

12103

No. _____

Supreme Court of Illinois

Gillilan.

vs.

Gray.

United States of America

State of Illinois

McHenry County & Shew before the Honorable
Judge H. Wilson judge of
the Circuit Court of the thirteenth judicial Circuit
of the State of Illinois and presiding judge
of the McHenry County Circuit Court in said
judicial Circuit at a Circuit Court begun
and held at the Court house in Woodstock
in said County on Tuesday the sixteenth day
of March in the year of our Lord one
thousand eight hundred and fifty two
and of the Independence of the said United
States the twenty fifth

Present the Hon. Judge H. Wilson
Judge
Attest Joel H. Johnson
Clerk
Amos B. Coon
State's attorney
John B. Coon
Shiriff

By it remembered that heretofore to wit on
the 23^d day of August in the year of our
Lord one thousand eight hundred and fifty
two a certain writ of Summons was issued
out of the office of the Clerk of the Circuit
Court of said McHenry County in the words
and figures following that is to say

State of Illinois } The People of the State
McHenry County & of Illinois to the
Shiriff of said County
Greeting.
We Command you that you summon

Daniel S. Gray and Ralph Gray 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 Woodstock
in said County on the third Monday of Septem-
ber next to answer unto John Gillilan &
Aaron Hubbard in a plea of assumpsit
to the damage of said plaintiffs as they say in the
sum of Three hundred Dollars. And have you
then and then this writ with you indorsement
thereon in what manner you shall ^{have} executed the same
Witness Joel H. Johnson Clerk of the
said Court and the seal thereof at
Woodstock aforesaid this 28th day
of August A.D. 1832

Seal

J. H. Johnson

Clerk of the Circuit Court

Which said Summons has endorsed thereon
Personally served by reading to Daniel S. Gray Robert
Ralph Gray not found in my County

S. Durburn

Sept 4th A.D. 1831

Sherriff

By A. P. Wherryington

Maid Sept 10. 1831

Depty Sherriff

J. H. Johnson Clerk

And thereafter to wit on the 17th day of January
in the year last aforesaid the said plaintiffs filed
their return declaration in writing in the words and
figures following to wit

State of Illinois } McHenry County Circuit
McHenry County } Court January Term A.D. 1832

Daniel S. Gray and Ralph Gray defendants in
the suit of the County of Kean in said State men

Summenced in said last mentioned ^{County} to answer in this
Court John Gilliland and Henry Hubbard the
plaintiffs in this suit of the County of McHenry
against of a plea of assumpsit. And thereupon
the said John Gilliland and Henry Hubbard the
said plaintiffs by McChes and Murphy their
attorneys complain.

For that whereas heretofore writ
On the twenty second day of June in the year
of our Lord one thousand eight hundred and
fifty at the County of McHenry aforesaid in law
Circulation that the said plaintiffs at the special instance
and request of the said defendants made buy of the
said defendants a certain reaping and grass cutting
Machine commonly called Husseys reaping and grass
cutting machine, and for a certain price or sum
of money to wit the sum of one hundred and
twenty five dollars to be therefore paid by the said
plaintiffs that the said defendants undertook and
then and then faithfully promised the said
plaintiffs that the said machine then was well
made of good materials and to work well if well
managed and the said plaintiffs aver that they
confiding in the said promises and undertakings
of the said defendants did afterwards to wit on
the day and year aforesaid at the County aforesaid
buy the said machine of the said defendants and
then and then paid there for the said machine the said
sum of money nevertheless the said defendants
deftorously and fraudulently intending to injure
the said plaintiffs did not perform in regard their
said promises and undertakings so by them made
as aforesaid but thereby craftily and subtly de-
ceit and defrauded the said plaintiffs in this to wit
That the said machine at the time of the making
of the said machine promises and undertakings
of the said defendants was not ^{well} made of good

materials and would not work well when well managed but on the contrary thereof was at the time not well made of materials and would not work well when well managed whereby the said machine became and was of no use or value to the said plaintiff and the said plaintiff have been put to great charges and expense of their moneys in and about said machine and greatly hindered in and about their business amounting to a large sum of money to wit the sum of three hundred dollars to wit at the County of McKenney aforesaid.

And whereas also afterwards to wit at the County of McKenney aforesaid in consideration that the said plaintiff at the special instance and request of the said defendants had then and then bought of said defendants a certain other reaping and grass cutting machine at and for a certain other price or sum of money then then and then agreed upon between the said plaintiff and defendants they the said defendants undertook and then and then faithfully promised the said plaintiff that the last mentioned machine at the time of the said sale thereof was made of good materials and would work well nevertheless the said defendants contriving and intending to defraud the said plaintiff did not regard their said last mentioned promise and undertakings but thereby craftily and subtly deceived and defrauded them in that to wit that the said last mentioned machine at the time of the said sale thereof was not made of good materials and would not work well when well managed whereby the said last mentioned machine then and then became and was of no use or value to the said plaintiff and the said plaintiff have been put to great

Charges and expense of their suits in the whole
amounting to a large sum of money to wit the sum
of three hundred dollars to wit at the County afore
said.

Said Richard also afterwards to wit on the
day and year aforesaid at the County of McKenney
aforesaid in consultation therewith the said
plaintiffs at the special instance and request
of the said defendants had then and there
~~for~~ bought of the said defendants Messys
Reaping & grass cutting Machine at and for
a certain other price and sum of money then
and there agreed upon between the said plain-
tiffs and the said defendants the said defen-
dants understood and they and there and
then faithfully promised the said plaintiffs that
the said last mentioned Machine at the time of
the said sale thereof would work well month-
ly the said defendants knowing and intending
to injure the said plaintiffs did not regard their
said last mentioned promise and undertakings
but thereby craftily & subtly deceived and defrauded
them in this to wit, that the said last mentioned
Machine at the time of the said sale thereof would
not work well whereby the said last mentioned
Machine then and there became and was of no use
or value to the said plaintiffs of which the said
defendants had notice and the said plaintiffs have
been put to great charges and expenses of their
suits in and about said Machine and have
been greatly injured in their work and labor
in cutting their grain and grass in the whole
amounting to a large sum of money to wit the
sum of three hundred dollars to wit at the County
of McKenney aforesaid wherefore they bring suit
Which has engaged them.

McClure & Murphy
Atty for plaintiffs

Wm Gary 17 1852
J H Johnson clary

And thereafter to wit. On the 18th day of March
in the year of our Lord one thousand eight
hundred and fifty two. it being one of the days
of the late March Term of the Circuit Court of
said County the said defendants filed their return
according to the rules and figures following which
is to say.

Gray & Gray } McHenry Circuit Court
at } March Term 1833
Gilliland & Hubbard }

And the said defendants answer & defend the money rising where to says that the matters and things in said declaration mentioned in manner & form as the same are therein stated set forth are not sufficient in law to be answered unto &c.

Plato for Defts
 And for Causes of disclaimer shews.

That there is no
account in said Declaration that the Cause of
Action accrued in the County of McHenry

There is no averment in said declaration that the
 plaintiffs at the time of the commencement of
 this suit were residents of the County of McKean.
 And the plaintiffs join in denying
 McKean Murphy.

Andersch. N.Y. March 18th
1832. J. H. Johnson
C

And thereafter do it on the day and year last aforesaid
the said Court then being in session as aforesaid
the following proceedings were had to wit

John Gilliland & Horace Hubbard }
 Daniel S. Gray & Ralph Gray } Answer

now come the
 plaintiffs and withdrew a declaration filed herein
 on the fifth day of March inst. And therefore come
 the defendants and file his demurrer to the declaration
 of the said plaintiffs in which the plaintiffs by motion
 join and the Court being fully advised thereon
 sustains the same. It is therefore ordered and con-
 sidered by the Court that the said defendants have
 answered of the plaintiffs his costs and charges
 about their former expenses and that they have
 execution therefor. And the said plaintiffs stand by
 their declaration and saying nothing further. It is
 therefore ordered and considered by the Court that
 the said plaintiffs be barred from having and main-
 taining their action aforesaid against the said
 defendants by reason of any thing in said declaration
 contained, and it is further ordered and considered
 by the Court that the said defendants have and recover
 of the plaintiffs their costs and charges herein expen-
 ded and that they have execution therefor. It is the
 opinion of the Court in sustaining said demur-
 der the said plaintiffs by their Counsel excepts

And thereafter went on the 20 day of April in
 the year last aforesaid the said Court then being
 in session as aforesaid the said plaintiffs filed
 in the office of the Clerk of the Circuit Court their
 bill of exceptions in the words and figures
 following. That is to say.

John Gilliland & Horace Hubbard }
 Daniel Gray & Ralph Gray } Case

Be it remembered that on this 16th day of March
1852 the above entitled cause came on to be heard
before the Hon J. G. Wilson Judge of the 13th judicial
Circuit on answer to the plaintiffs declaration which
answer the Court sustained & gave judgment for
the defendants on said answer to which opinion
of the Court in sustaining said answer and in
denying judgment thereon against the plaintiff
the plaintiff excepted and filed this their bill of
exceptions to saying, filed, enrolled and made part
of the record which is done.

J. G. Wilson Judge
which has endorsed thereon
Filed April 2nd 1852
J. H. Johnson
Clerk

State of Illinois
McHenry County
I the undersigned Clerk
of the Circuit Court
in and for the said
County in the State aforesaid do hereby certify that
the foregoing is a true copy of the Record and
proceedings in this office in the above entitled cause
Witness my hand and the seal of said
Court at Woodstock, in said County
this 28th day of May A.D. 1852
J. H. Johnson
Clerk

John Gulliland &
 Horan Hubbard } Error to Mt. Vernon County
 is } Circuit Court
 Leander S. Gray &
 Ralph Gray }

And now comes the plaintiff
 in error in the above entitled cause and I say
 there is manifest error in the proceedings
 had in said cause and assigns the following
 as causes of error

1st The Court erred in sustaining the demurrer
 to the plaintiff's declaration, for the causes
 assigned in said demurrer.

2d The Court erred in rendering judgment
 for the defendants on said demurrer -

3d Judgment on said demurrer ought to have been for the plaintiff

C. W. Blum & J. D.
 Murphy for
 Plaintiff

And now comes the deft in error & ~~says~~ that
in the records & proceedings of said court there is
no error & he prays said judgment be affirmed

McHenry
1853

J. Gilliland & Co.

A. S. & B. Gray

Crow to Mt. Airy

Receipt

Received

Filed July 23^d 1852

L. Leland & Co.

1853

12103

Step 1

State of Illinois, sct.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *McHenry* GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which
was in the Circuit Court of *McHenry* county, before the Judge thereof, between

John Gillilan & Aaron Hubbard

plaintiffs and *Daniel Gray and
Ralph Gray*

defendants, it is said manifest error hath intervened, to the injury of the aforesaid *plaintiffs*

as we are informed by *their* complaint, and we being willing that error, if any there be, should be
corrected in due form and manner, and that justice be done to the parties aforesaid, command you that
if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of 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 *2nd Monday in June* next, that the record and proceedings,
being inspected, we may cause to be done therein, to correct the error, what of right ought to be done
according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said
Court, and the seal thereof, at Ottawa, this *23rd*
day of *July* in the year of our Lord one thousand eight
hundred and fifty *two*.

S. Ireland Clerk of the Supreme Court.

Chas. Henry
Jno. Gilliland et al.
vs
Daniel^s Gray et al.
Mit & Error

Filed July 20th 1852.
Seland CLK.

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Kane* Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *McHenry* county, before the Judge thereof, between *John Gillilan & Horace Hubbard* plaintiffs - and *Daniel^S Gray and Ralph Gray* —

defendants, it is said that manifest error hath intervened, to the injury of the said *John Gillilan & Horace Hubbard* — as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Daniel^S Gray and Ralph Gray* —

that *they* be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the *2^d* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* — shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Gray's* — notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *23^d* day of *July* in the year of our Lord one thousand eight hundred and fifty *two*.

A. Deland Clerk of the Supreme Court.

Personally served on the within named Daniel S Gray
 & Ralph Gray by reading February 25th 1853
 at 10 o'clock A.M. N.B. Spaulding, Sff of Platte Co
 By Jas. B. Barrie Sffy

151
McHenry
 John Gillman et al.

^{by}
 Daniel S Gray and
 Ralph Gray -

See. Ho. to Home

To June Term 1853.

2 hours	1.00
26 Miles -	1.20
<u>Return</u>	1.00
	<u>\$2.20</u>

Filed March 21, 1853.
 A. Deland Clk.

Gilliland & ~~Beckland~~
vs

Gray & Gray

Authors' report to of Plaintiff

13. Illinois Thly. et use. vs Green page 432

Gilliland & Husband

Gray & Gray

Authority. as per to
J. H. H. H.

Filed June 15th 1853.

L. Leland & Co.

By P. K. Leland & Co.

John Gillilan &
Horace Hullean } McHenry County Cir-
vs } cant Court.
Daniel S. Gray & } Error to Supreme
Ralph Gray } Court.

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
Witness this 26th day of June A.D., 1852
Hosea B. Thrapp.

McHenry -

Gallatin

is

Gray

Band for

Certs -

Filed July 23^d - 1852
L. Keland Clk.

Gillman vs Gray

The record shows that the plaintiffs declaration was withdrawn it does not show any leave to file a new declaration nor that one was filed

The 1st Count of the declaration is bad

1st Because it does not show a contract amounting to a warranty

2nd It is not pretended after knowing the machine was not a good one

3rd No notice of any defect in the machine was ever given to deft or request for payment made

4th The rule of damages in this case if a warranty is shown would be the difference in value between the machine as it was and as it would have been if as good as warranted the declaration gives no means by which the damages can be ascertained the value of the machine is not stated

The 3rd & 4th Counts are bad because they show no consideration for the promise
a naked promise, after ^{made} ptops had bought

The machine is medium pectum & is
not binding

Plato & Cook

for depts in error

Gillian & Gray

Point made by depts in
error

Filed August 1st 1853
L. Ireland Ch.
By P. H. Ireland Dr.