

14008

No. _____

Supreme Court of Illinois

Dana

vs.

Phillips

Thomas Phillips }
 } Appeal from Peoria
 } County.
Giles G. Dana }

The first error relied on in this case is, that the Circuit Court permitted the ~~Def~~ to amend his declaration after issue joined upon the plea of Non Assumpsit. Applications to amend the pleadings are addressed to the sound discretion of the Court & granting leave cannot be assigned for error.

The other error assigned is, that the Court gave no judgment upon the Demurrer to the replication to Defendants, with the plea, but gave a general judgment for damages against the Defendant without deciding the issue at Law. It appears from the record that the sixth plea mentioned in this assignment, was, of plea of Release of the action mentioned in the Plaintiffs declaration. To this plea the Plaintiff below replied, that the release mentioned in the plea was not his deed & that it was an issue to the country. After filing the Demurrer the record states, that the parties then agreed that both matters of Law & fact arising in this cause may be tried by the Court & after hearing the evidence & arguments of Counsel the Court gave judgment for Plaintiff below for his damages, without expressly overruling the Demurrer. Was this an error? The replication was clearly a sufficient answer to the Defendants plea & the Demurrer was improperly interposed.

The Circuit Court doubtless, so considered it
& ~~found it as a nullity~~ & treated it as
a nullity. By so doing the defendant
has sustained no possible injury & the
only effect of reversing the judgment below
& remanding the ~~proceedings~~ cause, will
be to require the Circuit Court, to decide
a demurrer, which this Court perceives,
~~could not be sustained~~, must be over-
ruled. To reverse judgments for such
trifling informalities, when no possible
injury can result to the party, would be
a ~~disgrace~~ ^{perjury} to judicial proceedings.
The judgment below is affirmed with
costs.

Thomas Phillips
49
Wm. C. Dana

opinion

Manuscript

Filed Feb. 18, 1839
J. M. Duncan

copy

Thomas Phillips
appellant

vs
Giles C. Dana
appellee

Joinder in Error

File 0 Dec 15. 1838
J. M. Luncan

In Supreme Court
appeal from ~~Lower~~ ^{Prima} ~~Case~~ ^{Case} 20

Giles C. Snow ~~appellant~~
vs

Thomas Phillips }
appellant } And the said Thomas
Phillips by A. H. Purples
his attorney comes & says
that ⁱⁿ the record and proceeding aforesaid
and in the judgment aforesaid there
is manifest error in this to wit

1st That the Court below permitted the
Plaintiff to amend his declaration
after Issue joined upon the Plea of
Non assumpsit

2^d That the Court gave no Judgment
upon the Demurrer & the Replication
to Defendant's 6th Plea but gave a
General Judgment for Damages
against the Defendant without deci-
ding the issue at law

A. H. Purples

~~Att'y for appellant~~

And the said Thomas Phillips prays

That the Judgment & Proceedings aforesaid
for the Errors aforesaid appearing on the
records & proceedings aforesaid be ever
and anon that the said Thomas Phillips
be restored to all his rights &c

M. Purdie
Att'y for appellants

Giles & Leonard }
Thomas - Phillips }
Phillips

Assignment
of Errors

Filed Dec 12
1838 Jm Duman

At a Circuit Court began and held at the Court house in
the Town of Peris within and for the County of Peris and
State of Illinois on Monday the fourteenth day of September
in the year of our Lord One Thousand Eight Hundred and
Thirty Eight. Present the Honorable Can Stone
presiding Judge of the Sixth Judicial Circuit.

Be it remembered that, heretofore to wit; on the
sixteenth day of August in the year of our Lord
One Thousand Eight hundred and Thirty seven
Giles C. Dana sent out of the Clerk's Office of the
Court aforesaid the following writ of summons against
Thomas Phillips to wit; State of Illinois, Peris County,
The people of the State of Illinois. To the Sheriff of Peris
County Greeting. We command you to summon Thomas
Phillips if he may be found in your county, to appear
before our Circuit Court, on the first day of the term
thereof, next to be held at Peris, within and for the said
County of Peris, on the fourth Monday of September next
then and there in our said Court, to answer unto Giles
C. Dana in a plea of trespass on the case upon promise
and make return of this writ, with an endorsement
of the time and manner of serving the same on or before
the first day of the term of the said Court, to be held aforesaid.
Witness Lewis Bigelow Clerk of our said Court, and the
seal thereof at Peris this 16th day of August A.D.
1837 Lewis Bigelow, Clerk. The said writ was
returned to the Court aforesaid by the Sheriff aforesaid
endorsed as follows Served the within by sending the
same to the deft this 28th day of August 1837
Thos Bryant S. P. C. And on the sixteenth day
of August in the year last aforesaid, the said Giles
C. Dana filed in the Clerk's Office aforesaid, the

following declaration to wit, In the Circuit Court
of the Judicial Circuit of the State of Illinois, Term
4th Monday of Sept: A.D. 1836. Perin County
twit, Giles C. Dana, of Perin, in the County
of Perin and State of Illinois, Plaintiff in this
suit complains of Thomas Phillips of said Perin
defendant of a plea of trespass on the case on ~~promissory~~
For that whereas the said defendant heretofore, ~~him~~
on the seventh day of May A.D. 1836 at Perin
aforesaid made his certain promissory note in writing
bearing date the day and year aforesaid, and thereby then
and there promised to pay twelve months after the date
thereof, to one Jesse Underhill or order the sum of
three hundred and thirty two and $\frac{50}{100}$ dollars
with six per cent interest thereon ~~in value received~~
and then and there delivered the said promissory note
to the said Jesse Underhill; and the said Jesse Underhill
to whom or to whose order the payment of the said sum
of money in the said promissory note specified was to be
made, after the making of the said promissory note and before
the payment of the said sum of money therein specified
to wit: on the day and year aforesaid, at Perin aforesaid,
endorsed the said promissory note by which said endorsement
he the said Jesse Underhill ordered and appointed the said
sum of money in the said promissory note specified in
the name of one Nathan Constock and then and there
delivered the said promissory note so endorsed to the said
Nathan Constock; and the said Nathan Constock to
whose order, the payment of the said sum of money in the
said promissory note specified was by the said endorsement
directed to be made, after the making of the said promissory
note and before the payment of the said sum of money
therein specified, to wit: on the day and year

aforsaid at Peoria aforsaid endorsed the said promissory
note, by which last mentioned endorsement he the said
Matthew Comstock then and there ordered and approved
the said sum of money in the said promissory note specified
to be paid to the said plaintiff and then and there delivered
the said promissory note to the said plaintiff; by means
whereof and by force of the Statute in such Case made
and provided, the said defendant then and there became
liable to pay to the said plaintiff the said sum of money
in the said promissory specified according to the tenor
and effect of the said promissory note, and being so liable
he the said defendant in consideration thereof,
afterwards to wit, on the day and year aforsaid, at
Peoria aforsaid, undertook, and then and there faithfully
promised the said plaintiff to pay him the said sum of
money in the said promissory note specified, according
to the tenor and effect thereof. Nevertheless the said
defendant not regarding his said promise, but fraudu-
lently, contriving, craftily and slyly to deceive and
deprive the said plaintiff in this behalf hath not as
yet paid the said sum of money nor any part thereof
to the said plaintiff (although often requested so to do) but
the said defendant to pay him the same hath hitherto
wholly neglected and refused and still doth neglect and
refuse. To the damage of the said plaintiff of \$400.
and therefore he brings suit &c. Johnson & Gale for the plaintiff.

Copy of the note declared on above
#332 50 Peoria May 7th 1836

Twelve months after date of promise to pay
I gave thereunto or over there hundred thirty two
50/100 Dollars, value received, without defalcation
with six per cent interest Tho Phillips
on the back of the note are the following endorsements

Pay to the order of Nathan Comstock. I have Underhill
Pay to G. B. Dana or order of Nathan Comstock
and afterward to wit, on the eighteenth day of May
in the year of our Lord One Thousand Eight Hundred and
Thirty Eight the said Thomas Phillips filed in the Clerk's
Office aforesaid the following plea to wit, G. B. Dana
vs Thomas Phillips in the Circuit Court of Sevier County
of May Term AD 1838. And the said defense set by
St. H. Purple his attorney comes and defends the wrong and
injury when he and says that he did not understand
and assume in manner form as the said plaintiff
hath thereof above complained against him and of
this he puts himself upon the country. And the said
plaintiff doth the like. Johnson atty for plffs.

And for further plea in this behalf the said defense
by his attorney aforesaid by leave of the Court here first
had and obtained says that the said plaintiff ought
not to have and maintain his aforesaid action thereof
against him because he says that the consideration
for which the said supposed note in the said plaintiff's
declaration mentioned was given has wholly failed
and that the same was transferred, if transferred at all
to the present plaintiff after the said supposed note
became due and payable according to the tenor and
effect of the said supposed note and with full notice
that the consideration for which the said note was given
had wholly and entirely failed and this he is ready
to verify Whereupon he prays judgment if the
said plaintiff ought to have or maintain his aforesaid
action against him.

And for further Plea in this behalf the said defense
by his attorney as aforesaid says that the said plaintiff
ought not to have and maintain his action aforesaid
against him because he says that the said note

in the said plaintiffs declaration mentioned was trans-
ferred to the said plaintiff after the said note became
due and payable according to the tenor & effect thereof.
That the said note was given to me Jesse Underhill
for the purchase of a certain tract of land situated
in Township Ten north Eight East of the fourth
principal being the north East quarter of section
Thirty Two in said Township and that the said
land was purchased by this defendant wholly upon
the representation of the said Jesse Underhill and
without the said defendant ever having seen the
said land and that the said Underhill represented
and warranted the said land to be of a very su-
perior quality one half timber and one half
prairie and well watered with living springs and
running streams and that the said land was high
& dry and rolling and well adapted to the purposes
of cultivation and further agreed that if the same land
should not prove to be in every respect of the quality
and kind by him the said Underhill represented that
then and in that case the said promissory note
given therefor and in the said plaintiffs declaration
mentioned should be null and void & of no effect
whatsoever. Yet the said defendant in fact knows that
the said land so purchased by the said defendant was
of a very inferior quality being situated in the middle
of prairie about twenty miles from timber and that
the same is not ^{one} half timber and one half prairie land
but that the same contains no timber at all and
that the said land is not watered by living springs
and running streams, but that the whole of the
said land is at all times a perfect swamp and
entirely covered with water and in no way adapted

to the purpose of cultivation, nor is the land in any respect of the quality and kind as represented and warranted to be by the said Underhill at the time of the giving of the said note of all which prior to the purchase of the said note by the said plaintiff in his said declaration mentioned he the said plaintiff to wit on the 10th day of May 1837 he the said plaintiff had notice and this the said defendant is ready to verify Wherefore he prays judgment if the said Plaintiff ought to have or maintain his action aforesaid thereof against him. N. H. Purple defts atty.

And afterwards the said Giles & Dana filed with the clerk of said Court the following replication to wit, In the Circuit Court of Perin County Term May 1838 Giles & Dana v Thomas Phillips And the said plaintiff as to the said plea of the said defendant by him first above pleaded and whereof he hath put himself upon the country doth the like &c Johnson for plaintiff

1. And the said plaintiff as to the said plea of the said defendant by him secondly & thirdly above pleaded saith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said plaintiff from having and maintaining his aforesaid action thereof against him the said defendant and that the said plaintiff is not bound by law to answer the same. And this he the said plaintiff is ready to verify. Wherefore by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and his Damages by reason of the not performing the said several promises and undertakings in the said

11
Declaration mentioned to be adjudged to have the
Johns for plaintiff. And afterwards to wit:-
On the Twenty first day of May in the Year of our
Lord One Thousand Eight hundred and Thirty eight
before the said Circuit Court and at the term aforesaid
it being eighth day of said term came the parties
by their attorneys and on the plaintiffs motion,
it is ordered that the plaintiff have leave to amend
his declaration. And afterwards to wit on the
twenty second day of May in the Year last aforesaid
before the said Court at the term aforesaid it being
the ninth day of said term came the parties by
their attorneys and issue being joined upon the
plaintiffs demurrer to the defendants plea, it is
considered by the court, after hearing the arguments
of counsel, that the said plea is bad and in-
sufficient. Whereupon the defendant asked
and obtained leave to plead anew. And it is
further ordered that the defendant file his said
new pleas by two o'clock to morrow in the afternoon
and afterwards the said Thomas Phillips filed with
the Clerk of said Court the following plea to wit
Perrin Circuit Court. Giles C. Dana & Thomas Phillips
And for further plea in this behalf by leave of the
Court here first had and obtained the said release
by his attorney aforesaid says that the said plaintiff
ought not to have and maintain his action
aforesaid against the said defendant because he says
that the said several supposed promises and under-
takings in the said plaintiffs declaration mentioned
if any such were or was made were and each
and every of them was made by him the said Thomas
Phillips together with one John Smith jointly and

2 Plea

not by him the said Thomas Phillips separately from
and without the said Thomas Phillips to wit at
Perin in the County aforesaid and this he the
said Thomas Phillips is ready to verify wherefore
he prays judgment of the said plaintiff ought
to have or maintain his action aforesaid against
the said defendant &c

D' new -

And for further plea in this behalf the said defendant
by his attorney aforesaid says admir non tenens
he says that after making of the said several promises
and undertakings in the said declaration mentioned
and before the commencement of this suit to wit
on the first day of January A.D. 1837 at Perin
in the County aforesaid he the said defendant
delivered to the said Giles C. Dean the plaintiff in
this suit five barrels of Vinegar of the value of
Twenty dollars, One hog-head of Molasses of the
value of Fifty dollars, Twenty Fur hats of the
value of Thirty dollars, Two barrels of Rum
of the value of Fifty dollars, Two barrels of Gin
of the value of Fifty dollars, Two hundred yards
of striped Cotton Cloth of the value of Fifty dollars
Three barrels of select Pork of the value of fifty
dollars and Thirteen boxes of Sperm Candles
of the value of Fifty dollars in all of the value
of four hundred dollars in full satisfaction
and discharge of the said several promises and
undertakings and of all the said sums of money
in the said declaration mentioned and which
said enumerated articles he the said plaintiff
then and there accepted and received of and from
the said defendant in full satisfaction and discharge
of the said several promises and undertakings

and of all the said sums of money in the said plaintiff's
declaration mentioned and this the said defendant
is ready to verify. Wherefore he prays judgement of
the said plaintiff ought to have and maintain his
aforesaid action thereof against the said defendant.
And for further plea in this behalf the said defendant
by his attorney aforesaid says actio non because he
says that he the said defendant on the first day
of January A.D. 1837 at Peoria in the County aforesaid
and before the commencement of this suit paid to
the said plaintiff the said sum of money in the
said plaintiff's declaration mentioned together with
all the interest then due thereon according to the
form and effect of the said promissory note and
this the said defendant is ready to verify. Wherefore
he prays judgement of the said plaintiff ought
to have and maintain his aforesaid action against
him &c.

5th plea. And for further plea in this behalf the said defendant
by his attorney aforesaid says actio non because
he says that after the making of the said several
promises and undertakings in the said declaration
mentioned and before the commencement of this
suit to wit on the first day of January A.D. 1837
at Peoria in the County aforesaid he the said defendant
Thomas Phillips made and sealed and as his
act and deed delivered to the said plaintiff a certain
writing obligatory in the penal sum of One Thousand
dollars lawful money of the United States containing
for the payment of the sum of money in the
said plaintiff's declaration and in the said
promissory note mentioned like lawful money and
interest for the same by the said defendant to the

said plaintiff at a certain time therein mentioned
and now elapsed and which said writing obligatory
the said defendant then and there delivered to the
said plaintiff and the said plaintiff then and
there accepted and received the same of and from
the said defendant in full satisfaction and discharge
of the said several promises and undertakings in the
said declaration mentioned and of all damages
and sums of money thereupon due and owing
or to become and that the said defendant is ready
to verify. Wherefore he prays judgment of the said
plaintiff ought to have or maintain his aforesaid
action thereof against him the said defendant
And for further plea in this behalf the said defendant
by his attorney as aforesaid says actis non habens
he says that after the making of the said several
supposed promises and undertakings in the said
declaration mentioned and before the commence-
ment of this suit to wit on the first day of
January AD 1837 at Peris in the County of
Peris aforesaid he the said plaintiff by his certain
writing of release sealed with his seal and
now shown to the said Court here the date whereof
is the day and year last aforesaid (wherein said
writing of release having been lost and destroyed
by accident the said defendant cannot produce
the same to the said Court) did remise, release
and for ever quit claim unto the said defendant
his heirs executors and administrators the said
several promises and undertakings in the
said declaration mentioned And each and
every of them and all sum and sums of
money then due and owing or thereafter
to become due together with all causes of

6 value

action thereon and that the said defendant is ready
to verify wherefore he prays judgment If the
said plaintiff's right to have or maintain his
aforesaid action thereof against him be
And for further plea in this behalf the said defendant
by his attorney aforesaid says acta non because he
says that before the making of the said promissory note
in the said plaintiff's declaration mentioned to wit:-
on the seventh day of May AD 1836 at Perin in
the County aforesaid it was corruptly and against the
form of the Statute in such in that case made
and provided agreed by and between the said defendant
and one Isaac Underhill to whom the said note was
then and then made payable and delivered that he
the said Isaac Underhill should lend and advance
unto the said defendant the sum of Two hundred
and fifty dollars lawful money of the United States
and that the said Isaac Underhill should forbear
and give day of payment thereof to the said defendant
until and upon the seventh day of May AD 1837
then next ensuing and that the said defendant
for the loan of the said sum of Two hundred fifty
dollars and for giving day of payment thereof as
aforesaid for the time aforesaid should give and
pay to the said Isaac Underhill on the said seventh
day of May 1837 aforesaid then next ensuing more
than lawful interest after the rate of six per centum
per annum on the said sum of Two hundred and
fifty dollars that is to say the sum of Eighty two
dollars and fifty cents making together with the said
sum of Two hundred and fifty dollars to be
lent and advanced by the said Isaac Underhill
to the said defendant as aforesaid the said sum

2^d Plea

of three hundred and thirty two dollars and fifty cents in the said promissory note mentioned and also that the said defendant should pay to the said Isaac Underhill interest on the said sum of three hundred and thirty two dollars and fifty cents from the said 7th day of May 1836 as aforesaid until the time of payment of the said sum of three hundred and thirty two dollars and fifty cents in the said promissory note mentioned at the rate of six per cent per annum and that for securing the payment of the said sum of three hundred and thirty two dollars and fifty cents with interest for the same as aforesaid to the said Isaac Underhill he the said defendant should make execute and deliver to the said Isaac Underhill the said promissory note in the said plaintiffs declaration mentioned and the said defendant then and there did make execute and deliver to the said Isaac Underhill the said note in the said plaintiffs declaration mentioned and then and there delivered the said promissory note to the said Isaac Underhill and the said Isaac Underhill accepted and received them and then the said promissory note of and from the said defendant in pursuance of the said corrupt and unlawful agreement and for the purpose aforesaid and the said defendant avers that the said promissory note was transferred to the said plaintiff after the said note became due and that the said plaintiff had notice of the facts before stated in this plea prior to and at the time he became the purchaser of the said note, and the said defendant avers that the said sum of eighty two dollars and fifty cents so as aforesaid agreed to be

given and paid to the said Jesse Underhill for
the purpose aforesaid and the interest of the said
sum of three hundred and thirty two dollars
and fifty cents so reserved and made payable
to the said Jesse Underhill by the said condition of
the said writing as aforesaid exceeds the rate of
six dollars for the forbearing and giving any of
payment of one hundred dollars for one year
in the sum of ninety dollars and forty five cents
contrary to the form of the Statute in such cases
made and provided. By means whereof and by
force of the Statute in such case made and
provided the said defendant avers that he is
entitled to recover of the said plaintiff his full
costs of this suit and that the plaintiff shall
forfeit three fold the amount of the whole interest
reserved, dis counted and taken to wit, the sum of
Two hundred twenty one dollars thirty five cents
one third part thereof to be paid to the said defendant
and the remaining two thirds to be paid into the County
Treasury of the County of Peria. And this he is
ready to verify Wherefore the said defendant
prays judgement for his costs as aforesaid and that
the said plaintiff shall pay and forfeit three
fold the amount of the whole interest so reserved
dis counted and taken to wit the said sum of two
hundred & twenty one dollars and thirty five cents
and that one third part thereof shall be paid to
the said defendant and the remaining two thirds
shall be paid into the County Treasury of the County
of Peria and that the said plaintiff may have
judgement and execution only for the balance
which may remain due upon the said promissory
note after deducting three fold the amount of

the said interest so as aforesaid reserved, discounted
and taken at. H. Purple defts atty. And afterwards
the said Giles & Dana filed with the Clerk aforesaid
the following replication to wit; And for replication
to the defendants second plea filed in this case
plaintiff says precludi non by reason of any
thing in said plea alleged because he says
that said plea and the matters and things therein
contained are not good and sufficient in law
to bar the plaintiff from having and maintaining
his said action this he is ready to verify
Wherefore he prays Just. Johnson for plff.

Rep to 2^d Plea

And the plaintiff for replication to defendants
third plea says precludi non because he says
that the defendant did not deliver to the plaintiff
five barrels of vinegar of the value of twenty dollars
one hoghead of molasses of the value of fifty dollars
Twenty four hats of the value of thirty dollars, two
barrels of Rum of the value of fifty dollars, Two
barrels of Gine of the value of fifty dollars, Two
hundred yards of striped cotton cloth of the value
of fifty dollars, Three barrels of mess pork of the
value of fifty dollars and thirteen barrel
Sperm Candles of the value of fifty dollars
in full satisfaction of the said several promises
in plaintiffs declaration mentioned and this
he prays may be enquired of by the Country
Johnson for plff. And the said atty doth the line
at. H. Purple for plff.

Rep to 3^d Plea

Rep to 4th Plea

And for replication to the fourth plea of defendant
filed herein plaintiff says precludi non
because he says that the said defendant did
not at any time before the commencement

of this suit pay to the plaintiff the said sum
of money in the plaintiffs mentioned together
with all the interest thereon as alleged
in said plea. And this he prays may be
enquired of by the Country. Johnson for plffs
And the said plff doth the like. Purph for def

Repe to 5th Plea

And for replication to defendants fifth plea
plaintiff says precludi non because he says
that the defendant did not make seal and return
to the plaintiffs as his act and deed a writing
obligatory in the penal sum of one thousand
dollars lawful money of the United States and there
for the payment of the sum of money in the
said plaintiffs declaration and in the said
permissive note mentioned at a certain time therein
mentioned and now elapsed and this he prays
may be enquired of by the Country
And the said def doth the like. Purph for def

Repe to 6th Plea

And for replication to defendants sixth plea
plaintiff says precludi non because he says that
the said supposed release in said plea mentioned
is not the act and deed of this plaintiff and this
he prays may be enquired of by the Country
Johnson + for plffs

Repe to 7th Plea

And for replication to defendants seventh plea
plaintiff says precludi non by reason of any
thing in said plea alleged because he says
that the note in plaintiffs declaration mentioned
was not executed in pursuance of or upon
the said corrupt unlawful and unwritten
agreement or for the purpose in the said last
mentioned plea of defendant mentioned in
manner and form as the defendant in his

last mentioned plea hath alleged, and this he
prays may be supported by the Country
Johnson for ~~plff~~. And the said ~~plff~~ doth
the like. Purple for ~~def~~. And afterwards the
said Thomas Phillips filed ~~the~~ with the Clerk
aforesaid the following opinion to wit, Giles C
Dana v Thomas Phillips and the said defendant
saith that his said plea by him secondly above
pleaded and the matters therein contained in
manner and form as the same are above pleaded
and set forth are sufficient in law to bar and
preclude the said plaintiff from having or
maintaining his aforesaid action thereof against
him the said defendant and the said defendant
is ready to verify & prove the same when where
and in such manner as the said Court here shall
direct and award Wherefore inasmuch as his
said plaintiff hath not answered the said plea
nor hitherto in any manner denied the same
the said defendant prays judgment and that
the said plaintiff may be barred from having or
maintaining his aforesaid action thereof against
the said defendant. N.H. Purple ~~def's~~ atty.

Exhibits to 2^d Rep

Page 6^o Purple

And the said defendant saith that the said
replication to the said sixth plea of the said
defendant and the matters therein contained in
manner and form as the same are above pleaded
and set forth are not sufficient in law for the
the said plaintiff to have or maintain his
aforesaid action thereof against the said defendant
and that he the said defendant is not bound
in law to answer the same and that the
said defendant is ready to verify Wherefore
by reason of the insufficiency of the said

replication in this behalf the said defendant
prays judgement, if the said plaintiff ought to
have or maintain his aforesaid action thereof
against him by St. H. Purple depts atty
and afterwards the said Giles O'Donn files in
the Clerk's Office aforesaid the following. And the
plaintiff says that his said replication to
defendants sixth plea is good and sufficient
in law for him to have and maintain his
said action and this he is ready to verify
wherefore he prays judgement. Johnson ~~proff~~
and afterwards took on the twenty third day
of May in the year of our Lord One thousand
Eight hundred and Thirty Eight before the Grand
Court aforesaid at the term aforesaid it being the
twentieth day of said term came the parties by their
attorneys and issue being joined upon the
denumer the defendants second plea, it is
considered by the court that the said second
plea is bad and insufficient to bar the
plaintiffs action. The parties then agree that
both matters of law and fact arising in this
cause may be tried by the court, and after
hearing the evidence and arguments of
counsel, it is considered by the court that
the plaintiff have and recover of the defendant
the sum of three hundred and seventy three dollars
and sixty cents damages, together with his
costs about his suit in this behalf
expended, and that he have execution
therefor. And thereupon again came
the defendant, by his attorney and files his
exceptions to the opinions and orders of

Abraham
Nelson to G. O'Keefe

Court made on the trial of this cause, in
the words and figures following to-wit
Perin Circuit Court of May Term ad 1838
Giles & Dana v Thomas Phillips. The
defendants counsel move the court to strike
out the amendment to the plaintiffs declaration
made on the 21st Instant in the following
words "with six per cent interest thereon"
for the reason that issue had been taken upon
the defendants plea of non assumpsit, prior
to the time that the said declaration was amended.
The court that the amendment is properly made
and that the same be permitted to stand as part
of the said declaration. The counsel for the
defendant respectfully accepts to the opinion
of the court and desire the court to send this
bill which is done Dan Stone ~~Seal~~
and the said defendant prays an appeal
which is allowed by the court upon his filing
bond according to law within five days
and afterwards to-wit on the twenty fourth
day of May in the year and at the term last
aforesaid before the Court aforesaid came the
parties by their attorneys and on defendants
motion it is ordered that Andrew M Hunt be
accepted as security in the appeal bond to be given
by the defendant. And afterwards to-wit on the
Twenty Sixth day of May in the year last aforesaid
the said Thomas Phillips filed with the Clerk of
said Court the following appeal bond to-wit
Know all men by these presents that we Thomas
Phillips and Andrew M Hunt of Perin in the
County of Perin and State of Illinois are held
and firmly bound unto Giles & Dana of the

same place in the pearl sum of One Thousand
dollars lawful money of the United States to which
payment well and truly to be made and done we
do bind ourselves our heirs, executors Administrators
and each and every of them jointly and severally
by this presents Witness our hands and seals at
Peru this 25th day of May in the year of our Lord
One thousand Eight hundred and Thirty Eight
The condition of this obligation is such that whereas
the above bounden Thomas Phillips has appealed from the
judgement of the Circuit Court of the County of Peru
State of Illinois in a certain suit tried and finally
determined at the May Term of the said Court wherein
Giles C. Dana was plaintiff and the said Thomas Phillips
was defendant which said judgement was rendered
against the said defendant Now if the said Thomas
Phillips shall duly prosecute the said appeal and
pay the judgement, costs, interest and damages in
case the said judgement shall be affirmed on the
trial of the said appeal in the Supreme Court of the
State of Illinois then this bond shall be void otherwise
in force Thomas Phillips *TS*
A.M. Hunt *TS*

State of Illinois

Peru County

William Mitchell clerk of the Circuit
Court within and for said County do hereby
certify that the foregoing is a true and perfect
transcript of the record and proceedings in the
within case - In Testimony whereof I
have hereunto set my hand and
seal of said Court at Peru this
Twenty eighth day of November
A.D. 1838
William Mitchell *cl*

Giles C. Dana
acts by appeal
Thomas Phillips

Transcript from Perma
Circuit Court

Filed Dec. 10 1838
G. C. Dana

102.114.120.165.210

X
Fees
Transcript 11.75
Per Heat 50
\$ 12.25

Judgment affirmed
Dec. Term 1838

14008