

No. 2438

Supreme Court of Illinois

Isaac G. Israel sues for use
of E.B. Scholl

vs.

Wm. T. Reynolds et al

(379)  7

Hear held in the Pike Circuit Court, at the
April Term. A. D. 1849.

Present.

W. A. Marshall Judge.

Isaac G Israel who sues
for the use of Edward B Scholl
vs

William T Reynolds &
John D Wilson doing business
under the name of William T Reynolds & Co

In the Pike Circuit Court
September Term A. D. 1848

Attachment

W L Higbee being by me duly sworn deposes and
says that he is attorney for the above named Edward B Scholl
and as affiant is informed and verily believes the above
named defendants William T. Reynolds and John D Wilson
are indebted to said Scholl in a sum of money exceeding
twenty dollars to wit in the sum of three hundred and
fifty dollars, and that said indebtedness accrued to said
Scholl from said defendants as follows to wit, on the
twenty first day of September in the year of our Lord one
thousand Eight hundred and forty Seven at the County of
Pike and State aforesaid the said Isaac G Israel purchased

of the Said Edward B Scholl one Steam Boiler for and in consideration of which he the Said Israel then and there undertook and promised to pay to him the Said Edward B. Scholl the sum of Three Hundred and fifty dollars on or before the twenty first day of June in the year of our Lord One thousand Eight hundred and forty eight - And afterwards to wit on the fifth day of fifth day of February in the year of our Lord one thousand eight hundred and forty eight at the City of St Louis and State of Missouri (to wit the County of Pike aforesaid, the Said William F Reynolds and John D Wilson were partners in trade under the name of William F Reynolds & Co and so being partners, aforesaid the Said William F Reynolds and John D. Wilson made their certain promise in writing to the Said Isaac G Israel in the words and figures following to wit: -

St Louis Feby 5th 1848

I G Israel Esq^r

Dear Sir In accordance with your request we herein state that according to our understanding with you when we purchased your property known as St Louis Mill we will pay for the boiler purchased by you for your Saw Mill & not yet paid for by you with the understanding that the cost of said boiler does not exceed three hundred & fifty (350) dollars.

Yours truly

Signed

W F Reynolds & Co

and then and there delivered the same to the Said Isaac G Israel and thereby under the name of the Said firm of William F Reynolds & Co undertook and promised to pay to him the Said Israel the sum of three hundred and fifty dollars according to the tenor and effect thereof -

And affiant further says that the boiler referred to in said instrument in writing signed by said William

S. Reynolds & Co is the Same Sold by Said Scholl to Said Israel and that the cost thereof did not exceed three hundred and fifty dollars— And affiant further states that the Said Isaac G. Israel afterwards to wit; on the Eighteenth day of March in the year of our Lord One thousand Eight hundred and forty eight at the Said County of Pike aforesaid for a valuable consideration assigned Said instrument in writing to one Stephen R. Gray afterwards to wit on the fifteenth day of July A.D. 1848. at the County aforesaid in like manner assigned the Same to Said Edward B. Scholl whereby the Said William S. Reynolds & John D. Wilson became liable to pay to Said Scholl the amount Specified in Said instrument in writing according to the tenor and effect thereof— Yet the Said defendants have not paid the Same or any part thereof. And affiant further says that Said William S. Reynolds & John D. Wilson do not reside in this State but reside in the City of St Louis and State of Missouri he therefore prays that a writ of Attachment may issue &c

Subscribed and Sworn to before
me this 17th day of July A.D. 1848

C. L. Higbee

A. Starne Clerk

And afterwards to wit on the 17th day of July A.D. 1849. the following bond was executed and filed in words and figures as follows to wit:

I know all men by these presents That we Edward B. Scholl and Stephen R. Gray. of the County of Pike and State of Illinois are held and firmly bound unto William S. Reynolds & John D. Wilson doing business under the name of W. S. Reynolds & Co in the penal sum of Seven Hundred Dollars for the payment of which well and truly to be made, we and

each of us, bind ourselves, our heirs executors and administrators, jointly and Severally, and firmly, ~~these~~ ^{by} ~~presently~~ ^{these} ~~presently~~ ^{presently} sealed with our Seals and dated at Pittsfield this 17th day July Anno Domini One thousand eight hundred and forty eight

The Condition of the above obligation is such that Whereas the above bounden Edward B Scholl hath on the day of the date hereof prayed an attachment at the suit of Isaac G. Israel who sues for the use of Edward B. Scholl against the estate of the above named William S. Reynolds and John W. Wilson doing business under the name of Wm S. Reynolds & Co for the sum of Three Hundred and fifty dollars and the same being about to be sued out returnable on the fourth day of September next to the term of the Court then to be holden; now if the said Edward B Scholl and Stephen B. Gray shall prosecute said suit with effect, or in case of failure therein shall well and truly pay and satisfy the said William S. Reynolds and John W. Wilson all such costs in said suit and such damages as shall be awarded against the said Edward B. Scholl and Stephen B. Gray their heirs executors or administrators in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment then the above obligation to be void otherwise to remain in full force and effect.

Taken and entered into
the date first above written
Attest
Clerk

E B Scholl 

Stephen B. Gray 

And afterwards to wit on the same day being the 17th day of July 1848 - a writ of Attachment was issued in words and figures as follows to wit;

State of Illinois
Pike County.

The People of the State of Illinois
To the Sheriff of said County Greeting

Whereas E. L. Higbee attorney for E. B. Scholl hath complained on oath to Alexander Starne Clerk of the Circuit Court of Pike County ^{trump, under the style of W. D. Reynolds & Co} that William D. Reynolds & John D. Wilson doing &c., are justly indebted to the Said E. B. Scholl to the amount of Three Hundred & fifty Dollars and cents; and oath having also been made that the Said William D. Reynolds and John D. Wilson are not residents of the State of Illinois but are residents of St Louis State of Missouri - And the Said Edward B. Scholl having given bond and Security according to the directions of the act in such case made and provided -

We therefore command you that you attach so much of the estate, real or personal, of the Said William D. Reynolds & John D. Wilson to be found in your County, as shall be of value sufficient to satisfy the Said Debt and Costs, according to the Complaint; and such estate so attached in your hands, to secure, or so to provide that the same be liable to further proceedings thereupon according to law, at a Court to be holden at Pittsfield for the County of Pike on the fourth day of September next. So as to compel the Said William D. Reynolds and John D. Wilson to appear and answer the Complaint of the Said Edward B. Scholl - ~~and that you~~

Esce

Witness A. Starne Clerk of our Said Court
at Pittsfield this 17th day of July 1848.

A. Starne Clerk

Upon which Attachment there is the following indorsement

I have levied upon and taken the following described property to wit; forty acres of Wheat more or less in the State on the land owned by Wiley Watson near Israels Mill. Six and a half Yoke of Work Oxen, two Ox Waggon, thirty thousand feet of Sanded Lumber at the Saw Mill at St Louis Missouri Said property being taken and attached as the property of William D. Reynolds & John D. Wilson known as William D. Reynolds &c in favour of Edward B. Scholl this the 18th day of July A. D. 1848.

W. D. Hicks Sheriff
by J. B. Gray Deputy

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Afterwards to wit on the 2nd day of August A.D 1848
the following delivery bond was filed in words and figures
as follows to wit

Know all men by these presents that we Wilson Smith
Ag^t for W^m. S. Reynolds & Co & Alfred Grubb. of the County of Pike
and State of Illinois are held and firmly bound unto Daniel
D. Hicks Sheriff of Pike County and State of Illinois in the po-
-at sum of Seven Hundred dollars for the payment of which
well and truly to be made we and each of us, bind ourselves,
our heirs executors and administrators, jointly, severally and
firmly by these presents sealed with our seals and dated
at Barry this 19th day of July Anno Domini One thousand
eight hundred and forty eight.

The Condition of the above obligation That the Sheriff
of said County by virtue of an Attachment in his hands from the
Court of the Circuit Court of Pike County, in said State dated
July 17th 1848. in favor of Edward B. Schell plaintiff, and
against the above bounden W^m. S. Reynolds & John D. Wilson
defendants for the sum of Three Hundred fifty dollars return-
-able to the next term of said Court has laid upon and taken
the following described property to wit: forty acres of Wheat
more or less in the shock on the land owned by Wiley Watson
near Israels Mill 6 1/2 Yoke of work oxen 2 Ox Waggons - & about
30,000 feet Sawed Lumber at the Saw Mill in St Louis MO to
satisfy the debt and cost aforesaid; and whereas the said
W^m. S. Reynolds & Co desire to retain the possession of the
aforesaid property untill the day of sale - Now if the said
Reynolds & Co or Alfred Grubb. shall well and truly satisfy
the said debt and costs or shall not dispose of or injure
the above described property and shall deliver the same to the
said Sheriff when demanded by him his Deputy or Succe-
-sor in office keep & have the same on hand to satisfy.

any judgment & costs that may be rendered in this cause
& Subject to the same or the Execution issued in the case
then the foregoing obligation to be null and void otherwise
to remain in full force and effect.

Signed Sealed and } Wilmot Smith SS
delivered in presence of } A Grubb SS

And afterwards to wit on the 24th day of August A.D.
1848. the following declaration was filed in words and figures
as follows to wit;

State of Illinois } In the Pike Circuit Court
Pike County } September Term A.D. 1848.

Isaac G. Israel who sues for
the use of Edward B Scholl

vs

William T. Reynolds & John D.
Wilson doing business under the
name & style of W.T. Reynolds & Co

William T. Reynolds and John D. Wilson
are attached to answer Isaac G. Israel who sues for the use
of Edward B Scholl in a plea of assumpsit and thereupon the
said plaintiff by Higbee his attorney complains - For that
whereas on the fifth day of February in the year of our Lord
one thousand eight hundred and forty eight at St Louis
to wit the County of Pike aforesaid the said William T. Reynolds
and John D. Wilson were partners in trade under the name
and style of W.T. Reynolds & Co and so being partners as aforesaid
they the said W.T. Reynolds and John D. Wilson by
their said partnership name and style of W.T. Reynolds & Co
on the said fifth day of February in the year of our Lord one
thousand eight hundred and forty eight at St Louis to wit;

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the County of Pike aforesaid made their certain instrument or undertaking in writing bearing date the day and the year aforesaid and thereby then and there promised, plaintiff in the words and figures following to wit:

St Louis July 5th 1848

Dear Sir

In accordance with your request we hereby state that according to our understanding with you when we purchased your property known as St Louis Mill we will pay for the boiler purchased by you for your saw mill & not yet paid for by you with the understanding that the cost of said boiler does not exceed three hundred and fifty (350) dollars.

Yours truly

W. J. Reynolds & Co

and then and there delivered the said instrument or undertaking in writing to the said plaintiff and the said plaintiff avers that the said boiler did cost the said sum of three hundred and fifty dollars and that the cost of the said boiler did not exceed the said sum of money in the said instrument or undertaking in writing specified and the said defendants then and there in consideration of the premises undertook and promised to pay to the said plaintiff the said sum of three hundred and fifty dollars according to the tenor and effect of said instrument or undertaking in writing.

And the said plaintiff to whom the payment of the said sum of money in the said instrument or undertaking in writing specified was to be made after the making thereof and before the payment of the said sum of money therein specified to wit, on the Eighteenth day of March in the year of our Lord one thousand eight hundred and forty eight at the County of Pike aforesaid indorsed the said instrument or undertaking in writing by which

indorsement he the said plaintiff then and there advanced the said sum of money in the said instrument or undertaking in writing specified to be paid to one Stephen R Gray and then and there delivered the said instrument or undertaking in writing to him the said Stephen R Gray and the said Stephen R Gray to whom the payment of the said sum of money in the said instrument or undertaking in writing specified was by said indorsement directed to be made, after the making of the said instrument or undertaking in writing and before the payment of the said sum of money therein specified to wit; on the eighteenth day of March in the year of our Lord one thousand Eight hundred and forty eight at the County of Pike aforesaid indorsed the said instrument or undertaking in writing by which said last mentioned indorsement the said Stephen R Gray then and there ordered the said sum of money in the said instrument or undertaking in writing specified to be paid to the said Edward B Scholl for whose use this suit is brought, by means whereof and by force of the Statute in such cases made and provided the said defendants then and there became liable to pay to the said plaintiff for the use of the said Edward B Scholl the said sum of money in the said instrument or undertaking in writing specified according to the tenor and effect thereof - and being so liable they the said defendants in consideration thereof afterwards to wit on the day and year aforesaid at the County of Pike aforesaid undertook then and there faithfully promised the said plaintiff to pay him for the use of the said Edward B Scholl the said sum of money in the said instrument or undertaking in writing specified according to the tenor and effect thereof -

And for that whereas also afterwards to wit on the fifth day of February in the year of our Lord one thousand

Eight hundred and forty eight at St Louis to wit; the County of Pike aforesaid the said defendants were partners in trade doing business under the name and Style of W^o. S. Reynolds & Co and so being partners as aforesaid they the said William S. Reynolds and John D. Wilson by the name and Style of W^o. S. Reynolds & Co. on the day and year last aforesaid at St Louis to wit; the County of Pike aforesaid made their certain other instrument or undertaking in writing bearing date a certain day and year therein mentioned to wit; the day and year last aforesaid and thereby then and there promised to pay to the plaintiff a certain Sum of money therein specified which instrument or undertaking is in the words and figures following to wit

St Louis Feb 5 1848

Dear Sir

In accordance with your request we herein state that according to our understanding with you when we purchased your property known as St Louis Ill. we will pay for the boiler purchased by you for your Saw mill & not yet paid for by you with the understanding that the cost of said boiler does not exceed three hundred and fifty (350) dollars.

Yours Truly

W^o. S. Reynolds & Co

and then and there delivered the said instrument or undertaking in writing to the said plaintiff - and the said plaintiff avers that the said boiler did cost the said Sum of Three hundred and fifty dollars and that the cost of said boiler did not exceed the said Sum of money in the said instrument or undertaking in writing specified and the said defendants thereby then and there in consideration of the premises undertook and faithfully promised to pay to the said plaintiff the said Sum of money in the said instrument in writing specified according to the tenor and effect thereof.

3.

And for that whereas, also afterwards to wit; on the fifth day of February in the year of our Lord One thousand Eight hundred and forty eight at St Louis to wit; the County of Pike aforesaid the said defendants were partners in trade doing business under the name and style of W^m J Reynolds & Co and so being partners as aforesaid the said William J Reynolds and John W Wilson by the name and style of W^m J Reynolds & Co on the said fifth day of February in the year aforesaid at St Louis to wit; the County of Pike aforesaid made their certain other instrument or undertaking in writing bearing date a certain day and year therein mentioned to wit; the day and year aforesaid and thereby then and there promised the said plaintiff to pay him for a certain boiler which the said plaintiff had before that time purchased for a Steam Saw Mill in the Town of St Louis Mo. provided the cost of said boiler did not exceed three hundred and fifty dollars and then and there delivered the said instrument or undertaking in writing to the said plaintiff and the said plaintiff avers that said boiler did cost the said sum of three hundred and fifty dollars and that the said cost of said boiler did not exceed the said sum of money in said instrument or undertaking in writing specified - And the said defendants thereby then and there promised the said plaintiff to pay him the said sum of money in the said instrument or undertaking in writing specified according to the tenor and effect thereof -

H.

And for that whereas, also afterwards to wit; on the fifth day of February in the year of our Lord One thousand eight hundred and forty eight at St Louis to wit; the County of Pike aforesaid the said William J. Reynolds and John W. Wilson were partners in trade doing business under the name and style of W^m J. Reynolds & Co and so being partners they the said William J. Reynolds and John W. Wilson under

their said partnership name and Style of W. S. Reynolds & Co made their other certain instrument or undertaking in writing bearing date a certain day and year therein mentioned to wit: the day and year aforesaid, and then and there delivered the same to the said plaintiff and thereby then and there under the name and style of W. S. Reynolds & Co promised to pay to the said plaintiff the sum of three hundred and fifty dollars according to the tenor and effect of said instrument or undertaking in writing -

5.

And for that whereas also afterwards to wit on the fifth day of February in the year of our Lord One thousand Eight hundred and forty eight at the County of Pike aforesaid the said defendants were indebted to the said plaintiff in the sum of Three hundred and fifty dollars for the price and value of goods then and there bargained and sold by the plaintiff to the defendants at their request - And in the sum of Three hundred and fifty dollars for the price and value of goods then and there sold and delivered by the plaintiff to the defendants at their request - And in the sum of three hundred and fifty dollars for the price and value of work then and there done and materials for the same provided by the plaintiff for the defendants at their request -

And in the sum of Three hundred and fifty dollars for money then and there lent by the plaintiff to the defendants at their request.

And in the sum of Three hundred and fifty dollars for money then and there paid by the plaintiff for the use of the defendants at their request -

And in the sum of three hundred of three hundred and fifty dollars for money found to be due to the plaintiff from the defendants on an account then and there stated between them -

And whereas the defendants afterwards on the fourth day of July in the year of our Lord One thousand Eight hundred and forty eight at the County aforesaid in consideration of the premises then and there promised to pay the said last mentioned several Sums of money to the plaintiff on request yet they have ~~designated~~ disregarded their promises and have not paid the said several Sums of money nor either of them or any part thereof, to the damage of the plaintiff three hundred and fifty dollars and therefore he brings Suit &c.

by Higbee Atty for ptiff.

And afterwards to wit on the 28th day of August A. D. 1848 the following process was filed in words and figures as follows to wit:

Israel use &c

or

Reynolds & Co

Issue Subpoena for E. D. Sweet at the instance of ptiff.

Higbee for ptiff.

And afterwards, to wit on the same day a Subpoena was issued in words and figures as follows to wit.

State of Illinois }
Pike County } s. et

The People of the State of Illinois
To the Sheriff of Said County - Greeting

We command you to Summon E. D. Sweet if to be found in your County, to be and appear before the Circuit Court of Said County at the Court House in Pittsfield on the 6th day of September 1848. the 3rd day of the next term of the Court.

to give evidence and the truth to say in behalf of plaintiff in a certain matter of controversy pending in Said Court wherein J. G. Israel use of &c. is plaintiff and W. S. Reynolds and others are defendants; and thus you are not to omit under the penalty of the Law; and of this unit make legal service and due return.



Witness A. Starne Clerk of our Said Court at Pittsfield this 28th day of August 1848. the Seal of Said Court being hereunto affixed.

A. Starne Clerk

Upon the back of which Subpoena is the following endorsement I have served the within unit by reading the Same to the within named E. D. Sweet.

August 29th 1848.

W. D. Hicks Sheriff P. C. Ill.

And afterwards to wit on the 5th day of September 1848 the following notice of publication and the Certificate was filed, in words and figures as follows to wit:

State of Illinois } The Pike Circuit Court to
Pike County } September Term A. D. 1848;

J. G. Israel use of E. B. Scholl }
vs } Attachment
William S. Reynolds & John D. Wilson }

Notice is hereby given to the Said William S. Reynolds and John D. Wilson that a writ of Attachment has been issued out of the Clerk's office of the Circuit Court of Pike County, Illinois in a suit pending in Said Court instituted by J. G. Israel for the use of E. B. Scholl against the estate of you the Said William S. Reynolds and John D. Wilson for the sum of Three Hundred and fifty dollars which attachment

has been returned by the Sheriff of Said County and properly
 levied upon - Now unless you the Said William D Reynolds
 and John W. Wilson shall be and appear at the September
 Term of Said Court to be holden at the Court House in the
 Town of Pittsfield State and County aforesaid on the first
 Monday in September next. give bail and plead within the
 time limited for your appearance in Said Suit judgment
 will be entered against you and the estate so attached
 be sold.

Higbee & Richardson Attys.

Aug 3^d 1848 U.W.

At Staine Clerk.

of Said Court.

It is hereby certified that the foregoing notice in the case
 of J G Israel for the use of E. B. Scholl was published in the
 Pike County Sentinel a newspaper published in Pittsfield in
 Pike County Illinois from the third day of August A.D. 1848.
 to the 31st day of August A.D. 1848. both inclusive being four suc-
 cessive weekly insertions of the same

Drumhull & Smith

Proprietor & Publisher of the Sentinel

And afterwards to wit; At a Circuit Court began and
 held at the Court House in Pittsfield Pike County Illinois
 on the first Monday being the fourth day of September A.D.
 1848.

Present.

The Hon^{ble} A H Purple Judge

The following order was ordered to be entered of Record on
 the 5th day of September being the 2nd day of the Term.

J G Israel use of E B Scholl

vs

W^m D Reynolds & John W. Wilson

Attachment

This day came the defendants by their.

attornies and enter a motion to dismiss the attachment herein which being heard the same is overruled -

And afterwards to wit on the 8th day of September being the 5th day of the said term the following order was ordered to be entered of Record in words and figures as follows to wit:

Isaac G Israel use of Scholl

vs

Attachment

W^m D Reynolds & John D Wilson

Ordered that this Suit be continued

And afterwards to wit on the 11th day of January A.D. 1849 the following affidavit was filed in words and figures as follows to wit:

Israel use of Scholl

vs

Reynolds & Wilson

Personally came C L Higbee, who being duly sworn says that he is personally acquainted with the above defendants W^m D Reynolds & John D Wilson and that they are not residents of this State, but reside in the State of Missouri

Subscribed and Sworn to before me this 11th day of January A.D. 1849-

A. Starne

Clerk

C L Higbee

And afterwards to wit on the 3^d day of April A.D. 1849 the following Certificate and Notice of publication was filed in words and figures as follows to wit -

I George W Smith hereby certify that the annexed notice was duly published in the Pike County Sentinel a weekly newspaper printed and published in the Town

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of Pittsfield Pike County Illinois for the time specified in said
notice being four weeks successively commencing January 11th
1849-

G W Smith

publisher & Editor of Sentinel

State of Illinois } In Pike Circuit Court to April Term 1849
Pike County }

Isaac G Israel use of Edward B Scholl

vs

Attachment

W^m D Reynolds and John D Wilson

Notice is hereby given to the said W^m
D Reynolds and John D Wilson that a writ of Attachment has
been issued out of the Clerk's office of the Circuit Court of
Pike County Illinois in a suit pending in said County instituted
by Isaac G Israel for the use of Edward B Scholl against the
estate of you the said W^m D Reynolds and John D Wilson for
the sum of three hundred and fifty dollars - Now unless
you the said W^m D Reynolds shall be and appear at the April
Term of said Court to be holden at the Court House in Pitts-
field on the first Monday in April next give bail and plead
within the time limited for your appearance in said suit
Judgment will be entered against you and the estate so
attached will be sold

Higbee & Richardson

Atty. for Plaintiffs

January 11th 1849-

A Starne Clerk C.C.P. Co

And afterwards to wit: At a Circuit Court begun and
held at the Court House in Pittsfield Pike County Illinois
on Monday the 3^d day of April A.D. 1849.

Present. W A Marshall Judge

The defendant files her demurrer to plaintiff declaration.

in words and figures as follows to wit.

William T. Reynolds & John Wilson

vs

Isaac G Israel use of Scholl

And the said defendants come and defend the wrong & injury when &c. they say that the said 1st 2^d 3^d 4th 5th Counts of the Plaintiffs declaration and the matters and things therein contained in manner and form as the same are therein stated and set forth are not sufficient in law for the said plaintiff to have and maintain her aforesaid action thereof against them, and that they are not bound by the law to answer the same, and this they are ready to verify, wherefore they pray Judgment.

Filed April 3^d 1849-

May for defts.

And afterwards to wit on the same day - The ^{defendants} plaintiff files his plea herein in words and figures as follows to wit.

Israel use of Scholl

vs

William T. Reynolds & John D. Wilson

The said defendants come and defend the wrong & injury and as to all of the Counts of said declaration except the 1st 2^d 3^d 4th & 5th says that he did not undertake and promise as the said plaintiff therein hath alleged against him, and of this he puts himself upon the Country

And plaintiff doth the like

May for defts.

Higbee

Filed April 3^d 1849.

And afterwards to wit on the same day being the 3^d day of April 1849. the following order was ordered to be entered of Record in words and figures as follows to wit

J. G. Israel use of E. B. Scholl
vs

Attachment

W^m S. Reynolds & John D. Nelson

The demurrer herein filed to the 1st
2nd 3rd 4th & 5th Counts being heard is Sustained and leave is
given plaintiff to amend the second count in his declaration
by half past one O'clock the plaintiff stands by demurrer of
defendants as to the other counts in his declaration

And afterwards to wit on the 4th day of April 1849 the a.
Subpoena was issued in words and figures as follows to wit

State of Illinois } S.S. The People of the State of Illinois
Pike County } To the Sheriff of Said County Greeting
We command you to summon Wilmet Smith of to
be found in your County. to be and appear before the Circuit
Court of Said County, at the Court House in Pittsfield instantly
to give evidence and the truth to say in behalf of plaintiff
in a certain matter of controversy pending in Said Court
wherein J. G. Israel use of E. B. Scholl is plaintiff and W^m S.
Reynolds et al are defendants; and this you are not to omit under
the penalty of the law; and of this wit make legal service
and due return.



Witness A. Starnes Clerk of our Said
Court; at Pittsfield this 4th day of
April 1849. the seal of Said Court being
hereby affixed

A. Starnes Clerk

Upon the back of which is the following Return

I have served the within Subpoena by reading the same
to the within named Wilmet Smith April 5th 1849

W. D. Hicks Shff. P. C. Ill
by Isaac Turnbull Deputy

And afterwards on the same day being the 4th day of April 1849. Plaintiff files his amended declaration in words and ~~words~~ figures as follows to wit:

And for that whereas also afterwards to wit on the fifth day of February in the year of our Lord One thousand Eight hundred and forty eight at St Louis to wit the County of Pike aforesaid the said defendants were part-
-ner in trade doing business under the name and style of W^m S. Reynolds & Co and so being partners as aforesaid they the said William S. Reynolds and John W. Wilson by the name and style of W^m S. Reynolds & Co on the day and year last aforesaid at St Louis to wit; the County of Pike aforesaid in consideration that on or about the fifth day of February A.D. 1847. the said defendants had purchased of and from said plaintiff certain property known as St Louis Plth of the estate of the said plaintiff then and there being to wit; at said County of Pike on said last mentioned time and on said purchase had agreed to pay to the said plaintiff for the use of a certain Saw mill of him the said plaintiff said order being then and there unpaid for by said plaintiff the cost of said order - provided the said cost thereof should not exceed the sum of Three Hundred and fifty dollars.

made their other certain instrument of writing or undertaking in writing bearing date a certain day and year therein mentioned to wit; the day and year last aforesaid and thereby then and there promised to pay to the plaintiff a certain sum of money therein specified which instrument or undertaking is in the words and figures following to wit;

St Louis Feb 5th 1848.

Dear Sir

In accordance with your request we herein state that according to our understanding with you when we purchased your property known as St Louis Plth. we will pay for the order purchased by you for your Sawmill & not yet paid for by you with the understanding that the cost of said order does not exceed three hundred and fifty (350) dollars.

Yours Truly.

W^m S. Reynolds & Co.

and the matters and things therein contained are unsef-
 -ficient in law in manner and form as therein stated for
 the plaintiff to have and maintain her aforesaid action
 against him wherefore she they pray Judgment

Stay.

And afterwards to wit on the 5th day of April being the fourth day
 of said Term the following order was ordered to be entered of record
 in words and figures as follows to wit.

Isaac G. Israel use of E. B. Scholl

vs

Attachment

William S. Reynolds & John D. Wilson

This day again came the parties by their
 attorneys and the demurrer herein filed to the Second Court in
 plaintiff's declaration being heard is Sustained and to try the
 cause came a jury to wit John Troutner and Elen others
 who being sworn well and truly to try the issue joined and
 true verdict render according to law and evidence, after hearing
 the evidence and argument of counsel retire to consider of
 their verdict and coming into Court do say that they
 find for the defendants, It is therefore considered and
 adjudged by the Court that the defendants recover of the
 plaintiff their costs herein expended, The plaintiff en-
 -ters a motion for a new trial for reasons filed

And afterwards to wit on the 7th day of April 1849 being the
 6th day of the present term - the following order was ordered to be
 entered of Record in words and figures as follows to wit:

I. G. Israel use of E. B. Scholl

vs

Attachment

William S. Reynolds & John D. Wilson

The motion for a new trial herein being

heard is overuled whereupon plaintiff files his bill of ex-
-ceptions which being signed and sealed is ordered to be made
a part of the record in this cause.

And afterwards to wit on the same day the plaintiff files his
bill of Exceptions which is in words and figures as follows.
to wit

State of Illinois } In the Pike Circuit Court September
Pike County } Term A. D. 1848.
Isaac G Israel who sues for the use of
Eduarda B Scholl

vs
William S. Reynolds & John A. Wilson
doing business under the name and style
of William S. Reynolds & Co

Be it remembered that on this the trial
of this cause in said Court and County at the April Term of
said Court A. D. 1849- the said plaintiff to maintain the
issue on his part offered to read in evidence a written Statement
of the defendants which is Marked Exhibit A- and by the
defendants admitted on said trial to be in the hand writing
and the State of Defendants. as follows (^{at}
St Louis July 5th 1848

I G Israel Esq^r

Dear Sir In accordance with your
request we herein State, that according to our understanding
with you when we purchased your property known as St.
Louis, Ill. we will pay for the boiler purchased by you
for your Saw-mill & not yet paid for by you. with the
understanding that the cost of said boiler does not exceed
three hundred fifty (350) dollars.

W^m S. Reynolds & Co

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Upon the back of said obligation is the following endorsement
I assign the within for value received to Stephen R. Gray
this 18th day of March A.D. 1848.

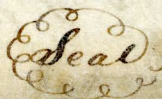
J G Israel

which said written Statement and assignment were excluded by the Court, and said defendants was not permitted to read the same to the Jury, to which said opinion and decision of the Court in excluding said written Statement said defendants objected. and now excepts - The plaintiff then offered to prove that the cost of said Order in said Statement & Exhibit "A" mentioned did not exceed, but was of the amount and value of three hundred and fifty dollars, which being thereupon admitted by the defendant, and the said written Statement marked Exhibit "A." being still excluded from the jury by the Court, the testimony of the plaintiff was here closed and the defendant offering no evidence, And the foregoing being all the evidence there was offered, Said trial the cause was submitted to the Jury which found a verdict for the defendant. - Whereupon the defendant moved the Court for a new trial for the following reasons filed -

- 1st " Because said plaintiff were surprised by the overruling of motion for a continuance of said cause to procure the testimony of witness Sweet -
- 2nd " Because the Court erred in excluding the written Statement of defendants from the Jury -
- 3^d " Because the Court erred in overruling motion of plaintiff for a continuance of said cause -

Which said Motion was overruled by the Court and to which said opinion and decision of the Court in overruling said Motion and refusing to award a new trial said defendant objected and now excepts - And thereupon the said defendants objected to the said

Several decisions and opinions herein before noted excluding
 Said evidence and refusing to grant a new trial, and now
 objects and excepts and prays that this his bill of Exceptions
 in said behalf may be allowed signed and Sealed by the
 Court, which is done accordingly And upon Said plaintiff's
 motion the same is ordered to be made a part of the Record
 in this cause.

W^m A Marshall 

State of Illinois }
 Pike County } ss

I A Stame Clerk of the Circuit Court
 in and for Said County, do hereby certify that the foregoing
 twenty four pages contains ^{a true and correct copy and complete copy} of the record in the foregoing
 entitled cause, wherein Isaac G Israel for the use of E. B. Schell
 is plaintiff and William D. Reynolds and John D. Nelson trading
 as W. D. Reynolds & Co are Defendants.

In Testimony whereof I have hereunto
 Subscribed my name and affixed the Seal
 of our Said Court this 26th day of May
 A.D. 1849

A. Stame Clerk
 +

Isaac G. Israel who sue for the use of } Plaintiffs in error
Edward B. Scholl,

vs } Error from Pike County, Ill. - Attachment
William J. Reynolds & John Wilson doing business } Def't in
under the Name of William J. Reynolds & Co. } Error

And now comes the said plaintiffs in error and say there is manifest error in the decisions of the Court and in the record and proceedings of this cause, and assigns for error the following for hearing in the Supreme Court of the State of Illinois for the Second Grand Division at December Term A.D. 1849 -

1st The Court erred in excluding as evidence and agreeing to be read the written statement of defendants, designated in the bill of exceptions as Exhibit "A."

2nd said Court erred in refusing to grant an order for the continuance of the trial of said cause -

3. Said Court ~~erred~~ erred in refusing to grant a new trial in said cause -

4. Said Court erred in sustaining the defendants, defendant to first five counts respectively of said plaintiffs declaration -

5th Because the verdict of the Jury and judgment of the Court are contrary to the Law and evidence

6th Because the verdict and judgment should have been for Plaintiffs & not for def't.

Wm. & Skinner

for Pliffs in error

The writ of error to be issued herein will be
made a supersedeas on the pl^{ty} in error
with Alfred Gumb & Stephen R Gray, sureties,
entering into bond to the depts, in error in
the penalty of one hundred dollars
conditioned as the law directs.

August 4th 1849.

A. H. Heat. C. Justice
Sup. Court.

And the said defendants William T Reynolds
and John D Wilson say There are no such
errors in the Record in this cause, as the
plaintiff herein hath assigned, wherefore
he prays judgment Say & Blackman
for depts

Maac & Co. Shad, etc
Clerk for depts
Wm J. Reynolds & Co

Wm J. Reynolds

Office Aug. 22nd 1849

Wm J. Reynolds
Clerk

Wm J. Reynolds
Clerk for depts

State of Illinois }
2nd Grand Division }
Sangamon County }

Know all men by these presents, that we, Isaac G. Israel, Alfred Grub and Stephen R. Gray are held and firmly bound unto William J. Reynolds & John D. Wilson doing business under the name ~~and~~ of William J. Reynolds & Co, in the penal sum of One Hundred Dollars lawful money of the United States of America for the payment of which well and truly to be made we jointly and severally bind ourselves, our heirs, executors and administrators. Signed with our hands and sealed with our seals this the fourteenth day of August A.D. 1849—

Whereas at the April Term of the Pike County Circuit Court A.D. 1849 a Judgment was rendered by the said ~~Court against the said William J. Reynolds and John D. Wilson~~ Court against the said Plaintiff Isaac G. Israel, and in favor of the said William J. Reynolds and John D. Wilson defendants, for the costs of suit. And whereas the said Plaintiff has taken the record of said Cause into the Supreme Court for rehearing and a writ of error to be made a supersedeas has been ordered by the Hon. J. H. Treat, Chief Justice of the Supreme Court to be issued on said Plaintiff in error with Alfred Grub & Stephen R. Gray sureties entering into bond to the defendants in error in the penalty of One Hundred Dollars conditioned as the Law directs. Now should the said Plaintiff pay whatever Judgment may be rendered by the said Supreme Court, the above obligation to be void otherwise of full force and virtue.

Isaac G. Israel Seal
Alfred Grub Seal
Stephen R. Gray Seal

Grace & Israel who
Suffered in school
as } Bond
Thos J. Reynolds & Co

Supreme Court - 2nd Grand Division
for the State of Illinois
Isaac G Israel.

vs

William F Reynolds & John & Nelson

William F Reynolds being

duly sworn doth depose and say that
he is acquainted with the circumstances of
Isaac G Israel the plaintiff in this cause, as to
property - that said Israel is insolvent; and that
the costs in this cause, (should judgment
therein be rendered against him for the costs)
could not be collected by execution against
his property. Security for costs is therefore
prayed &c

W F Reynolds

June
27

Reginald et al

Affidavit

Filed Decr 18th

State of Illinois, }
SUPREME COURT. }

ss. 2nd Grand Division

The People of the State of Illinois,

To the Sheriff of Pike County.

Because in the record and proceedings, and also in the rendition of
the judgment, of a plea which was in the Circuit Court of Pike
County, before the judge thereof, between Isaac G. Small plaintiff
and William J. Reynolds.

defendant, it is said that manifest error hath intervened to the injury of 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
Springfield, 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 William J. Reynolds.

that he be and appear before the Justices of our said Supreme Court, at the next term of
said Court, to be holden at Springfield, in said State, on the second Monday in
December next, to hear the records and proceedings aforesaid, and the errors as-
signed, if he shall think fit; and further to do and receive what the said Court
shall order in this behalf; and have you then there the names of those by whom you shall give
the said William J. Reynolds notice together with
this writ.

Witness, the Hon. Saml. M. Drake Chief

Justice of our said Court, and the seal thereof, at Spring-
field, this 22nd day of August
in the year of our Lord, one thousand eight hundred and
forty-nine

William B. Warren

Clerk of the Supreme Court.

Supreme Court.

Ans. G. Small Plaintiff in error,

vs.

W. D. Reynolds Defendant in error,

Scire Facias.

Filed. Oct. 3^d 1849.

Wm. Reynolds

I have executed the within
writ by reading the same to
Wm. D. Reynolds Sept 8th 1849
D. D. Hicks Sheriff & Co Secs.

Feed
1. Service 50,
Returning 12 1/2
ff 0. 62 1/2 add postage 10c ff 0.72 1/2
D. D. Hicks Sheriff

State of Illinois, ss.

Clerk's Office of the Supreme Court.

} 2nd Grand Division

I hereby certify, that a Writ of Error hath issued from this Office, for
the reversal of a judgment obtained by *William T. Raynes*
against *Isaac G. Small* in the Circuit Court
of *Pike* county, at the *April* Term, in the year
of our Lord one thousand eight hundred and *forty nine* in a certain action of *plea*
of assumpsit for which Writ of Error is to operate as a Supersedeas,
and as such is to be obeyed by all concerned.

Given under my hand, and the seal of the said Supreme Court,
at Springfield, this *22^o* day of *August*
in the year of our Lord one thousand eight hundred and
forty nine

Wm J. Warren

Clerk of the Supreme Court.

I acknowledge service of the within Supersedeas August
25th 1849

I also acknowledge service of the within this
25th Aug 1849. ^{H. Starnes Clerk}
D. D. Hicks Sheriff P. C. Dec.

Return to Warrant

Supreme Court.

Isaac G. Israel

vs

W. J. Reynolds

Writ of Supersedeas.

Filed.

Dec 11 1849

2438

State of Illinois, }
SUPREME COURT. } ss.

2nd Grand Division

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Pike

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 Pike county, before the Judge thereof, between Isaac G. Small

plaintiff and William J. Reynolds

defendant it is said manifest error hath intervened to the injury of the aforesaid.

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 our 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 Springfield in the county of Sangamon, on the second Monday in December 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 N. Beah Chief

Justice of the Supreme Court, and the seal thereof, at Springfield, this 23 day of August.

in the year of our Lord, one thousand eight hundred and

forty nine — W. B. Warren

Clerk of the Supreme Court.

Supreme Court.

J. G. Israel Plaintiff in error

vs.

W. J. Reynolds Defendant in error,

Writ of error,

Filed Aug. 25th 1849
W. B. Warren
clerk