

13878

No. _____

Supreme Court of Illinois

Ellery, et al.

vs.

Spencer.

71641  7

Pleas continued and held at the Court House in Bloomington within and for the County of McLean in the Eighth Judicial Circuit of the State of Illinois. before the Hon. David Davis Judge of said Eighth Judicial Circuit in a certain action therein pending. wherein George H. Ellery and James S. Gibbons were Plaintiffs and Hamilton Spencer was Defendant. And in which course final Judgment was rendered at the Special Term of said Court. to wit. On the eighteenth day of June in the year of Our Lord One thousand Eight hundred and fifty seven.

George H. Ellery & James S. Gibbons
Partners of the Firm of Ellery & Gibbons

vs

Hamilton Spencer



Be it Remembered

that heretofore. to wit. on the seventeenth day of February in the year of Our Lord One thousand Eight hundred and fifty seven. came said Plaintiffs by Davis & Baldwin Their Attorneys. and filed in the office of the Clerk of ^{said} Circuit Court. a process. Bond for Costs. Declaration. and Copy of Instrument & Account sued on. Which said Process. Bond for Costs. Declaration and Copy of Instrument and account sued on are respectively in words and figures as follows to wit.

McLean County Circuit Court.

George H. Ellery &

James S. Gibbons

vs

Hamilton Spencer

Assumpsit

Damages. \$2,000. ⁰⁰/₁₀₀

The Clerk will please issue a writ of
Subpoena in the above entitled cause, directed to the Sheriff of
McLean County and made returnable to the next Term of the
McLean County Circuit Court. & oblige.

Davis & Baldwin.

Chicago Feb 14th. 1857.

Plffs. Atlys.

McLean County Circuit Court.

George H. Ellery &

James S. Gibbons

vs

Hamilton Spencer

I do hereby enter myself security for
costs in this cause and acknowledge myself bound to pay or
cause to be paid all costs which may accrue in this action
either to the opposite party, or to any of the officers of this Court
in pursuance of the laws of this State.

Dated this 14th day of February 1857.

Hasbrouck Davis.

Circuit Court of McLean County

Of the March Term. A. D. 1857.

State of Illinois ss.

McLean County George H. Ellery and James S. Gibbons

partners doing business together in the City, County and State of New York, under the name, firm and style of Ellery & Gibbons, Plaintiffs in this Suit, by Davis & Baldwin their Attorneys, Complain of Hamilton Spencer of the County of McLean in the State of Illinois, Defendant in this Suit, who is summoned &c in a plea of trespass on the case upon promises. For that whereas the said Defendant, here to fore heretofore to wit, on the Twenty Sixth day of March in the year of Our Lord One thousand Eight hundred and fifty six, at the City of Bloomington in said State of Illinois to wit, at said County of McLean, made his promissory note in writing and then delivered the same to one James C. Smith and thereby promised by the name style and description of H. Spencer to pay to the order of the said James C. Smith by the name style and description of Jas. C. Smith, Auditor seven months after date at the Merchants & Drovers Bank of Joliet, Illinois, Seven hundred & forty $8\frac{1}{10}$ Dollars, for value received, and the said James C. Smith, to whom, or to whose order the said note was made payable, as aforesaid under the name style and description of Jas. C. Smith, Auditor then and there for a valuable consideration, and before the payment of said note or any part thereof, and before the same became due, and payable, endorsed the said note to the order of one Peter Stuart, and the said Peter Stuart, under the name style and description of P. Stuart, then and there for a valuable consideration and before the payment of the sum of money, mentioned, in said note or any part thereof, and before the same had become due and payable endorsed the said note to one James F. Alden, and the said James F. Alden, then

and there for a valuable consideration, and before the said sum of money mentioned in said note had been paid or any part thereof, and before the same, according to the terms of said note had become due and payable, endorsed the said note to the Plaintiffs. By means whereof and by force of the Statute in such case made and provided, the said Defendant became liable to pay said plaintiff, 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 plaintiffs according to the tenor and effect, true intent and meaning of the said note and of the endorsement aforesaid to wit at the place aforesaid. And whereas also the said Defendant afterwards, to wit, on the first day of February in the year of Our Lord One thousand eight hundred and fifty seven to wit, at Joliet in said County, became, and is indebted unto the Plaintiffs in a large sum of money to wit, Two thousand Dollars, for money before that time lent, and advanced for said Defendant, by said Plaintiffs, at said Defendants request. And also in the like sum for money before that time paid, laid out, and expended, for said Defendant, by said Plaintiffs at the like special request, of said Defendant. And in the like sum of money before that time had and received by said Defendant to and for the use of said Plaintiffs. And also in the like sum, for goods, wares, and merchandise before that time sold and delivered by said Plaintiffs to said Defendant, at like special instance and request. And also in the like sum for the labor care and diligence of said Plaintiff before that time done and performed by said Plaintiff for said Defendant, at the like instance and request of said Defendant. And also in the like sum then and there found to be due and

and owing to said Plaintiffs on an account stated between them
and being so indebted said Defendant. in consideration thereof
then and there undertook and promised to pay said Plaintiffs
said several sums of money above mentioned when thereunto
afterwards requested. Yet the said Defendant. not regarding
his said promises and undertakings. but contriving &c. although
often requested so to do. has not paid said Plaintiffs either
of said sums of money above mentioned or any part thereof
but so to do has hitherto wholly neglected and refused. and still
does neglect and refuse to the damage of said Plaintiffs of Two
Thousand Dollars. and therefore they bring this Suit. &c

Davis & Baldwin.

Pliffs Attys.

Copy of Instrument and Account issued on
#740. ⁸⁴/₁₀₀ Chicago. Alton & St. Louis. Railroad.

Bloomington,

Seven months after date I promise to pay to the order of
Jas. C. Smith. Auditor. out the Merchants & Drivers Bank of
Joliet, Illinois. Seven Hundred & forty ⁸⁴/₁₀₀ Dollars. value received.

H. Spencer.

(Endorsed on the Back as follows)

Pay to the order of Peter Stuart.

Jas. C. Smith. Auditor.

P. Stuart.

James F. Alden.

Hamilton Spencer.

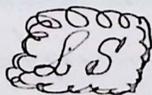
To Ellery & Gibbons. Dr.

To Money Lent and Advanced	\$2000 ⁰⁰ / ₁₀₀
To Money paid, laid out and Expended	\$2000 ⁰⁰ / ₁₀₀
To Money had and received to and for the use of said Plaintiff	\$2000 ⁰⁰ / ₁₀₀
To Goods, Wares and Merchandise, Sold and delivered	\$2000 ⁰⁰ / ₁₀₀
To Labor and Services	\$2000 ⁰⁰ / ₁₀₀
To Balance due on account stated	\$2000 ⁰⁰ / ₁₀₀

And thereupon on the day and year aforesaid sued out of said Clerks office, a writ of Summons, which said writ of Summons was in words and figures as follows, to wit,

State of Illinois 
 McLean County  The People of the State of Illinois
 To the Sheriff of said County, Greeting.

We Command you to Summon Hamilton Spencers, if found in your County, personally to appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in Bloomington on the fifth Monday in the month of March next, to answer unto George H. Colley and James S. Gibbons in a plea of Account to their damage Two Thousand Dollars as they say, and have you then and there this writ and make return thereon in what manner you execute the same.



Witness, William McCullough, Clerk of said Circuit Court and the Seal thereof hereto affixed at Bloomington this 17th day of February, in the year of Our Lord One thousand Eight Hundred and fifty seven
 Wm. McCullough Clerk 
 By H. Barr. Deputy 

which said writ, was by the Sheriff of said County, returned into said Clerks Office. endorsed as follows, to wit,

Executed by reading to the within named Hamilton Spencer
February 23^d. 1857.

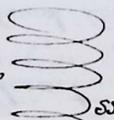
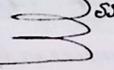
Fees. Service & Return 60. Travel. 5 ,65

J. H. Moore. Shff.

And thereupon afterwards, to wit, at the March Term of said Circuit Court, in the year last aforesaid, Present,

Hon. David Davis	Judge
Ward H. Garrison	Pros. Atty.
William McCullough	Clerk
Joseph H. Moore	

On the eighth day of said Term, being the seventh day of April in the year aforesaid, comes said Defendant and files among the papers of this cause, a Demurrer to the first Count of said Plaintiffs Declaration aforesaid, which said Demurrer is in words and figures as follows to wit,

State of Illinois  Of the March Term A.D. 1857, of the
McLean County  Circuit Court, within & for said County
Ellery & Gibbons, Petffs.

vs

Hamilton Spencer, Defolt 

And the said Defendant by his Attorneys comes & says, that the matters and things in the first Count, of the said Plaintiffs Declaration is the same

are therein set forth are not sufficient in the Law, for the
said plaintiffs to have or maintain their aforesaid action
hereof against him, and this he is ready to verify. Wherefore &c

Stuart & Edwards.

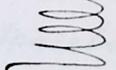
for Defendant.

And for causes of Demurrer, the Defendant assigns the following

There is no averment in said Count, that the note was delivered
by Smith to Stuart, nor by Stuart to Alden, 2. There is no
averment in said Count, that the note was endorsed to Peter
Stuart. The averment is "to the order of Peter Stuart"

Stuart & Edwards.

And also on the day and year aforesaid files in said Clerks
office, among the papers of this cause, his plea to the second
Count of said Plaintiffs Declaration, which said plea is in
words and figures as follows.

State of Illinois  Of the March Term, A. D. 1857, of the
McLean County  Circuit Court, within & for said County.

Hamilton Spencer, ads. Ellery & Gibbons.

And the said Defendant for Plea to the 2nd Count
of the said Plaintiffs Declaration, says he did not undertake
and promise, in manner and form as the said Plaintiffs
have above hereof complained against him, and of this he puts
himself upon the Country.

Stuart & Edwards

for Defendant.

And thereupon afterwards. to wit at said Term of said Circuit Court. to wit. on the ninth day of April in the year last aforesaid. came said Defendant by his attorney and moved the Court to dismiss this Suit. as appears of Record in words and figures as follows. to wit.

Ellery & Gibbons

vs

Hamilton Spencer



In Assumpsit.

And now at this day comes said Defendant by his Attorney. and moves the Court here that this cause be dismissed, for want of Bond for costs filed herein. according to the Statute in such case made and provided.

And thereupon afterwards. to wit. at the Special Term Term of said Circuit Court in the year last aforesaid. Present,

Hon. Jesse C. Norton Judge

William McCullough. clk.

Joseph H. Moore. Sheriff.

On the fourth day of said Term. being the eighteenth day of June in the year last aforesaid. came said Plaintiffs by their Attorneys and filed among the papers of this cause. a note. with the Notary's Protest attached thereto. which said Note and Protest are in words and figures as follows. to wit.

Chicago, Alton & St Louis Railroad

\$740 ⁸²/₁₀₀₀

Bloomington March 26th 1856

Seven months after date. I promise to pay to the order

of Jas. C. Smith. Auditor at the Merchants & Drivers Bank
of Joliet, Illinois. Seven Hundred & forty $8\frac{3}{4}$ Dollars value
received.

No. 188.

H. Spencer.

State of Illinois
Will County, City of Joliet SS
Be it known that on this 29th
day of October 1856. I, William Smith, a Notary Public, duly
commissioned and sworn, and residing in the City of Joliet
in the County and State aforesaid, at the request of Smith &
Goodell, went with the original promissory note herewith annexed
to the Merchants & Drivers Bank at Joliet Illinois, and demanded
payment of the same, which was refused, no funds having been
provided for the payment thereof. Whereupon I, the said
Notary Public at the request aforesaid, did Protest, and by
these presents do solemnly and Publicly protest, as well
against the maker and endorsers thereof, as against all others
whom it doth or may concern, for exchange, re-exchange, and all
costs, charges, damages and interest already incurred, and to
be hereafter incurred, by reason of non payment of said prom-
-issory note. And I, the said Notary Public, do hereby certify
that on the same day and year above written, proper notices
of the foregoing protest were put in the Post office at Joliet
as follows,

Notice for Jas. C. Smith, Auditor, Bloomington, Illinois
" for Peter Stewart Esq. Wilmington Do
" for James F. Alden Esq. Do. Do.
" for Messrs. Elvey & Gibbons
" " Chas. Palmer Cashier.

Notice for Messrs. J. H. Burch & Co. Chicago. Illinois
each of the above places being the reputed places of Residence
of the persons to whom notice was directed.

LS

In testimony whereof I have hereunto set my hand
and affixed my Notarial Seal the day and year
above written.

W^m. Smith. Notary Public.

Fees. Noting 25 cts. Protest and Record. 50 cts. Notices \$1.50. Seal 25 cts.

certificate 25 cts. \$2.75
Postage -- -- 18
\$2.93

Which said note was endorsed on the back as follows. to wit.

Pay to Order Peter Stuart.

Jas. C. Smith. Auditor

P. Stuart.

James F. Alden

Pay J. H. Burch & Co. or order.

And thereupon. on the day and year aforesaid. final judg-
ment was rendered in this cause. as appears of Record. to wit.

George H. Ellery & James S. Gibbons

vs

Hamilton Spencer.

In Assumpsit.

And now at this day
comes said Defendant by Stuart his Attorney. and presents
to the Court here. his disclaimer to said Plaintiff's Declaration
in the plea aforesaid. And the Court having fully considered

the same is of opinion that the Declaration aforesaid and the matters and things therein contained are sufficient to sustain said Plaintiffs action in the Plea aforesaid. and doth order that said Demurrer be overruled. And said Defendant. electing to abide by his Demurrer. Thereupon come said Plaintiffs by Swett & Come their Attorneys, and on their motion. leave is granted them. by the Court. to strike the Common Counts of said Declaration. from the files of this cause. which is done. And now said Defendant being saying nothing in Bar or preclusion of said Plaintiffs action against him. therefore it is adjudged by the Court that said Plaintiffs have sustained damages by reason of the non performance of certain promises in their Declaration mentioned. but because the amount thereof is unknown to the Court here therefore the Clerk is ordered to assess the same. and the Clerk having assessed the damages aforesaid reports the same in writing to the Court here. which report is by the Court approved and ordered to be filed. Therefore it is considered by the Court that said Plaintiffs recover of said Defendant the sum of Seven Hundred and Sixty nine Dollars and Fifty two Cents. their Damages aforesaid in form aforesaid assessed. and likewise their costs in this behalf expended and that they have execution therefor. And thereupon the said Defendant prays an appeal to the Supreme Court. which is granted him on condition. that he within ninety days. file with the Clerk of this Court a Bond. conditioned as the Law directs. to be approved by said Clerk

And thereupon. afterwards. to wit on the Twenty first day

of July in the year last aforesaid. Came said Defendant by his attorney and filed in said Clerks office, an appeal Bond, which said Bond is in words and figures as follows to wit.

Know all men by these presents that we Hamilton Spencer and Joel A. Matteson, of the State of Illinois are held and firmly bound unto George H. Elley and James S. Gibbons in the penal sum of Sixteen Hundred Dollars for the payment of which well and truly to be made we bind each of us bind ourselves, our heirs, executors and administrators jointly and severally and firmly by these presents.

Sealed with our seals and dated at Bloomington this Twentieth first day of July, Anno Domini, One Thousand eight Hundred and fifty seven.

The condition of the above obligation is such that, whereas the said George H. Elley and James S. Gibbons, did on the eighteenth day of June, one thousand eight hundred and fifty seven, at a term of the Circuit Court, then being holden within and for the County of McLean, and State of Illinois obtain a judgement against the above bounden Hamilton Spencer for the sum of Seven Hundred and Sixty nine Dollars and Fifty two Cents and costs of suit, from which judgement the said Hamilton Spencer, has prayed for and obtained an appeal to the Supreme Court of said State. Now if the said Hamilton Spencer, shall duly prosecute said appeal, and shall moreover pay the amount of the judgement, costs, interest and Damages rendered and to be rendered against him, the said

Harrilton Spencer. in case the said judgment shall be affirmed in the said Supreme Court. then the above obligation to be null and void. otherwise to remain in full force and virtue.

Approved this 21st day of July
A.D. 1857. by me.
W^m. McCullough. Clerk



H. Spencer
J. A. Mattison.



State of Illinois
McLean County



I, William McCullough Clerk of the Circuit Court within and for said County do hereby certify that the foregoing is a true and correct copy of the the records and papers on file in the above entitled cause in my office.

(of said court)
Witness my hand and seal, hereto affixed at
Bloomington this twelfth day of November
A.D. 1857.



W^m McCullough, Clerk.
J. A. Mattison, Deputy.

Costs of Transcript \$6⁵⁰/₁₀₀

Received above costs

of "Pltfs. Atty."

W^m McCullough, Clerk

J. A. Mattison, Deputy

No. 1539 - C.S.

294.

Ellery & Gibbons

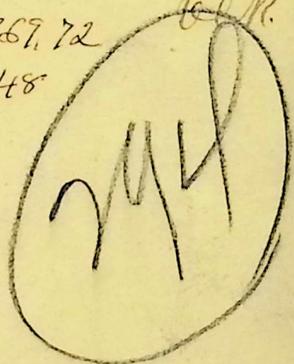
13878

Hamilton Spencer

Records.

Filed April 28. 1858
L. Leland

Judt. \$267.72
Dgn. \$38.48



Orme - apples.