

14252

No. _____

Supreme Court of Illinois

G_ribbens

vs.

Thompson, Wetmore & Co.

71641  7

161
STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 16

1862

*Shannon
McKinnore*

*vs
Mathews*

14252

[Handwritten signature]

[Handwritten signature]

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

WETMORE C. THOMPSON, CALVARY L. WETMORE and JUBSON C. FRISBY,
Partners, trading and doing business in the name and style of
THOMPSON, WETMORE & CO.,

vs.
JOHN W. MATHEWS, OSCAR F. GRIBBENS, RUFUS W. LENORI and CALVIN TERRY,
Partners, trading and doing business under the name and style of
J. W. MATHEWS & Co.

Error from Tazewell.

- Page 1 Term of the Tazewell circuit court, February, 1860.
- Parties plaintiffs.
- 2 Parties defendants.
- Precept.
- Proceeding of the court.
- 2 & 3 Writ against defendants.
- Return of writ by sheriff of Tazewell county:
- “Service on Oscar F. Gribbens on the 14th January, 1860; J. W. Mathews, R. J. Lenori and Calvin Terry not found in Tazewell county.”—Signed by T. C. Reeves, sheriff Tazewell county, by T. L. Masters, deputy.
- 4 Writ to the sheriff of Mason county, dated 19th December, 1859.
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- Filing declaration 17th of January, 1860.
- Declaration in assumpsit. The declaration charges that John W. Mathews, Oscar F. Gribbens, Rufus W. Lenori and Calvin Terry, partners, trading and doing business under the name and style of J. W. Mathews & Co., made their promissory note dated 13th day of August, 1857, at Pekin, by the description J. W. Mathews & Co., and payable 1st day of April, 1858, for the sum of five hundred and fifty-seven and seventy-one hundredths of dollars, with interest.
- 7 Sets out the liability and promise.
- Common counts.
- Breach, damage \$1,000.
- Copy of note sued on, signed “J. W. Mathews & Co.”
- 8 Account stated.

Further proceeding by the court, at February term, 1860.

Title of cause.

Plea: The plea says the plaintiffs ought not to have or maintain their said action thereof against him, because he says that he is not now, and never was, a member of the firm of J. W. Mathews & Co.; and this he is ready to verify. Prays judgment, &c.

20 Affidavit: Calvin Terry states under oath, that the above plea as pleaded is true in substance and fact. Sworn and subscribed to. Signed Calvin Terry.

Jurat before the clerk.

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30 Plea by Oscar F. Gribbens, denying under oath, that he is not now, nor never has been, a member of the firm of J. W. Mathews & Co. Prays judgment, &c.

Jurat. He swears the above plea is true in substance and fact. Signed O. F. Gribbens.

Jurat sworn before M. C. Young, clerk, S. W. Stone, deputy clerk.

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Title of cause, and term of court, February term, 1860.

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Now this day comes as well the plaintiffs, by their attorneys, Parker & Son, as the defendants by their attorney, Hugh Fullerton, and by agreement a jury is waived, and this cause is tried by the court, on a plea of abatement as to Oscar F. Gribbens; and the court having heard the proofs and allegations 13 of the parties and argument of counsel thereon; and being fully advised in the premises, is of the opinion that the plaintiffs hath sustained damages by reason of the breaches of promise in the declaration mentioned, to the sum of six hundred and twenty and seventy-five hundredths of dollars. It is therefore ordered and adjudged by the court, that the plaintiffs recover of 15 said defendant, Oscar F. Gribbens, the damages aforesaid, and likewise the costs and charges by them about their said suit expended; and that execution issue therefor; and this cause is continued as to Calvin Terry, with leave to either party to file exceptions in vacation.

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Copy of note read in evidence:

PEKIN, August 13th, 1857.

On the first day of April, 1858, for value received, we promise to pay Thompson, Wetmore & Co., or order, the sum of five hundred and fifty-seven and seventy-one hundredths dollars, with interest.

Signed by

J. W. MATHEWS & Co.

And rested their case.

Defendants then introduced on their part one James A. McGrew, who testified that he knew the defendants, and always understood that Gribbens was only a clerk for J. W. Mathews. Heard Mathews say he was the best clerk he ever had. Mathews always treated him as a clerk; had heard Gribbens, when attending to the business, say to people who had business with the company, that he could not do certain things until Mathews came, or until he could see Mathews.

That being all the evidence, the court found for the plaintiffs.

The defendant then excepted.

Signature of the judge, and seal.

Clerk's certificate and seal.

BENJAMIN S. PRETTYMAN, *Attorney.*

~~50 227~~ 16 151
Metamore dues

Matthews dues

Abstract

Given Aug 17. 1860
Leland
Clerk

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BENJAMIN S. PRETTYMAN, *Attorney.*

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Wetmore et al

n

Matthews et al

Abstract

Filed May 17, 1860

L. Belmont

clerk

THOMPSON, HARRISON & CO.

PRINTERS

CHICAGO, ILL.

NO. 10 N. W. CORNER

OF THE CHICAGO

OFFICE

OF THE

RECORDS

AND

DEEDS

OF

THE

CITY

OF

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Mathews deals

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Mathews deals
Abstract

Filed May 17, 1860
Leland
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Title of case and form of court.
Judgment and joinder.
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Abstract
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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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16 - 161
Ly ribbon
or

Whitmore

plffs by argt'

Filed May 24-1860

L Leland

clerk

1
Plead to a Term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Taylor and State of Illinois on the first Monday of the month of February the same being the sixth day of said month in the year Eighteen hundred and Sixty. Present the Honorable James Hannott Judge of the County first Judicial Circuit of the State of Illinois composed of Taylor Mason &c

Be it remembered that on the 19th day of December in the year A.D. 1859, a praecipe was filed in the words and figures following to-wit-

State of Illinois } Of the February Term of the
Taylor County }^{ss} Circuit Court A.D. 1856.

Witness L. Tompson
Calvary L. Whitman +
Judson L. Forsly, partners trading & doing business in the name & style of Tompson Whitman & Co
=H=
John W. Matthews

Assumpsit
Damages \$1000.

Oscar F. Kribbon
 Rufus W. Lenori
 Calvin Terry
 Partners trading and
 doing business under
 the name and style
 of J. W. Matthews & Co.

The Clerk will please
 issue a summons in the above entitled cause
 to the Sheriff of Lapeer County for John W.
 Matthews, Oscar F. Kribbon, Rufus W. Lenori, and
 to the Sheriff of Mason County for Calvin Terry
 returnable to the next term of the Court.

To M. C. Young Esq. Wm. B. Parker & Son
 Clerk Plaintiffs Attys.

And now afterwards to wit on the day
 and year last aforesaid a summons issued
 in the words and figures following to wit-

State of Illinois }
 Lapeer County }^{ss} - vs - The People of the State of Illinois
 by - Grieting - }
 We command you that you
 summon John W. Matthews, Oscar F. Kribbon,
 Rufus W. Lenori, & Calvin Terry partners trading
 & doing business under the name and style
 of J. W. Matthews & Co. If he shall be found
 in your County, personally to be and appear

before the Circuit Court of Layswell County
 on the first day of the next term thereof to be
 held at the Court House in Pekin in said
 County on the first-munday of February next
 then and there to answer unto Whetmore & Tom-
 pson & contrary to Whetmore & Judson & Frisely part-
 ners trading & doing business in the name & style
 of Tompson Whetmore & Co in a plea of Assumpsit
 to the damage of said plaintiffs as they say in
 the sum of One Thousand Dollars, And have you
 then and there this writ with an endorsement
 thereon, in what manner you shall have executed
 the same

Witness M. C. Young, clerk of the said
 Court and the seal thereof at Pekin aforesaid,
 this 19th day of December 1859
 Merrill C. Young clerk Circuit Court
 By E. W. Stone Deputy clerk

Which said Summons was returned on the
 3rd day of February AD 1860 with the follow-
 ing endorsement thereon to wit-

State of Illinois }
 Layswell County }
 }
 }
 }

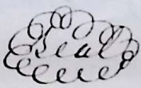
I have duly served the within
 by making the same to the within named defen-
 -dant Oscar F. Robbins this 14th day of January
 AD 1860, - J. W. Matthews R. J. Leonri & Calvary
 J. W. not found in my County J. B. Keene S. C.

By J. L. Martens
 Deput

State of Illinois } The people of the State of Illinois
 Tazewell County }³⁰⁵ To the Sheriff of Mason County -

Writing - In command you that
 you summon Leabro Fory impleaded with John
 W. Mathews Oscar F. Killion Rufus W. Girou partners
 trading and doing business under the name
 and style of J. W. Mathews, &c. If he shall be found
 in your County personally to be and appear before
 the Circuit Court of Tazewell County, on the first
 day of the next term thereof, to be held at the court
 house in Pekin, in said County on the first
 Monday of February next, then and there to an-
 swer unto Wm. L. Thompson Leabro Fory & Wm.
 L. Judson & Judson & Frisby partners trading & doing
 business in the name & style of Thompson Wm. L.
 &c. in plea of Assumpsit, to the damage of said
 plaintiffs as they say in the sum of One Thousand
 Dollars. And have you then and there this
 writ with an endorsement thereof in what
 manner you shall have executed the same -

Witness M. L. Young, Clerk of said Court
 and the seal thereof at Pekin aforesaid, this
 19th day of December 1854



Merrill L. Young Clerk Circuit Court

By S. W. Stone Deputy Clerk

Which said summons was returned on the
 27th day of January A.D. 1855 with the following

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endorsement therein to wit -
State of Illinois } I do hereby certify that I
Mason County } have served this writ by making
to the within Calendar Term January 3. 1860 -
J. P. Baughurst Sheriff
By B. K. Baughurst Deputy

And now afterwards to wit on the 17th
day of January A.D. 1860. a Narr. was filed
in the words and figures following to wit

State of Illinois } Jaywell Circuit Court of the
Jaywell County }^{ss} February Term A.D. 1860 -
Wetmore & Tompson Calendar L.
Wetmore and Judson & Frisley partners trading and
doing business under the name and style of Tompson
Wetmore & Co. Plaintiffs in this suit by Wm. B. Par-
ker Esq. attorney complain of John W. Mathews
Oscar F. Knibben Rufus W. Louini and Calendar
Term partners trading and doing business under
the name and style of J. W. Mathews & Co. defendants
who were summoned &c. in a plea of trespass on the
case on promises. For that whereas the said defen-
dants heretofore to wit: on the Thirtieth day of Augu-
st in the year of our Lord One thousand eight hun-
dred and fifty seven at Pekin town at Pekin in
said County of Jaywell. made the certain promi-
sory Note, and there and there delivered the same

6

to said plaintiffs, in and by which said note said defendants by the name style and description of J. W. Matthews dec., promised to pay to said plaintiffs by the name style and description of Thompson Urtnon dec. on the first day of April 1858 the sum of five hundred and fifty seven and seventy one hundredths dollars with use for value received. By means whereof, and by force of the Statute in such case made and provided, the said defendants became liable to pay said plaintiffs said sum of money mentioned in said note, and being so liable, in consideration thereof then and then undertook and promised to pay the same to the said plaintiff according to the tenor and effect, true intent and meaning of the said note to wit, at the place aforesaid.

And whereas also the said defendants afterwards to wit on the first day of December in the in the year of our Lord one thousand eight hundred and fifty nine to wit at Perth in said County, became and was indebted unto the plaintiffs in a large sum of money to wit One thousand dollars for money before that time lent and advanced to and paid laid out and expended for said defendants by said plaintiffs at said defendants request; and for money before that time had and received by said defendants, to and for the use of said Plaintiffs; and also in a like sum

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for goods, wares and merchandises, before that time sold and delivered by said plaintiffs to said defendants at like special interest and request and also in a like sum for the labor care and diligence of said plaintiffs before that time done and performed by said plaintiffs for said defendants at the like instance and request of said defendants, and being so indebted, said defendants, in consideration thereof then and thereuntook and promised to pay said plaintiffs said last mentioned sum of money when thenunto afterwards requested. Yet the said defendants notwithstanding their said promises and undertakings but contriving &c, although often requested to do ha not paid said plaintiffs either of said sums of money, or any part thereof but so to do hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of said Plaintiffs of One Thousand Dollars and therefore they bring suit &c

Wm B Parker & Son

Plaintiffs Attorneys

- Copy of Instrument and account sued on. -

Pekin Aug 13th 1857

On the first day April 1858 for value received we promise to Pay Thompson Wetmore & Co. or order the sum of five thousand fifty seven 1/100 Dollars with use
J W Mathews & Co.

J. W. Matthews & Co

To Thompson & Watson & Co Dr	
To money lent and advanced	\$ 1000.
To money expended and paid out for	\$ 1000.
To money received for use of.	\$ 1000.
To goods wares and merchandise	\$ 1000.
To labor and services	\$ 1000.
To balance on account stated	\$ 1000.

And now afterwards to wit on the 8th day of February A.D. 1860 please was filed in the words and figures following to wit

Watson & Thompson Judson C. Frisley	}	Joyce will
Calvary & Watson Partners trading		
under the name and style of Thompson	}	February Term
Watson & Co. vs		
John W. Matthews Oscar F. Gibbon	}	}
Rufus W. Irons & Calvin Irons		
partners under the name and style	}	}
of J. W. Matthews & Co.		

And the said defendant Calvin Irons by N. Fullerton his Attorney comes and defends the wrong and injury where to and says that the said plaintiffs ought not to hear or maintain their aforesaid action against him, because he says that he is not now and never was a member of the firm of J. W. Matthews & Co. and this he is ready to verify

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wherefore he pray judgment if the said plaintiffs ought to have or maintain their aforesaid action against him &c H Fullerton

Atty for defendant

State of Illinois }
Luzerne County } } Calvin Ferry the above named defendant comes and on his oath states that the matters and things stated in the above plea are true in substance and in fact &c

Sworn to and subscribed Calvin Ferry

before me this 8 February AD

1860 Minell Le Young clk

By E. S. Stew Deputy

Wmson Le Tompson Calvin Le Wmson & Judson Le Frisby trading and doing business under the name & style of Tompson Wmson & Co vs: In Luzerne County Circuit Court

John W. Matthews, Oscar F. Scribbon Rufus W. Leroy and Calvin Ferry trading and doing business in the name and style of J. W. Matthews & Co A.D. 1860.

And the said defendant Oscar F Scribbon by Hugh Fullerton his Attorney comes and defends the wrong and injury when &c and says that the said plaintiffs ought not to have or maintain their aforesaid action then

11

John W. Matthews Oscar F. Gibbon }
 Rufus W. Lironi + Calvin Lorry }
 trading and doing business }
 under the name + style of J.W. Matthews }
 &c. }
 Lowell Circuit
 Court 1860
 Assumpsit

And the said plaintiffs as to the said
 plea of Calvin Lorry by him above pleaded says pro-
 cludi non because he says that the said Calvin
 Lorry was was at the time of the promises in said
 declaration mentioned a partner and member
 of the firm of J.W. Matthews &c. and this they say
 may be regarded into by the country.

Thos B. Parker & Son
 Plaintiffs Atty.

And the defendant Calvin Lorry doth the like

Hugh Fullerton
 for Deft-

Watson G. Tompson Calvin L. Watson }
 + Jackson G. Fosdy trading and doing }
 business under the name and style of }
 Tompson Watson &c. }
 vs. }
 of the February
 Term of the
 Lowell Cir-

John W. Matthews Oscar F. Gibbon }
 Rufus W. Lironi + Calvin Lorry }
 trading and doing business under }
 the name and style of J.W. Matthews }
 1860.-
 Assumpsit

and the said
 plaintiffs as to the said plea of Oscar F. Gibbon

by him above pleaded say preclude you because
 he says that the said Oscar F Gibbon was at
 the time of the promises in said declaration. Men-
 tioned a partner and member of the firm of J. W.
 Mathews & Co and this they say may be regarded into
 by the country:-

Wm B Parker & Son

Plaintiff's Attorneys

and the defendant Oscar F Gibbon doth
 the like

H. Fullerton

Atty. Deft.

And now afterwards to wit on the 18th day of
 February A.D. 1860 an affidavit was filed in
 the words and figures following to wit:-

State of Illinois } Of the month of February Term of the
 Jaycewell County } Jaycewell Circuit Court 1860-
 Thompson Urtnon & Co }
 vs. } Assumpsit
 J. W. Mathews & Co }

And the said defendant
 Calvin Ferry after being first duly sworn on
 his oath states that he cannot safely proceed to
 the trial of this cause at the present term of this
 Court on account of the absence of J. B. Mathews
 who is a material witness for this affiant on
 the trial of the plea in abatement filed by this
 affiant in this cause. And this affiant furth-

her states, that he caused a subpoena to be issued in this cause for the said D.B. Mathews on the 24th day of January last-past, and that the said subpoena had been returned by the Sheriff of Tazewell County aforesaid duly served on the said D.B. Mathews according to law, and the said Mathews promised this officiant that he would be in attendance at the present term of this Court, and this officiant confidently expected that he would be in attendance at the present term & this officiant further states that the said D.B. Mathews resides as this officiant is informed in Jersey City in the State of New Jersey - and this officiant further states that shortly after the said subpoena was served upon the said D.B. Mathews this officiant was informed that he had returned to his home in the State of New Jersey, at which time this officiant states that there was not time to give notice to the opposite party and see out a *dedamus potestatem* to take the deposition of the said Mathews and get it returned, for to be read on the trial of this cause at this Term of this Court - This officiant further states that he expects to be able to prove by the said Mathews on the trial of this cause, that officiant was not at the time of the promise in said plaintiffs declarative mentioned a partner or a member of the firm of J. W. Mathews & Co. and this officiant further states that he know of no witness by whom he can

from the same facts - and this affiant further states that he expects to be able to procure the personal attendance of the said D. B. Mathews at the next term of this court to which time this affiant prays this cause may be continued. This affiant further states that this application is not made for delay but that Justice may be done

Subscribed & Sworn to before Calvin Froy
me this 18th day of February
A.D. 1860 - Merrill C Young clk
By S. S. Stow V.C.

And now afterwards to wit At a Term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Taylor and State of Illinois on the first Monday of the month of February the same being the sixth day of said month in the year Eighteen hundred and Sixty - Present the Honourable James Harriott Judge of the Twenty first Judicial District of the State of Illinois Hugh Fetterlon Esq Prosecuting Attorney Thomas C Burns Sheriff and Merrill C Young Clerk the following proceedings were had in said cause to wit

Saturday February 18th 1860

Thompson Wetmore & Co.

v

John W. Matthews

Oscar F. Gribbow

Rufus W. Senori

Calvin Terry as firm

of J. W. Matthews & Co.

Assumpsit

Now on this day came as well the Plaintiffs, by their attorneys, Parker & Son, as the Defendants by their attorney, Hugh Fullerton; and by agreement, a jury is waived, and this Cause is tried by the Court, on plea in abatement as to Oscar F. Gribbow. And the Court having heard the proofs and allegations of the parties, and argument of counsel thereon, and being fully advised in the premises, is of opinion that the Plaintiffs hath sustained damages by reason of the breaches of promises in the Declaration mentioned, to the sum of Six hundred twenty & ⁷⁵/₁₀₀ (\$620.⁷⁵/₁₀₀) dollars. It is therefore ordered and adjudged, by the Court, that the Plaintiffs recover of said defendant, Oscar F. Gribbow, the damages aforesaid and likewise the costs and

charges by them about their suit expended. and that execution issue therefor. and this Cause is continued as to Calvin Terry; with leave to either party, to file exceptions in vacation.

And afterwards, to wit; on the 16 day of April A.D. 1860 a Bill of exceptions was filed in the words and figures following to wit;

Thompson Wetmore & Co	} Of the February } term of the Sagewell } County Circuit } Court A.D. 1860 } <u>Bill of Exceptions</u>
v	
Oscar Gribbon	
John W. Matthews	
Calvin Terry and Rufus W. Se moni oni	

And the foregoing cause, coming on to be heard - The Plaintiffs called one B. S. Pettyman, who testified that he knew the defendants, had been acquainted with said Oscar Gribbon since the Spring of 1854. and that some time during the Spring or Summer of 1854. there was placed in his hands for collection by W. S. Maus, a claim of about \$400. dollars, vs J. W. Matthews & Co., that he called

on Gribbon for the Claim, as one of the firm of J. W. Matthews & Co. That he was advised he was one of the firm, but could not say who told him.

Gribbon went with Witness to J. W. Matthews, who gave witness an order for the Claim, in the presence of Gribbon, in the name of the firm of J. W. Matthews & Co. The order was not paid, and witness afterwards sued Oscar Gribbon - J. W. Matthews & Leoni, as the firm of J. W. Matthews & Co & got Service on Gribbon and Matthews, & took judgment against them, on the Claim; and he believed Gribbon was a member of the firm of J. W. Matthews & Co. - He got the Claim from Gribbon.

The Plaintiff then read the note in evidence, as follows,

Pekin August 13th 1857

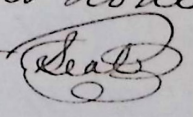
On the first day of April ~~1857~~ 1858 for value received, We promise to pay Thompson Wetmore & Co or order the sum of Five hundred and fifty seven & ⁷/₁₀₀ Dollars with int.

J. W. Matthews & Co
and rested the case.

Defendants then called James A. Melgrew, who testified that he knew the defendants & always understood that Gibbon was only a clerk for J. W. Mathews - Heard Mathews say he was the best clerk he ever had.

Mathews always treated him as a clerk; had heard Gibbon, when attending to the business, say to people who had business with the Company, that he could not do certain things until Mathews come, or until he ^{could see} ~~saw~~ Mathews.

And the foregoing was all the evidence offered in the case. And thereupon the Court found for the Plaintiff. And the Defendant moved for a new trial, which was overruled. and the Court thereupon entered a judgment in favor of Plaintiff, against the Defendant, Gibbon. To which the Defendant, Gibbon, then and there excepted, and prayed that this, his Bill of Exceptions be signed and sealed, which is done.

James Harriott 

State of Illinois } ss
Tazewell County }

I, Merrill C. Young,
Clerk of the Circuit Court, within,
and for the County of Tazewell, do
herby certify that the foregoing
eighteen pages, contain a true,
full and complete Record of the
proceedings had in the above
entitled cause, as the same
appears of record in my Office.

In testimony whereof I have
herewith set my hand and
affixed the Judicial Seal thereof,
at Pekin this 16th day of April
AD 1860

Merrill C. Young Clerk

Fees \$4 $\frac{50}{100}$

and Tax



Geo Gubbin et al In the Supreme
vs Error to Judgment Court Third Grand
Thompson Return et al Division April Term
1810

And now comes the said Plaintiff and says
that in the Record and Proceedings aforesaid and
in the execution of the judgment in the aforesaid
Cause, Manifest Error both intended & the injury
in this

- 1st The Court erred in our ruling the Bill entered
for nullity,
- 2^d The Court erred in rendering a judgment
in this case against, ^{said} Geo Gubbin, one of the Defendants
below, when Terry another of the Defendants below
was at the time and served with Process & had
appeared and pleaded to the action, a separate
Defense, as to him, which was not disposed of by
Terry, but continued by the Court, when the
Judgment against Gubbin was rendered

For which and for other errors
Manifest in the Record and proceedings aforesaid
the said Plaintiff prays that said judgment be
wholly reversed set aside & for costs & interest

R. B. Hoffman

For Plaintiff

And the Defendants by Robert their
Attorney came and say that there is
no error in the Record aforesaid

and pray that the said judgment
be ~~reversed~~ affirmed

James Roberts Atty
for self in error

3- Grand Jurors Sp. Ct. No
Apr Term 1860

No. 227.

O. Gubbin
(Thompson, Watson et al.)

On Motion for Supersedeas

The Plaintiff in error in
the above Cause. James Roberts on his
Bond, in Case supersedeas is awarded in the
Case - the name of B. B. Roberts
and furnished the Court with the evidence
of James Roberts that he is fully responsible
for twice the amount of the judgment
Awarded against him in the Court below.

Attorney at Law
J. H.

State of Illinois

Superior Court 32 Grand Jurors

James Roberts being duly sworn deposes
and says that he is owner of aqueduct at
the Bondman stand in the foregoing Case
and holds him to be fully responsible
and good security for twice the amount of
the judgment Awarded in the above
Cause & which is responsible in supersedeas
on the motion of Attorney at Law -

James Roberts

Subscribed & sworn
before me this 17th
Day of May 1860

L. Deland Clerk
J. B. Nie Deputy

¹⁶
Osea Gubler²

50.

²⁰
Thompson Victoria 1884

affidavit

Motion for suppression

Filed May 17, 1880

L. Leland
Clerk

Know all men by these Presents
and to whom these Presents may come
meeting, that we the undersigned Oscar F. Gibbin
and Benjamin J. Deffenon, the first as Receiver
and the other as Secy, our self and firm of bond
with Thompson, Victorin & Co. in the past
sum of one thousand Dollars, and well and
truly to pay what we do hereby bind ourselves
our heirs Executors and Administrators
jointly severally and firmly by these Presents
Witness our Hands and Seals this eight
day of June A. D. 1867

Now the Condition of this obligation
is such that when as the said Thompson
Victorin & Co. did at the February term of
the Jaywell Circuit Court A. D. 1867
obtain a judgment against the said Oscar F
Gibbin ~~for~~ as a member and partner of the firm
of J. W. Matthews & Co. which said suit was
at the instance of the said Oscar F. Gibbin
removed by writ of Error to the Supreme Court
of the State of Illinois. holden in the 3^d grand
division thereof. holden in Ottawa April
1868 - And whereas the said Oscar F. Gibbin
did enter his motion for a supersedeas
in said Cause, and whereas the Supreme
Court on consideration of said motion for
supersedeas. doth order, that a supersedeas

issue in that behalf on the said Oscar F
 Gublin entering into Bond in the Penal
 sum of one thousand Dollars, with Benjamin
 D. Coffey as the security. Now therefore if the
 said Oscar F Gublin shall prosecute his said suit
 in error of said before the supreme Court of said
 with effect, or if said cause for said should be
 sustained & the judgment of the circuit court affirmed
 then should said Gublin pay a cause to be paid said amount
 & all cost, then this obligation shall be void otherwise
 remain in full force Oscar. F. Gublin (S) B
 Benjamin D. Coffey (S)

16
 Gublin 50
 Benjamin
 Coffey Bond

Paid Sept. 4. 5. 1880
 J. L. Leland
 Cash

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County Tazewell Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of Tazewell County, before the Judge thereof, between Wetmore & Thompson, Calvary & Wetmore & Judson C. Frisby partners trading & doing business under the name & style of Thompson Wetmore & Co.

plaintiffs and John W Mathews, Oscar F Gibbon, Rufus W. Lenoir & Calvin Ferry partners trading and doing business under the name & style of J. W. Mathews & Co.

defendant.s., it is said manifest error hath intervened, to the injury of the aforesaid Oscar F Gibbon

as we are informed by his complainant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 17th day of April — in the Year of Our Lord One Thousand Eight Hundred and Sixty

L Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

50 16

Oscar F. Grubbow

impleaded &c

No.

vs.

Wetmore C. Thompson

et al

WRIT OF ERROR.

This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned,
September 5th A. D. 1860

L. Leland

Clerk.

J. B. Allen Deputy

FILED

September 5

A. D. 1860

L. Leland

Clerk.



No 227

Geo Gubbins

vs Error to Russell
Thompson & Thomas Etal.

3^d Grand Jurisdiction

Super Ct. Hls

Apr. Term 1860

On Motion for Supersedeas

The principal error assigned is that, the writ was brought by Defts in error, against P^lff in error & several others as Partners, that service was had on ^{Gubbins & Terry} one of the other partners, Terry appeared in Court below, and pleaded in abatement that he was not & had never been a partner of the firm. The Court continued the Case as to this partner, ^{Terry} on his motion, and tried the Cause and rendered a judgment against Gubbins, alone, although he was found as a partner, and on what purported to be a partnership Debt, & ~~caused~~ Equities to issue against Gubbins. & The cause as to Terry stands continued in the Court below, and is such manifest error that a supersedeas should be awarded) = see Bruce Rept. 128,

2 Decm. .. 36. 572.

Proffina for
G

Gilbert ¹⁶ } No ~~227~~
do } 50
Thompson ¹⁶ witness ¹⁶¹ et al.

Michigan Supreme

Filed May 17. 1860
L. L. Linn
Clerk

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; McConnell 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.*

16

~~50~~

16 - 161

Gribbon

vs

Whitmore

Plaintiffs Brief & argt'

Filed May 24-1860

L. Island

Clark

No points filed

by S. H. A.

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

WETEMORE C. THOMPSON, CALVARY L. WETMORE and JUDSON C. FRISBY,
Partners, trading and doing business in the name and style of
ThOMPSON, WETMORE & CO.,

vs.
JOHN W. MATHEWS, OSCAR F. GRIBBENS, RUFUS W. LENORI and CALVIN TERRY,
Partners, trading and doing business under the name and style of
J. W. MATHEWS & Co.

Error from Tazewell.

- Page 1 Term of the Tazewell circuit court, February, 1860.
- Parties plaintiffs.
- 2 Parties defendants.
- Precept.
- Proceeding of the court.
- 243 Writ against defendants.
- Return of writ by sheriff of Tazewell county:
- “Service on Oscar F. Gribbens on the 14th January, 1860; J. W. Mathews, R. J. Lenori and Calvin Terry not found in Tazewell county.”—
Signed by T. C. Reeves, sheriff Tazewell county, by T. L. Masters, deputy.
- 4 Writ to the sheriff of Mason county, dated 19th December, 1859.
- Return of sheriff of Mason county:
- 5 Service: served on Calvin Terry, January 3, 1860, J. P. Havinghorst, sheriff, by J. B. Hanther, deputy.
- Filing declaration 17th of January, 1860.
- Declaration in assumpsit. The declaration charges that John W. Mathews, Oscar F. Gribbens, Rufus W. Lenori and Calvin Terry, partners, trading and doing business under the name and style of J. W. Mathews & Co., made their promissory note dated 13th day of August, 1857, at Pekin, by the description J. W. Mathews & Co., and payable 1st day of April, 1858, for the sum of five hundred and fifty-seven and seventy-one hundredths of dollars, with interest.
- 7 Sets out the liability and promise.
- Common counts.
- Breach, damage \$1,000.
- Copy of note sued on, signed “J. W. Mathews & Co.”
- 8 Account stated.

Further proceeding by the court, at February term, 1860.

Title of cause.

Plea: The plea says the plaintiffs ought not to have or maintain their said action thereof against him, because he says that he is not now, and never was, a member of the firm of J. W. Mathews & Co.; and this he is ready to verify. Prays judgment, &c.

9 Affidavit: Calvin Terry states under oath, that the above plea as pleaded is true in substance and fact. Sworn and subscribed to. Signed Calvin Terry.

Jurat before the clerk.

Title of the cause.

10 Plea by Oscar F. Gribbens, denying under oath, that he is not now, nor never has been, a member of the firm of J. W. Mathews & Co. Prays judgment, &c.

Jurat. He swears the above plea is true in substance and fact. Signed O. F. Gribbens.

Jurat sworn before M. C. Young, clerk, S. W. Stone, deputy clerk.

10 & 11

Title of cause.

Replication and joinder to the plea of Calvin Terry.

Title of cause, and term of court, February term, 1860.

12

Replication and joinder.

13, 14 & 15

Affidavit for continuance.

Further proceeding of the court.

Title of the cause.

Trial by the court by agreement.

Judgment, February 18, 1860, as follows:

Now this day comes as well the plaintiffs, by their attorneys, Parker & Son, as the defendants by their attorney, Hugh Fullerton, and by agreement a jury is waived, and this cause is tried by the court, on a plea of abatement as to Oscar F. Gribbens; and the court having heard the proofs and allegations
16 of the parties and argument of counsel thereon; and being fully advised in the premises, is of the opinion that the plaintiffs hath sustained damages by reason of the breaches of promise in the declaration mentioned, to the sum of six hundred and twenty and seventy-five hundredths of dollars. It is therefore ordered and adjudged by the court, that the plaintiffs recover of
17 said defendant, Oscar F. Gribbens, the damages aforesaid, and likewise the costs and charges by them about their said suit expended; and that execution issue therefor; and this cause is continued as to Calvin Terry, with leave to either party to file exceptions in vacation.

Bill of exceptions.

THOMPSON, WETMORE & CO.,

vs.

OSCAR GRIBBENS,
JOHN W. MATHEWS,
CALVIN TERRY,
RUFUS W. LENORI.

Tuzewell Circuit Court,
Of February Term, 1860.

17 The plaintiffs' evidence: B. S. Prettyman, a witness introduced by plaintiffs, testified that he knows the defendants; had been acquainted with Oscar Gribbens since spring of 1857; and that during the spring and summer of 1857, there was placed in his hands for collection about \$400 vs. Mathews & Co.; that he called on Gribbens for the claim, as one of the firm of J. W. Mathews & Co.; that he was advised he was one of the firm, but could not say who told him. Gribbens went with witness to J. W. Mathews, who gave witness an order for the claim in the presence of Gribbens, in the name of the firm of J. W. Mathews & Co. The order was not paid, and witness afterwards sued Oscar Gribbens, J. W. Mathews and Lenori, as the firm of J. W. Mathews & Co., and got service on Gribbens and Mathews, and took judgment against them on the claim; and he believed Gribbens was a member of the firm of J. W. Mathews & Co. He got the claim from Gribbens.

Copy of note read in evidence:

PEKIN, August 13th, 1857.

On the first day of April, 1858, for value received, we promise to pay Thompson, Wetmore & Co., or order, the sum of five hundred and fifty-seven and seventy-one hundredths dollars, with interest.

Signed by

J. W. MATHEWS & Co.

And rested their case.

18 Defendants then introduced on their part one James A. McGrew, who testified that he knew the defendants, and always understood that Gribbens was only a clerk for J. W. Mathews. Heard Mathews say he was the best clerk he ever had. Mathews always treated him as a clerk; had heard Gribbens, when attending to the business, say to people who had business with the company, that he could not do certain things until Mathews came, or until he could see Mathews.

That being all the evidence, the court found for the plaintiffs.

The defendant then excepted.

Signature of the judge, and seal.

19 Clerk's certificate and seal.

BENJAMIN S. PRETTYMAN, *Attorney*.

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

WETMORE C. THOMPSON, CALVARY L. WETMORE and JUDSON C. FRISBY,
Partners, trading and doing business in the name and style of
THOMPSON, WETMORE & CO.,

vs.
JOHN W. MATHEWS, OSCAR F. GRIBBENS, RUFUS W. LENORI and CALVIN TERRY,
Partners, trading and doing business under the name and style of
J. W. MATHEWS & Co.

Error from Tazewell.

- Page 1 Term of the Tazewell circuit court, February, 1860.
- Parties plaintiffs.
- 2 Parties defendants.
- Precept.
- Proceeding of the court.
- 2 & 3 Writ against defendants.
- Return of writ by sheriff of Tazewell county:
- “Service on Oscar F. Gribbens on the 14th January, 1860; J. W. Mathews, R. J. Lenori and Calvin Terry not found in Tazewell county.”—Signed by T. C. Reeves, sheriff Tazewell county, by T. L. Masters, deputy.
- 4 Writ to the sheriff of Mason county, dated 19th December, 1859.
- Return of sheriff of Mason county:
- 5 Service: served on Calvin Terry, January 3, 1860, J. P. Havinghorst, sheriff, by J. B. Hanther, deputy.
- Filing declaration 17th of January, 1860.
- Declaration in assumpsit. The declaration charges that John W. Mathews, Oscar F. Gribbens, Rufus W. Lenori and Calvin Terry, partners, trading and doing business under the name and style of J. W. Mathews & Co., made their promissory note dated 13th day of August, 1857, at Pekin, by the description J. W. Mathews & Co., and payable 1st day of April, 1858, for the sum of five hundred and fifty-seven and seventy-one hundredths of dollars, with interest.
- 6 Sets out the liability and promise.
- Common counts.
- Breach, damage \$1,000.
- Copy of note sued on, signed “J. W. Mathews & Co.”
- 7 Account stated.

Further proceeding by the court, at February term, 1860.

Title of cause.

Plea: The plea says the plaintiffs ought not to have or maintain their said action thereof against him, because he says that he is not now, and never was, a member of the firm of J. W. Mathews & Co.; and this he is ready to verify. Prays judgment, &c.

9^r Affidavit: Calvin Terry states under oath, that the above plea as pleaded is true in substance and fact. Sworn and subscribed to. Signed Calvin Terry.

Jurat before the clerk.

Title of the cause.

10 Plea by Oscar F. Gribbens, denying under oath, that he is not now, nor never has been, a member of the firm of J. W. Mathews & Co. Prays judgment, &c.

Jurat. He swears the above plea is true in substance and fact. Signed O. F. Gribbens.

Jurat sworn before M. C. Young, clerk, S. W. Stone, deputy clerk.

10 & 11

Title of cause.

Replication and joinder to the plea of Calvin Terry.

Title of cause, and term of court, February term, 1860.

12

Replication and joinder.

13, 14 & 15

Affidavit for continuance.

Further proceeding of the court.

Title of the cause.

Trial by the court by agreement.

Judgment, February 18, 1860, as follows:

Now this day comes as well the plaintiffs, by their attorneys, Parker & Son, as the defendants by their attorney, Hugh Fullerton, and by agreement a jury is waived, and this cause is tried by the court, on a plea of abatement as to Oscar F. Gribbens; and the court having heard the proofs and allegations
16 of the parties and argument of counsel thereon; and being fully advised in the premises, is of the opinion that the plaintiffs hath sustained damages by reason of the breaches of promise in the declaration mentioned, to the sum of six hundred and twenty and seventy-five hundredths of dollars. It is therefore ordered and adjudged by the court, that the plaintiffs recover of
16 said defendant, Oscar F. Gribbens, the damages aforesaid, and likewise the costs and charges by them about their said suit expended; and that execution issue therefor; and this cause is continued as to Calvin Terry, with leave to either party to file exceptions in vacation.

Bill of exceptions.

Further proceeding by the court, at February term, 1860.

Title of cause.

Plea: The plea says the plaintiffs ought not to have or maintain their said action thereof against him, because he says that he is not now, and never was, a member of the firm of J. W. Mathews & Co.; and this he is ready to verify. Prays judgment, &c.

9. Affidavit: Calvin Terry states under oath, that the above plea as pleaded is true in substance and fact. Sworn and subscribed to. Signed Calvin Terry.

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Jurat sworn before M. C. Young, clerk, S. W. Stone, deputy clerk.

10 & 11. Title of cause.

Replication and joinder to the plea of Calvin Terry.

Title of cause, and term of court, February term, 1860.

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13, 14 & 15. Affidavit for continuance.

Further proceeding of the court.

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Bill of exceptions.

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Matthews v. Ailes

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Matthews v. Ailes

Abstract

Filed May 17, 1880
Shelton
Clerk

Entered according to the act of February 23, 1802.

Title of cause.

Parties and parties to the case of *Matthews v. Ailes*.

Title of cause and term of court, February term, 1880.

Indication and joining.

Appointed for continuance.

Verdict proceeding of the court.

Title of the cause.

Order of the court by agreement.

Verdict of the court by agreement.

Verdict of the court by agreement.

Verdict of the court by agreement.

Verdict of the court by agreement.

Verdict of the court by agreement.

Verdict of the court by agreement.

Verdict of the court by agreement.

Verdict of the court by agreement.

Verdict of the court by agreement.

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

WETEMORE C. THOMPSON, CALVARY L. WETMORE and JUDSON C. FRISBY,
Partners, trading and doing business in the name and style of
THOMPSON, WETMORE & CO.,

vs.
JOHN W. MATHEWS, OSCAR F. GRIBBENS, RUFUS W. LENORI and CALVIN TERRY,
Partners, trading and doing business under the name and style of
J. W. MATHEWS & Co.

Error from Tazewell.

Case 1 Term of the Tazewell circuit court, February, 1860.

Parties plaintiffs.

2 Parties defendants.

Precept.

Proceeding of the court.

3 Writ against defendants.

Return of writ by sheriff of Tazewell county:

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5 Service: served on Calvin Terry, January 3, 1860. J. P. Havinghorst, sheriff, by J. B. Hanther, deputy.

Filing declaration 17th of January, 1860.

Declaration in assumpsit. The declaration charges that John W. Mathews, Oscar F. Gribbens, Rufus W. Lenori and Calvin Terry, partners, trading and doing business under the name and style of J. W. Mathews & Co., made their promissory note dated 13th day of August, 1857, at Pekin, by the description J. W. Mathews & Co., and payable 1st day of April, 1858, for the sum of five hundred and fifty-seven and seventy-one hundredths of dollars, with interest.

7 Sets out the liability and promise.

Common counts.

Breach, damage \$1,000.

Copy of note sued on, signed “J. W. Mathews & Co.”

* Account stated.

Further proceeding by the court, at February term, 1860:

Title of cause.

Plea: The plea says the plaintiffs ought not to have or maintain their said action thereof against him, because he says that he is not now, and never was, a member of the firm of J. W. Mathews & Co.; and this he is ready to verify. Prays judgment, &c.

Affidavit: Calvin Terry states under oath, that the above plea as pleaded is true in substance and fact. Sworn and subscribed to. Signed Calvin Terry.

Jurat before the clerk.

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Jurat sworn before M. C. Young, clerk, S. W. Stone, deputy clerk.

10 & 11

Title of cause.

Application and joinder to the plea of Calvin Terry.

Title of cause, and term of court, February term, 1860.

12

Replication and joinder.

13, 14 & 15

Affidavit for continuance.

Further proceeding of the court.

Title of the cause.

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Bill of exceptions.

THOMPSON, WETMORE & CO.,

vs.

OSCAR GRIBBENS,
JOHN W. MATHEWS,
CALVIN TERRY,
RUFUS W. LENORI.

*Tazewell Circuit Court,
Of February Term, 1860.*

The plaintiffs' evidence: B. S. Prettyman, a witness introduced by plaintiffs, testified that he knows the defendants; had been acquainted with Oscar Gribbens since spring of 1857; and that during the spring and summer of 1857, there was placed in his hands for collection about \$400 vs. Mathews & Co.; that he called on Gribbens for the claim, as one of the firm of J. W. Mathews & Co.; that he was advised he was one of the firm, but could not say who told him. Gribbens went with witness to J. W. Mathews, who gave witness an order for the claim in the presence of Gribbens, in the name of the firm of J. W. Mathews & Co. The order was not paid, and witness afterwards sued Oscar Gribbens, J. W. Mathews and Lenori, as the firm of J. W. Mathews & Co., and got service on Gribbens and Mathews, and took judgment against them on the claim; and he believed Gribbens was a member of the firm of J. W. Mathews & Co. He got the claim from Gribbens.

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Signed by

J. W. MATHEWS & Co.

And rested their case.

Defendants then introduced on their part one James A. McGrew, who testified that he knew the defendants, and always understood that Gribbens was only a clerk for J. W. Mathews. Heard Mathews say he was the best clerk he ever had. Mathews always treated him as a clerk; had heard Gribbens, when attending to the business, say to people who had business with the company, that he could not do certain things until Mathews came; or until he could see Mathews.

That being all the evidence, the court found for the plaintiffs.

The defendant then excepted.

Signature of the judge, and seal.

Clerk's certificate and seal.

BENJAMIN S. PRETTYMAN, *Attorney.*

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Matthews deals

v
Matthews deals

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Filed May 17, 1860
S. Delaney
Ala

JAMES W. HILLMAN & CO.

DEPT. OF THE INTERIOR

OFFICE OF THE COMMISSIONER

WASHINGTON