

State of Tennessee

At a Circuit Court begun and held for the County of Davidson at the Court house in the town of Nashville on the second Monday in September (it being the eighth day of said Month in the year of our Lord one thousand eight hundred and forty five and in the 70 Year of American Independence.

Present the Honorable Thomas Maney one of the Judges of the Circuit Courts of the State of Tennessee and assigned to hold the Circuit Courts of the Sixth Judicial Circuit in said State

Names and Paul	}	Debt &c
John Thompson and		
John D. Thompson		

Be it remembered that heretofore to wit on the 6<sup>th</sup> Day of May A.D. 1845 Maney and Paul sued out of the Clerk's office of the Circuit Court of Davidson County an Original writ against John W. Thompson and John D. Thompson in the words and figures following to wit.

State of Tennessee  
To the Sheriff of Davidson County, Greeting  
You are hereby Commanded to summon John W. Thompson and John D. Thompson if to be found in your County, to be and appear before the Judge of our Sixth Circuit at the next Circuit Court to be held in the County of Davidson at the Court House in the town of Nashville on the second Monday in May next then and there to answer Clement W. Maney and Isaac Paul, of a plea that they owes unto them five hundred and seventy three Dollars which to them they owe and from them unlawfully detain to their Damage Two Hundred Dollars

Herein fail not; and have them and these their writs  
 Witness, Thos. J. Shibley, Clerk of our said Court at  
 office the Second Monday in January AD 1845 and in  
 City of the year of American Independence.

Thos. J. Shibley

I do acknowledge myself the above plaintiff's debt in  
 the sum of five hundred dollars for prosecuting the above  
 writ with effect or payment of all costs and  
 Damages to the defendant on failure thereof Witness my hand  
 and seal the 5<sup>th</sup> Day of May AD 1845

Geo. A. Goddett Esq

Endorsed Given 6<sup>th</sup> May 1845

of Depute N. P. Corbitt, to execute this writ given under  
 my hand and seal the 5<sup>th</sup> May 1845

Chas. Samies Shiff

Came to hand the 6<sup>th</sup> May 1845 executed 9<sup>th</sup>  
 May 1845

N. P. Corbitt D. Shiff

And afterwards to wit at the May  
 Term AD 1845 of said Circuit Court the plaintiff  
 appeared by Mr. G. A. Goddett their attorney in  
 prosecution of their said suit and filed their declar-  
 ation in the below and figures following to wit:

State of Tennessee ( District Court  
 Anderson County ) May Term 1845.

Clement W. Vance and Grace

Paul by their attorney Complain of Geo. W. Thompson  
 and Dela D. Thompson, Summoned to answer &  
 of a plea that they render unto them five hundred and seventy  
 three Dollars which to them they owe and from them  
 unjustly detain. Now that whereas heretofore to wit  
 on the 22<sup>nd</sup> Day of February AD 1840. at to wit in  
 the County aforesaid the defendants by their certain  
 writing obligatory sealed with their seals and now

and to the Court shown, the date whereof is the day and Year aforesaid acknowledged themselves to be held and finally bound unto the said plaintiff in the sum of five hundred and seventy three Dollars above demanded to be paid to the plaintiff on the 9<sup>th</sup> day of January 1843. Yet the said defendant (altho' after requested so to do) hath not as yet paid the sum of five hundred and seventy three Dollars or any part thereof to the plaintiff, but so to do hath utterly wholly failed and refused and still fail and refuse to the plaintiff, Damages Imbursed Dollars

Me & Geo Goodlett  
attorney for plaintiff

Pleas "Nil Debit & Payment"

By William & Whitworth  
Attorneys for plaintiff

And afterwards to wit, at the September Term AD 1845 of said Circuit Court the following entry appears upon the Minute Book to wit

Nance and Paul

D. W. & G. W. Thompson

Debt Plea Payment & issue

This day came the parties by their attorneys and also a jury of good and lawful men to wit

1 Geo Murphy	5 A. G. King	9 Charles Lovell
2 Geo. Briley	6 William Brooks	10 Allen Knight
3 Geo. W. Magar	7 Charles Cook	11 A. R. Evans
4 Geo. Hamblin	8 Thos. Cartwright	12 such ones

who being duly charged tried and sworn to the truth to speak upon the issue given upon their oath do say that the defendants have not paid the debt in

The Declaration mentions except a balance of four hundred and seventy two dollars and fifty six Cents, and they do assign the plaintiffs Damages by reason of the premises to the sum of Ninety one Dollar and Sixty eight Cents. It is therefore Considered by the Court that the plaintiffs do recover against the said Dependents their balance of debt aforesaid and their Damages Occurred by the detention thereof together with their Costs by them about their Suit in this behalf expended and that they have their Execution &c.

Tenure of Costs		
State Tax	33 $\frac{1}{2}$	
Clerks fees	5.62	
Shiff Lamer	16 $\frac{1}{2}$	
J D Shiff & J D Corbett	2.00	10.56
Judgement 10 <sup>th</sup> Sept 1845		564.14

State of Tennessee  
 J. Thomas Smiley  
 Clerk of the Circuit Court of Davidson County State  
 aforesaid. Do hereby Certify that the foregoing is a true  
 and perfect transcript of the records and proceedings  
 had in said Court, in the Cause therein determined wherein  
 Nance and Paul, were the plaintiffs and J D Shiff  
 & J D Corbett Dependents, as the same remains of record in

In Testimony whereof I have hereunto  
 set my hand and affixed the seal of said  
 Court, at office the 29<sup>th</sup> December AD,  
 1845 and in the 90<sup>th</sup> Year of American  
 Independence  
 J. Thomas Smiley  
 By his Deputy R. G. Smiley

To the Hon. Nathan Green, Judge of the  
Supreme Court of the State of Tennessee

The Petition of John W. Thompson and Beila  
F. Thomson, citizens of the county of Davidson and  
State of Tennessee, respectfully shews to your Hon.  
that a writ of fieri facias or execution has been  
issued on the erroneous judgment in this record  
contained, for five hundred and sixty four dollars  
& 14 cents, and ten dollars 50 cents costs of suit, against  
the goods and chattels lands and tenements of your  
Petitors and is now in the hands of the Sheriff of Davidson  
county for collection.

Your Petitors further shew that  
said judgment is erroneous because there ~~are~~ <sup>is</sup> no replication  
to the plea filed by your Petitors and <sup>consequently</sup> no issues on  
which a jury could be sworn - Your Petitioners further  
state that the memorandum which appears upon the minute  
book of the Court and in the record, to wit the words  
"debt. Plea Payment and issue" was not made by consent  
of your Petitioners or their attorneys - and they insist that  
the said judgment is otherwise defective, erroneous, and  
void -

The premises considered your Petitioners  
pray that writs of error and Supersedeas be granted them  
directed to commanding DC, and for such other and  
further relief as in law they are entitled to, and as in  
duty bound they will ever pray &c.

By William Whitworth  
Their attos.

State of Tennessee

To the Clerk of the Supreme Court at  
Nashville, -

Let writs of error & Supersedeas  
issue, as prayed for in the within  
petition, on petitioners entering into  
bond with security according to Law.

31<sup>st</sup> Dec 1845:

Nathan Green  
Judge

575

Wm. A. D. G. Thompson

Wm. A. D. G. Thompson

Wm. A. D. G. Thompson

June 20<sup>th</sup> Dec 1845

App'd.

Recorded in Book 118  
Page 10411

No. 0 MT 82

1845

Defendants say in their Petition to Judge Green that the memorandum on the minute Book in reference to the Plea Payment and issue was not made with their consent Defendants counsel were in court when judgment was taken there was but one Plea (viz) Payment upon which by consent we joined issue ~~at~~ the first appearance Term of the Cause there were two Pleas (in short viz nil Debet and Payment) but at the Trial Term they dropped the Plea of nil Debet as appears from the record and the Jury found the verdict upon the Plea of Payment as ~~appears from the record~~ This Court in 3<sup>d</sup> Humphries Page 99 say that a Plea filed since the last continuance upon which a verdict was given is a waiver of all former Pleas We did not notice the Plea nil Debet filed in short at the first term and the Court had not the right nor did they <sup>and in Ferrisone's digest 1642-3-4</sup> notice it In Keys 57<sup>2</sup> it is decided that the want of a similiter may be aided after verdict In 4<sup>th</sup> Humphries 345 and 5<sup>th</sup> Humphries <sup>(560)</sup> it is decided that we had the right to treat these Pleas filed in short as nothing If we had noticed them the Court would have <sup>been</sup> bound to do it but it noticed them no farther than we did In 6<sup>th</sup> Yeager 491 it is decided that if there has been a trial as upon Issue although there be no Issue if the Supreme Court is satisfied that the merits have been reached they will affirm the judgment under the act of 1809 ch 126 sec 10 <sup>(Page 233 G & N)</sup> This Court also say in 3<sup>d</sup> Humphries Page 84 That if the sense or legal effect of the verdict is a response to the Pleas

it will be sustained 14<sup>th</sup> Johnson 86-2 Burrow  
 698. and 9<sup>th</sup> Massachusetts reports 316 are  
 alluded to here by the Court as sustaining  
 this point We think then that if this Court is  
 satisfied that the Plea of Nil Debit was waived  
 and if we take on the Plea of Payment  
 the verdict of the Jury was correct and there  
 is no error 2<sup>d</sup> That if there were two Pleas Nil Debit  
 and Payment and no replication it could have  
 been aided after Verdict 3<sup>d</sup> That if the merits  
 of the case have been reached this Court will  
 not disturb the verdict 4<sup>th</sup> That if the Plea of Nil  
 Debit filed in short at the first term was not attempted to be  
 relied on at the Trial it was waived and the verdict is correct  
 upon the plea of Payment & Issue

SANC and Tall  
 vs S Bick  
 M. and D. F. Thompson

472.56  
 91.68  
 564.24

564.14  
 70.51  
 28.50  
 5.87

99.88  
 564.14  
 664.02

M. C. W. A. Lovell  
 Counsel for Plaintiff



know all men by these presents, that we John W. Thompson and  
Dea F. Thompson, and John M. Whitcutt are held and bound  
unto G. W. Vance and J. Paul, in the pure sum of Two hundred &  
fifty dollars, which sum well and truly to be paid, We bind ourselves  
our heirs & assigns and severally, jointly by these presents: Witness  
our hands and seals this 20<sup>th</sup> day of Dec. 1845.

The condition of the above obligation is such, that J. W. Thompson  
& D. F. Thompson, by Petition to R. Green Esq. one of the Judges  
of the Supreme Court of Error and Appeals of said State, has obtained  
an Order to the Clerk of said Court at Nashville, for writ of Error  
& Supersedeas to issue, to bring up said cause from Circuit Court  
of Davidson County, to the Court for rehearing the

Now if the said, J. W. Thompson & D. F. Thompson  
shall well and truly prosecute, their said writ of Error and  
Supersedeas, with effect, & in case of failure then to pay  
all such costs and damages, as said Supreme Court  
shall adjudge against them for failure therein, then this obli-  
gation, to be void, else to be & remain in full force and  
value.

John W. Thompson & Co  
John F. Thompson & Co  
By R. W. Williams his atty  
John M. Whitcutt