

No. 13214

Supreme Court of Illinois

Campbell et al

vs.

Gilman

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 185.

1861

Liberty

vs.
Campbell

13214

STATE OF ILLINOIS—SUPREME COURT,
THIRD DIVISION—APRIL TERM, 1861.

GEO. C. CAMPBELL and ORRIS H. BULLEN, Appellants,
vs.
WILLIAM W. GILMAN.

APPEAL FROM LA SALLE.

- 1 This was an action of assumpsit, brought by the endorsee of a promissory note against the makers.
- 4 Declaration in the usual form, with special and common counts.
- 7 Plea—That since the commencement of the suit in a certain cause in said court, in which William Engles, Michael Engles, John Engles and Joseph Engles by William Engles, his next friend, were complainants, and Peter Engles, Catharine Goetell, Peter Goetell, said defendants, Orris H. Bullen and George C. Campbell, and also Joseph O. Glover, were defendants, the said Campbell and Bullen were enjoined from paying said note until the further order of said court, and that said order was in full force and effect.
- 9 Demurrer to plea, general and special.

Causes---That the note was assigned before it became due, and that plaintiff is not made a party to the chancery suit; neither is there any averment in said plea that the note was assigned after it became due, or after the commencement of the chancery suit, nor that plaintiff had notice of any such defence before the assignment.
- 10 Demurrer sustained.
- 11 Judgment ordered on demurrer, and an order by the court that the clerk assess the damages.
- 12 Judgment rendered for \$798.12 and costs.

ERRORS ASSIGNED.

1st. The court erred in sustaining the demurrer to said plea of said defendants.

2d. The court erred in allowing the clerk to assess the damages in said cause.

3d. The court erred in rendering judgment aforesaid in manner and form aforesaid.

GLOVER, COOK & CAMPBELL,

For Plaintiffs in error.

POINTS FOR APPELLANTS.

1st. The plea shows that the defendant had been enjoined from paying the note to ANY PERSON WHATEVER, by order of the court below in the chancery cause ; and yet, by sustaining the demurrer and rendering judgment, the same court in another cause, orders the note to be paid to plaintiff, while the injunction remains in full force, because the plaintiff below was not a party to the chancery cause—in other words, in this case, the court below says that the injunction in the chancery case was improperly issued and therefore it should not avail the defendants in this case ; whereas, the rule is well settled that an injunction can not be attacked collaterally, and so long as it remains in force would be a perfect defence.

Stone vs. Wood, 16 Ill., 177.

McCoy vs. Mooron, 18 Ill., 519.

Buckmaster vs. Grenly, 3 Gilman, 631.

Ralston vs. Wood, 15 Ill., 159.

2d. The defendants below could not enquire whether the injunction was properly issued against them ; they must obey its mandate.

The People vs. Gilmer, 5 Gilman, 242.

And should the court below render a judgment against them for obeying its mandate ?

3d. The final judgment was improper—for upon the demurrer the only proper judgment is for costs, and no default was ever taken against the defendant, so that the clerk was not authorized under the statutes to assess the damages.

2 Purple's Statutes, 823.

GLOVER, COOK & CAMPBELL, for Appellants.

1852
Campbell v Ballen
vs

Gilman

Abstract of Points of
Appellant

Filed Apr 19. 1861
A. A. Ward
Clerk

GLOVER COOK & CAMPBELL vs Gilman
2 Barb. Reports 232.

was not introduced under the objection to answer the charges
was over taken against the defendant, so that the clerk
cannot the only proper judgment is for costs and no dismis-
sal. The final judgment was improper—for upon the de-
fendant for electing to answer.

And should the court below render a judgment against
the plaintiff, the defendant's appeal is proper.

The information was properly issued against them; they must
answer. The defendant's appeal could not entitle a judgment
against them.

Johnson vs Wood, 12 Ill. 173.
Hickman vs Gilman, 2 Gilman 232.
McDon vs Wood, 12 Ill. 173.

It could be a proper defense
to object to the evidence and so long as it remains in force
appearing the case is not settled that an information can not
therefore it should not avail the defendant in the case;

information in its entirety was not introduced; and
in other words in this case, the court below says that the
defendant's appeal was not a party to the charges, cannot—

information was the information introduced in the case.

as to costs in the other cases, unless the notes to be held to
be maintained the defendant and introduced judgment the
court of the court below in the charges case; and the
judgment being the notes to was never introduced in

the case. The case shows that the defendant had paid an-
swers for the charges.

GLOVER COOK & CAMPBELL

vs
Gilman

Abstract of Points of
Appellant

Filed Apr 19. 1861
A. A. Ward
Clerk

State of Illinois } ss
La Salle County }
Heas before the Honorable
Madison E. Hollister, the
Judge of the Ninth Judicial district of the State
of Illinois and the Presiding Judge of the La Salle
County Circuit Court, at a term of said Court
Commenced and held at the Court House
in Ottawa in said County on the first Monday
in the month of February, the same being the
Sixth day of February in the year of our Lords
One thousand eight hundred and Sixty, and
of the Independence of The United States of
America the Eighty fourth.

Present, The Honorable Madison E. Hollister

Presiding Judge
John F. Nash Clerk
Washington Bushnell States Attorney
Francis Warner Sheriff.

Be it remembered that on the 27th day of January
A.D. 1860, a Precipe was filed with the Clerk of
said Circuit Court, in the words and figures following
to wit;

State of Illinois } ss.
La Salle County } Circuit Court, of said
County, February Term A.D. 1860

William W. Gilman Plaintiff

vs
George C. Campbell &

Orris H. Bullen
Defendants

The Clerk of said Court

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will issue a Summons in the above cause, directed
to the Sheriff of La Salle County, in a plea
of Assumpsit returnable at the February Term
of Said Court, A. D. 1860 to the damage of the
Plaintiff of One Thousand Dollars

Charles W. Gilman Plaintiff attorney
To John F. Nash Esq, Clerk
January 1860.

It is further remembered that on the said
27th day January 1860, a Summons issued out
of and under the Seal of Said Court, in the
words and figures following to wit;

State of Illinois } ss. The People of the State
La Salle County } of Illinois, To the Sheriff
of Said County, Greeting:

We command you
that you Summon George C. Campbell & Orris
W. Bullen if they shall be found in your
County, personally to be and 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 Ottawa, in Said County, on said
the first Monday in the month of February next,
to answer unto William W. Gilman in a plea
of trespass on the case upon promises to the

damage of said Plaintiff as he says in the sum
of One thousand dollars.

And have you then and then this writ,
with an endorsement thereon in what manner
you execute the same.



Witness John F. Nash clerk of
Our said Court, and the Seal thereof
at Chicago, this 27 day of January
A. D. 1860.

J. F. Nash Clerk

Which said Summons was returned by the Sheriff
of said County on 2^d day of February 1860, with
the following endorsement thereon, to wit;

"Executed this writ by Reading the same
to George C. Campbell & Orris H. Bullen
on the 27th day of Jan'y 1860.
S. R 1.10 2m 10 = 120 } F. Warner Eff."

On said 27th day of January 1860, the Plaintiff,
in the foregoing entitled suit, filed his declaration
herein, in the words and figures following, to wit;

"State of Illinois }
County of La Salle } ss.

Circuit Court of said County
Of the February Term
A. D. 1860.

William W. Gilman the Plaintiff in this suit

by Charles H. Gibman his Attorney Complain-
of George C. Campbell and Orris H. Bullen
the Defendants who were summoned, &c, of a plea
of trespass in the case aforesaid: For that where-
as, the said Defendants, heretofore, to wit: On the
Twelfth day of September in the year of our Lords
One Thousand eight Hundred and fifty nine
to wit, at said County of La Salle made their
Certain Promissory Note in writing, bearing date
the day and year aforesaid, and then and there
delivered the same to Peter Engles in and by
which said Note said Defendants by the name
Style and description of Geo. C. Campbell and
O. H. Bullen promised to pay the order of the
Said Peter Engles Four months after the date
thereof (which period hath now elapsed) Seven
Hundred and Fifty Dollars at Eames Allen
& Co Bank for value received. And the
said Peter Engles to whom or to whose order
said Note was payable, afterwards, to wit, on
the day and year aforesaid, that is to say, at
the County of La Salle aforesaid endorsed said
note in writing, by which said endorsement
the said Peter Engles then and there ordered
and appointed the said sum of money in said
Note mentioned, to be paid to said Plaintiff
and then and there delivered said Note, so
indorsed, to the said Plaintiff.

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By means whereof, and by force of the Statute in such case made and provided, the said Defendants became liable to pay said Plaintiff said Sum of money mentioned in said Note, and being so liable, in consideration thereof, they and they undertook and promised to pay the same to the said Plaintiff according to the tenor and effect of the said Note, and of the indorsement aforesaid, to wit, at the place aforesaid.

And whereas, also, The said Defendants aforesaid, to wit, on the Twentieth day of January in the year of Our Lords one thousand eight hundred and Sixty, to wit, at said County, became and were indebted unto the Plaintiff in a large Sum of money to wit; One Thousand dollars, for money before that time lent and advanced to said Defendants by said Plaintiff, at said Defendants request; and also in the like sum, for money before that time paid, laid out and expended for said Defendants by the said Plaintiff at the like Special request of said Defendants; and in the like sum for money before that time had and received by said Defendants to and for the use of said Plaintiff; and also, in the like sum for goods, wares and merchandise before that time sold and delivered by said Plaintiff to said Defendants, at the like Special instance and request; and also in the like

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sum for the labor, care and diligence of the said Plaintiff before that time done and performed by said Plaintiff for said Defendants and at the like instance and request of said Defendants; and also in the like sum, then and there found to be due and owing to said Plaintiff on an account stated between them; and being so indebted, said Defendants in consideration thereof, then and there undertook and promised to pay said Plaintiff said several sums of money above mentioned, when thereunto afterwards requested.

Yet the said Defendants, not regarding their said promises and undertakings, but contriving &c although often requested so to do, have not paid said Plaintiff either of said sums of money above mentioned, or any part thereof but so to do have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said Plaintiff of One Thousand dollars, and therefore he brings this suit, &c.

Charles H. Gilman
Plaintiff's Attorney,

Copy of instrument and account sued on
\$430
September 12th 1859.

Four months after date we promise to pay to the order of Peter Engle Seven Hundred fifty dollars at Carnes Allen & Co Bank and

received

Geo C. Campbell
O. H. Bullen "

Said note is indorsed thus " I hereby guaranteed
this note good."

A. O. Glover. "
And thus " Peter Engle."

Geo C. Campbell &
O. H. Bullen

To William W. Gilman Dr.

To money lent and advanced	\$1000.00
To money paid, laid out and expended	\$1000.00
To money had and received to and for the use of said Plaintiff	\$1000.00
To Goods, wares and merchandize sold and delivered	\$1000.00
To labor and Services	\$1000.00
To balance due on account Stated	\$1000.00 "

On the 2^d of July 1860. the defendants filed
their certain pleas to Plaintiff's declaration (said
2^d day of July being one of the days of the June Term
of said Court for said year) in the words and figures
following, to wit;

State of Illinois

Sas Sally Campbell & Co. And Circuit Court thereof
To June Term A. D. 1860.

William W. Gilman

vs

Assumpsit

George B. Campbell

& Orris H. Bullen

And now come the said defendants by Glover Cook & Campbell their attys and defend &c when &c and say act's now &c because they say that the cause of action in each of the counts of said plaintiffs declarations are one & the same to wit the note particularly mentioned & described in said first count, and not other and different. And that heretofore and after the commencement of this Suit to wit, on the 23^d day of February A. D. 1860, the said day being one of the days of the February Term of the Circuit Court in and for the County of La Salle in a certain cause in said Court, then pending and undetermined, upon the Chancery Side of said Court wherein William Engles, Michael Engles, John Engles, and Joseph Engles by William Engles his next friend were complainants, and Peter Engles, Catharine Goettel, Peter Goettel said defendants Orris H. Bullen and said defendant George B. Campbell, and also Joseph O. Glover were respondents, an order was entered of record in and by which it was ordered adjourned and decreed by said Court the

The said defendants herein and said Peter Goettel and said Joseph O. Glover should restrain from paying over to any one the amount of the note in the Bill and Supplemental Bill of said complainants in said Chancery cause mentioned & described until the further order of said Court, and said defendants aver that said note in said Bill and Supplemental Bill mentioned & described was and is the same note upon which the said action herein is brought and that said order is now in full force and effect & has never been reversed or set aside as by the records of said Cause now remaining in the office of the Clerk of said Court will more fully & at large appear

And this he is ready to verify wherefore he prays judgment

Shoos Cook & Campbell
Attys for Dfts. "

On the 9th day of November 1860, the same being one of the days of the November Term of said Court for the year 1860, the plaintiff files herein, a demurrer to defendants pleas, in the words and figures following, to wit;

8 State of Illinois } Circuit Court of said County
La Salle County } ss. November Term 1860

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William W. Gilman
 vs
 C. H. Bullew +
 George C. Campbell

And now comes the said
 Plaintiff by C. H. Gilman his attorney + says
 that the matters and things in the said defendants
 said plea contained are not sufficient in law
 and that said Plaintiff ought not to answer
 the same wherefore he prays judgment &c

Charles H. Gilman

Plaintiffs Attorney

And for cause of demurrer the said plain-
 tiff shews that the note upon which this suit
 is brought was assigned to said Plaintiff by the
 payee thereof before the same became due and
 that the said Plaintiff is not in any manner
 made a party to the suit named in said de-
 fendants said plea neither is any ~~assignment~~ ^{assignment}
 made in said plea that the note in said declara-
 tion named was assigned after it became due
 or after the commencement of the Chancery suit
 therein, in said defendants plea named nor is
 notice on said Plaintiff of such or any defence
~~arise~~ before the assignment of said note in
 said declaration named. "

Here follows a copy of the note sued on and
on file in this cause, with endorsements. viz;

\$750⁰⁰ September 12th 1859.

Four months after date we promise to pay to
the Order of Peter Engles Seven Hundred & fifty
Dollars at Eames Allen & Co Bank -

Value received

No. Geo. C. Campbell
Dated Jan'y 12/15/60. O. H. Bullen "

(Endorsements)

"I hereby guaranteed this note good
S. O. Glover "

"Peter Engles"

Be it remembered that on the 1st day of
December A.D. 1860, the same being one of the
days of the November Term of said Court for said
year, an order was entered of record in said cause
in the words and figures following, to wit;

William W. Gilman
vs. Assumpsit.

George C. Campbell
Oris H. Bullen 3 -ff comes by C. H. Gilman
his attorney and the defen-

-ants by Glover & Cook their attorneys and after
hearing the arguments of counsel the Court sustain the
plaintiffs demand to defendants plea. "

Be it further remembered that on Wednesday February 6th 1861, the same being one of the days of the February Term of said Circuit Court for the year 1861, an order was entered of record in said cause in the words and figures following to wit;

“Williams W. Gilman
vs
George C. Campbell-
Ornis H. Bullen } assumpsit

This day again came the parties to this suit, the plaintiff by G. H. Gilman his attorney and the defendants by W. H. L. Wallace their attorney and on motion of plaintiffs attorney it is ordered by the Court that judgment be entered herein against the defendants on the Plaintiff's demurrer to defendants plea

And it appearing to the Court that this suit is founded on an instrument in writing for the payment of money only, the clerk is directed to assess the damages and report the same to this Court, which is done and found to be the sum of seven hundred and ninety Eight-dollars and twelve cents, which is reported to and accepted by the Court.

It is therefore considered by the Court that the plaintiffs have and recover of the defend-

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unto the said sum of Seven Hundred and ninety eight dollars and twelve cents for his damages; also his costs and charges by him herein expended, and that he have execution therefor. "

On the 8th day of February A.D. 1861, the same being one of the days of the February Term of said Court for the year 1861, an affidavit in the part of the defendants, was filed herein in the words and figures following to wit;

State of Illinois }
La Salle County } ss.

George C. Campbell
being first duly sworn states on oath that in the case of William W. Gilman of Orris H. Bullen & this affiant^{this affiant}, was acting as the attorney of said Bullen and in person for himself in the Defence of said Cause that he drew the Plea of said Defendants in said Cause and signed the same in the name of the firm of which he is a member (Glover, Cook & Campbell) but that said Glover & said Cook were never really engaged in the defence in

said cause otherwise than as this affiant
was engaged, that affiant intended to and
did conduct the said defence personally
in every respect that the said Plea in said
Cause was filed at the June Term of said
Circuit Court & that this affiant informed
Charles H. Gilman, who was and is the
Atty of said Plff of the filing of said
Plea & of the nature thereof & that there-
upon the said Gilman said to this respon-
dent. that he supposed that said cause
would have to be continued & abide the
result of the injunction set out in said
Plea to which this affiant assented &
said cause was continued to the November
Term of said Court, that this affiant &
relying upon the said Statement of said
Gilman supposed & believed that it was
the intention of said Gilman to take no
further steps in said cause but to let
the same abide the result of the said
injunction suit and ~~therefore~~^{therefore} did not watch
said cause nor examine the papers
therein nor did he know or have the least
intimation that any steps had been taken
in said cause until yesterday when the
said cause was called for trial, when he
was for the first time informed ~~that~~

that the said Gilman had at the November Term of this Court filed in said cause a Demurrer to the said Plea & that said Demurrer had been sustained by the Court, and upon an examination of the records in said Cause affiant has learned that said Demurrer was filed on the 9th day of November A. D. 1860, which was upon Friday of the 1st week of said Term of Court which said Friday was the second day of said Term upon which any business was conducted and that said Demurrer was not called up until the 1st day of December which was only three days before the final adjournment of said Court for the said Term, and this affiant avers that during the whole of said Term this affiant was not in any way informed & did not know that said demurrer had been filed & that no attempt to press the decision was doing the whole of said Term made before the said 1st day of December which was upon Saturday, that said Cause was passed upon each call of the Docket & without any intimation to this affiant that there was any demurrer then pending.

Affiant further states that said defendants have a good, perfect & meritorious

Defence, in said Cause & asks that said default
be set aside & these Defendants be allowed to
plead therein.

Geo C. Campbell

Subscribed & sworn to before me
this 8th day of February A.D. 1861

A. B. Moore ctk. „

On Friday February 8th 1861, the same
being one of the days of the February term of
said Court for the year 1861, a further order was
entered of records in said cause in the words and
figures following, to wit;

William W. Gilman }
vs } Assumpsit
George C. Campbell }
Orris H. Bullen }

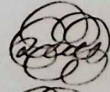
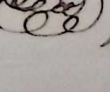
The defendants this day
Come by W. H. S. Wallace,
who moves the Court to vacate the judgment her-
etofore entered therein against the defendants
on the plaintiff's demurrer to defendants' pleas,
which motion is overruled by the Court,,

On Wednesday the 20th day of February
1861, the same being one of the days of the
February Term of said Court for the year 1861

William W. Gilman in the penal sum
of one thousand Dollars for the payment of
which well and truly to be made we do ~~and~~
hereby bind ourselves our heirs and executors
jointly and severally, firmly by these presents
Signed & Sealed This 18th day of March
A. D. 1861.

The condition of the above obligation
is such that whereas the Said William
W. Gilman did at the February Term
A. D. 1861, - of the Circuit Court in and for the
County of La Salle & State of Illinois recover
a judgment against the above bounden Orris
H. Bullen & George C. Campbell for the sum
of One thousand Dollars & costs of suit
from which said judgment the Said Orris
H. Bullen ^{and} George C. Campbell have
prayed for and obtained, an appeal to the
Supreme Court of the State of Illinois,

Now therefore if the Said Orris H. Bullen
& George C. Campbell shall prosecute their
said appeal with effect and pay or cause
to be paid whatever judgment shall be rendered
against them upon the trial or dismissal of
said cause then this obligation to be void
otherwise in full force and effect -

George C. Campbell 
Joseph C. Glover 
O. H. Bullen 

State of Illinois }
La Salle County } ss I Absalom B. Moore
Clerk of the Circuit Court
in and for said County of La Salle and State
of Illinois, do hereby Certify that the above and
foregoing, is a true, full and complete record
of the proceedings had in said Court, in
the above entitled Suit; as appears from
the files and records of my Office.

Witness Absalom B. Moore Clerk of our
said Circuit Court and the Seal thereof
at Ottawa this 2nd day of April A.D.
1861

Absalom B. Moore Clerk
Charles H. Cooke Deputy

And now come the said Appellants
by Glover, Cook & Campbell their
Attornies & say that in the record
of proceedings aforesaid there is
manifest error in this to wit

1st - The Court erred in sustain-
ing the Demurrer of said Plaintiff
to said Defendants Plea

2^d - The Court erred in ordering

Said Clerk to assess the damages
against said Defendants in said Cause

3^d The Court Erred in rendering the
Judgment aforesaid in manner and
form aforesaid

Blower, Leok & Campbell
for Appellants

And now comes the said Appellee
by Seland & Seland his attys & says
there is no error in the said record &
proceedings & prays an affirmance of
the proceedings.

Seland & Seland
for appellee



William W. German

vs

George A. Campbell
& Ors M. Bullen

Record for Supreme
Court

Filed April 15th 1861
L. Seland
Clerk

Fees \$5.00. Paid by
G. C. Campbell