No. 11847

Supreme Court of Illinois

Evans.

vs.

Fisher, et al.

71641 7

Ct. 25
Joshua Evans
vs
William Fisher et al.

11847

1849

A Record of the orders judgments & proceedings of the Honorable Circuit Court of Marshall County in the State of Illinois began & held at the Court house in the Town of Lacon on the Thirteenth day of October Eighteen hundred & forty eight present the Hon John Dean Caton Judge of the 8th Judicial Circuit of said State Henry L Crane Sheriff & John Runs Clerk

Be it remembered That William Fisher Jabez Fisher & Nathaniel G Chapin filed in the clerks office of said Court the Appeal Bond in a suit wherein William Fisher Jabez Fisher & Nathaniel G Chapin are plaintiffs & Joshua Evans is Defendant on the 3d day of August A.D. 1848 in the words & figures following (to wit)

Know all men by these presents that we William Fisher & Co & Neal S Gregory are held & firmly bound unto Joshua Evans in the penal sum of fifty Dollars lawful money of the United States for which payment well & truely to be made we bind ourselves our heirs executors & administrators jointly severally & firmly by these presents Witness our hands & seals this second day of August One thousand Eight hundred & forty eight

The Condition of the above obligation is such that whereas Joshua Evans did on the Thirteenth day of July one thousand Eight hundred & forty eight before Hezekiah S Crane probate Justice of the peace for the County of Marshall Illinois recover a judgment against William Fisher Jabez Fisher & Nathaniel G Chapin partners under the firm of William Fisher & Co for the sum of twenty four Dollars & fifty cents from which judgment the said William Fisher & Co have taken an appeal to the Circuit Court of the County of Marshall aforesaid & State of Illinois Now therefore if the said William Fisher & Co shall prosecute their appeal with effect & shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force & effect

William Fisher (Seal)
Jabez Fisher & (Seal)
Nath G Chapin (Seal)
By William Fisher
N S Gregory (Seal)

Approved by me at my office this second day of August one thousand Eight hundred & forty eight
H S Crane probate Justice peace (Seal)

And on the same day the plaintiffs filed in said clerks office a Summons in the words & figures following (to wit)

State of Illinois } The people of the State of Illinois
Marshall County } To any Constable of said County Greeting

[1847-1]

You are hereby commanded to summon Joshua Evans to appear before me at my office in Lacon on the Thirteenth day of July Inst at 12 O'Clock N to answer the complaint of William Fisher Jabez Fisher & Nathaniel G Chapin partners under the firm of William Fisher & Company for a failure to pay them a certain demand not exceeding one hundred Dollars & hereof make due return as the Law directs Given under my hand & Seal this fifth day of July A D 1848 H S Evans J P J P (Seal)

Endorsed I have executed the within writ by reading the same to the within named Joshua Evans July 6th 1848 Daniel M Robertson Const

Plaintiffs also filed at the same time in said Clerks office a Transcript in the words & figures following

William Fisher Jabez Fisher & Nathaniel G Chapin partners under the firm of William Fisher & Co vs Joshua Evans

Suit Brot on an account for $54.04

Demand $54.04

State of Illinois Marshall County ss

I Heale Gregory do enter myself security for all costs that may accrue in the above cause this 3rd day of July A D 1848

H S Gregory

Serving Writ	12½
Taking Security for Costs	25
Summons	18¾
2 Subp's for pltffs	37½
1 Subp for Deft	18¾
1 Subp for pltffs	18¾
1 Subp for Deft	18¾
1 Subp for Deft	18¾
Venire for Jury	25
Swearing Jury	37½
Swearing 12 witnesses for pltffs	75
Swearing 7 witnesses for Deft	43¾
Entering Judt	25
J P J P Fees	3 78
Const R's fees	14 25
Witnesses fees	5 00
Jury fees pd by Deft	1 50
	$24 50
Entering appeal	25
Taking Bond	50
Transcript	25
paid by pltffs	$1 00
Witnesses for pltffs	
Jas Caldwell	50
Mrs Caldwell	50
Wm Caldwell	
Allen Stock	
Silas Loveland	
Theodore Perry	
Charlotte Long	50
Hearnes Gangus	50
Zephaniah Swartz	50
Abner Shinn	50
Jas H Johnson	50
Robert Boal	
Wm Deft	
Wm Evans	
Allen & Ford	50
Albert Evans	
Susan Evans	
Alfred Caldwell	
William Beatty	
D M Robertson	

1848 July 3rd Summons issued & put into hands of Const Robertson the same day; Returnable on the 13th July 1848 at 12 O'Clock M 1848 July 7th Summons returned served by reading &c 1848 July 7th Subp issued on part of Deft for James Caldwell & Allen & Ford & given to Const Robertson returnable with Summons 1848 July 10th Subp issued on part of pltff to Theodore Perry & Charlotte Long Hearnes Gangus Zephaniah Swartz James Caldwell & wife Wm Caldwell & Allen Stock & given to Constable Robertson 1848 July 10th Deft Subp for James Caldwell & Allen & Ford returned served on 1848 July 11th Subp issued on part of Deft for Robert Evans Susan Evans Alfred Caldwell & William Beatty & given to Constable Robertson 1848 July 13th Subp issued on part of pltff for Abner Shinn & given to Constable Robertson 1848 July 13th at the request of Deft a venire for a Jury of Six issued & put into hands of Constable Robertson 1848 July 13th Subs all returned served by reading &c 1848 July 13th Subp Duces Tecum issued on part of Deft for Mary Evans Subp returned served by reading &c 1848 July 13th parties appear & a Jury being empanneled & returned to wit Lunsford Broaddus Lemuel Russel John Wilhoff Lott Shullmany James Orr & Thomas R Simpson who being duely sworn & who having heard the Evidence on their oaths say that the said Joshua Evans owe not owe the said William Fisher Jabez Fisher & Nathaniel G Chapin partners under the firm of William Fisher & Co in manner & form as they the said plaintiffs have alledged Wherefore it is considered that the said William Jabez Fisher & Nathaniel G Chapin take nothing by their suit aforesaid & further it is considered that the said Joshua Evans do recover against the said William Fisher Jabez Fisher & Nathaniel G Chapin partners under the firm of William Fisher & Company twenty four Dollars & fifty Cents for his costs & charges by him about his defense in this behalf sustained &c. From which judgment the plaintiffs have taken an appeal

Costs taxed 24 50
Entering appeal 25
Taking Bond 50
Transcript 25
paid by pltffs $1 00

The State of Illinois Marshall County ss

I do hereby certify that the foregoing Transcript & the papers accompanying the same contain a full & perfect Statement of all the proceedings had before me in the cause aforesaid between the parties aforesaid in the plea aforesaid Given under my hand & seal at Lacon this second day of August one thousand eight hundred & forty eight H S E...

Plaintiffs filed also with other papers their account in the said Clerks office on said 3d day of August viz

Joshua Evans for wife Dr

To Lorin Fisher & Co

1848 March 25	34 3/4	Yds Sheeting	11 Cts	3 82	1	Molasses Bottle		25
	7	" Ticking		1 31	1	Salt Cellar		13
	1	Red Stead		3 00	1	Basket		75
	30	Yds Fine Sheeting	15 Cts	4 5	2	Bowls		25
	1	Table Cloth		1 25	10 lbs	Batting	18 3/4	1 87
	7 3/4	Yds Cotton Calico	15	1 16	35	Yds Calico	12	4 20
	9	Do Do	20	1 80	3	Sleeper	18 3/4	56
	5	Bleached Muslin	16 Cts	80	2	Crash	15 Cts	30
	12 1/2	Yds Brown	9 Cts	1 12	2	Rolls Paper		10
	1	Pr Shovel & Tongs		1 00	3 lbs	Rice	7 Cts	21 13.70
	8	Sugar		8 90 22.26	Apl 5th 1	Bed Stead		4 00
27th "	1 1/2	Lett Glass	62 1/2	93	1	Lett Chairs		5 00
	1 1/2	Teas	62 1/2	93	1 "	Rocker Rocks		1 75 10.75
	1	Sugar Bowl		50	17 1/2	Yds 33 1/4 Yds Sheeting	10 Cts	3 33
	1	Tea Pot		62	1	Bed Stead		4 00 7.33
	1	Pitcher		50				$54.04
	1	Do		25				
	2	Platters		50				
	6	Tumblers		75				

Whereupon a Summons was issued in said cause to said Defendant as follows (to wit)

The people of the State of Illinois

To the Sheriff of Marshall county Greeting

We command you to summon Joshua Evans if he may be found in your county to appear before the Circuit Court on the first day of the Term thereof to be held at Lacon within & for said County of Marshall on the fifth Monday of October next then & there in said Court to answer unto William Fisher Jabez Fisher & Nathaniel Blakeslee on an Appeal by them obtained from a judgment rendered against them in favor of said Evans before Reynolds Sloane Probate Justice of the peace of said County on the ~~fifteenth~~ Twelfth day of July 1848 for the sum of Seventy four Dollars & fifty cents costs of suit & make return of this writ with an endorsement thereon of the time & manner of executing the same on or before the first day of the Term of said Court to be held as aforesaid Witness John Burns Clerk of said Court & the seal thereof at Lacon this third day of August in the year of

[11847-2]

(Seal)

our Lord one thousand Eight hundred & forty eight

John Burns Clerk

Wednesday morning November 15 1848

Present as before

William Fisher Jabez Fisher
and Nathaniel B Chapin partners
under the name & style of William Fisher & Co
Joshua Vs Evans

Marshall County Circuit Court
October Term 1848

Be it remembered that on this day this cause came on to be tried & the plaintiffs to sustain the issue on their part called Theodore Perry who was sworn as a witness & testified that he had a conversation with defendant after the first separation of Mr & Mrs Evans which was two years since when Mrs Evans left defendant she came to my house shortly after she left & went into the house of a neighbor; I went with Mr Evans to see his wife; in that interview the conversation took place, accusations were made by both parties; this conversation was an endeavor to settle the difficulty between them; here the counsel for the defendant objected to the witness testifying to any admissions made by defendant in that conversation which objection was overruled by the Court; to which decision of the Court the defendant excepted; witness then testified that defendant wished his wife to go back home with him; she said he had ill used her & she did not like to go back, he admitted a part of it, & a part of it he denied; she remarked that she could not live with him; & had been unhappy while she lived with him; they were married about Christmas 1846 Maybe a year previous to that, she said the cause of her unhappiness was his abuse of herself & family she accused him only of hard language; cant state any of the language she said he used to her; defendant then said he would give her no further cause to leave, that he had used hard language but would do so no more, that if he ever treated her so again, he would bring her to Lecon, & she might have all that she brought him, & more too. she went back with him upon that assurance; she said she would not bear as much as she had before; the substance of the conversation was a charge of hard usage on her part, admissions on his, & a promise to do better, dont remember any of the language she charged him with to have used to her. to the introduction of which testimony the defendant at the time it was offered objected; which objection was overruled by the Court to which decision

of the Court the defendant excepted. The witness further testified that Defendant seemed to wish his wife to go back with him & to be willing to make concessions to induce her to do it.

The plaintiffs then called Titus Loveland who was sworn as a witness & testified that he is a clerk in Mr Fishers store, exhibits the items of account to Mrs Evans at the dates charged, & that they amount to fifty four Dollars & four cents that the prices charged are the usual & fair prices; knew Mrs Evans at that time & previously she lived in a house now occupied by Mr Stevens; Mrs Evans had a son & two daughters with her, children of a former husband; The youngest was some seven or Eight years old; Thought the bill of goods was necessary for her to keep house, she was then keeping house. When I speak of necessaries I mean for her & her family; She was then keeping boarders; She had left her husband & was then living separate & apart from her husband.

The plaintiff then called Peter Rickey, who testified that he was acquainted with the condition of Mrs Evans when she left her husband & came to Town, she was pretty destitute & had considerable difficulty to get along, she borrowed things to get along with, she took in washing for awhile & then took boarders, but that was some time after. When she came to my house she borrowed the things she used; her health was quite poor & feeble & I boarded with her some two weeks after my family left; & I think these things were got about that time. Mr Evans has a very good farm & is in comfortable circumstances. I should think most of the things in this bill were unnecessary for her. The first time she left Mr Evans she sent me up for her goods. He said at that time, that people had told him that she was a dishonest woman before they were married, but he did not care any thing about that, that he could cure her of that it; He afterwards said he had found that story wrong he was one in upon to her chastity; She took some four or five loads of goods to him when she married him, this was a year ago last fall; She was away some three weeks; her family was with her when she got these things mentioned in the bill.

Mrs Rickey was then called as a witness for plaintiffs & testified that Mrs Evans lived in part of their house; She was very destitute; She borrowed things, to keep house with; She was in feeble health; I think she did not get any thing tee she got them of Mr Fisher; I believe the things she got were necessary; she had a couple of boarders at that time & two more since

The plaintiffs then called Mr Johnson, who testified, that, the first time I saw Mrs Evans after she left her husband, she was feeble & her children sick; I lent her a bedstead & bed clothing & table; I should think that many of the things articles in the bill, were such as she needed. She took to Mr Evans when they were married, six or seven bedsteads, tables chairs, & bureau, & looking-glass or two; I helped load a part of the things

The plaintiffs then called Harriet Sampson as witness, who testified that she was a daughter of Mrs Evans; lived with Mr Evans while Mrs Evans lived with him; he did not treat her well; he was scolding & finding fault; heard him scolding a great many times at night; could not hear what he said; Susan Evans & I have very often gone to the door & listened; Mother appeared to be a good deal troubled, crying a good deal of the time; The last part of the time she was there, her health was very poor. Once when James Caldwell was there, I heard a conversation cant tell much what was said; I heard him tell her she had not earned her board for three months; dont know as she made any reply; Mother told Mr Caldwell that Mr Evans said he was ashamed to take her into company; Evans dit not deny it, she said she could not live with a man that treated her so, she would leave him; he told her to go & welcome; dont remember of his saying any thing more at that time; I have heard him say there was no such good news as her leaving; this was a few days before her leaving; I was there all the time that she was, but about two weeks. It was not more than a week or two after she was married that he began to abuse her. She took nothing away but her cloaths when she left; when she left he did not say anything as I remember; She did not bring all her clothes away; I once heard him call Mother a liar; once heard him call her a good for nothing hussy; I heard him once tell her he might afford to support her in idleness, but he was not going to support her brats; do not remember what they were talking about, at the time he called her a liar or what else was said then; had been a good deal of talk on both sides; dont know what else was said when he called her a hussy; dont know who was by, but think Susan was. There were six or seven beds in the house; heard pretty loud talk several times at night. Mother brought away one sett of silver spoons, one sett of table spoons, one sett of knives & forks, & plates

she took only three Feather Beds & Bedsteads there

The plaintiffs then introduced Allen Slack as a witness, who testified that he heard Mr Evans say, that, he thought it was well that they were apart, some two or three or four weeks after Mr & Mrs Evans separated for the last time. Mr Evans is considered wealthy, has a large farm, & a share in a saw Mill — The reason he gave, that he thought it was well they were apart, was they might stand a chance to go to Heaven & if togeather they might stand a chance to go to Hell.

The plaintiffs then introduced I Reese as a witness who testified that he is a brother of Mrs Evans. I went to see Mr Evans about the property; I asked him the reason that her sister could not agree; he said May be you think I blame your sister, but I dont upon my soul I dont for one iota she has done; this was after the second parting, last Spring or fore part of Summer; he said he believed the neighbors were the sole cause of the difficulty; he offered to give up her property if she would give up all claim to his property

The plaintiffs then introduced Charles Slack as a witness who testified, that, he, once while defendant & his wife lived togather heard Evans say that there was an Elder in the presbyterian Church who would be glad if she was out of the Church she looked dejected & he looked repulsive at that time

This was all the Evidence offered by the plaintiffs

The defendant then called Susan Evans as a witness who testified that she was the Daughter of the defendant & resident at his house all the time Mrs Evans lived there & was there when she left; The reason of her leaving was this; her son Stephen had told a story about defendant having killed a sheep; she wanted to know of Mr Caldwell who started the story, he replied Stephen; defendant then replied he would not have Stephen around him lying about him in that way; without he was corrected Mrs Evans said he should not stay nor would she either; this was on thursday she left on Saturday; there was no other difficulty at that time; there were some words passed between them, in presence of Albert which I did not hear; I was there all the time she was; never heard him call her a good for nothing hussey, or a liar, or words of that kind. In their diferences one said about as much as the other. ~~I do say~~ I have heard some words between them; dont know how they commenced; I always heard one say about as

much as the other; the difficulty I mean was scolding some times he commenced it, & some times she did; the difficulty generally grew out of Stephen

Cross examination— I heard her say two, or three times, she did not mean to stay; I once told her I would not stay; I have often when they had scolded heard her say she would not stay to be treated in that way; I once told her I did not know as I would stay; after they would have a talk, she would come & talk with me, & kept me disturbed; this was the reason I made the remark; I hatened once or twice at night; heard them talk; one talked as loud as the other; could not see what was said; when I made the remark to Mrs Evans, that I did not know but I would leave; I did it to stop the fuss, not to impute blame to my father; never had difficulty in the family, till Mrs Evans came; my father is a kind man in his family; I have heard her use as hard language as I ever did him

The Defendant then called Albert Evans, who testified that he is a son of defendant, & lived at home while Mrs Evans lived there; was there when she left; the reason of her leaving was, her son Stephen was said to have reported a story that defendant had killed one of his neighbors sheep; I was with father when he left the house the morning before she left; he said if she would leave he would not hinder her or she would have to; but he would rather she would stay; he then left, & did not return till she had gone: Father had told her of Stevens stories about him; said Stephen could not stay there, if he could not correct him for being about him; she then said, if he could not stay, she would not; there was no harsh treatment of her by him; Defendant was in the house more than I was; some times there was scolding; some times one commenced the scolding & some times the other one had about as much to say as the other; this did not occur daily; some times for weeks there was no trouble; I lived there & had a good oportunity to know what was done

The Defendant then called William Evans, who testified, that he was a son of Defendant; lived there the whole time Mrs Evans was there; never saw any thing amiss in his treatment of her; I have heard them scolding some back & forth; she was well provided for; never knew her to want for any thing; some times the one commenced scolding & some times the other; she said as much as he did; The reason of her leaving was the sheep story; Father said Stephen could not stay unless he could be corrected; he would not have any body about him telling such lies; did not hear her reply; one of the scoldings was about Election; she said she did not

want us to vote for Springer & Crane; said they were her enemies; Father said he would vote for them; She talked hard at that time; The ballance of the Scolding, generally grew out of Stephens pranks.

Defendant then called William Caldwell who testified that he has known Defendant 13 years; acquainted with his family when Mrs Evans was there; worked for him one month & boarded at his house, when She was there; never saw any thing amiss, in his treatment of her; live one fourth of a Mile from Defendant was at his house once or twice a week; never saw any unkind treatment, on his part; believes he Defendant is as kind a man in his family as he ever was acquainted with. heard the Conversation before Spoken of; I heard him say She had not earned her board for three Months; that She was three Months knitting a pair of Stockings; She accused him of refusing to Correct his Children, for going fishing on Sunday; both were excited; this was the time I was asked, who first reported the Sheep Story; & had told her Stephen; he said he would not have the boy about him, in that way; She said the boy Should not Stay, nor would she either.

The Defendant then called Zephaniah Swarty as a witness who testified that he had known Defendant for about 13 years; lives within a half of a Mile from him; frequently at his house; once or twice a week or oftener; I never saw any thing wrong or harsh in his treatment of his wife; his Character is that of a kind man; he never spoke to me against his wife

William Beatty was called by Defendant as a witness & testified that he had known defendant 13 years; taught School in his district while Mrs Evans was there; Stayed at his house frequently, say once or twice a week, over night; never saw any thing wrong or unpleasant in his treatment of Mrs Evans

The Defendant called A Caldwell as a witness who testified that he had known Defendant some 13 years; lives about one fourth of a Mile from him; was at his house once a week or oftener; never saw any harsh or unkind treatment, towards his wife by Mr Evans

This was all the evidence in the case. The Jury found a verdict for the plaintiffs for the Sum of fifty four Dollars & four Cents. The Defendant thereupon moved for a new trial, upon the ground that the verdict was unsupported by the evidence. The plaintiffs then remitted all but fifty Dollars which Motion was overruled by the Court; To which decision of the Court in overruling

want us to vote for Springer & Crane; said they were her enemies; Father said he would vote for them; She talked hard at that time; The ballance of the Scolding generally grew out of Stephens pranks.

Defendant then called William Caldwell who testified that he has known Defendant 13 years; acquainted with his family when Mrs Evans was there; worked for him one month & boarded at his house, when She was there; never saw any thing amiss, in his treatment of her; live one fourth of a Mile from Defendant was at his house once or twice a week; never saw any unkind treatment, on his part; believes he Defendant is as kind a man in his family as he ever was acquainted with. heard the Conversation before Spoken of; I heard him say She had not earned her board for three Months; that She was three Months knitting a pair of Stockings; She accused him of refusing to Correct his Children, for going fishing on Sunday; both were excited; this was the time I was asked, who first reported the Sheep Story; & had told her Stephen; he said he would not have the boy about him, in that way; She said the boy Should not Stay, nor would she either.

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This was all the evidence in the case. The Jury found a verdict for the plaintiffs for the Sum of fifty four Dollars & four Cents. The Defendant thereupon moved for a new trial, upon the ground that the verdict was unsupported by the evidence. The plaintiffs then remitted all but fifty Dollars which Motion was overruled by the Court; To which decision of the Court in overruling

said motion the Defendant by his Counsel excepted & prays that this bill of exceptions be signed sealed & made part of the record which is done

Whereupon the following judgment was entered of record in said Cause in said Court on the same day

William Fisher Jabez Fisher & Nathaniel S Chapin
vs
Joshua Evans } Appeal

On this day came again the parties & the Defendant withdrew his motion to dismiss this appeal, & issue being joined herein a jury came to try the same (to wit) Duffield Clay Washington Cook Joel Perkins Levi Holmes Timothy Owen J B White John Ridgeway Enoch Sawyer Joseph Van Ruskirk Denail Holland Pierce Perry & James B Cook who being sworn well & truely to try said issue & a true verdict render according to the Evidence; say we the jury find for the plaintiffs the sum of fifty four Dollars & four cents; whereupon the plaintiffs remit of the amount of fifty four Dollars & four cents; It is therefore considered by the Court that the plaintiffs recover of the Defendant the sum of fifty Dollars the residue of said verdict, likewise their costs & charges by them about their suit in their behalf expended as well in this Court as in the Court below & that they have execution therefor whereupon the Defendant moves the Court for a new trial herein which motion is overruled by the Court And the Defendant prays an appeal herein to the Supreme Court of this Court which is granted on condition that he file herein with the Clerk of this Court an appeal Bond, within forty days from the adjournment of this Court with Lunsford Broaddus & William Evans his sureties therein in the sum of two hundred Dollars according to the Statute in such case made & provided which is done in the words & figures following (to wit)

Know all men by these presents that we Joshua Evans William Evans & Lunsford Broaddus of the County of Marshall & State of Illinois are held & firmly bound unto William Fisher Jabez Fisher & Nathaniel S Chapin in the penal sum of Two hundred Dollars current money of the United States for the payment of which well & truely to be made we bind ourselves our heirs executors & administrators jointly severally & firmly by these presents Witness our hands & seals this Twentyfifth day of November A D 1848

The condition of the above obligation is such that whereas the

Said William Fisher Jabez Fisher & Nathaniel Clapham did on the first day of November A.D. 1848 in the Circuit Court of the County of Marshall & State aforesaid recover a Judgment against the above bounden Joshua Evans for the sum of fifty Dollars Damages & Sixty two Dollars & forty one cents Costs of Suit, from which said judgment of the said circuit Court the said Joshua Evans has prayed for & obtained an appeal to the Supreme Court of said State
Now if the said Joshua Evans shall duely prosecute his said appeal with effect & shall moreover pay the amount of the judgment Costs Interest & damages rendered & to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force & virtue

Taken & entered into before me at my office in Lacon this first day of December A.D. 1848 John Runs Clerk Circuit Court

Joshua Evans (Seal)
William Evans (Seal)
Lumford Broaddus (Seal)

J. D. Caton

State of Illinois } Clerks Office Circuit Court December 2d 1848
Marshall County }

I John Runs Clerk of said Court do hereby Certify that the foregoing is a true & perfect copy of the record made in said Court in said cause above mentioned as appears of record in my Office Witness my hand the Seal of said Court being hereto affixed the date last aforesaid

John Runs Clerk

And now comes the said appellant and assign the following decisions of the court appearing upon the record aforesaid, for Error to wit

The court erred in admitting the testimony of Theodore Perry in relation to admissions.

[1848-L]

Said William Fisher Jabez Fisher & Nathaniel Chapin did on the first day of November A.D. 1848 in the Circuit Court of the County of Marshall & State aforesaid recover a Judgment against the above bounden Joshua Evans for the sum of fifty Dollars Damages & Sixty two Dollars & forty one cents Costs of Suit, from which said judgment of the said circuit Court the said Joshua Evans has prayed for & obtained an appeal to the Supreme Court of said State

Now if the said Joshua Evans shall duely prosecute his said appeal with effect & shall moreover pay the amount of the judgment Costs Interest & damages rendered & to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force & vitae

Taken & entered into before me at my office in Lacon this first day of December A.D. 1848 John Burns Clerk Circuit Court

Joshua Evans (Seal)
William Evans (Seal)
Lunsford Broaddus (Seal)

J. D. Caton

State of Illinois } Clerks Office Circuit Court December 2d 1848
Marshall County }

I John Burns Clerk of said Court do hereby certify that the foregoing is a true & perfect copy of the record made in said Court in said cause above mentioned as appears of record in my Office

Witness my hand the seal of said Court being hereto affixed the date last aforesaid

John Burns Clerk

And now comes the said appellant and assign the following errors of the court appearing upon the record aforesaid, for error to wit

The court erred in admitting the testimony of Theodore Perry in relation to admissions.

[41847-47]

made by the appellant in a conversation with his wife when he was endeavoring to induce her to return & live with him

The Court erred in admitting no proper testimony in behalf of the plaintiffs in the circuit Court

The Court erred in rejecting proper & legal testimony offered by the defendant in the circuit Court.

The Court erred in overruling the motion for a new trial

The Court erred in rendering the judgment aforesaid in manner & form aforesaid

Glover & Glover & Lillard
& Leland
Counsel for appellee

Case
William Posey, Father
and Nathaniel Posey, Son
vs
Mathew Evans

Clerk's fee of circuit court of Marshall County for making this copy & certifying same $15-00

P. Evans Clerk

Filed June 11. 1849.
J. McLean Clk.

And the said Defts. in error say that in the record & proceedings aforesaid, there is no such error as is therein alleged — & they pray that the said judgment may be in all things affirmed — By their Atty. C. Peters —

The plaintiffs Counsel then asked the Court to give the following instructions to the jury (to wit)

1st Given

1st If the Jury believe from the Evidence that Mr & Mrs Evans separated by consent; he is liable for necessaries, & she carried with her a credit to the extent of such necessaries.—

2d Given

2d If the jury believe from the Evidence that Mr Evans by ill usage & harsh treatment compelled her to leave him, the case is the same as if he had actually turned her out of doors, & he thereby sends with her a credit for her reasonable expenses: & in that case he cannot discharge himself of his liability either by a general or particular notice not to trust her.

3d Given

3d As to what are necessaries, this is to be determined by the condition of the husband & his Estate; & if the jury believe from the Evidence that Mrs Evans had sufficient cause or reason to leave Defendant's house; or if she left with his consent, the Defendant is liable in the present action.— If the jury further believe from the evidence that the articles furnished by the Pl'ffs were such as were necessary for her comfort & convenience, having regard to the Estate & condition of her husband

4th Given

4th A notice published in the newspaper not to trust his wife; will not discharge the Defendant of his liability for her necessaries, if they believe she left the house of her husband on account of ill treatment which was sufficient in Law, to authorise her to leave him as with his consent

& if the jury believe from the Evidence that Mrs Evans left the house of her husband with his consent for any justifiable cause, then it is for the jury to determine what are necessaries; & they will in determining this question take into consideration the property & circumstances of her husband. & the Law will allow her a credit on his account for such things as are usually deemed necessaries for the wife of a person of such Estate as Mr Evans is proved to be

The Defendants counsel asked the Court to give the following instructions to the jury (to wit)

1st Given

1st If Mrs Evans purchased the articles mentioned in plaintiffs demand while she was living separate & apart from the defendant without his consent & that she had no sufficient cause for her leaving his home they must find a verdict for the defendant

2d Given

2d If Mrs Evans improperly left her husband without his consent & continued absent from him he is not liable to pay for necessaries furnished to her

[11847-8]

Given

3d. If Defendant at the time his wife was about to leave him expressed his unwillingness to have her leave, by informing her that it was his wish that she should stay & it has not been shown that he ever after that time consented to her leaving & she had no just cause for leaving him then he is not liable for necessaries furnished her while she was living away from him

Given

4th. That even ~~after~~ if he had consented to her leaving, if after that & before she left he informed her that he was unwilling she should leave & withdrew his consent for her leaving, he had a perfect right to withdraw that consent

Given

5th. That, if Mrs Evans was in the habit of scolding her husband & useing hard language to him, it is a circumstance proper to be considered by the jury in determining whether defendant was as much in fault as to justify her leaving

Given

6th. That Mrs Evans had no justifiable cause to leave her husband unless he compelled her so to do by turning her away refuseing to provide for her or personal ill treatment & in some way rendering it impossible or intolerable for her to live with him by ill usage

Given

7th. If there were difficulties in Defendants house justly accasioned by the harsh language or other improper conduct of Mrs Evans that was no just cause for her leaving him

Given

8th. That it must be proven that the demand sued on was for articles that were necessary for the use of Mrs Evans: Mr Evans is not bound to pay for any thing furnished for Mrs Evans by her children by her former husband when not living in his family nor is he bound to furnish articles to furnish a boarding house for her to keep

Given

9th. That Mr Evans had a right to insist upon the proper behaviour of every person in his household; & if he reproved his wife for not taking proper care of her children; it was not just cause for her leaving

Given

10th. That Mr Evans refuseing to keep Stephen the son of Mrs Evans in his house was no just cause for her leaving him

Given

11th. That in order to justify Mrs Evans in leaving her husband it is not sufficient that there should be accasional disagreement & scoldings between them or coldness of feeling producing nothing but & accasional harsh language in which both parties are equally in fault

Given

12th. That the causes which will justify a wife leaving her husband must amount to cruelty of some kind or reasonable apprehension of personal violence

Given

13th. That if Mrs Evans left her husband against his consent he is not liable for necessaries furnished to her while away against his consent unless he turned her away or compelled her to leave by rendering his house unfit for a modest woman to live in or by refuseing to provide for her; or unless she had reasonable grounds to apprehend personal violence; or by harsh treatment amounting to cruelty

Tuesday morning October 31st 1848 the following Record was made in said cause in said court (to wit)

William Fisher Jabez Fisher and Nathaniel S Chapin vs Joshua Evans } Appeal

This day came the Defendant and moved the court to dismiss the appeal herein taken for want of sufficient appeal Bond & moved the court for a Rule upon the plantiffs to produce authority to agent to sign said Appeal Bond which Rule is made & granted by the court

[11847-7]

Supreme Court, 3d Grand Division - June Term 1849.

Joshua Evans
25 vs
William Fisher, Jabez Fisher
& Nathaniel G. Chapin
Appellants. Costs =

Appeal from Marshall.

Jndt. affd. -

Fil. transcpt. 20. Dk. cause 12½, Ent. appea. 25, Fil. errors 6¼,	.63¾
2 affdts. & fil. 37½, Ord. refusing to strike bill of exceptions from files 25,	.62½
Fil. opinion 6¼, Ent. opinion 75, fil. abstract 6¼, Ent. argument 25,	1.12½
Ord. for further hearing 25, Ent. order. 25, Ord. taking time 25,	.75
Bill of costs 37½, copy 25, Certf. & seal 50, fil. & Dk. 18¾,	1.31¼
Shffs. return. 12½, Satisfn. 25, Dk. fee 1.25	1.62½
Transcript & Certf. & seal	15.00
	Amt. $ 21.17½
Cr. by paid Clk. S. C. $5.	5.00
	Bal. $16.07½

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the state of Illinois to the sheriff of Marshall county---Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of Joshua Evans you cause to be made the sum of sixteen dollars and seven & a half cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 17th day of July A. D. 1849.

C. Leland *Clerk of the Supreme Court.*

Received the within fee bill for collection on the 18 day of July at 6 O'C P.M. A.D 1849 & by virtue of the same I did on the 2 day of August 1849 levey upon the following Discribed property to wit one old buggy & one mantle clock as the property of the within named Joshua Evans & Money made in full by sale of the above Discribed property on the 28 of September 1849. fifteen dollars paid over to Clerk of Circuit Court of Marshall County & one dollar & seven cents paid to clerk of the Supreme Court at Ottawa, Returned this 5th day of October 1849

Service 50 milage 1,25 Delivy Bond 50 Commission, 80 Return 12½ $3,17½

Received my fees in full Henry L Crane Sheriff of marshall County

Lacon Octr 5th 1849

Received of H L Crane Shff of Marshall County my fee in full for transcript in the within fee bill

John Burns

Clerk Cct

Supreme Court

Joshua Evans

vs

William Fisher et al.

Fee Bill vs Plff. $16.07½

Filed Oct. 8. 1849.

Nelson Clk.

fifteen cents yet due wich I will pay over when opportunity presents
H L Crane

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of Marshall County---Greeting:

WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of Joshua Evans

you cause to be made the sum of nine dollars and seven & a half cents costs in the said Supreme Court, which William Fisher, Jabez Fisher & Nathaniel G. Chapin

lately recovered against him, before the Justices of our said Supreme Court, as appears to us of record, and make return hereof in ninety days.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 17th day of July in the year of our Lord one thousand eight hundred and forty nine.

C. Leland *Clerk of the Supreme Court.*

Received the within Execution on the 18 day of July 6 Oclock PM AD 1849
& by virtue of the same Said on the Second day of August 1849 Levied upon the following
Discribed property to wit one four hose wagon & One cooking Stove as the property of the within named
Joshua Evans Henry L Crane Sheriff of Mr Co,
the within Demand of $9.7½ made in full by sale of the above Discribed property on the
28th day of September 1849 & paid over to the Clerk of the Supreme court at Ottawa
Returned on the 5th day of October 1849

Service, 50 milage 1,25 Deliry Bond 50 commission, 45 Return 12½ Advertising 25 $2,07½

Received my fees in full Henry L Crane Sheriff of marshall County

Supreme Court
Joshua Evans
vs
William Fisher et al.

Execution vs Plff.
Bill of costs $9.07½
Fees Bill 16.07½
Coll. $25.15

Fils Oct. 8. 1849.
Adams Clk.

25

Joshua Evans appellant
vs
William Fisher et al appellee

B. C. Cook being sworn on oath saith that he was counsel for the appellant in the Circuit Court in which this cause was tried. That an agreement was made by affiant with the counsel for the appellee that the bill of exceptions in this cause might be made out and signed during the next week, which by law the Putnam County Circuit Court ~~was~~ should be in session. affiant further states that ~~it was~~ during the week in which the Putnam Circuit Court was to have been held Judge Caton the presiding Judge of the said Court was sick and said Court was not held. that said bill of exceptions was prepared and submitted to the said Judge during the time limited by the agreement aforesaid and that it was prepared by affiant from written notes of the testimony in said cause and is as affiant believes true and correct that said bill of exceptions was signed ~~sealed~~ by the said ~~Court~~ Judge in pursuance of the agreement. Affiant further states that the ~~bill of~~ agreement aforesaid was that said bill of exceptions was to have been prepared during the then next week but affiant has no recollection of any agreement that said bill of exceptions should be sealed

mitted to the counsel for appellee although it was then expected and understood that ~~both~~ all the counsel in the case would meet at Putnam Co. Circuit Court in which case said bill would undoubtedly have been so submitted, affiant further states that under the circumstances as they existed it would have been impossible after it was known that the Putnam court was not to ~~have~~ be held to have prepared said bill of exceptions and to have submitted them to the counsel for appellee who resided fifty miles from affiant in the time ~~to have~~ limited by the agreement aforesaid

Subscd. & sworn to before me June 16. 1849.
S. Leland Clk.

B. C. Cook

Filed June 16. 1849
S. Leland Clk.

Jethro Evans
vs.
Jno Fisher et als } Sup. Ct. June Term 1849

Onslow Peters being duly sworn, says, that he was counsel in the above entitled cause for the Ptffs. below in the circuit court — that he made no arrangements or agreement with the other party or the counsel, relative to the bill of exceptions in said cause = nor did he know that an appeal was prosecuted or that a bill of exceptions had been taken till after he ~~[illegible]~~ learnt that it had been left with the Clerk of Marshall Co. Circuit Court ==

On Tuesday of this week he saw the said Bill of exceptions in said Clerk's office, and it was not marked filed, nor was there any mark or note upon it, showing ~~that~~ it had ever been filed by the Clerk —

Onslow Peters

Subscribed & sworn to
this 16th of June 1849 —
Before me —
S. Leland Clk.

Evans
vs.
Fisher et al

Filed June 16. 1849.
Cleland Clk.

John Burns, being duly sworn says, that no bill of exceptions was signed (to his knowledge) in the case of Foster et als. against Evans, during the term of the court at which the trial was had = that sometime after, probably three or four weeks after the term, a ~~bill~~ paper purporting to be a bill of exceptions was brought to my office by the said defendant and handed to me, and I placed the same among the papers in the cause, where it has ever since remained — ~~but I do not know that the same has been marked as filed~~ = The same was incorporated into the transcript of record sent to the Supreme Court in this cause, under direction of the defendant ~~& his counsel~~

At the time of the trial in said cause, & ever since, I have been, & still am, the Clerk of the circuit court of said county —

John Burns

State of Ills } I Silas Ramsey Clerk of the
Marshall County } Circuit County Commissioners
Court of Marshall County do
Certify that John Burns Clerk of the Circuit
Court of Said County Signed to a Subscribed
the foregoing affidavit before me this
12th day of June A.D. 1849 witness
my hand & the Seal of
Said Court at my office
at Lacon Silas Ramsey Clerk

[11847-13]

Filed June 16. 1849.
A. Leland Clk.

Wm Fisher et al } Circuit Court of Marshall
vs } County Illinois
Joshua Evans } of October Term AD 1848

Silas Ramsey and Isaac I Fenn being duly sworn deposeth & says that they and Onslow Peters Esqr were Counsel for the plaintiffs in the above entitled Cause and that they were the only Counsel in said Cause for said plaintiffs and that B C Cook Esqr was Counsel for the defendants and the only one acting for the defendants in the trial of this Cause in the Circuit Court of Marshall County that there was an agreement between these affiants and B C Cook that the Bill of Exceptions in this Cause should be Submitted to these affiants at Hennepin in Putnam County on the week following the Term of the Circuit Court in Marshall County at the Term at which this Cause was tried and that after being Submitted to these affiants the same were then & there approved to be signed by the Hon I D Caton Judge of said Court and that these affiants were both at Hennepin Silas Ramsey on the following week

#And that the Hon I D Caton had not there nor was any bill of exceptions Submitted to them by B C Cook or by any other person for him nor did they ever see or hear of any Bill of exceptions untill they were informed by the Clerk of the Circuit Court of

#And Isaac I Fenn being sworn says that the word Clerk would not be present if he did not go to Hennepin on the following week but was there on Saturday for the purpose of attending Court was held in Marshall County

Marshall County that the defendant had left in his office a Bill of exceptions which was several weeks after the time the same was to have been submitted to them at Hennepin in Putnam County & that there was no agreement between the affiants and said defendant or B. C. Cook his Counsel or any other person that said Bill of exceptions was to be signed by the Judge at any other time or place than Hennepin as before stated — And that said Bill of exceptions or paper purporting to be a Bill of exceptions does not contain the whole testimony that the testimony of Mrs Long who was called and testified on behalf of the plaintiffs is entirely left out of said Bill of exceptions & that the whole of the testimony of Harriet Gariquer is not embodied in said Bill of exceptions that the said Harriet also testified that on the morning on which her mother left Mr Evans home Evans again asked his wife to go if she wanted to but that he would rather she would stay. (or words to that effect) and that was but a short time before she left and that all of the testimony of James Caldwell is entirely omitted that said Caldwell testified that he was present at the conversation spoken of by Harriet Gariquer a few days before that mother left Sept. & heard Sept. tell Mrs Evans to go and welcome & stated in substance the conversation related by Harriet as having taken place a few days before her mother left Sept. & that at another time Sept. told mother & Sept. and further affiants say that the same was all the testimony given in said case not

Oliver P. Cornish

Ira S. Ferrel

State of Illinois } ss
Marshall County }

I John Burns Clerk of the Circuit Court of Marshall County do certify that the foregoing affidavit was sworn to & subscribed before me this 12th day of June A.D. 1849 witness my hand and the seal of said court this day & year above written

John Burns
Clerk

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Pet. 13
No. 633
W. G.

[11847-15]

Filed June 16. 1849.
L. Leland Clk.