

No. 14557  $\frac{1}{2}$

# Supreme Court of Illinois

Stout

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vs.

Evans

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

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No. 260

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14557

Not having returned the bill of  
exceptions in James V Evans vs  
Francis Stuart appealed from  
the Circuit Court of the County  
of Warrick in the State of Illinois  
to the Clerk's Office of said Court  
I here by as Attorney for said Evans  
agree that I will take no advantage  
of the record in said Cause  
<sup>to form an issue</sup> ~~not~~ having been made for the  
Supreme Court, and that such  
appeal is not to be dismissed therefor  
April 22, 1863

John S. Thompson  
Atty. for Plff

Ms  
Francis Staat

or  
James V Evans  
agreement of John  
S Thompson —

Filed May 6<sup>th</sup> 1823  
L. Leland  
Clerk

Chas. W. Apr 27 1863

I Charles B Lawrence Judge of the  
Southern District Circuit of the State  
of Illinois, State that having received  
the writ of execution of appellant  
Stall in James V Evans & him  
in Western Circuit Court in time  
to have signed and had them  
filed in the Clerk's office of said  
Court within the time required  
therefor in granting such  
appeal, And having for the  
accommodation of one of  
the Attorneys of said Evans  
sent him such bill for examina-  
tion on a promise to said  
Stall <sup>attorneys</sup> that if ~~it was~~ <sup>it was</sup> not  
sent to such Clerk's office  
within such time that I  
would order the Clerk of such  
Court to mark ~~the~~ <sup>it</sup> as so  
filed and had that ~~it was~~ <sup>it was</sup>  
so filed And ~~that~~ <sup>it was</sup> it not  
having been so sent I have  
so ordered such Clerk

C. B. Lawrence

May 10<sup>th</sup> 1863

269  
Lumber Co.  
Statement of

Income

Filed May 6<sup>th</sup> 1883  
Leland  
Clark

State of Illinois  
Warren County ss

James V Evans  
vs  
Francis Staut

Charles Jameson being  
first duly sworn on his oath states - That  
he was one of the attorneys for Defendant  
in the above entitled cause at the time  
the same was tried at the March Term  
AD 1862 of the Warren Circuit Court - That  
at the trial, by consent, the Defendant  
was allowed sixty days, within which  
he was to file a bill of Exceptions in  
said Cause, that afterwards and within  
the said sixty days the Hon. C M Harris  
also one of the attorneys for said Defendant  
prepared a bill of Exceptions and this  
affiant presented the same to A. G. Kirk  
Patrick Esq one of Plaintiff attorneys at  
the trial for examination but the said  
Kirkpatrick refused to examine the  
same saying that Judge Thompson of  
Aledo Mercer County was the leading  
attorney for plaintiff and that Affiant  
must take the bill of Exceptions to him  
for Examination, this Affiant then went  
to Aledo with said bill of Exceptions to

present the same to Judge Thompson but was  
informed at his residence <sup>in Caledonia</sup> that said Thompson  
had started that morning for Raab's Island  
to be absent several days - There being  
no other attorneys for Plaintiff, this affiant  
the next day took said Bill of Exceptions  
to the Hon<sup>ble</sup> B Lawrence Judge of said  
Circuit Court to be signed, said Judge  
informed this affiant that he would not sign  
the same until Judge Thompson had had  
an opportunity to examine the said Bill  
but that it having been presented to him  
within the sixty days given said Defendant  
he would order the Clerk of said Court  
to file it inunc pro tunc when signed -  
This affiant was afterwards informed by the  
Judge of said Court that he had given  
said Bill of Exceptions to Judge Thompson  
for examination. This affiant further  
states that he is informed and believes  
that Judge Thompson one of said Plaintiff's  
attorneys has had and kept possession  
of the said Bill of Exceptions until

on or about the 25th day of April A.D. 1863

Subscribed and sworn to before Chas Jameson  
on this 28th day of April A.D. 1863

Wm Laphety Clerk Circuit Court  
By L O Tomblott, Deputy.

Staal vs Evans

Affidavit of Jameson

Filed May 6<sup>th</sup> 1863  
L. L. Leland  
Clerk

The record in this case shows the Bill of Exceptions was filed on the 24th day of April 1863. The record is handed of & entered subject to the order & impression of the Court, it is not now handed to the Court, because, said record is making an abstract thereof & desirous to see it. It will be made.

Francis Staat

vs

James W Evans

Points on Motion  
by Atty General

In this case Evans sued Staat in the Circuit Court of Warren County & recovered a judgment against him. Staat appealed to the Supreme Court & had 60 days to file his Bond & Bill of Exceptions.

He filed the Bond, & made out the Bill of Exceptions in time & handed it to Judge Lawrence the Circuit Judge.

Judge Lawrence handed the Bill of Exceptions to Hon John S Thompson the Attorney of Evans who kept in his possession until the 27th day of April (last week) & then returned it to the Clerk. The Clerk then completed the record & sent it to me.

In the mean time, on the 22<sup>d</sup> of April 1863, Thompson the Attorney of Evans in the Court below, agreed not to take any advantage of the delay in entering the appeal & making up the record, which agreement is herewith presented to the Court.

Mr Kirkpatrick, who appears in this Court for Evans, refuses to acknowledge the authority of Thompson to

make any agreement in the case, and  
ask to have the appeal dismissed

This motion is now resisted by  
the Attorney of State for the reasons  
above set forth

The record could not be made out  
& sent to this Court until the Bill of  
Exceptions was filed. The Bill of Exceptions  
was in the possession of Thompson  
the Atty of Evans until the 27th April  
1863, & in the mean time, Thompson  
agreed substantially that no advantage  
should be taken by reason of not entering  
the appeal

This agreement superseded the necessity  
for entering the case in this Court  
during the three first days of the term

The defendant Evans ought not  
to be permitted to take advantage of  
his own wrong, or rather of the wrongful  
act of his attorney. The agreement  
should be enforced.

Wm Wend  
Atty for State.

260  
Francis Stoddard

or  
James V. Evans

Reasons why motion  
to dismiss appeal, should  
not be allowed

by

Sturtevant

Filed May 6<sup>th</sup> 1863  
L. Leland  
Clerk

to dispoſe of the caſe the preſent  
Term.

Sent down the bill im-  
mediately with inſtructions  
to Laſſet to make out the  
overt at once and ſent off  
there is ſtill time

Yours  
A. K. K. K. K.

Dear C. M. Harris.

I have read the above. I have done all I can do I  
ſuppoſe. It is true that I have not been able to go to look after the  
Caſe in the Supreme Court. If I had been I could not have done  
do do. I certainly ſhould be willing to do any thing in my  
power to prevent any trouble by you on account of my own  
neglect. I herewith ſend you the Bill of Exceptions.  
I have made but a partial examination of them. I find  
I have out the minutes of the testimony & can therefore  
make no corrections except from memory. Since  
I have read the above I prefer that you ſend them to him  
& let him examine them & as the Judge goes home through

Monmouth he saw Lord at them, sign them  
& let the Record go up.

I am sorry the thing is in its present

shape -

Yours truly

John L. Thompson

<sup>26-8</sup>  
Stuart vs Evans

statement of Judge  
Thompson

Filed May 6<sup>th</sup> 1863  
L. Leland  
Clerk

Francis Staats } Supreme Court of Illinois  
James B. Evans } April Term 1883

The objections of appellant to dismiss the appeal in this case cannot be sustained for the following reasons:

Mr. Thompson as shown from his letter filed by appellant has never been employed <sup>by appellant</sup> for this court, and can make no agreement for appeal, and the agreement only extends to the filing of the bill of exceptions. It might be a good reason for refusing to settle bill of exceptions from record, but cannot excuse the appellant for his own laches in failing to enter the case in this Court on or before the 30 day of this Term. He should have entered the case & applied for further time in which to file his record. Now he seeks to deprive us of the benefit of a large judgment on account of his own laches and have the case go over to next Term.

The appellant has a remedy, and can file his record & obtain a supercedas, if he is entitled to

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Francis Stuart

v  
Samuel B. Evans

appeller

Suggestions in

favor of

dismissing appeal

Filed May 6<sup>th</sup> 1883

L. Leland  
Clerk

now, the rule of the Court is imperative  
that records must be filed on or  
before the 3<sup>rd</sup> day of the Term, unless  
further time is given. And it  
is unjust that this case should  
go over to next Term. I think  
the appeal should be dismissed

A. H. Hibbard  
for appeller

I might suggest that I am  
willing to have the case tried at this  
Term & have so notified the  
appellant. A. H. 11