from said Clerk's Office in the words
and figures following to wit:

State of Illinois

Kane County

} The People of the State of
Illinois to the Sheriff of Said
County, greeting

We command you to Summon John Gillilan
& Horace Hubbard, if to be found in your
County, personally to be and appear before the
Circuit Court of Said County, on the first^{day} of the
next Term thereof, to be holden at the Court House
in Geneva, on the second Monday of August
next to answer unto Daniel S. Gray & Ralph
Gray of a plea of Assumpsit to his damage, as
he says in the sum of Two Hundred Dollars, and
make due return of this writ

Witness Charles B. Wells: Clerk
of Said Court and the Seal thereof.
at Geneva this fifth day of June
A.D. 1857

C. B. Wells

Clerk

On which is endorsed the following to Wit:
Personally
Served on the within named John Gilliland &
Horace Hubbard by reading June 11th 1857
Luther Dearborn
Shiff Kaneo

And afterwards to Wit: on the 25th day of June
A.D. 1857, was filed the plea in assumpsit, in words
and figures following to Wit:

State of Illinois } Kane County Circuit Court
Kane County ss 8 August Term A.D. 1857

Daniel S. Gray and Ralph Gray Plaintiffs complain
of John Gilliland and Horace Hubbard, Defendants,
in a plea of the case; for that whereas the said
defendants, on the twenty second day of June
Eighteen hundred and fifty, at Montgomery
to Wit: at Kane County aforesaid, made and
signed their certain promissory note, and then
and there delivered the same, bearing date the
same day and year aforesaid, to the said
Plaintiffs, and thereby the said defendants promised
to pay the said plaintiffs the sum of One Hundred
and twenty five dollars, for value received
By means whereof and by force of the Statute

in such case made and provided. the said Defendants became liable to pay the said Plaintiffs the said sum of money in said Note mentioned; and in consideration of such liability, the said defendants afterwards to Wit; on the same day and year aforesaid. at the place aforesaid. undertook, and then and there faithfully promised the said plaintiffs to pay them the said sum of money in said Note mentioned according to the tenor and effect thereof

And whereas, also, the said defendants, afterwards, to Wit; on the same day and year aforesaid, at the place aforesaid, were indebted to the said plaintiffs in the further sum of two hundred Dollars, for the work and labor, care and diligence of the said plaintiffs by the said plaintiffs before that time done, performed and bestowed in and about the business of the defendants and for the said defendants and at their special instance and request, and also in the further sum of two hundred dollars for divers goods, wares and merchandise by the said plaintiffs before that time sold and delivered to the said defendants, and also in the further sum of two hundred dollars for the use of the said plaintiffs, and for so much money by the said plaintiffs before that time lent, and advanced to, and paid, laid out and expended for, the said defendants and at their special instance and request; and for so much money by the said defendants before that time had and received, to and for the use of the said plaintiffs: And being so indebted they, the said defendants, in consideration thereof, afterwards, to Wit, on the ^{same} day and year aforesaid, at the place aforesaid, undertook

and then and there faithfully promised the said plaintiffs to pay them the said several sums of money mentioned. when they the said defendants should be thereto afterwards requested

Yet the said defendants although often requested. &c., have not paid the several sums of money in the first and second counts mentioned. or any part thereof. to the said plaintiffs but to pay the same. or any part thereof. to the said plaintiffs, have hitherto wholly refused. and still do refuse. to the damage of the plaintiffs. of Two Hundred Dollars. and therefore they bring suit &c by their attys

W. B. Plato

Copy of Note

Montgomery June 22^d 1850

On or before the first day of July next I promise to pay to Daniel S. Gray & Son at their shop in Montgomery the sum of one hundred & twenty five dollars with use for one of Hussey's reaping and Grass cutting Machines

John Billilan
(Signed) Horace Hubbard

afterwards to wit: on the 12th day of August 1857. was filed in the Circuit Clerks Office of Kane County the following pleas to wit:

State of Illinois)

Kane County &

John Billilan & Horace Hubbard) Care

vs

Daniel S Gray & Ralph Gray) In Kane Circuit Court

August Term 1857

And now comes the defendants. by C. McClune
their attorney. and for plea says that they did
not promise and undertake, as the said plaintiffs
in their said declaration thereof hath complained
against them. And of this they the said defendants
put themselves upon the Country

C. McClune atty for Deft
and the plttf doth the like

M. B. Plato

The plaintiffs in the above entitled cause will
pleas take notice that on the trial of the above cause
said defendants will introduce evidence, and
insist on the following, as a defence in the said
cause. to wit: that the promissory note on which
this suit is brought was executed by said defen-
dants to said plaintiffs for & on consideration for
one of Husesys reaping and Grass cutting Machines,
that at the time of the execution of said Note and
as part of said contract for said Machine, by their
agent Horace Wilder warranted said Machine
to the said defendants, to be well made of good
materials & to work well if well managed, that
the said Machine was not made of good materials
that said Machine did not work well, although
it was well managed, but on the contrary that
said Machine would not work well, though
well managed, but proved wholly worthless
and of no value whatever, to the said defendants,
and that the said defendants soon after trying said
Machine, notified the said plaintiffs and requested
the said plaintiffs to take the said Machine away
and give up said Note, which said plaintiffs refused
to do.

The said defendants. will also
insist that the said Note was procured by fraud
coniv and Misrepresentation

C McClure atty for Deft

Afterwards to Wit: on the 20th day of August
A.D. 1851 it being one of the days of the August
Term of the Kane County Circuit Court A.D. 1851
the following proceedings were had in said
Cause. to Wit:

173 Daniel S Gray &
Ralph Gray }
John Hillilaw } Assumpsit
Horace Hubbard }

This day comes the
Plaintiffs by Plato
their attorney.

and the defendants by McClure & Waring their
attorneys. also come. have a jury and submit
this cause to the court for trial. after hearing
the evidence the court finds the issues joined
in favor of the plaintiffs, and assesses their dam-
ages at the sum of One hundred and Thirty Three
75/100 dollars. thereupon comes the defendants
and moved for new trial. which is overruled by
the court

afterwards to Wit: on the same day the defendants
filed a motion for a new trial which is in words
and figures following to Wit:

Daniel S Gray & Ralph Gray }
John Hillilaw & Horace Hubbard }

Motion for New Trial. That the court erred
in admitting the note offered in evidence when
objected to

Afterwards to wit: on the 20th day of August A.D.
1851 it being one of the days of the August Term
A.D. 1851 of the Kane County Circuit Court. the
following proceedings were had. which is in words
& figures following to Wit:

Daniel S Gray & Ralph Gray	} Assumpsit	This day comes out to be heard the defen- - dants motion
John Gillilaw		
Horace Hubbard		

heretofore entered for a New Trial. the Court being
fully advised overules the same. it is therefore considered
by the Court that the plaintiffs have and recover
from the defendants the sum of One hundred
and Thirty Three ⁷⁵100 dollars and their costs
in this suit expended and have execution there-
fore: & thereupon comes the defendants and prays
an appeal to the Supreme Court of the State of
Illinois: which is allowed by the Court upon condition
that the defendants enter into Bond to the plaintiffs
in the penal sum of Three Hundred dollars with
Alfred Edwards. Increase Bosworth or Henry C Hunt
as security to be filed within Thirty days

afterwards to Wit: on the same day. the defendants
filed a bill of exception. of which the following is
a copy to Wit:

State of Illinois } In Kane County Circuit Court
Kane County } August Term A.D. 1851.

Daniel S Gray &
Ralph Gray }
v } Case
John Hillilaw }
Horace Hubbard }

Be it remembered that on this
20th day of August A.D. 1851 the above entitled
Cause came on to be heard, before the Hon^{ble}
G. Wilcox Judge of the 13th Judicial Circuit
of the State of Illinois, a jury being by the
parties expressly waived. When the plaintiffs
to sustain their action offered a note in
evidence - in the following words & figures to
wit:

Montgomery June 22^d 1850
On or before the first day of July next I
promise to pay to Daniel S Gray Son at their
shop in Montgomery, the sum of one hundred
& twenty five dollars with use, for one of
Hussey's reaping & grass cutting machines
(Signed) John Hillilaw
Horace Hubbard

To the introduction of which evidence the
defendants objected, in consequence of a
variance between said note and declaration
in said case, which objection was overruled
& said note received in evidence, and judgement
rendered for plaintiffs. When the defendants by
council moved the Court for a new trial, for
the following reason: That the Court erred in
admitting the note offered in evidence when
objected to, which motion was overruled by
said Court to the judgement of which Court in

receiving said Note in evidence. & overruling
said Motion for a new trial the defendants by
Council excepts & prays that the bill of excep-
-tions may be signed Sealed & made part of
the records. which is done

Isaac H. Wilcox
Judge &c

Afterwards to wit: on the 15th day of September
A.D. 1851 was filed an appeal bond to the Supreme
Court of the State of Illinois. which is in words
and figures following to wit:

Know all men by these presents
that we John Gillilan and Horace Hubbard
and Henry E Hunt of the County of Kane and
State of Illinois. are held and firmly bound
unto Daniel S Gray and Ralph Gray also
of the same County & State in the penal sum
of Three Hundred dollars current money
of the United States for the payment of which well
and truly to be made we bind ourselves our
heirs executors and administrators jointly
severally and firmly by these presents

Witness our hands and seals this Eleventh
day of September A.D. 1851

The condition of the
above obligation is such that whereas the
said Daniel S Gray and Edward Gray did
on the 21st day of August A.D. 1851 in the Circuit
Court in and for the County of Kane and State
aforesaid recover a judgement against &

the above bounden John Gillilan and Horace
Hubbard for the sum of one hundred Thirty
Three ⁷⁵/₁₀₀ dollars damage and fourteen ³⁰/₁₀₀
dollars cost from which said judgement of the
Circuit court the said John Gillilan and Horace
Hubbard has prayed for and obtained an
appeal to the Supreme Court of said State.
Now if the said John Gillilan and Horace
Hubbard shall duly prosecute there said
appeal with effect and shall moreover pay
the amount of the judgement costs interest
and damages rendered and to be rendered
against them in case the judgement shall
be affirmed in the said Supreme Court then
the above obligation to be void otherwise to
remain in full force and virtue

John Gillilan } Seal
Horace Hubbard } Seal
H. E. Hunt } Seal

State of Illinois }
Hann County ss }

I Charles B. Wells, Clerk of Hann
County Circuit Court, do hereby
Certify, that the foregoing is a true copy of
the original Precept, Writ, Decretum, Pleas,
Motion for new trial, Bill of exceptions, on file
in my Office in the case of Ralph & Gray &
Daniel & Gray against John Gillilan and
Annie Hubbard, also copies of all the ad-
mittance of Record in said Cause, as appears
of Record.

In Testimony Whereof I
have hereunto set my hand
and seal, at Geneva this
17th day of Decr AD 1851.

C. B. Wells
Clerk.

13 12 1857
 17 8 1857
 4
 4

67.10
 12.92
 134.20

Name

Ralph Gray
 Daniel S. Gray

John Gillilan
 Horace Hibbould

Recd from Name

Filed Dec. 18. 1852.
 L. Deland CLK.

Filed again July 23¹⁸⁵²

for 2 of a/c 2.80
 in total \$ 3.15

Gillilan & Huleane

^{by}
Grey and Gray

Subject to the allowance of a supersedeas
because no ~~objection~~ exception to the decision of the court was ever taken till long after the trial

The error assigned is that the court erred in admitting the note, the bill of exceptions does not show or purport to show all the evidence and it is perfectly manifest that parole proof may have been introduced making the note *prope evidenti*

I think therefore that it is palpable that a supersedeas would only have the effect to delay the plaintiff

Gillilan & Hulebut
as
Gray & Gray

Secretis vris