

13656

No. _____

Supreme Court of Illinois

Gribbins

vs.

Wetmore & Co.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 15

1362

Gribbin
^{2d}
Thompson

13656

State of Illinois, } Third Grand Division.
SUPREME COURT. } APRIL TERM, 1860.

OSCAR GRIBBIN
vs.
THOMPSON, WETMORE & CO.

Brief, Argument, and Authorities for Plaintiff in Error.

In this case Oscar Gribbin, the plaintiff, was sued by the defendants in error in an action of assumpsit, together with John W. Mathews, Rufus Lenori, and Calvin Terry, as partners trading under the name and firm of J. W. Mathews & Co. Terry and Gribbin were served with process and appeared and plead severally to the action, each pleading in abatement, that he was not one of the firm of J. W. Mathews & Co.; and Terry made affidavit for a continuance of the cause for want of evidence, and the court continued the same as to Terry, and as to Gribbin took up the cause, tried it, and rendered a judgment therein against Gribbin for the whole debt alone, leaving the cause continued and undecided as to Terry.

Mathews and Lenori were not served with process.

A joint debtor should not, when sued jointly, and a service on other of the joint debtors had, be tried alone; and if such trial should be had, on evidence relating to the defendant alone, and other joint defendants plead to the action a clear defence, which plea is not disposed of, a new trial should be awarded on motion of the defendant tried alone.

2d. The second error assigned is that judgment was rendered against Gribbin on his plea, when the other joint debtor was served and had appeared and plead a full defence not personal to himself in court. This was clearly erroneous. The rule is well settled that when a suit is brought against several, you must recover against all of the joint defendants who are served with process or none. See Breese Rep. 128, Kimel vs. Shultz *et al.*; Robinson vs. Smith *et al.*, 18 Johnson Rep., 459; Hoxey vs. County of Macoupin, 2 Scammon Rep., 36; McConnel vs. Swails, 2 Scammon Rep., 572. These authorities being conclusive on this point, and the record showing the facts as here alleged, the cause should be reversed.

B. S. PRETTYMAN, *for Plaintiff in Error.*

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as

Thompson Wilson

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