

11862


No. _____

Supreme Court of Illinois

Gilpatrick.

vs.

Foster.

71641  7

John F. Gilpatrick for se.

vs

George Foster

vs
J. J. Davies

1851

1862

Prepaid

State of Illinois
Jo Daviess County

} Appeal taken to the Jo Daviess
County Court of said County began and held with-
-in and for said County of Jo Daviess on the first
Monday of July in the year of our Lord 1849
before Hugh Dickley Judge of said Jo
Daviess County Court. wherein.

John J Gilpatrick for the
use of Joseph Cowgill vs Plaintiff

vs
George Foster Defendant

It is remembered that heretofore
and on the 2nd day of January A.D. 1849 the said defen-
-dant George Foster filed in the Office of the Clerk
of the said Jo Daviess County Court a transcript
which is in the words and figures following to
wit.

John J Gilpatrick for
the use of Joseph Cowgill } November 6th 1848
vs } Attachment issued on
George Foster } the affidavit of J Cowgill
to the hands of J Hamilton

Court on a note of hand made payable to John J
Gilpatrick or bearer for Ninety seven dollars 7/100
dated Whitesale Springs June 3rd 1848 signed George
Foster. Credit on the same for \$20. 20 cts Returnable
on the 13th Inst. at 1 o'clock P.M. December 13th 1848
The papers returned endorsed. Carried on Three ox
waggon. One two horse waggon December 9th 1848 J
Hamilton Court fees \$1.25. The hour arrives the par-
-ties present. The defendant refuses to be sworn
as to the credits. The Plaintiff sworn judgment

rendered against defendant for seventy eight dollars
23 cts debt and costs of Suit taxed at Two dollars
2 1/4 cts.

I do hereby certify the above to be a true copy
from my docket.

Dec: 13th 1848

J A Mattocks J^{sr} C^l

Endorsed Filed January 2^d 1849

In W^h Mitchell Clerk

And afterwards on the same day went on
the 2^d day of January 1849 the said George Foster
filed in the Clerk's Office said Jo^h Davis County
Court an Appeal Bond which said Bond is
in the words and figures following to wit.

Know all men by these presents that we George
Foster James Bennett & Gaylord Bennett are held
and firmly bound unto John J^r Gilpatrick for
the use of Joseph Cowgill in the penal sum of one
hundred & seventy five dollars for the payment
of which well and truly to be made we bind ours-
elves and each of our heirs executors and adminis-
trators jointly and severally firmly by these presents
sealed with our seals and dated this 2^d day of
January 1849.

The condition of the above obligation is such
that whereas the above named John J^r Gilpatrick
for the use of Joseph Cowgill did on the 13th day of
December 1848 before J A Mattocks a Justice
of the peace for Jo^h Davis County recover a judgment
against the above named George Foster for the sum
of seventy eight 23/100 dollars and costs from
which said judgment the said George Foster wishes
to appeal to the Jo^h Davis County Court of Jo^h Davis
County. Now if the said George Foster shall

prosecute his appeal with effort and shall pay
whatever judgment shall be rendered upon the dis-
-missal or trial of said appeal then the above oblig-
-ation to be void otherwise to remain in full force
and effect.

Approved
Geo M Mitchell

Clerk

George Platter (Dea)
James Bennett (Dea)
Gaylord Bennett (Dea)

Endorsed Filed January 2^d 1849

Geo M Mitchell Clerk

And afterwards and on the same day and on
the 2^d day of January ad 1849 a writ of Summons
issued out of the said Clerk's office of said Court on
said appeal which said writ is in the words and
figures following to wit

State of Illinois
Jo Daviess County } et

To the Sheriff of the County of Jo Daviess
We command you to summon John J Gilpatrick
for the use of Joseph Cowgill to appear before the
Jo Daviess County Court at the Court House in Galena
at the next term to be holden at Galena on the 1st Mo-
-oday of July next to answer George Platter in an
appeal and have you then then this writ.

Geo M Mitchell

Witness the Hon Hugh J Dickey Judge
of said Court at Galena Illinois this
2^d day of Jan'y 1849

Attest Geo M Mitchell Clerk

Endorsed Returns the within Summons not
executed the within named John J Gilpatrick
not found in my County this 7th day of May
1849
M B Pierce Sheriff

and afterwards went on the 21st day of February
A.D. 1849. The Justice of the Peace before whom said cause
was tried went. J. A. Mattocks Esq. returned into
the Clerk's Office of said Judicial County Court. The
following original papers appertaining to said cause
before him went the affidavit of the said Joseph
Cowgill. The ~~not~~ attachment bond taken of the
said Cowgill by the said Justice and the writ
issued thereon by said Justice. Wherein said affidavit
bond and writ are in the words and figures
following to wit

State of Illinois
affidavit,) Judicial County } Personally appeared before me
a Justice of the Peace in and
for the County aforesaid Joseph Cowgill and after
being duly sworn deposes and says that one George
Paster is indebted to him \$81 and 42^{cts} and that
he is about to leave the State with intent to
remove his property to his injury and so that pro-
cess cannot be served in the usual way. Sworn
to and subscribed before me
This 6 day of December 1848 Joseph Cowgill
J. A. Mattocks J. P.

Bond) Know all men by these presents that we Joseph
Cowgill and Jonathan Hall are held and firmly
bound unto George Paster and all others concerned
in the penal sum of one hundred and sixty
two dollars \$162 for lawful money for the payment of
which we bind ourselves our heirs and administrators
jointly and firmly by these presents with our
hands and seals this 6 day of December 1848.

On condition of the above obligation is such
that whereas the above bounden Joseph Cowgill

both on the day and date hereof prayed an attachment
at the suit of Joseph Cowgill against the personal
estate of the above named George Foster for the sum
of \$81. and 42 cts and the same being about to be
sued out returnable on the 13th day of December 1848.
Before said Justice. Now if the said J. Cowgill
shall prosecute his suit with effect or in case of
failure therein shall well and truly pay and satisfy
the said George Foster all such costs in such suit
and such damages as the said George Foster may
sustain by reason of wrongfully suing out said
attachment. then the above obligation to be void
else to remain in full force and virtue.

Witness our hands and seals this 6th day of
December 1848

Joseph Cowgill *Deab*
Jonathan Hall *Clk*

Endorsed Filed Feb 21st 1849
Geo W. Mitchell Clk

ind) State of Illinois
Madison County }
To any Constable of said County Greeting
Whereas Joseph Cowgill hath complained on oath
before J. A. Matthews a Justice of the Peace in and
for said County that George Foster is justly indebted
to the said Joseph Cowgill in the amount of 81 dollars
and 42 cts and oath having been also made that
the said George Foster is about to leave the State with
intent to remove his property from the State to the
injury of such creditor so that the ordinary process
of law cannot be served and the said Joseph Cowgill
having given bond and security according to the
directions of the act in such cases made and provided
we therefore command you that you attach so much
of the personal estate of the said George Foster as he found

in your County as shall be of sufficient value to satisfy
the said debt and costs according to the Complaint,
and such personal estate so attached in your hands
to secure or so to provide that the same may be liable
to further proceedings thereon according to law before
the undersigned Justice of the Peace, and case pers-
onal property of value sufficient cannot be found
that you summon all persons whom the Plaintiff
or his Agent shall direct to appear before said Justice
on the 13th day of December 1848 at 1 o'clock P.M. there
and then to answer what may be objected against him
or them, when and where you shall make known
how you have executed this writ. Given under
my hand and seal this 6th day of December 1848.

Ja^s H. Mattocks J. P.

Endorsed Seized on three Ox waggons
December 9th 1848
J. Hamilton Const.

Served & reading December 9th 1848
Served the within process by reading the
same to the within named George Foster on
the 9th day of December 1848
J. Hamilton Const.

The said Justice also returned into the said Clerk's office
with said affidavits, bond & writ, a note in the words
and figures following &c.

One day after date I promise to pay
John P. Gilpatrick or Bears Ninety seven dollars and
17/100 for value received
White Oak Springs Jan 3rd 1849 George Foster

Endorsed as follows &c.
May 17 1848

Received on the within 14 70 cents
August the 4th 1848

Received on the within 50

pay the within note to J. Cowgill
J. P. Gilpatrick
April 18 Received on the within 5.00

And afterwards Dunt on the 17th day of May A.D. 1849. The said defendant by his attorney, filed in open Court with the Clerk of said Court his motion to dismiss. Which is in the words and figures following Dunt.

George Paster
vs
J. S. Gilpatrick for
use of J. Cowgill

In the Judicary County
Court. May Term 1849
Appeal on attachment

The Dept by his attorney moves the Court to dismiss the above entitled cause, and reverse the judgment of the Justice for the following reasons.

- 1st Because the Justice had no jurisdiction.
- 2^d Because there was no affidavit filed by the plaintiff, his agent, or atty.
- 3^d Because there was no bond filed by said plaintiff.
- 4th For other reasons appearing on the face of the Justice's proceedings. Campbell
Atty for Dept.

Endorsed Filed 17th May 1849
Geo M. Mitchell Clk

And on the same day Dunt the 17th day of May A.D. 1849 in May Term of said Court A.D. 1849 in the record of the proceedings there in said cause is the following entry Dunt.

John S. Gilpatrick for use
of Joseph Cowgill
vs
George Paster

Appeal

The defendant by his attorney comes and moves the Court to dismiss this Dunt, and the plaintiff by his attorney, comes and files his motion to amend the return of the Officer on the original writ issued in this case by the Justice of the Court

below, after hearing the arguments of counsel. The court sustains the motion & amends, which amendment is made by the officer in open court, and the court overrules the motion of the defendant & dismisses this suit & whitts rulings and decisions of the court, the defendant by his attorney excepts.

And afterwards went on the 20th day of March 1858 in the March term of the Circuit Court of Jo. Damp County Illinois. A.D. 1858. District Circuit Court. The said cause had been transferred, together with all the causes undisposed of in said County Court of Jo. Damp County, by operation of law, in the record of the proceedings therein in said cause as the following entry sheweth.

John J. Gilpatrick &
vs of Joseph Cowgill

vs
George Plaster

} Appeal

} Now at this day came the parties by their attorneys, and upon issue joined by agreement they waive the intervention of a jury and for trial put themselves upon the court, and the court after hearing the evidence, after inspection of the papers and due deliberation finds the issue for the plaintiff, and assesses his damages at the sum of thirty three dollars and seventy three cents.

It is thereupon considered by the court that the plaintiff have and recover of the defendant the said sum of thirty three dollars and seventy three cents so as aforesaid assessed by the court, together with his costs of him about this suit in this behalf expended, and also his costs in the court below and that he have execution therefor.

And afterwards writ on the 22^d day of March
A.D. 1850 in the said plaintiff's behalf his Attorney filed his
motion & reasons with the Clerk of said Circuit Court in open
Court for a new trial of said Cause which said
motion is in the words and figures following
Writ.

John J. Gilpatrick for
the use of Joseph Cowgill }
vs } Circuit Court
George Foster } March Term 1850
} And the said plain-

tiff's Attorney comes and moves the Court
to set aside the finding herein for a new trial here-
in for the reasons following. That the finding
was contrary to the evidence.

And because the finding was contrary
to Law.

And because the Court refused to permit
the plaintiff to amend the endorsement on the
note sued on. And for other reasons.

Higgins
for self

Endorsed
Filed 22^d March 1850
Wm. P. Brady Clerk

And afterwards writ on the same day Writ
the 22^d day of March A.D. 1850 in the said March
Term of said Circuit Court in the record of the
proceedings thereof in said cause is the following
entry Writ

John J. Gilpatrick vs
the use of Joseph Cowgill }
vs } Appeal
George Foster }
} An motion of the

Plaintiff's Attorney. The judgment heretofore entered in this case is ordered by the Court to be set aside and the Plaintiff's Attorney moves the Court for a new trial of this case, which motion after argument is overruled by the Court, to which ruling and decision of the Court the Plaintiff's Attorney excepts. and the defendant moves the Court for judgment upon the finding of the Court heretofore entered in this case. It is thereupon considered by the Court that the Plaintiff have and recover of the defendant the sum of Thirty three dollars and seventy three cents so as aforesaid assessed by the Court, together with his costs by him about his suit in this behalf expended, and also his costs in the Court below and that execution issue therefor.

On the trial of the above entitled cause. The following exceptions were allowed or found,

John J. Gilpatrick for
use of J. Cowgill
vs
George Foster

In the 1st Term Court of the North Term
Ad 1857

Be it remembered that on the trial of this cause. after the same was submitted to the Court for trial the Plaintiff to prove his case. offered in evidence a promissory note executed by said Foster to the said Gilpatrick and which note was sent up by the Justice of the Peace with the other papers in the case. and is in the words of figures following to wit

One day after date I promise to pay John J. Gilpatrick or bearer Ninety seven dollars and 17/100 for value received.
White Oak Springs Jan 3^d 1848 George Foster

This was all the evidence offered by the plaintiffs.
The defendant then insisted upon certain credits
endorsed upon the back of said note by the said
Gispatrik being allowed. Whence endorsements are
in the words and figures following to wit.

May 17 1848.

Received on the within 14 70 Cents

August the 4th 1848

Received on the within 50

pay the within note to J Cowgill

J P Gispatrik

April 18. Received on the

within 5.00

The Plaintiff then asked leave to amend one
of the endorsements on the back of said note,
which endorsement was as follows. "Rec^d on the
within 50 so as to read. "Rec^d on the within 50 cents
to which amendment the def^t by his Counsel excep-
-ted, which exception was sustained by the Court
to which decision of the Court the plaintiff then
and then excepted. All the endorsements on said
note were then read by the defendant, which was
all the testimony offered by said def^t and
thereupon the Court found a verdict for the plaintiff
for the sum of thirty three dollars and seventy
three cents. to which finding the plaintiff then
and then excepted, and moved the Court to
set aside the finding and for a new trial
in the words and figures following to wit.

John P Gispatrik for
the use of Cowgill

} Circuit Court.

} March Term 1850

vs
George Baxter

} and the said plaintiff

by his Attorney comes &
moves the Court to set aside the finding & for
a new trial herein for the reasons following. That
the finding was contrary to the evidence.

And because the finding was contrary to law
And because the Court refused to permit the
plaintiff to amend the endorsement on the note
Ired on, and for other reasons.

Higgins for plaintiff
which motion the Court overruled. To which
entering the plaintiff then and then excepted
and asks that his bill of exceptions may be
sealed, signed & allowed, which is accordingly
done.

Benj. R. Sheldon Clerk

Endorsed July March 23^d 1850
Wm. A. Bradley Clerk

State of Illinois

Joel Camp County

William A. Bradley Clerk
of the Circuit Court in and for said County do
hereby certify the foregoing transcripts to be a true
full and correct copy from the record & files
of my office of all the proceedings which were
had in said Circuit Court in the aforesaid
Case of John P. Whipple vs. the use of Joseph
Cowgill vs. George Peater.

In testimony whereof I have
signed at my hand and affixed
the Seal of said Court at my
Office in Galena in said County
this 26th day of March A.D. 1851
Attest William A. Bradley
Clerk

cost of this transcript 3 50
entire amount 35
\$38 50

Assignment of Errors -

of John G. Gilpatrick for the use
of Joseph Cowgill and
George Foster - and

error to J. Davies -

And the said
John G. Gilpatrick who sues for
the use of Joseph Cowgill now
comes and says that in
the Records & proceedings aforesaid
there is error in this to wit -

1st That the Court rendered
judgment for the plaintiff for
the amount in said judgment
specified when by the evidence
it should have been for fifty
dollars more than that amount -

2^d That the Court erred in allow-
ing a credit of ^{or} fifty dollars
when the endorsement on the
note did not show that
fifty dollars had been paid -

3^d That the judgment given was
contrary to the evidence & the credit
allowed was unsupported by
the testimony & for other reasons

Wherefore the said
Gilpatrick who sues for the use
of Cowgill prays that the said
judgment may be reversed
& that he may be restored to all
things which he has lost by
reason thereof -

Higgins & Fisher his
Attorneys -

And now comes the said George Foster
by Thompson Campbell his attorney
to say that there are no such entries
in said Record & proceedings as are
above specified & he prays that
said Judge may be affirmed
Thompson Campbell
per W. H. Swift

John F. Gilpatrick for use.
vs
George Foeter
Reed

Filed March 29, 1854.
L. Leland Clerk.

State of Illinois, sct.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Jodavisp*— 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 *Jodavisp* county, before the Judge thereof, between *John F. Gilpatrick for the use of Joseph Cowgill*—

plaintiff— and

George Foster—

defendant it is said manifest error hath intervened, to the injury of the aforesaid *plaintiff*

as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *2^d Monday in June*— 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. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *29th*— day of *March* in the year of our Lord one thousand eight hundred and fifty *one*.

C. Seland Clerk of the Supreme Court.

John F. Gilpatrick pruce.

by
George Foster

Wm A Enos

Filed March 29, 1857.

L. Adams Clk.

State of Illinois, vol. 1
To the Clerk of the Circuit Court for the County of
The People of the State of Illinois
CREATING

According to law.

hundred and fifty one.
of the year of our Lord one thousand eight
Court, and the seal thereof at Ottawa, this 27th
WITNESSES the Hon. SARGENT H. TRACY, Chief Justice of our said

Record Clerk of the Supreme Court

STATE OF ILLINOIS—JO DAVIESS COUNTY.

In the Supreme Court of the third division in and for the State of Illinois—to the June Term, 1851.

John Gilpatrick for the use of Joseph Cowgill, vs. George Foster. Error to Jo Daviess County.

PUBLIC NOTICE is hereby given to the above named George Foster that a transcript of the record from the Circuit Court of Jo Daviess county, Illinois, in the above entitled cause, has been filed in the office of the Clerk of the Supreme Court of the 3d division, Illinois, together with an affidavit showing the non-residence of the said George Foster, and that service cannot be had upon him, and a writ of Error having been sued out by the said John Gilpatrick, who sues for the use of Joseph Cowgill, returnable to the June term, A. D., 1851 of the said Supreme Court, to be held at Ottawa on the second Monday of June next. Now unless you, the said George Foster shall appear and plead, answer, demur or join in Error to said proceedings in Error, the said judgment will be reversed, or such other proceedings had against you, as if you had been personally notified of the pendency of said writ of Error, as in other cases where process is regularly executed on the defendant in Error.

LORENZO LELAND, Clerk

April 3, 1851. -fj10 Sup. Court, 3d division.

I hereby certify that the annexed advertisement was published in the North Western Gazette a weekly paper published at Galena in the County of Jo Daviess and State of Illinois for nine weeks successively the first publication of which was made on the 7th day of April A.D. 1851 and the last on the 10th day of June A.D. 1851.

W. H. Houghton
publisher of said paper
Galena Ills

Galena June 10th 1851

Charge for advertising
the above \$ 4.00

Certificate of
Publication in
Hulphur by power
of Comptroller
Foster

Filed June 17, 1854.
S. Island Ck.

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Jodavie* — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *Jodavie* — county, before the Judge thereof, between *John F. Gilpatrick for the use of Joseph Cargill*, plaintiff — and *George Foster*

defendant, it is said that manifest error hath intervened, to the injury of the said

plaintiff

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 Ottawa, 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 Foster* —

that *he* be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the *2^d* Monday in *June* — next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* — shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Foster* — notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *29th* day of *March* in the year of our Lord one thousand eight hundred and fifty *one*.

A. Deland Clerk of the Supreme Court.

Returned this writ this 5th day of June A.D.
1851. not executed the within named George
Foster not found in my County.

C. C. Sanders Sheriff
of Jo Daviess County Ills

John F. Gibpatrick Esq.

George Foster

Sci. Fa.

To June Term 1851.

Filed June 13, 1851
A. W. Deane Clerk.