

No. 13217

Supreme Court of Illinois

Gillilan

vs.

Nixon

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Supreme Court—State of Illinois:

APRIL TERM, 1861—THIRD DIVISION.

JOHN GILLILAN,
vs.
ALEXANDER H. NIXON. } ASSUMPSIT.

ABSTRACT.

This is an action of assumpsit brought by Alexander H. Nixon against John Gillilan in the McHenry Circuit Court for contribution upon a joint indebtedness of Nixon and Gillilan to Ambrose Dodd, upon which one Brainard Lester, a debtor of Nixon's, was garnisheed by Dodd and a judgment recovered against him as such garnishee of Nixon for the full amount of the debt due from Lester to Nixon (\$574.90) before the commencement of this suit.

Page 4, 5, 6.

The declaration contains one special, and the common counts.

4. The special count recites, that on 17th day of June, 1858, Dodd recovered a judgment in the McHenry Circuit Court against Nixon and Gillilan for \$556.07, and \$5.50 costs, upon which judgment execution was issued and returned, nulla, bona. That a garnishee summons was issued upon said judgment against one Brainard Lester, a debtor of the said Nixon and a judgment rendered against Lester for the amount of the
5. judgment and costs against Nixon and Gillilan, and that by reason of said judgment being so rendered against the said Lester the said Nixon had been compelled to pay the whole of the judgment and costs obtained against him and the said Gillilan. Breach in the usual form.

5. Common counts in the usual form for money paid, money had and
- 6, 7. received, &c. To the first count of which declaration the plaintiff in

Page 8.

the Court below filed a demurrer, and the general issue to the community ^{on} ~~costs~~, upon which demurrer there was no decision or judgment by the Court, nor was there any plea to the first count.

9. Cause submitted to the Court by agreement of parties, proofs heard and issues found for the plaintiff in the Court below; damages assessed at \$311.59. Motion for a new trial and in arrest of judgment by the defendant in the Court below, which were overruled by the Court, and judgment rendered against the defendant in the Court below for \$311.59 and costs.

10. Appeal prayed and allowed.

10, 11. Appeal bond filed and approved.

12. Stipulation between the parties.

13. Bill of exceptions which recites, that upon the hearing of the cause the plaintiff introduced in evidence a judgment rendered on the 17th day of June, 1858, in favor of Ambrose Dodd against Nixon and Gillilan for \$566.09; and a judgment in favor of said Dodd against Brainard Lester as garnishee of Nixon on the 26th of October, 1858, for \$574.90, and the stipulation of the parties that the judgment in favor of Dodd against Lester as garnishee of Nixon was regularly obtained and for indebtedness then due to Nixon by Lester; that Lester was responsible; that by an agreement between Dodd and Lester the time for the payment of the garnishee judgment was extended for two years from the date of the judgment and was actually paid on the 18th day of January, 1860, and not before, which was all the evidence in said cause.

Whereupon the Court rendered judgment for the plaintiff, to which the defendant in the Court below then and there excepted.

W. Hancock
atty for
app

Abstract of
Supreme Court

Jos Gilliam
vs
Miss Schwan

Hauckitt

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Supreme Court—State of Illinois:

APRIL TERM, 1861—THIRD DIVISION.

JOHN GILLILAN,

vs.

ALEXANDER H. NIXON.

} APPEAL FOR MCHENRY.

Points of Error.

1. The Court erred in giving judgment in this case without disposing of the demurrer.
2. The Court erred in proceeding with the case without any issue as to the first count.
3. The Court erred in giving judgment for the plaintiff below upon the evidence.
4. The Court erred in not giving judgments for the defendant below upon the evidence.

Points of Snow
Gilliland
Chisom

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

JOHN. STELLER

ALEXANDER. H. BROWN

THE UNIVERSITY OF CHICAGO

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THE UNIVERSITY OF CHICAGO

APRIL TERM, 1861—THIRD DIVISION.

BRIEF.

In this cause the declaration is insufficient that it does not aver that the judgment recovered by Dodd against Lester, as garnishee of Nixon, was paid or satisfied, nor that the joint judgment in favor of Dodd against Nixon and Gillilan was satisfied, and Gillilan thereby discharged from further liability by reason of the satisfaction of the same by Nixon : *Dedman vs. Williams*, 1st Seam. 154.

The Court erred in proceeding to trial of the cause without disposing of the demurrer: McKinney vs. May, 534; Clark vs. the People, ex. rel., Crane, 15 Ills, 217. The evidence does not support the judgment. The garnishee judgment not being paid by Lester until over a year after the commencement of the suit, the suit having been commenced on the 14th day of January, 1859, and the judgment not being paid until the 18th day of January, 1860. A suit for contribution cannot be maintained until the party sueing has actually paid more than his proportion of the joint debt: Dedman vs. Williams, 1st Scam., 154.

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Phil
Gilliam
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Chiron

Filed Apr. 16th 1861
L. Leland
Clark

Supreme Court—State of Illinois:

APRIL TERM, 1861—THIRD DIVISION.

JOHN GILLILAN,
vs.
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The declaration contains one special, and the common counts.

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5. judgment and costs against Nixon and Gillilan, and that by reason of said judgment being so rendered against the said Lester the said Nixon had been compelled to pay the whole of the judgment and costs obtained against him and the said Gillilan. Breach in the usual form.

5. Common counts in the usual form for money paid, money had and
- 6, 7. received, &c. To the first count of which declaration the plaintiff in

Supreme Court
April Term 1864

Bro Gillies

Alexr. H. H. H.

Abstract

Commons—2nd of 1864

THE SUPREME COURT—1864

COMMONS—2nd of 1864

COMMONS—2nd of 1864

COMMONS—2nd of 1864

COMMONS—2nd of 1864

COMMONS—2nd of 1864

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COMMONS—2nd of 1864

Page 8.

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9. Cause submitted to the Court by agreement of parties, proofs heard and issues found for the plaintiff in the Court below; damages assessed at \$311.59. Motion for a new trial and in arrest of judgment by the defendant in the Court below, which were overruled by the Court, and judgment rendered against the defendant in the Court below for \$311.59 and costs.

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Whereupon the Court rendered judgment for the plaintiff, to which the defendant in the Court below then and there excepted.

A. S. Hancock
Atty. for appellant

Case No. 2329

Supreme Court—State of Illinois:

APRIL TERM, 1861—THIRD DIVISION.

JOHN GILLILAN,

vs.

ALEXANDER H. NIXON.

} APPEAL FOR McHENRY.

Points of Error.

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Points of view

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1861 info held
Clark
Supreme Court—State of Illinois:

APRIL TERM, 1861—THIRD DIVISION.

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vs.
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The Court erred in proceeding to trial of the cause without disposing of the demurrer: *McKinney vs. May*, 534; *Clark vs. the People*, ex. rel., *Crane*, 15 Ills, 217. The evidence does not support the judgment. The garnishee judgment not being paid by Lester until over a year after the commencement of the suit, the suit having been commenced on the 14th day of January, 1859, and the judgment not being paid until the 18th day of January, 1860. A suit for contribution cannot be maintained until the party suing has actually paid more than his proportion of the joint debt: *Dedman vs. Williams*, 1st Scam., 154.

217.
Brief

Gilliam

vs
Crison

Filed Apr. 16th 1861
L. Leland
Clerk

Supreme Court—State of Illinois:

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JOHN GILLILAN,
vs.
ALEXANDER H. NIXON. } ASSUMPSIT.

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5. judgment and costs against Nixon and Gillilan, and that by reason of said judgment being so rendered against the said Lester the said Nixon had been compelled to pay the whole of the judgment and costs obtained against him and the said Gillilan. Breach in the usual form.
5. Common counts in the usual form for money paid, money had and
- 6, 7. received, &c. To the first count of which declaration the plaintiff in

Page 8. the Court below filed a demurrer, and the general issue to the common counts, upon which demurrer there was no decision or judgment by the Court, nor was there any plea to the first count.

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Supreme Court—State of Illinois:

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Points of Mr
Gilliam
given

CONFIDENTIAL - 1985-1986

CONFIDENTIAL - 1985-1986

CONFIDENTIAL - 1985-1986

CONFIDENTIAL - 1985-1986

CONFIDENTIAL - 1985-1986

CONFIDENTIAL - 1985-1986

CONFIDENTIAL - 1985-1986

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Supreme Court—State of Illinois:

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217-
Brief
Gilliam

Prison

Filed Apr. 16th 1861

L. Leland
Clerk

RECEIVED COMMISSIONER OF PRISONS

APRIL 17 1861 - PRISON DIVISION

JOHN GILLIAM

OF THE STATE OF MICHIGAN

VS. THE STATE OF MICHIGAN

IN SENATE

THE STATE OF MICHIGAN, by and with the consent of the Senate and House of Representatives, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the Prison Division.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Prison Division, at Lansing, Michigan, this 17th day of April, 1861.

JOHN GILLIAM, Prisoner.

THE PRISON DIVISION, Lansing, Michigan.

RECEIVED

APRIL 17 1861

THE PRISON DIVISION, Lansing, Michigan.

RECEIVED

APRIL 17 1861

THE PRISON DIVISION, Lansing, Michigan.

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THE PRISON DIVISION, Lansing, Michigan.

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THE PRISON DIVISION, Lansing, Michigan.

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APRIL 17 1861

THE PRISON DIVISION, Lansing, Michigan.

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APRIL 17 1861

THE PRISON DIVISION, Lansing, Michigan.

1

Monday March 19 A.D. 1860
State of Illinois }
McHenry County } ss. Pleas before
the Honorable
Isaac G. Wilson Judge of the Thirtieth
Judicial Circuit of the State of Illinois
and Presiding Judge of the McHenry County
Circuit Court at a Circuit Court begun
and held at Woodstock in said County
at the Court House on Monday
the 19th. day of March for the year
of Our Lord one thousand eight hundred
and Sixty Present
Honorable Isaac G. Wilson Judge
Attest Edwin E. Thomas Sheriff
Wm. H. Hebron Clerk

And herebefore to wit on the 14th. day
of January A.D. 1859 was filed in
the Office of the Clerk of our said Court
a Process for Summons as follows
to wit:

Alexander H. Gibson }
John Gillilan } McHenry County
Special Feb. Term 1859
Assumpsit damages \$400.00
The Clerk with please issues Summons

in the above Entitled ~~xxxxxx~~ Suit
returnable next Term of Court and
oblige
Church & Kerr
Attys for Plff.
(Entered & filed Jan 14. 1859
J. H. Brown Clk.

And on same day was issued out of
Said Clerk's office a Writ of summons,
in words and figures as follows to wit

State of Illinois }
McHenry County }
The People of
the State of Illinois
to the Sheriff of said County greeting
We command you that you
Summon John Gilliland if he
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
1st Monday of February 1859 to
answer unto Alex H. Nixon
in a plea of Assumpsit to the
damage of said plaintiff as he
say in the Sum of Four Hundred

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Dollars And have you then and
thence this writ with an endorsement
thereon, in what manner you shall
have Executed the Same

Witness G. V. Kefau Clerk of our
Said Court and the Seal thereof at
Woodstock aforesaid this 14 day of
January A.D. 1854

(Seal) (G. V. Kefau Clerk
(Endorsement) State of Illinois McHenry County
I have duly served the within by reading
the Same to the within named John
Giblin on January 20th. 1854 as I am
therein commanded. Edwin Thomas
Sheriff by S. S. Chapel Deft.

Prs. Service 50. 15 mileage 75. Returns 10 = 1.35
Filed in Circuit Court this 22^d. day January
1854 G. V. Kefau Clerk

And thereafter to wit on the 24th. day
of January A.D. 1854. was filed in the
Office of the Circuit Clerk aforesaid
the Plaintiffs declaration in the above
Entitled Cause which said Declaration
is in words and figures as follows
to wit:

State of Illinois }
McHenry County } McHenry

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County Circuit Court
Special February Term 1859

Alexander McHenry Plaintiff
in this Suit by Church & Kerr his Attorney
complains of John Gillilan defendant
in this suit who has been summoned
by a plea of Despatch. upon the case
case upon promises for that whereas
herebefore to wit on the 17th day of June
one thousand Eight hundred and fifty eight
one Ambrose Dodd received a judgement
in the McHenry County Circuit Court
against the said Defendant and the
Plaintiff in this suit for the sum of
five hundred and fifty six 7/100 Dollars,
Debt and Damages and five 5/100
Dollars costs upon which judgement
and Execution was issued and returned
by the Sheriff of McHenry County of
-onsaid unsatisfied for want of property
out of which to collect the sum
that a Garnished summons was
issued upon said judgement against
one Thomas Lester a Debtor of
the said Plaintiff, and a judgement
rendered against him for the amount
of the judgement and costs against

The Said Defendant and the said Plaintiff obtained by the Said Docket as aforesaid by reason whereof the Said Plaintiff has been compelled to pay the whole of said Judgement & costs so obtained as aforesaid against him and the Said Defendant to his damage as he avers of four Hundred Dollars by means whereof the said Defendant became liable to pay unto the said Plaintiff the said Sum of four hundred Dollars and being so liable the said Defendant in consideration thereof afterwards to wit on the same day and year last aforesaid at the County of McHenry aforesaid executed and then and there faithfully promised the said Plaintiff well and truly to pay unto the said Plaintiff the said Sum of four hundred Dollars when he the said Defendant should be thereunto afterwards requested.

And whereas also the said Defendant afterwards to wit on the first day of January one thousand eight hundred and fifty nine at Woodstock to wit in said County of McHenry became

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and was indebted to the said Plaintiff
in a Large Sum of money to wit
the Sum of Four Hundred Dollars
for so much money before that time
paid laid out and Expended by the
Said Plaintiff to and for the use of
the Said Defendant and at the special
instance and request of the Said
Defendant and being so indebted
the Said Defendant in consideration
thereof afterwards to wit on the same
day and year last aforesaid and at
the place aforesaid undertook
and then and there faithfully promised
the Said Plaintiff well and truly
to pay unto the Said Plaintiff the
Said sum of money last above
mentioned when the Said Defendant
should be thereunto afterwards requested

Nevertheless the Said defendant
although after afterwards requested
so to do hath not as yet paid the
Said Several Sums of money above
mentioned or any or either of the
or any part thereof to the Said
Plaintiff but to pay the Same
or any part thereof to the Said
Plaintiff the Said Defendant

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both hereto altogether refused and
Stile doth refuse to the damage of
the said Plaintiff of four hundred
Dollars and therefore he brings suit
&c.

Church & Kerr
Atty for Plff.

Copy of Dec. Sued on
John Gillilan

To A. H. et al on Dr
Money paid laid out and expended \$400.00
(Endorsed.) Filed Jan 26. 1859
G. H. Kefauver Clk.

And thereafter to wit on the 11th day
of March in the year last aforesaid
the defendants file a Plea & Demurres
to the above declaration of the Plaintiff
which said Plea and Demurres are
in words and figures as follows to wit

State of Illinois } McHenry County
McHenry County } Circuit Court
Mo. Term 1859

John Gillilan

Alexander H. et al

vs
Def.

And the said
defendant by Justyn
& Church his Atty comes & defends.

the wrong & injury taken &c. and says
that the first count of the said plffs
Declaration. is not sufficient in law
for him to have and recover of & from
the said deft in this action whereupon
he prays Judgement and that the
same may be Enquired of by the
Court.

Jaslyn & Blanchet
for Defts.

And to the 2^d Count of the
said Plffs. declaration the said
Deft. says that he did not undertake
and promised in manner and form
as set forth in said Second Count
of said declaration in manner and
form as the same is therein set forth
and of this he puts himself upon
the Country Jaslyn & Blanchet
for Deft.

(Endorred) filed Mar 11. 1859
G. H. Kefauver clk.

And thereafter to wit on the 21st
day of March A.D. 1859. being
one of the days of the March
Term of said Court for the year
last aforesaid the following pro-
ceedings were had in said Cause

and ordered to be entered of Record
 thereto:

Alexander H. Nixon }
 John Gilliland } Assumpsit
 and

now come the parties to this suit by their respective Attornies and joined being joined by agreement Submit this cause to the Court for trial without the interocution of a Jury. And the Court being fully advised upon the proofs submitted herein by and having heard the evidence and arguments of Counsel finds the issue for the Plaintiff and assesses his damages at the Sum of Three Hundred Eleven dollars and fifty nine cents. Whereupon the defendant by Jaslyn enters his motion for a new trial and in arrest of Judgement And the Court being fully advised over rules the Sumo and doth order and adjudge that the Plaintiff have and recover of the defendant the sum of Three Hundred and Eleven dollars and fifty nine cents his damages so assessed as aforesaid as also

his costs and charges herein Expended
and that he have Execution therefor
And thereupon the Defendant
prays an appeal to the Supreme Court
of this State which is allowed on
condition that he enter into bonds
conditioned according to Law in the
Sum of Six Hundred Dollars with
Jesse P. Miller as Surety to be filed
within thirty days from this date

And thereafter to wit on the 20th. day
of April in the year last aforesaid was
filed an appeal Bond in the above
cause which is in words and figures as
follows to wit:

Know all men by
these Presents That we John Gilliland
Jesse P. Miller are held and firmly bound unto
Alexander H. Gibson in the special
Sum of Six Hundred Dollars Lawful
money of the United States for the payment
of which well and truly to be made
we bind ourselves our heirs and
Administrators jointly Severally and
family by these presents,

Witness our hands and Seals
this 20th. day of April A.D. 1860

The Condition of the above obligation is such whereas the said Alexander M. Nixon did on the 21st day of March A.D. 1860 at a Circuit Court then being holden for the County of McHenry &c. &c. &c. a Judgement against the above bounden John Gillilan for the sum of Three Hundred & Eleven Dollars and 54 cents and costs of suit, from which said Judgement the said John Gillilan has taken an appeal to the Supreme Court of the State of Illinois. Now if the said John Gillilan shall prosecute his appeal with Effect and shall pay whatever Judgement may be rendered by the Court upon dismissal or trial of said Appeal then the above obligation to be void otherwise to remain in full force and Effect.

Dated this 20th John Gillilan (Seal)
day of March Jesso P. Miller (Seal)
A.D. 1860.

(Endorsed.) Filed Apr. 20. 1860

W. H. Kofron Clerk

And then on the 9th day of April A.D. 1861 was filed in the Clerk's Office of said Circuit Court aforesaid

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a stipulation which is in words
and figures as follows to wit:

Alexander H. Tiford }
John Gillilan } It is stipulated
and agreed by
and between the parties to this suit
that the judgement rendered in favor of
Ambrose Dodd against Brainerd
Lester as Garnisher was regularly
obtained and was for indebtedness
then due and owing to the Plff. Alexander
H. Tiford by the said Brainerd Lester
and that said Lester was perfectly
responsible - that the time for the
payment of the judgement was by an
agreement between the Plff. in the
Garnisher judgement and the said Brainerd
Lester extended for two years from
the time the same was so rendered
And that the said judgement was
actually paid on the 18th. day of January
1860 and not before

Church & Kew

attys for Tiford

Joslyn & Marchant

Attys for Gillilan

Entered

Filed Apr 9, 1861
Ch. H. Russell Clk.

And on the same day last aforesaid
 was filed a Bill of Exceptions in
 the above Entitled cause which is in
 words and figures as follows, to wit;

Circuit Court of McHenry County
 March Term 1861

Alexander H. Nixon
 v
 John Gillilan } Re it

remembered
 that on the 21st of March 1860 before
 the Hon^{ble}. Isaac S. Wilson Judge at a
 Term of Court then being holden within
 and for the County of McHenry and
 State of Illinois this cause came up for
 hearing and was by agreement of
 parties submitted to the Court without
 the intervention of a Jury

Whereupon the Plaintiff introduced
 in Evidence a Judgement of said Court
 rendered on the 17th day of June 1858
 in favor of Ambrose Dodd and
 against Alexander H. Nixon and
 John Gillilan for the sum of five
 Hundred and fifty six and 9/100^{ths}
 dollars.

The plaintiff then introduced a Judgement rendered in the said Court in favor of the said Ambrose Dodd against Primmer Lester as Garnished of the said Alexander H. Nixon on the 26th day of October 1858 for the Sum of Five Hundred and Seventy four and 90/100^{ths} Dollars.

The Plaintiff then introduced a Stipulation between the parties to this suit which is in the words and figures following to wit

Alexander H. Nixon	}	It is stipulated and agreed
John Gillilan		

by and between the parties to this suit that the Judgement rendered in favor of Ambrose Dodd against Primmer Lester as Garnished was regularly obtained and was for indebtedness then due and owing to the said Alexander H. Nixon by the said Primmer Lester and that the said Lester was perfectly responsible that the time for the payment of the Garnished Judgement was by an agreement between the Plaintiff in the

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Garnishes Judgement and the said
Prained Sister Extended for two
years from the time was so rendered
and that the said Judgement was actually
paid on the 18th. day of January 1860
and not before

Church, K.
Atty for Arizon
Jaslyn & Hunchet
Atty for Gilliland

on the back of which is the following
indorsement Filed March 21st. 1860

V. H. K. for clerk
which was all the Evidence introduced
in said Cause

Whereupon the Court rendered
Judgement for the Plaintiff for the
sum of Three Hundred Eleven & 10/100
Dollars to the giving of which said
Judgement the said Defendant then
and then Excepted

Allowed

March 21st. 1860 Isaac G. Wilson (Seal)
Entered filed Apr 9. 1861 C. H. Russell clerk.

State of Missouri
McHenry County Jp. J. Church,
H. Russell clerk.
of the Circuit Court in and for

Supreme Court
April Term 1861

217-78

Wm. H. Nixon

April Term 1861

of

John Gillman

John Gillman

vs

Alexander & others

and now comes the plea by A.D.
Burchette his atty and assigns
in error in this cause the following

Points of Error.

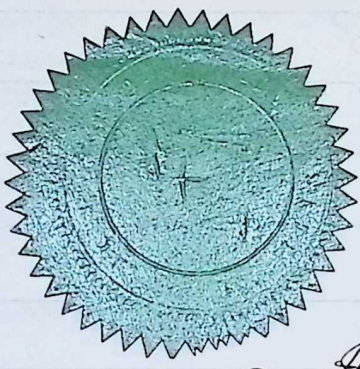
1. The Court erred in giving judgment in this case without disposing of the demurrer.
2. The Court erred in proceeding with the case without any issue as to the first count.
3. The Court erred in giving judgment for the plaintiff below upon the evidence.
4. The Court erred in not giving judgments for the defendant below upon the evidence.

Filed Apr. 16th 1861

L. Leland

Clerk

H. A. Hackett
att'y for app't



Apr. 2. 52

C. H. Rippl clerk

Said County in the State aforesaid do
humbly certify that the above foregoing
is a true and complete copy of
the papers and proceedings in this
Court in the above entitled cause
as filed and entered of Record and
appears by a diligent examination
thereof

Witness Charles H.
Rippl clerk of our
Said Court and the
Said Sheriff at Stockton
in said County this the
10th day of April
A.D. 1861

Supreme Court 217-78
April Term 1861 Supreme Court

Alex. H. Nixon

April Term 1861

John Gillilan

John Gillilan

Alexander H. Nixon

and now comes the plea by H. B.
Hanchette his atty and assigns
for error in this cause the following

Points of Error.

1. The Court erred in giving judgment in this case without disposing of the demurrer.

Filed Apr. 16th 1861

2. The Court erred in proceeding with the case without any issue as to the first count.

L. Leland
Clerk

3. The Court erred in giving judgment for the plaintiff below upon the evidence.

4. The Court erred in not giving judgments for the defendant below upon the evidence.

H. A. Hanchette
atty for app't.