Evans, James v. King, George, admin. of Evans, Jesse 1852 2nd C. Callaway 182/22

(25) Assumpsit

Aff'd; James fails to recover share of govt pension for father's Revolutionary War service

Contract; Military

Fulton Decr 1850

Dear Sir,

Some time since I wrote requesting you to send a writ of Error in the Case of James S Evans against Guy Rising and also a writ of Error in the Case of James S Evans Admr of Joseph Evans against Guy Rising - please send them immediately as I am afraid they will not arrive in time -

Yours Respectfully

Thos Ansell.

Please send me word at what time the Judgment dates in the Case of Thomison against Rengro.

PAID 5

Mr Dunscombe
Clerk of the Supreme
Court —
Jeffersen City
Mo

PULASKI
DEC 7
MO.

Evans v Sling
— " —

Evans, Adm. of Evans
v
Geo. Sling
— " —

precipe

filed Dec 7 1858
Wm E Dunscomb
Clerk

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Second Judicial Circuit in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Callaway County, in the Judicial Circuit aforesaid wherein James L Evans was plaintiff and George King was defendant.

in an action of Assumpsit manifest error hath intervened, to the great damage of the said J. L. Evans as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the Second Monday in January next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the Seventh day of December in the year of our Lord one thousand eight hundred and fifty.

SEAL OF THE SUPREME COURT IMPRESSION

Wm E Dunscomb

Received the within writ the
10th Dec. 1858 and Executed
the command thereof
Given under my hand Head of
Office as Clerk of the Circuit
Court within and for Lawrence
County this day and date
above Geo. Bailey Clk

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the second Judicial Circuit in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Callaway County, in the Judicial Circuit aforesaid wherein James S Evans, adm. of Joseph Evans was plaintiff and George King was defendant

in an action of replevin manifest error hath intervened, to the great damage of the said Jas. S. Evans as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the second Monday in January next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the seventh day of December in the year of our Lord one thousand eight hundred and fifty

Wm E Dunscomb

SEAL OF THE SUPREME COURT OF MISSOURI

Received the within Mt this 18th Dec. 1858 & Executed the Command thereof given under my hand & seal of office as Clerk of the Circuit Court within and for said County of Callaway the date above

Geo Bartlett

State of Missouri Callaway County
Be it remembered that on the
Evans vs King — 9th day of September 1848 James
S. Evans filed in the Office of the
Clerk of the Circuit Court of said
County the following declaration
against George King Writ,

"In the Circuit Court of the October Term 1848
State of Missouri County Writ, James S. Evans
Decon by Haydon his attorney complains of George
King of a plea of Trespass on the Case on promises
For that Whereas the said defendant heretofore
Writ, on the first day of September in the year
of our Lord 1848 Writ, at the County of Calla-
-way aforesaid was indebted to him the said James
S. Evans in the sum of six thousand dollars lawf-
-ful money for divers goods wares and Merchan-
-dise by the said plaintiff before that time sold and
delivered to the said Defendant, and at his spe-
-cial instance and request and also in the
sum of six thousand dollars lawful money for
money by the said plaintiff before that time lent
and advanced to, & paid laid out and expended
for the said defendant and at his like spe-
-cial instance & request. And also in the fur-
-ther sum of six thousand Dollars like lawful
money for so much other money by the said
defendant before that time had and received to
and for the use of the said plaintiff, and also
in other like sum of money for lawful interest
before that time deed, owing & payable by the
said defendant to the said plaintiff upon Cer-
-tain large sums of money by the said plaintiff
before that time lent and advanced to & for the

2 said defendant, and at his special instance &
Decon request, and also in other like sums upon an 16
account stated before that time by & between said
plaintiff and said defendant, wherein & whereby it
was upon such accounting found that the said
defendant was then & there in arrear & indebted
to the plaintiff in the said last mentioned sum
of money — and the said defendant being so inde-
-bted to the said plaintiff in the said several sums
of money in this Count above specified, in Consid-
-eration thereof afterwards towit, on the day and
year aforesaid towit, at the County of Callaway
aforesaid there and there undertook & faithfully
promised to pay the same and every of the said
sums of money to him the said plaintiff when he
the said defendant should be thereunto afterwards
requested. Nevertheless the said Defendant not regar-
-ding his said promise & undertaking but contriving
to injure the plaintiff hath not as yet paid him the
said plaintiff the said several or any or either of
the said sums of money, or any part thereof (alth-
-ough often requested so to do) and to pay the
same or any part thereof to him the said plaintiff
he the said defendant hath hitherto refused &
neglected & still doth refuse and neglect to the
Damage of the plaintiff of six thousand dollars
& therefore he brings his suit &c. —

P. R. Haydon atty for plff

and thereupon the following summons issued towit
Summ. State of Missouri to the Sheriff of Callaway County
Greeting we command you to summon George King
to appear before the Judge of our Circuit Court for
the Circuit and County of Callaway at the Courthouse
on the first day of our next October Term which
Term will commence on the second Monday in October

3 next to answer the complaint of James G. Evans
Sum^d. the plaintiff, as set forth and exhibited against
him in our said Court by the foregoing Copy of
his declaration, and this you shall not omit, and
have then there this Writ Witness George Bailey
L.S. clerk of our said Court with the seal of our
said Court annexed at Office this 11th day of
September 1848, and in the 29th Year of the State
Geo Bailey etc
upon the back of which the Sheriff made this
return to wit: Serv^d the within declaration &
Return summons by reading the same in the presence &
hearing of the within named Geo King in Calla-
way County Mo Septr 13th 1848.
Geo. E. O. Hockaday Shff C.C
and afterwards at a Circuit Court Continued and
held for Callaway County at the Courthouse on
Tuesday the 10th day of October 1848. This day
came the defendant and produced his motion
for the production of bills of particulars which
Mo for is ordered to be filed, and is as follows to wit
bill and the said defendant King comes & moves the
part^rs Court to Compel said plaintiff in this cause his
bill of particulars, so that the said defendant be
able to plead Jameson & Shely for King
and afterwards at said Term on the 11th day of
October 1848. This day came the parties aforesaid
and the motion of the defendant for the plaintiff
to file a bill of particulars being heard, it is considered
by the Court that the said motion be sustained, and
the plaintiff is ruled to file the same, within sixty
days after the present Term — and afterwards at
the Term aforesaid on the 14th day of October 1848
plea filed This day came the defendant and produced his
plea the same is ordered to be filed, and the cause
is continued

4 said plea is as follows towit" and the said defen=
=dant comes & defends the demand of the plaintiff
Jameson & Shelby for King
Replm and the plaintiff for replication saith defendant
has no defence to said action & of this he puts him=
=self upon the Country &c. Haydon for plff
and afterwards on the 20th December 1848 the follow=
=ing bill of particulars was filed towit". In the
Callaway Circuit Court, State of Missouri, James
S. Evans plaintiff vs George King Defendant In
an action of assumpsit, and now on this day
James S Evans the plaintiff in the above entitled
cause in obedience to the rule of the Court at the
last Term thereof in said cause, now here comes and
files therein the following specifications and bill of
particulars of the demand for the recovery of which
he hath instituted his said action against the
defendant George King. First, The said plaintiff
states that upon the trial of said cause he will
insist upon and prove that one Jesse Evans decea=
=sed late of Gasconade County in this State in his
lifetime by reason of his services as a Captain in
the Virginia State Troops in the War of the revolu=
=tion was entitled to the sum of $2976. 66/100 and
that by the decision of the Secretary of War the
said sum of money was allowed against the United
States for said services of the deceased for his half pay
from about the 4th day of March 1831. to the 29th
day of July 1843. or thereabouts (the time of the death
of the said Jesse) by virtue of, and under the provi=
=sions of an act of the Congress of the United
States approved. on or about the 5th day of July A.D.
1832, to provide for liquidating & paying Certain
claims of the State of Virginia — 2. The plaintiff
will insist upon and prove upon the trial that the

5 particular

said Jesse Evans in his lifetime, on or about the 3d day of December A.D. 1834. made executed & delivered to the plaintiff and to Joseph Evans and Jesse R. Evans then of Washington County in this State, for and in consideration of his love and goodwill & affection for them as Grantees his certain deed of Gift of that date, whereby among other things the said Jesse Evans in his lifetime in substance gave granted and transfered unto him the said Joseph and the said James S. Evans the plaintiff, all the money due him the said Jesse (since deceased) & to which he was entitled from the State of Virginia and the Government of the United States of America as pay, Half pay or in any other way the same may or might be due him for his said service in the War of the Revolution as an officer, by virtue of any law or laws reso=lution or resolutions, either by the Legislature of Virginia or the Congress of the said United States of America, by which said deed of gift the said plaintiff will insist that he and the said Joseph Evans (in the lifetime of the said Joseph) became entitled in common in equal moities to the said sum of $2976.- 66/100 which was afterwards audited & allowed as above mentioned by the Secretary of War. 3d The plaintiff will insist upon & prove upon the trial aforesaid, that after the said sum of $2976. 66/100 was so audited and allowed by the said Secretary of War & after the death of the said Jesse Evans, and after he made the said deed of gift above mentioned, and before the death of the said Joseph Evans towit, on the tenth day of January A.D. 1845. or thereabouts at Washington City towit at the County of Callaway aforesaid.- You the said George King by your agent and attorney in fact Stephen Trabue Otherwise called Stephen F. I. Trabue without the

6 authority, will or consent of the said Joseph Evans & the plaintiff or either of them, did collect & receive of & from the Treasury of the United States the said sum of $2976. 66/100 so allowed by the Secretary of part. War for the services of the said Jesse as aforesaid and which sum so collected & received you the said George King and your said agent acting under your licence & authority converted & disposed of to your own respective uses — and which sum you have both and each of you wholly failed and neglected to pay or any part thereof, to the plaintiff and the said Joseph in his lifetime or either of them or to the said plaintiff since the death of the said Joseph — By reason of all which the said James G. Evans upon the trial of the cause will insist and demand of you the said George King a verdict and Judgment in Damages for the one half of the amount of the said $2976. 66/100 being the sum of $1488. 33/100 principal with interest thereon from said 10th day of January A.D. 1845. at the rate of 6 per centum per annum until Judgment amounting in all to a large sum of money twit, to the sum of $3000 in Damages —

P. R. Haydon atty for plff

and afterwards at the April Term 1849 and on the 14th day of April, This day comes the plaintiff by his attorney and produced his motion to suppress depositions which is ordered to be filed, and

Mo to Suppress is as follows, twit, "In the Callaway Circuit Court April Term 1849. James S. Evans pltff vs George King deft assumpsit — The plaintiff comes and moves the Court to suppress & quash the reading of the depositions of the defendant filed at the present Term of this Court which said depositions were taken in Kentucky for the following reasons

7 Because 1st the same were taken without any
previous legal, sufficient or other notice to plaintiff
Mo. nor were the same taken pursuant to any legal
notice. 2nd the Witnesses or deponents were not duly
sworn as required by law. 3rd said depositions are
not duly certified or authenticated as required by
law. 4th said depos. are otherwise informal ille=
=gal & insufficient. Haydon & Jones for plaintiff
and the said plaintiff moves the Court to suppress
the reading all & every the several parts of said
depositions included in pencil brackets because
the same are irrelevant incompetent illegal &
hearsay evidence, and also answers to direct &
leading questions. Haydon & Jones for plaintiff
and afterwards on the 16th day of April 1849 and
during the said Term, Ordered that this suit
be continued until the next Term at the Costs
Contd. of the plaintiff, and that the defendant recover
the same and that he have Execution.
and afterwards at the October Term 1849 and on
the 9th day of the Month, The defendant pro=
=duced his motion to suppress depositions which is
ordered to be filed. and afterwards on the 10th day of
October 1849 and at the term last aforesaid
This day come the defendant and produced
his motion to Exclude parts of depositions which is
ordered to be filed and is as follows Towit, King
ad Evans And the said defendant comes & moves
the Court to Exclude so much of the deposition
of James H. Reef taken & filed in this Cause by the
plaintiff as is included in pencil marks thus
( ) because the same is the opinion of the
Witness given in relation to papers not before him
because the same is illegal and irrelevant
because said Witness details conversations of the

Because the same is not pertinent to the matter in issue. Leonard Jamison & Shelyfor King and afterwards on the 11th day of October 1849 and during said Term. This day come the parties aforesaid and the motions of the defendants to Exclude parts of depositions being taken up and the parties heard, it is considered by the Court that the same be sustained.

The plaintiff produced his motions to Exclude & suppress depositions which are ordered to be filed, and are as follows, to wit,

Mo to Exclude

Jas S. Evans vs George King. In the Callaway Circuit Court Oct Term 1849 and the said plaintiff comes & moves the Court to Exclude as Evidence Each all & Every the answers & Statements in the deposition of Stephen F. J. Trabue taken in the above cause by defendant and included in brackets by pencil marks for the reason following, because they are illegal, incompetent irrelevant & have nothing to do with the points in issue. Haydon Bones attor. pltff

Mo to suppress

Jas. S. Evans vs George King. In the Circuit Court Callaway Co October Term 1849. and the said plaintiff comes & moves the Court to suppress the reading of the deposition of Trabue taken by Deft in the above cause & filed at the present Term for the reason that defendant furnished the deponent with a copy of a deposition given by same deponent in a former suit from which Witness copied in other words, this deposition is copied by Witness from his said copy of said deposition taken in a former suit, furnished said Witness by plaintiff. Haydon Bones attor.

and afterwards on the 12th day of October 1849. On motion of the plaintiff oath made it is considered by the Court that this suit be continued until

9. the next term at the plaintiffs costs and that the defendant recover the same and that he have Execution

and afterwards at a circuit court continued held for Callaway county at the courthouse on Wed=nesday the 10th day of April 1850. This day come the parties aforesaid, and the plaintiff not being ready, it is ordered that this suit be set at the foot of this days docket at the costs of the plaintiff, and thereupon the plaintiff being heard upon oath. It is ordered that the same be con=tinued until the next Term at the costs of the plaintiff, and that the defendant recover the same and that he have Execution

afterwards at a circuit court continued and held for Callaway county at the courthouse on Tuesday the 15th day of October 1850. This day come the parties aforesaid and the motion of the defendant to suppress depositions being read and the parties heard it is considered by the Court that the same be sustained, and thereupon come a Jury to wit, Aaron McIntyre, Isaac Bain, James Fight=master, Elijah Thatcher, Lemuel Miller, Mar=shall Gibson, Charles A. Baily, John A. Jackson Henry S. Turner, John Smith, George Dawson & James Crawson who being Elected tried and sworn well and truly to try the issue joined, and there not being time to proceed further, the Jury is discharged until to morrow morning nine O'clock, under a charge from the Court, and afterwards on the 16th day of October 1850. This day come the parties aforesaid and the Jury impannelled and sworn in this cause on yesterday come into Court, and thereupon the plaintiff takes a non=suit. Therefore it is considered by the Court

10 that the Jury be discharged and that the plaintiff take nothing by his action, but that the defendant recover of the plaintiff his costs by him about his defence in this behalf expended, and that he have Execution. The plaintiff produced and filed his motion to set aside the Nonsuit, which was overruled by the Court and is as follows, to-wit, "Callaway

Mo to set aside Circuit Court October Term 1850. James J. Evans vs George King. In assumpsit. The plaintiff moves the Court to set aside the Judgment of Nonsuit in this cause & to grant him a new trial thereof for the following reasons

1st Because the Court Excluded from the Jury upon the trial proper, legal, relevant & competent Evidence as offered by plff. 2d The Court permitted the defendant upon his Cross Examination of the plaintiff Witnesses to give to the Jury illegal irrelevant & incompetent evidence

3d The Court gave to the Jury upon the motion of the defendant illegal erroneous & improper instructions as to the law of the case

4th The Court Misinstructed the Jury as to the law of the case, upon the motion of defendant

Jones Ansell & Hayden attd for plff

and afterwards on the 23d day of October 1850. This day come the parties and the plaintiff produced his bill of Exceptions, which was

Bill Expons filed examined, signed sealed and allowed by the Court and ordered to be filed, and made a part of the record, and is as follows to-wit,

Bill Expons James S. Evans vs George King. In the Callaway Circuit Court October Term 1850. Be it remembered that upon the trial of this cause, plaintiff offered in Evidence a deed of gift from Jesse Evans deceased to himself, Joseph Evans & Jesse R Evans in the words

11. Deed Gift

& figures following to wit, "To all to whom these presents shall come I. Jesse Evans send Greeting Know ye that I Jesse Evans of Gasconade County & State of Missouri for and in consideration of love good will and affection, which I ~~have~~ have to Joseph Evans, James S. Evans and Jesse R Evans of Washington County & State of Missouri, having given, and granted and by these presents do freely, clearly and absolutely give and grant to the said Jos Evans, James S. Evans & Jesse R Evans their heirs Executors &c the following described property in the manner following — I give to the said Jos Evans & James S. Evans three fourths of a claim I have to bounty land for services as a Captain of Infantry of the Illinois Virginia Regiment supposed to be three thousand acres of land, and all the money due me from the State of Virginia & the Government of the United States of America, as pay, Half pay, or in any other way, that may be due to me, for the said service in the war of the Revolution as an officer, by virtue of any law, or laws resolution or resolutions either by the Legislature of Virginia or the Congress of the United States of America — and to the said Jesse R Evans the other fourth supposed to be one thousand acres of land, this being the entire claim for land — It is understood that the said Jesse R Evans is only entitled to land & not to any money due for the said services, being the one fourth of the claim for land as aforesaid — To have and to hold all the said land & money as above described, from hence forth, as his and their property forever, absolutely without any manner of condition as I the said Jesse Evans have absolute and of my own accord set forth and put in further testimony — It is further understood that if the said land & money

is not recovered or obtained by the said Joseph, James & Jesse Evans or their heirs or Executors & the said Jesse Evans is not responsible for the title, or expence in obtaining it in any way or manner, Witness my hand & seal this 3d day December 1834.

Test Jesse Evans (Seal)

Charles Bolton, John F. Ritter

Bill Expons and after establishing the death of the subscribing Witness Charles Bolton & John F. Ritter & that their signatures were genuine by the testimony of John B. Harrison & Robert Moore, the same was offered to the Jury, to the reading of which defendant objected but the Court overruled the objection, defendant Excepted & thereupon the said deed of gift was read by the plaintiff to the Jury. Deft admitted the death of Jesse Evans, and also of Joseph Evans prior to the commencement of this suit, plaintiff offered to read to the Jury the certificate of acknowledgement & of record of said deed of gift in the words & figures following towit "State of Missouri Gasconade Cty, towit, Be it Known that on the 3d day of December in the year 1834 before the subscriber acting as a Justice of the peace in and for said County of Gasconade personally appeared Jesse Evans above named & who is to me Known to be the same who signed & sealed this deed of gift and acknowledged the the foregoing instrument to be his act and deed for the purposes therein expressed. In testimony whereof I have hereunto set hand not having any seal of office the day & year above mentioned — Charles Bolton J.P.

State of Missouri Gasconade County towit I John B. Harrison Clerk of the Circuit Court and Ex officio recorder of Gasconade County do certify that the foregoing deed of Gift and the acknowl

13 =edgement was duly recorded by me in book A. and pages 201. and 202 on the 25th day of December 1834. In Testimony whereof I have hereunto set my hand and official seal at my office in

L.S. Mtsterling this 25th day of December 1834

J.B. Harrison clerk & Ex off Recorder

Bill Expons defendant objected & the Court sustained the objection, to which opinion of the Court plaintiff objected & Excepted plaintiff proposed reading in Evidence a Certified Copy of all the papers & proceedings had & on file in the treasury de=partment at Washington City district of Columbia including a Copy of a power of attorney from defendant to Stephen F. I. Trabue as well as all the papers in the office of the register & 3rd auditor of said department &c all of which were authenticated under the seal of said departments and are in the words & figures following to wit" War department

$ 2976. 66. No. 6060 -

To the Secretary of the Treasury, Sir please ~~pay~~ to cause a Warrant for two thousand nine hundred and seventy six dollars and sixty six cents to be issued in favor of Stephen F. I. Trabue atty due Jesse Evans on Settl p acct 2d Comptroller No. 19.524 to be charged to the undermentioned appropriations Given under my hand this 9th day of Jany. 1845.

Wm Wilkins

Secretary of War

Countersigned Albion K Parris

Second Comptroller

Rest Registered, 14 Peter Hagner third auditor

14 Act to provide for liquidating and paying certain claims of the State of Virginia } 2976. 66 [18]

Treasury Department

Warrant " To William Selden Treasurer of the United
War dept. " States Greeting, pay to Stephen F. I. Trabue
No. 46. " atty. or order out of the appropriation named
" in the Margin Two thousand nine hundred and seventy six Dollars and sixty six cents due Jesse Evans on sett.
appropriation pursuant to requisition No 6060 of the Secretary of War dated 9 Jany. 1845. Countersigned by the second Comptroller of the Treasury, and Registered by the 3d. Auditor. For so doing this shall be your warrant. Given under my
act to provide for liquidating & paying certain claims of the State of Virginia hand and the seal of the Treasury this 10th day of January in the year one thousand eight hundred and forty five and of the independence the sixty ninth

Geo. M Bibb
Secretary of the Treasury

$2976. 66 Countersigned J. W. McCulloh Comptroller
Registered F. L. Smith Register

Received payment of the above warrant in the following drafts No. 8168 on the Louisville saving Institution $2500
8169. Bank of the Metropolis 476. 66
Stephen F. I. Trabue 2976. 66

No. 8168. Issued on War Warrant No. 46.

Treasury of the United States Washington
$2500 Jany. 10th 1845. Sir at sight pay to the order of Stephen F. I. Trabue atty due Jesse Evans

15 Twenty five hundred Dollars — 100

W. Selden

Treasurer of the United States

No. 8168. Registered January 10th 1845. $ 2500

Louisville Savg Inst. T. L. Smith

Louisville Ky Register of the Treasury

No. 8169. Issued on War Warrant No. 46.

$ 476.66/100 part Treasury of the United States Washing=ton January 10th 1845. Sir at sight pay to the order of Stephen F. I. Trabue atty due Jesse Evans Four hundred and seventy six dollars 66/100

W. Selden

Treasurer of the United States

No. 8169. Registered January 10th 1845. $ 476. 66/100

Bank of the Metropolis. D.C. T. L. Smith

Register of the Treasury

Treasury Department, Register Office July 29th 1846. I hereby certify the annexed Requisition of the Secretary of War No. 6060 the Warrant of the Secre=tary of the Treasury No. 46. and the drafts of the Treasurer of the United States No. 8168. & 8169. all in favor of Stephen F. I. Trabue atty are true Copies of the originals on file in this office —

R. H. Gillet Register

Be it remembered that R. H. Gillet Esq who Cer=tified the annexed transcript, is now, and was at the time of doing so Register of the treasury of the United States and that full faith and Credit are due to his attestations. In Testimony Whereof I. R. I. Walker Secretary of the treasury of the United States have LS hereunto subscribed my name and caused to be affixed the seal of this department at the City of Washington this twenty ninth day of July in the Year of our Lord 1836

R. I. Walker

Secretary of the Treasury

16 Copy/ Know all men by these presents that I George
power King sole administrator of Jesse Evans deceased who
attd. was formerly a Captain in the Illinois Regiment of the
State line of Virginia in the war of the revolution do
hereby nominate constitute and appoint Stephen
F. I Trabue of the County of Franklin and State of
Kentucky my agent and attorney in fact to pro-
-secute to allowance by the presentation of evidence
petition or otherwise any and every claim due to
said Jesse Evans as half pay for his Revolutionary
services under the laws of Virginia and in pursuant
to an act of Congress passed 5th July 1832 limit from
the day said officer retired from actual service
down to the date of the close of the war; also from
the 4th day of March 1831 to the day of the death of
said officer and such other amount or amounts as
may be due said officer, and when said claim
or claims are found due then my said attorney is
hereby authorised to receive a warrant or warrants
payable to me at such office or bank in the
United States as may be deemed the most practicable
& I hereby ratify and confirm all his acts in the
premises as witness my hand and seal this the
2nd day of September 1844 said power to be irrevoca-
-ble George King (seal)
Sealed and delivered in presence of Administrator of
William M Kerr Jesse Evans
Wm D. Kerr

State of Missouri Cole County Sct Be it remember-
-ed that on the 2d day of September 1844 personally
appeared before me William M Kerr an acting Justice
of the peace in and for the County and State afore-
-said George King who is personally known to be to be
the administrator of Jesse Evans deceased and

17 acknowledged the signing sealing and delivering of the foregoing power of attorney to be his free act and deed. In testimony whereof I have hereunto subscribed my name the day and year aforesaid

William McKee (Seal)

State of Missouri County of Cole ss I Gustavus A. Parsons Clerk of the County Court for said county and State aforesaid do hereby certify that William McKee whose name is subscribed to the foregoing certificate is now and was at the time of signing said certificate an acting Justice of the peace for said county and State duly elected, commissioned and qualified, and that the signature purporting to be his is genuine and that full faith and credit are due to all his official acts. In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office in the City of Jefferson this second day of September in the year of our Lord one thousand eight hundred and forty four

G. A. Parsons Clk

By Wm D. Kee Deputy Clk

The United States Dr. To Jesse Evans deceased Captain in the Virginia State Troops, for his half pay from March 4th 1831 (up to which time he was paid per settlement in July 1836. Which said settlement embraced his half pay up to October 6. 1835, but so much as accrued between 4 March 1831. & October 1835. having been deducted on his pension rolls is now again allowed) to the 29th of July 1843. the day of his death being 12 years & 147 days at $240 per annum $2976.66 Allowed per decision of the Secretary of War dated January 3. 1845, act to provide

for liquidating & paying certain claims of the State of Virginia approved July 5. 1832. Dollars 2976.66
Treasury department third auditors office
January 7 1845. By J. B. Kirkpatrick Clerk
Treasury department 2d comptrollers office
January 8th 1845. Ed. J. M.
Which is endorsed, No. 19524 Jesse Evans decd
Captain in Virginia State troops - act to provide
for liquidating and paying certain claims of
the State of Virginia approved July 5. 1832. $2976.66
Reported Jany 7. 1845.
Received January 10 1845. of the Third Auditor of
the Treasury Requisition No. 6060 dated 9 Inst for
two thousand nine hundred & seventy six dollars &
sixty six cents in full of the within account
$2976.66. Stephen F. J. Trabue
pursuant to the act of Congress of March
3d 1817 entitled an act to provide for the prompt
settlement of public accounts, I Peter Hagner
Third auditor of the Treasury department do
certify that the foregoing is a true transcript
from the books and proceedings of the Treasury
Treasury Department, third auditors office
July 30 1846 Peter Hagner Audr
Be it remembered that Peter Hagner Esquire
who certified the foregoing transcript is now
and was at the time of doing so, third auditor
of the Treasury of the United States and that
full faith and credit are due to his official
attestations. In testimony whereof I Robert J.
Walker secretary of the Treasury of the
United States have hereunto subscribed my
L.S. name and caused to be affixed the seal
of this department at the City of Washington

19 this 31st day of July in the year of our Lord One thousand eight hundred and forty six

R. I. Walker

Secretary of the Treasury

Bill Exposes To the reading of which deft objected, because they were improperly certified, because not legal testimony, but the Court overruled the objection & the same were read to which deft objected & Excepted plaintiff then offered & read in Evidence a certified copy of the letters of administration & administration de bonis non with the will annexed granted by the County Court of Osage County to deft on the Estate of the said Jesse Evans decd in the words &c following to wit,

Admor to King State of Missouri County of Osage Sct, Osage County Court August 15th 1843. and now on this day come George King and makes application for letters of administration to be granted to him on the Estate of Jesse Evans decd and the said George King having given good and sufficient security therefore it is ordered that the said George King be and he is hereby authorised and empowered to Administer all and singular, the goods and Chattles lands and tenement of said deceased to demand receive and in a lawful manner require all manner of debts due and owing to the said Estate, and faithfully to dispose of the same according to law or the order of any Court having competent Jurisdiction and lastly James Daniels and William Cason is hereby appointed suitable persons as witnesses to accompany the above administrator in opening and Examing the papers and money of the deceased and in making an Inventory of them. In

Testimony Whereof I. Eli McGilton clerk of the Osage County probate Court have hereunto
L.S. set my hand and affixed seal this 15th day of August 1843. E.M. Gilton Clerk

Recorded August the 15th 1843.

E.M. Gilton Clerk

State of Missouri County of Osage Set I Eli McGilton Clerk of the County Court within and for the County aforesaid do certify that the foregoing on this page contains a true full and perfect copy of the letters of administration granted to George King on the Estate of Jesse Evans deceased as fully as the same now remains of record in the office of the Clerk of the Osage County Court

In testimony Whereof I hereunto set my hand
L.S. and annex the seal of said Court at office this 17th day of September A.D. 1838.

E.M. Gilton Clerk
by Wm M. Lamkin D.C.

State of Missouri County of Osage ss. The State
Letters of Missouri to all whom the presents shall come
Testamentary Greeting Know ye that the last Will and testament of Jesse Evans deceased hath in due form of law been exhibited and proved and is now recorded in the office of the Clerk of the Osage County Court, a copy of which is hereunto annexed, and in as much as it appears that letters of administration with the will annexed hath been ordered to be granted to George King, and to the end that the property of the testator may be preserved, for those who shall appear to have a legal right or interest therein, and that the said last Will may be executed according to the request of the testator, We do hereby authorise him the said George King to collect

21. and secure all and singular the goods and chattles rights and credits which were of the said Jesse Evans at the time of his death, in whomsoever hands or possession the same may be found, and to perform and fulfill all such duties as may be enjoined upon him by said will so far as their shall be property and the law charge him & in general to do and perform all other acts which now or hereafter may be required of him by law. And I do hereby appoint James Daniels Esqr & William Cason as suitable persons to accompany the above George King in opening and examining the papers money and effects of said deceased and in making an Inventory of the same. In Testimony whereof I E. M. Filton Clerk of the Osage County L.S. Court have hereunto set my hand and ~~affixed~~ official seal this 13th day of May A.D. 1846

E. M. Filton Clerk

Recorded May the 13th 1846

E. M. Filton Clerk

State of Missouri County of Osage Ss I Eli McFilton Clerk of the County Court within and for the County aforesaid do certify that the foregoing (on this page) contains a true full and perfect copy of the letters of Administration with the Will annexed granted to George King administrator de bonis non on the Estate of Jesse Evans deceased as fully as they now remain of record in the Clerks office of the Osage County Court. In testimony whereof I hereunto set my hand & annex the seal of said Court L.S. at office this 17th day of September A.D. 1850

E. M. Filton Clerk

by W. M. Lamkin D.C.

Bill Plaintiff then offered in Evidence & proposed reading to the Jury a certified copy of an instrument

Expons

22 -ment of writing ~~of~~ signed by the defendant & made a Voucher in his 1st settlement with the County Court of Osage County, in which said writing he acknowledged the receipt of the money from his atto. Stephen F. I. Trabue, which writing is in the words & figures following, to wit,

King X Stephen F. I. Trabue To George King Admor of the
To Estate of Jesse Evans decd. Dr.
Trabue To the amount received from the Treasury of the
Receipt United States the 7th January 1845. on account of arrearages of half pay due to said Evans as a Captain in the Revolutionary War from 4th March 1831. to 29th July 1843. at $240 per annum $2976.66
deduct one half as compensation to said Trabue for his services as per agreement of the 2d September 1844 sanctioned by the Osage County Court Missouri November term 1844. $1488.33

Leaving this balance due to the Admr. of $1488.33
Received this 30 June 1847 from Stephen F. I. Trabue one thousand four hundred and Eighty eight dollars 33 cents the balance due to me as Administrator of the late Capt Jesse Evans decd as by the foregoing Statement appears
$1488.33 George King Admor
Witness I. Warlaw of ~~the~~ Jesse Evans deceased
State of Missouri County of Osage SS. I Eli McGilton Clerk of the County Court within and for the County aforesaid do hereby certify that the foregoing (on this page) contains a true full and perfect copy of the receipt of George King administrator of Jesse Evans deceased to Stephen F. I. Trabue which was filed together with the settlement made by said Administrator with the Osage County probate Court at the September Term 1847. as fully as it now remains on file

23 in the clerks office of the Osage County Court
In testimony whereof I hereunto set my hand
L.S. and annex the seal of the County Court of Osage
County at office in Lime this 17th day of
September A.D. 1850. E. M. Fellow Clerk
By Wm. M. Lamkin D.C.

Bill Exposn To the reading of which deft objected & the
Court sustained the objection & refused the read
=ing thereof, whereupon plaintiff objected & Excepted
Plaintiff then offered & proposed reading to the
Jury a certified Copy of the 1st annual settlement
of said defendant as Admr of the Estate of
the said Jesse Evans decd together with the Vou
=chers thereof including the writing above
mentioned deft objected to the reading of
the Vouchers or any of them including the
aforesaid writing as one of them & the Court
sustained the objection & refused the reading
of the Vouchers of said settlement & the writing
aforesaid included. To which opinion of the
Court the plaintiff objected & Excepted, and
thereupon plaintiff read to the Jury a certified
Copy of said settlement of said admr made
with the County Court of said County at its
September Term 1847 without any of the Vouch
=ers including the writing aforesaid, which said
settlement is in the words & figures following
Writ, State of Missouri County of Osage

King Settlmt 1st The following is the first annual settlement
of George King administrator de bonis
=non on the Estate of Jesse Evans deceased with
the will annexed, made with the Osage
County probate Court at the September
Term 1847. Said Administrator to said Estate Dr.

24 per Inventory on file in the Clerk's office $1612.95 (26)
per Second Inventory 543.00
To the following named property at the appraised
Value which I have delivered to Peter one of the
legatees of said Evans as per receipt to wit
3 head of horses appraised to $78.00
3 head of Cattle & 1 Rifle gun 22.00
2 Feather beds & Bedding — 25.00
Settlement 1 Lot of house & Kitchen furniture 3.00 128.00
To the following named property which I have
delivered Charity one of the Legatees
30 head of hogs appraised to 20.00
2 Feather beds & bedding 35.00
1 lot of house & Kitchen furniture 3.00 58.00
To the following named property which I have
delivered to Lissy one of the legatees
2 Cows and about 30 head of hogs $32.00
2 feather beads & bedding 35.00
1 Lot of house & Kitchen furniture 4.00
1 man called Blazd & 2 Cows 19.00 90.00
To 1 man called Manirva and
1 cow to which I am charged
with in the sale bill 20.00
110.00 " 2431.95
x To amount of money received from
the Treasury of the United States
Stephen F. J. Trabud my attorney on
account of arrears of half pay due to
said Evans deceased as a Captain in
the Revolutionary war from the 4th March
1831. to the 29th day of July 1843 at $240
per annum 2976.66
$5408.61

Said Administrator Cr.
By amount of money retained by Stephen F. J.

25. To balance my attorney for his fee for services rendered in prosecuting & prosecuting said claims to allowance as per duplicate receipt and per order of Probate Court $1148.33

By the following Vouchers produced to the Probate Court and allowed

	No 1	$5.26	
	2	1.00	
	3.	2.50	
	4	1.12½	
	5.	2.00	
	6.	8.56.	
	7.	1.75	
	8.	1.03	
	9.	1.50.	
	10.	1.50.	
		26.22	26.22
Number	11	1.60	
	12	1.00	
	13.	1.75	
	14	3.00	
	15.	4.00	
	16	4.50	19.85
	17	2.00	
	18	50	
	19.	2.00	
	20.	1.50.	
	21	1.43	
	22	1.50	
	23	8.43	
	24	6.15	
	25.	4.13	
	26.	5.00	32.64
	27	42.08	
	28	11.75	
	29.	13.65	

26. Number 30		$3.62	
31.		146.10	
32		5.00	
34 & 35.		2.72	224.92

The following Vouchers was paid to the Legatees Viz

paid to Joseph C. King as pr. receipt	No. 36	$20.00	
paid to William King	" 37	20.00	
paid to James Evans	38.	20-62	
paid to C Reaves	39.	20.00	
paid to William King Admr.	40	20.00	
paid to William B. Evans	41.	20.00	120.00
paid to Jesse C Evans	42	20.00	
paid John Evans	43.	20.00	
paid R. W. Groves	44	20.00	
paid E. S. Ratkins	45.	20.00	
paid Thirtha Langly	46.	20.00	100.00
			2008.58
paid A. K. Bell No.	47.	20.00	
paid Erastus Evans	48.	20.00	
paid Jesse C Evans Guardian	49.	20.00	
paid John Simons No. 51 & 52		20.00	
paid James M Briggs No. 50.		20.00	100.00
paid William B. Evans 53.		10.00	
paid Nathan King No. 54. 55. & 56.		25.46	
paid William Evans 57.		20.00	
paid Erastus King 58.		20.00	
paid Jos & James S Evans 59.		87.75	163.21.
James S Evans No. 60.		960.49	
paid to Jane Farmer No. 61.		122.95	
paid to John Farmer 62.		109.00	
paid to Jane Farmer 63.		50.00	
paid to Jesse E King 64.		20.00	
paid Martha Ann King 65.		20.00	1282.44

By balance due and on my settlement at August Court 1846. No. 69 23.26.

27 paid Peter a Legatee No. 67. $128.00
paid Lipsy a Legatee 68. 110.00
paid to Charity a Legatee 69. 85.00 366.26
20.00
346.26
3900.49

By 6pr. cent on $10.416.12 No. 70 dollars worth of property, personal received & distributed 624.96
$4525.45

Said Administrator Dr.

To having received the following named slaves to wit
1 Negro Woman named Lila and her family of Children
1 Mariah
1 Maniea
1 Charity
1 Rachael - 1 Louis - 1 Elizabeth - 7.
1 Negro Woman Rachel & her family of Children Viz
1 Peter, 1 John - 1 Lorenzo - 1 James - 1 Charity - 1 Violet
1. Negro man named George
1 Negro man named William
1 Negro man named Lorenzo Dow
1 Negro man named Godfrey
1 Negro man named Harry in all 19.

Said Administrator Cr.

By having delivered to Joseph & James S Evans as per receipt No. 70. 17.
delivered to Jane Farmer No. 71. 1
delivered to James S Evans No. 60. 1
19

Peter, Charity & Elizabeth were Emancipated in the Last Will and testament of the aforesaid Lipsy Evans deceased to whom I have gave them their freedom as required in said Will and caused their free papers to be made out and delivered to them as required by law. George King administrator as aforesaid

State of Missouri County of Osage I Eli McGilton Clerk of the County Court within and for the County aforesaid do certify that the foregoing six pages

28 contains a true full and perfect copy of the first annual settlement of George King administrator de bonis non on the Estate of Jesse Evans deceased with the will annexed, made with the Osage County Probate Court at the September Term 1847 as fully as it now remains on file in the Clerks office of the Osage County Court. In testimony whereof I have hereunto set my hand and affixed the seal

L.S. of the County Court of Osage County at office in Linn this 17th day of September A.D. 1850.

E. M. Gilton Clerk
by Wm. M. Lamkin D.C.

State of Missouri County of Osage ss At a probate Court began and held in the Town of Linn on the 6th day of September A.D. 1847 were present Jno. G. Fackler Judge of Probates and John I. McDaniel Sheriff Court being called adjourned from day to day until thursday morning. Thursday morning 9 O'Clock September 9th 1847 Court met pursuant to adjournment same present as yesterday. among the records and proceedings of said Court made on the third day of said Term is the following, trinit, and now comes George King administrator de bonis non with the will annexed of Jesse Evans deceased, and his Vouchers being seen & understood by the Court it is ordered by the Court that he be credited by settlement and Vouchers here filed in the sum of $45 25. 45 and that he be charged with the balance found in his hands on this settlement. State of Missouri County of Osage ss I Eli M. Gilton clerk of the County Court within and for the County of Osage aforesaid do hereby certify that the foregoing on this page contains a true full and perfect copy of the order of the Court

29 made on the first annual settlement of George King administrator de bonis non on the Estate of Jesse Evans deceased with the will annexed made with the Osage County Court at the September term 1847 as fully as it now remains of record in the Clerks office of the Osage County Court. In Witness Whereof

I hereunto subscribe my name and annex the L.S. seal of said County Court at office in Linn this 17 day of September A.D. 1858. E.M. Gilton Clerk

by Wm M. Lamkin D.C.

Bill Eupons King Evi Plaintiff then introduced Jesse King as a Witness who after being duly sworn stated, that he was the son of defendant, that he had heard of this deed of gift almost from his infancy, that it had been the subject of common in his fathers family & with his mother who was a daughter of Jesse Evans deed Ever since he could recollect, at least since its Execution in 1834.

Farmer Evi Plaintiff next introduced Jesse Farmer who after being duly sworn as a Witness stated that he was grandson of old man Evans & nephew of deft that he had repeatedly heard the deed of gift spoken of in defts family from the time it was made in 1835 to the present time, he stated a part of a conversation he had with old man Evans in relation to it soon after it was made on cross examination he was asked to state the whole of the conversation with old man Evans which was objected to by pltff and objection overruled, he stated that he never heard that the deed of gift covered the claim for which the present suit was instituted until after the suit commenced, nor did he ever hear that pltff claimed the money now sued for by said deed

30 of gift until after the commencement of this
Farmer suit; on the contrary thereof he only heard
Evi they claimed their distributive share as heirs of old
man Evans, in addition to what they had before
received; that the conversations he had heard in
defts family and in his presence & with him were in
relation to the $12000 which pltff had recd by
virtue of the deed of gift and he never heard
till after the institution of this suit that they
claimed more by virtue of that deed. That about
3 years since when they were all over in Lime
Osage County Mo. for the purpose of proving up the
will of Jesse Evans decd Witness heard a conversa
=tion about sending to the Clerk of the Gasconade
Circuit Court for a copy of said deed of gift
That deft was in Lime at the time, but dont
recollect whether present or not or who it
was that spoke of sending for it — whether de
=fendant or not —

Harri John B. Harrison stated that as clerk of the Gas
=son conade Circuit Court he had copied said deed
Evi of gift for those calling for it, several times, that
he remembered giving James S Evans pltff & Jesse R
Evans such a copy & whom the others were for he
does not recollect — That they were all given
several years since —

The plaintiff read in evidence the suit heretofore
instituted in this Court of Evans vs King with
the bill of particulars, (here insert said record
& bill of particulars) to wit, The declaration was
filed in the clerks office on the 18th September 1846
and is as follows," State of Missouri County of
Callaway In the Circuit Court October Term
1846 Joseph Evans plaintiff complains of George

31 Decon Evans v King a Smor

King administrator of the estate of Jesse Evans deceased defendant, of a plea of trespass on the case on promises. For that whereas the said defendant heretofore on the first day of August in the year of our Lord One thousand eight hundred and forty six at said County was indebted unto said plaintiff in the sum of five thousand dollars for the work and labour care and diligence of the said plaintiff, by the said plaintiff before that time done performed and bestowed in and about the business of the said defendant, and for the said defendant and at his special instance and request and also in the further sum of five thousand dollars of like lawful money for divers goods wares and merchandise, by the said plaintiff before that time sold and delivered to the said defendant and at his like special instance and request and also in the further sum of five thousand dollars of like lawful money, for money by the said plaintiff before that time lent and advanced to, and paid laid out and expended, for the said defendant and at his like special instance and request, and also in the further sum of five thousand dollars of like lawful money for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and being so indebted the said defendant, in consideration thereof afterwards towit, on the day aforesaid, at the place aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the said several sums of money in this Count mentioned, when the said defendant should be thereunto afterwards requested and whereas also said defendant afterwards towit on the day and year and at the County last

32 aforesaid accounted with said plaintiff of and con-
Decon= cerning divers other sums of money from the said
defendant to the said plaintiff before that time due
and owing, and then in arrear and unpaid and
upon such accounting the said defendant then
and there found in arrear and indebted to the said plain-
tiff in the further sum of five thousand dollars like
lawful money, and being so found in arrear and
indebted said defendant in consideration thereof
afterwards to wit, on the day and year last aforesaid
at said County undertook and then and there promised
said plaintiff to pay him said mentioned sum of
money when he said defendant should be there-
to afterwards requested. Nevertheless said defendant
although often requested so to do has not as yet paid
said several sums of money above mentioned or either
or any part of either of them, but to do so has
refused and still refuses to the damage of said
plaintiff of Ten thousand dollars and therefore he
brings his suit &c. S. M. Bay atty for plaintiff
Sum. and thereupon the following summons issued to wit,
State of Missouri To the Sheriff of Callaway County
Greeting We command you to summon George King
administrator of the Estate of Jesse Evans deceased
to appear before the Judge of our Circuit Court for
the County of Callaway at the Courthouse on the
first day of our next October Term, which Term will
commence on the second Monday in October next
to answer the complaint of the plaintiff Joseph
Evans as set forth and Exhibited against him in our
said Court by the foregoing copy of his declaration
and this you shall not omit and have then there
this writ — Witness George Bartley clerk of our said
L.S. Court with the seal of said Court annexed at

33 Office this 18th day of September 1846. and in the 27th Year of the State Geo. Bartley Clerk

Return Served the within declaration & summons by reading in the presents & hearing of George King in Callaway County Septr. 23d. 1846. Geo E. O'Hockaday Sheriff C.C.Mo.

and afterwards at a Circuit Court Continued and held for Callaway County at the Courthouse on Wednesday the 14th day of October 1846 This day come the defendant and produced his motion to rule the plaintiff to file a bill of particulars, which is ordered to be filed—

and afterwards on the 16th October 1846 during said term, This day come the plaintiff and produced his bill of particulars which is ordered to be filed, and is as follows to wit " George King— To Joseph Evans Dr.

To my share, as one of the children of Jesse Evans deceased, of the average of the pension of said Jesse Evans decd drawn by you from the Government of the United States through your agent Stephen F. J. Trabue on the 10th of January A.D. 1845. amounting in all to the sum of $2976.66

and afterwards on the 17th day of October 1846 This day come the parties aforesaid and the defendant produced his plea and the plaintiff his Joinder thereto which are ordered to be filed and leave is given the defendant to file special pleas within thirty days of the end of this term by giving the plaintiffs attorney a copy of said pleas within that time, and afterwards on the 22d Octo. 1846. Ordered that this suit be Continued until the next Term—

and afterwards on the 21st day of April 1847

34 and during the April Term. The death of the plaintiff being suggested - it is ordered that this suit be revived in the name of James B. Evans his administrator and the cause is continued -

afterwards on the 14th day of October 1847.
This day come the plaintiff and produced his Exceptions to the deposition of the defendant filed on the 8th day of October 1847 which is ordered to be filed -

and on the 18th day of October 1847.
This day come the parties aforesaid, and on motion of the plaintiff & attorney, it is ordered by the Court that this cause be continued until the next Term at the costs of the plaintiff, and that the defendant recover the same and that he have Execution -

and on the 22d October 1847. This day come the parties aforesaid and the motion of the plaintiff to suppress the deposition of the defendant being heard, it is considered by the Court that the same be overruled -

and afterwards on the 12th day of April 1848.
This day come the plaintiff and produced his motion to suppress the deposition of John Jameson which is ordered to be filed -

and afterwards on the 13th April 1848.
This day come the parties aforesaid, and by consent this cause is submitted to the Court as a Jury, whereupon the plaintiff takes a nonsuit, therefore it is considered by the Court that the plaintiff have nothing by his bill, but that the defendant recover of the plaintiff his costs by him about his

35 defence in this behalf expended, and that he
had Execution—
Bill and here the plaintiff closed his ~~case~~ Testimony
Exptn and this was all the testimony offered in the
cause either by plaintiff or deft. Thereupon
defendant asked the Court to give to the
Jury the following instruction, Number 1. 2. 3. & 4.
in the words & figures following, to wit
Instrs. Upon the Evidence given the plaintiff cannot
recover. The plaintiff cannot recover in
this action upon the proof given without
Evidence that before the commencement of
the suit he demanded the money sought to
be recovered from the defendant—
The plaintiff cannot recover in this action
on the proof given, without Evidence that he
had given the defendant notice of his right
to the money before the commencement of
this suit—
The plaintiff cannot recover in this
action upon the proof given against the
defendant in his individual capacity.
Bill To the giving of which plaintiff objected
Exptn but the Court overruled the objection as to
the 1st 2d & 3rd & gave them & sustained the
objection as to the 4th & refused it—
To which opinion of the Court in giving the
1st 2d & 3rd Instructions as asked for by deft
plaintiff objected & Excepted & to the refusal
of the 4th defendant objected & Excepted &
Thereupon the plaintiff took a non-suit with
leave to move to set the same aside which
was granted. plaintiff then filed his motion
in the words & figures following (see it on page

36. 10 of this record) asking the Court to set aside the Judgment of nonsuit, which motion was overruled by the Court. To which opinion of the Court in overruling said motion plaintiff objected & Excepted & herewith tenders his bill of Exceptions which being examined, allowed signed & sealed are made a part of the record

Will A. Hall (seal)

State of Missouri Callaway County Set
As clerk of the Circuit Court within and for the County aforesaid, I do hereby certify that the foregoing thirty six pages contain a full true and complete transcript of the record and papers in the suit of James S. Evans against George King as fully as the same now remains in my office.

Given under my hand and seal of office as clerk as aforesaid this third day of December 1850.

Geo. Bartley Clerk

Evans Admr vs King

The following agreement is filed in the above ~~said~~ Cause to wit, "In the Callaway Circuit Court October Term 1850. James S. Evans administrator of Joseph Evans decd vs George King Deft. In assumpset. It is agreed by the undersigned Counsel for the respective parties in the above Entitled cause, that the Bill of Exceptions in the case of said James S. Evans vs George King decided at the present Term of the Court with the ma=ters therein contained shall be considered the Bill of Exceptions in this case, with the additional

matter thereto, to be added in copying the Record shewing that letters of administration upon the estate of the s.d deed were duly granted by the proper authority before the commencement of the suit, to s.d James S. Evans, with a copy thereof inserted - Haydon, Ansell & Jones for pl.ff
Leonard Jameson & Shely for King

The following is a copy of the letters of administration filed in the above cause twit, "County of Washington SS. The State of Missouri, To all persons to whom these presents shall come Greeting Know Ye that Joseph Evans late of the County of Washington died intestate as it is said having at the of his death property in this State which may lost, destroyed or diminished in Value if speedy care be not taken of the same - To the End therefore that said property may be collected preserved and disposed of according to law We do hereby appoint James S. Evans administrator of all and singular the goods and chattles rights and credits which were of the said Joseph Evans at the time of his death with full power and authority to secure and dispose of said property according to law and to collect all money due said deceased and in general to do and perform all other acts and things which are or hereafter may be required of him by law - In Testimony Whereof I Samuel Harrison Clerk of the County Court in and for the County of Washington aforesaid have hereunto signed my name L.S. and affixed the seal of said Court at office in the Town of Potosi this 21st day of December A.D. 1846.
Sam Harrison Clerk

Letters Admor

Recorded December 21st 1846. Saml Harrison Clerk

38) State of Missouri Washington County — I Samuel Harrison Clerk of the County Court within and for the County aforesaid hereby certify that the foregoing contains a full true and perfect copy of the Letters of administration of James S. Evans Administrator of the estate of Joseph Evans deceased as the same remains of record in my office

In Testimony whereof I hereunto set my hand L.S. and official seal at office in the Town of Potosi this 3d day of March 1847.

Saml Harrison Clerk

The above suit was commenced on the 9th September 1848. and afterwards at a Circuit Court continued and held for Callaway County at the Courthouse on Wednesday the 16th day of October 1850. This day come the parties aforesaid and thereupon come a Jury to wit Aaron McIntire, Jesse Bane, James Fightmaster, Elijah Thatcher, Leander Miller Marshall Gibson, Chas A. Baily, John A. Jackson, Henry S. Turner, John Smith George Dawson Jacob Crowson, who being Elected tryed and sworn well and truly to try the issue Joined, and thereupon the plaintiff takes a Nonsuit, therefore it is considered by the Court that the Jury be discharged, and that the plaintiff take nothing by his action, but that the defendant recover of the plaintiff his costs by him about his defence in this behalf Expended, the plaintiff produced and filed his motion to set aside the Nonsuit, which was overruled by the Court

39 State of Missouri Callaway County Sct

As clerk of the Circuit Court within and for the County aforesaid, I do hereby certify that the agreement on the 36th & 37th page of this record, is truly copied from the original on file in my office, also that the copy of the Letters of Administrators of James S. Evans on the Estate of Joseph Evans is truly copied from the copy on file in my office, and that the Judgment of said Evans as Admor against George King is truly copied from the record in my office and that the said suit was commenced on the 9th September 1848

Given under my hand and seal of office this 5th December 1850.

Geo. Bartley ccts

19 ~~17~~ ~~8~~ 11

Oas. S. Evans p. e.

vs } Error

George King - d. e.

18 ~~8~~ 8

Oas. S Evans Admr. of p. e.

Joseph. Evans decd

vs } Error

George King - d. e.

filed Dec. 19 1850

Wm E Dunscomb

Clerk

Callaway

2

[44]

Supreme Court,
January Term 1851.

James S. Evans - pltff
ad ⅌ In Error to Callaway Cty -
George King - Dept

And now on this day the said Evans comes & assigns the following Errors in the above entitled Cause -

1st The Circuit Court rendered Judgment for the said King against him said Evans, whereas by Law, the Judgment ought to have been rendered for him said Evans against him said King - In this therefore the Court clearly Erred =

2 - The Court Erred in rejecting & refusing to permit the plaintiff Evans, upon the trial, to give to the Jury, good, legal, relevant & competent Evidence; as also, in permitting the said King to give to the Jury incompetent, illegal & irrelevant Testimony, though objected to by Dr. Evans =

3d - That the Court upon the trial misinstructed the Jury, & gave them illegal, & improper instructions as to the Law of the Case =

4th – That the Court Erred in refusing to Grant the said Evans a new trial upon his motion & reasons assigned therefor = Wherefore he prays that the Judgment aforesaid may be reversed &c –

Ansel, Jones & Hayden,
attys for Jeff in Error –

James S. Evans – Jeff
vs. Judgment of Error –
George Kinga Dept

Filed Jany. 14 1857
Wm E Dunscomb
Clerk

Supreme Court,
Jany Term 1851.

James S. Evans, Adm.r &c
agt } In Error to Callaway
George King — Dept.

And now on this day comes here the plff in Error, & assigns the following Errors as having been committed by the Circuit Court upon the trial of the above entitled Cause —

1st The Court erred in rendering judgment for the said King instead of rendering it for said Evans, as is apparent from the Record & Proceedings had in the Cause =

2d — The Court erred in rejecting legal proper, relevant & competent Evidence as the same was offered by said Evans, & permitted said King to give illegal, irrelevant, & incompetent evidence, as offered on the trial, though objected to by said Evans =

3d — The Court refused proper Instructions as to the Law of the Case, as prayed for by said Evans; & also erred in misinstructing, and giving illegal & improper Instructions as to the Law of the Case =

4th — The Court erred in refusing to

Set aside the nonsuit taken, & in the refusal to grant him a new trial of the Cause upon his motion for ~~a new trial~~ the same=

Wherefore he prays that the Judgment aforesaid may be reversed, Annulled &c, &c=

Ansel, Jones &
Hayden attys
for pltff in Error—

James S. Evans
vs. Judgment of Error—
George Stiles

filed Jan 7. 16 1851
Wm E Dunscomb
Clerk

Evans
vs }
King

Evans brought an action against King for money had and received upon the following case.

Jesse Evans the father of the plaintiff who had served in the revolutionary war as an officer in the "Illinois Virginia Regiment" executed a deed of gift dated the third day of December 1834 by which he conveyed to his sons Joseph Evans and the plaintiff three fourths of his claim for land to which he was entitled by reason of his services as such officer and "all the money due me from the "State of Virginia and the government of the "United States as pay, half pay, or in any "other way that may be due to me for the "said services in the war of the revolution "as an officer by virtue of any law or laws "resolution or resolutions either by the Legis-"lature of Virginia or the Congress of the U-"nited States". The consideration stated in this instrument is "love good will and affection". After this instrument was made and after the donees had received some money under it Jesse Evans died and the defendant King became his administrator. As such administrator the defendant received from the government of the United States the sum of $2976.$\frac{66}{100}$ on account of the half pay of the intestate from 1836 up to the time of his death. This action is brought to recover the money so received. The case in the court below turned upon the receipt of a demand

before the commencement of the action but the questions discussed here involve the merits of the case and so far as it now appears necessary the merits will be decided.

The present action is designed to enforce against the representative of Evans the voluntary ~~[illegible]~~ ~~[illegible]~~ gift made by the instrument executed in favor of his sons by a recovery of the money received by his administrator.

The money was received from the government of the United States by the administrator King under the act of Congress of 5th July 1832 4 Stat. U S 563 which provided for liquidating and paying certain claims of the State of Virginia. The second section of the act directs payment to be made to the State of Virginia from the Treasury of the United States of the amount of judgments which had been recovered against that State in favor of the officers or representatives of officers of certain regiments and corps therein mentioned. The third section provides that the Secretary of the Treasury shall adjust and settle the claims for half pay of the officers of the same regiments and corps who had not prosecuted their claims to judgment; ~~the settlement to be~~ but for which the State of Virginia would be bound upon the principles of the half pay cases decided by her Court of Appeals.

Under this act Jesse Evans as a captain was entitled to receive from the government of the United States $240 a year as his half pay for life. There is nothing in the act that prohibits the transfer of the right to this ~~[illegible]~~ allowance of half pay nor any direction

as to the persons who shall succeed in case of the death of the officer. Whether there is any provision in the act of the legislature of Virginia affecting the question of succession to the rights of a deceased officer we have not now the means of ascertaining.

We purposed at first deciding the questions discussed at the bar which involve the merits of this controversy, but subsequent reflection has ~~rendered~~ ~~it~~ produced doubts whether ~~these~~ the questions are presented upon the present record as fully and fairly as they might be. It is incidentally mentioned that the assignees of Jesse Evans have received a considerable sum of money from the government under the deed of their father but it does not appear whether the government recognized them as assignees and paid the money to them as their own under the deed of their father, or whether it was received from the government in the name of their father Jesse Evans. The fact that the government recognized their right to the money under the deed of their father and paid it to them, may have great influence in determining the ~~questions~~ questions now ~~made~~ presented by the defendant in opposition to their present claim. If they were treated by the government as entitled to the money under the deed, or if according to the practice of the department they could have received the money claiming it under that deed, it would be difficult to resist the conclusion that the transfer was in itself complete and their right perfect.

In the absence of such evidence, the defendant, the legal representative of Jesse Evans, is shown to have received the money. Whatever may be the right of the plaintiff to recover the money from the defendant we will take the payment to have been rightly made in the first instance to the administrator by the government, unless the contrary is shown, and

then we hold that before the person who received the money as a administrator was sued by the plaintiff there should have been a demand made upon him for its payment. The want of a demand appears to have been the ground of decision in the Circuit Court upon which the plaintiff suffered a non suit. That decision upon the state ~~If he renews his suit he~~ of the evidence was correct and the judgment is affirmed.

H R Gamble

Jan. 7. 17 & 18

Evans
v
King

Opinion
HRG

filed July 17 1852
Wm E Dunscomb
Clerk

Op. for ansell
$1.10

THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF Callaway IN SAID STATE, **Greeting,**

WHEREAS, George King on the seventeenth day of July in the year eighteen hundred and fifty two at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Chas. S. Evans admr. of Chas. Evans decd the sum of Seven 10/100 dollars for his costs and charges by him expended in a certain suit wherein the said Chas. S. Evans admr. as aforesaid was plaintiff in error and the said George King was defendant in error which to the said defendant were adjudged, as appears to us of record: **Therefore,** We command you, that of the goods and chattels, lands and tenements of the said Chas. S. Evans admr. of Joseph Evans decd in your bailiwick, you cause to be made the aforesaid costs, and that you have the same before the Judges of our said Supreme Court, on the second Monday in January next, to render unto the said George King the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then there this writ.

SEAL OF THE SUPREME COURT OF MISSOURI

Witness, William E. Dunscomb, Clerk of said Supreme Court, at Office, in the City of Jefferson, the thirteenth day of October in the year of our Lord one thousand eight hundred and fifty two

Wm E Dunscomb

Came to hand Oct 20th 1852
Thos B Nesbitt Sc C

I return the within execution not satisfied no property of the said Jos. Evans being found in my County
Thomas B Nesbitt Sc C

January 21 1853

Sheriffs fee 50. cts

32

January Term 1853

George King
Mg Exeon
Jos. Evans adm.

Costs

R B Jackson	60
Wm E Dunscomb	6.50
this suit	1.00
	$8.10

Calcaway

OWEN & HUBLEY
SO. LEE
MASS

Evans Vs. King

Points and authorities.

by Thomas Ansell.

First The action for money had and received was properly brought in this Cause - (See points & authorities below.)

1 Where one Man has in his hands money which according to the rules of Equity and good conscience belongs to and ought to be paid to another, this is the proper form of action for its recovery. If then at the Commencement of this suit, the defendant held money which En Aequo et bono he ought not to have retained from the plaintiff, he is entitled to recover in this action. Wiseman Vs Lyman 7 Mass R 233

2 There need be no privity of Contract except what results from one man having another Mans money, which he has not the right Conscienciously to retain in order to support this action. Chitty on Contracts page 605 Note 1

3 There are many Cases in which this action is supported without any privity between the parties - When one Man has in his hands the money of another which he ought to pay over, he is liable to this action, although he has never seen or heard of the party who has the right to the Money &

when the fact is proven that the de=
fendant has the money of the plain
=tiff, if he cannot show a legal or
Equitable ground for retaining it,
the Law creates the privity and prom
=ise necessary to support this action—
Hall Vs. Marston 17 Mass R 579.

4 The action of Assumpset for money
had and received, is often called
an Equitable action, and is less res=
tricted and fettered by technical
rules and formalities than any o=
=ther form of action. It aims at the
abstract justice of the Case, and
looks solely to the enquiry whether
the defendant holds money which
En Aequo et bono belongs to the
plaintiff—Claflin Vs. Godfrey 21 Pick
(Mass R page 6

Hall Vs. Marston 17 Mass R 579.
Mason Vs. Waite 17 Mass R 562.
Wiseman Vs. Lyman 7 Mass R 288.
Eddy Vs. Smith 13 Wend 490.
Claflin Vs. Godfrey 21 Pick. 6.
Kane Vs. Paul 14 Peters 33.
De Valengin's Admr. Vs Duffy—
14 Peters 282.

Interest may also be recovered in this
Action—Pease Vs Barber 3 N. York Term
R 266. Opinion by Kent, Chief Justice.

5 This action also lies for money paid by mistake, or upon a consideration which happens to fail, or money got through imposition, express or implied, or extortion, or oppression, or undue advantage taken of the plaintiffs situation. — Moses vs Macferlan 2 Burrows 362. So if the money of the plaintiff has in any other manner come into the defendants hands for which he would be chargeable in Tort, the plaintiff may waive the Tort and bring Assumpsit under the common Counts.

6 The Rule is flexible and applies to almost every kind of Case, where money or property has been received, directly or indirectly by defendant, which in justice and Equity belongs to the plaintiff, - the privity and promise are fictions which the Law creates, in order to effect substantial justice.

7 Parker Chief Justice in Hall vs Marston 17 Mass R. 575 speaking of the consent of the holder being necessary to create a privity between the plaintiff and defendant, says -
"When the fact is proved that he (the defendant) has the money (of the plaintiff) if he cannot show the legal or Equita

=table right for retaining it, the Law Creates the property and promise. This Doctrine says Judge Parker, appears not to have been disputed until the Case of Williams vs. Everett 14 East Rp 582 cited by the Counsel for the defend=ant. That Case differs materially from the one now before us, as will be seen by comparing the Two together. In that Case there was a positive refusal of the Agent to act according to the Orders of the person who remitted the money except so far as to receive the Contents of the Bill, the difficulty was to estab=lish an implied promise against an express denial. 17 Mass, Rp 579.

Chitty on pleading ~~Contracts~~ Money had and received page 384 & 385. 386 top paging

Second The fourth Instruction asked by defendant was properly refused by the Court, on the ground that James S Evans had an Individual claim against George King, which he had the right to recover in his Individual Capacity ~~from~~ said King, his (said King) either in ~~his~~ Individual or representative Character.

1 The owner of property or of Money received by an Admr. may resort to the Admr. in his personal Character and Charge him De bonis propriis with the amount thus received; or proceed against him as Executor or Admr. at his Election —

But whenever an Executor or Admr. in his representative Character, lawfully receives money or property, he may be compelled to respond to the party entitled to it, in that Character, and shall not be permitted to throw it off after he has received the Money, in order to defeat the plaintiffs Action — De Valengin's Admr. Vs. Duffy 14 Peters 282.

2 Whatever property or money is lawfully recovered by the Executor or Admr. after the death of his Testator or Intestate in virtue of his representative character, he holds as assets of the Estate; and is liable therefor in such representative character to the party who has a good title thereto. —
The want of knowledge, or the possession of knowledge on the part of the Admr. as to the rights or claims of other persons upon the money thus received; cannot alter the rights of the party to whom it ultimately belongs. — De Valenginis Admr. v. Duff 14 Peters 282. —

3 The Declaration in an action by an Executor for the recovery of money received by the defendant after the death of the Testator, may be in the name of the plaintiff as Executor; or in his own name without stating that he is Executor. —
The distinction is that when an Executor sues on a cause of action which accrued in the life-time of his Testator he must declare in the detinet, that is, in his representative capacity only. But when the cause of action accrues after the death of the Testator, if the money when recovered will be assets,

the Executor may declare in his representative Character, or in his own name. — Kane V. Paul 14 Peters 33. —

Third. That by the deed of gift made by Jesse Evans in his life time transferring to James S Evans & Joseph Evans the money due him for his military services in the war of the Revolution they became entitled to the same, and that the collection thereof by defendant King was in his own wrong, and no demand or notice was necessary from plaintiff to sue King previous to his bringing this suit for the money.

1 By the act of Congress of the U S approved May 15th 1828 For the relief of certain surviving officers & Soldiers of the Army of the Revolution Stat U S Vol 4th Page 269. and by an act supplementary to said act approved June 7th 1832 Stat U S Vol 4th page 529 it is expressly declared, "that the pay hereby allowed, shall not be in any wise transferable, or liable to attachment, levy or seizure by any legal process whatever, but shall inure wholly to the personal benefit of the officers & c entitled to the same.

2 The act of Congress of the U S approved June 19th 1840 making provision for the payment of Pensions to the Executors & Admors of deceased Pensioners in

certain Cases declares — That in case any male Pensioner shall die leaving Children but no Widow, the amount of Pension due to such Pensioner at the time of his death shall be paid to the Executor or Admr. on the Estate of such Pensioner for the sole and exclusive benefit of the Children to be by him distributed among them in equal shares, and the same shall not be considered as a part of said Estate nor liable to be applied to the payment of debts of said Estate in any Case whatever — Stat U S Vol 5th page 385.—

3. But in the Act of Congress of the U S Approved July 5th 1832 — To provide for liquidating and paying certain Claims of the State of Virginia Stat U S Vol 4th page 563. for Money received under which Act the present suits were brought, no restriction or prohibition is found as to the transfer or application of the Money received under the said Act. therefore if there is no restriction outside of said Act the Money ~~received~~ due under it was assignable and when received would inure to the benefit of the Assignee.

Fourth Was the money due Jesse Evans under the said Act of July 8th 1832 assignable under that said Statute?

1 The correct distinction made in Cases of this description is, that a Man may always assign a Pension or ~~Annuity~~ given him as a Compensation entirely for past services, whether granted to him for life, or merely during the pleasure of others - in such a Case the assignee acquires a Title to it both in Equity and at Law, and may recover back any sums received in respect of it by the assignor after the date of the Assignment -

But when the Pension is granted not exclusively for past services, but as a Consideration for some Continuing duty or service, although the Amount of it may be influenced by the length of service which the party has already performed, it is against the policy of the Law that it should be Assignable — Note 1 page 371 2 Story's Equity - page 368. 369. 370. 371. ~~and~~ Section 1040 d. & e ~~and~~ ~~Note X at page XXX~~

X 2 In order to constitute an assignment of a debt or other Chose in Action in Equity no particular form is necessary any order, writing, or act which makes an appropriation of a fund, amounts to an Equitable Assignment of that fund.
The reason is, the fund being matter not assignable at Law, nor capable of manual possession, an appropriation of it is all the nature of the Case admits of, and therefore it is held good in Equity
2 Story Eq 38 Sect 1047.

3 The assignment of a debt may be by parol as well as by deed —
But in order to perfect his Title against the debtor it is indispensible that the assignee should immediately give Notice of the assignment to the debtor, for otherwise a priority of right may be obtained by a subsequent assignee, or the debt may be discharged by a payment to the assignor before such Notice — 2 Story Eq page 382 Sect 1047 — See also Story Eq page 362 Sect 1040 — page 392 Sect 1057 page 366 Sect 1040 b

4 Courts of Equity will give effect to Assignments of Trusts, possibilities of Trust and contingent interests, whether they are in real or personal Estate, as well as to Assignments of Choses in Action.
In Courts of Law these principles of Courts of Equity are now acted on to a limited extent, but still whenever a bond or other debt is assigned and it is necessary to sue at Law for the recovery thereof, it must be done in the name of the original Creditor — In Equity on the other hand the Assignee may sue on such Assignment in his own name, and enforce the payment of the debt directly against the debtor making him as well as the Assignor (if necessary) a party to the Bill. — Although to make it effectual for all purposes, it may be important to give notice of the Assignment to him; since before notice, he is not affected with the Trust created thereby, and the rights of third persons may intervene to the prejudice of the Assignee. The ground of this doctrine is that in Equity the Creditor has a right to dispose of his own property as he may choose; and to require the debt to be paid to such person as he may direct, without any consultation with

the debtor, who holds the debt subject to the rights of the Creditor.
2 Storys Eq page 362 Sect 1040 page 392 Sect 1056 & 1057.

5 Judge Story in his Equity Sect 1040 e page 371 Speaking of the Assignment of Pensions says "However this may be the ~~weight of~~ Authorities seem strongly to support the Assignment of Pensions — and again in Note 1 at the same page he says "The weight of Authority, seems however in favor of the Assignability of half pay. and Cites Tunstall Vs Boothy 10 Simons Rs 542. 549. & Wells Vs Foster 8 Meson & Wellsby's Rs 149.

6 Lord Eldon in Davis Vs The Duke of Marlborough 1 Swanstons Rs 78. says, "a Pension for past services may be aliened, but a Pension for supporting a Grantee in the performance of future duties is inalienable."

Mr Justice Buller says, in Flarty Vs Odlum, "That pay actually due can be assigned, but does not extend to future accruing payments." 3rd Term Rs 682.

Fifth Is a Deed of gift sufficient to pass personal property to the Donee without actual delivery of the property?

1 A parol gift of Slaves without delivery is void, but a gift by deed on a good Consideration is valid without delivery the relation of Father and Child is a sufficient Consideration to render a gift of Slaves from the former to the Latter valid. Banks Admr. vs Marksbury 3 Littell 275.

2 Delivery of property given by a Father to a Son by Bill of Sale is not necessary to pass the Title as between the parties Fulow vs Thomas 6 Mon 74

3 A Deed of gift to a Son in Law under Seal not void for want of consideration, the Seal imports a consideration. 2 U. S Digest Suplmt page 86 Sect 85 Hoon vs Gertman 1 Branch 63.

4 It has recently been determined that by the Law of England in order to transfer property by gift, there must be a deed or instrument of gift, or there must be an actual delivery of the thing to the donee.
2 Bla 334 Note 3—

~~Grangiac Vs Arden 10 Johns Rp 293~~

2 U S Digest Suplmt page 84 Sect 44 page 85 Sect 72 page 86 Sect 75. 76. 85. 86 88 page 83 Sect 25

~~Linnendall Vs Doe 14 Johns 222~~

Voluntary Conveyances good except against Creditors and purchers 1st Storys Eq page 375 Sect 371 .. page 356 Sect 353. 354. 355. 356.

As between the Donor & Donee and those claiming under them a Gift of personal property by deed is valid though possession remains with the Grantor. M'Cutchen Vs M'Cutchen 9 Porter 650 - 2 U S Dig page 86 Sect 86 (Supplemt.)

A deed of Gift of personal property may be made to take effect and vest the property in possession, upon a future Contingency. Abbot Vs Wil=liams 2 Brevard 78 - 2 U S Dig page 85 Sect 72. Supl

The owner of a bond which was in suit and for which the owner held an attorney receipt, told the plaintiff that he might have the bond, and delivered him the attorneys receipt for it, instead of deliv=ering the bond itself which was then filed in the suit in the Court, no

consideration was given by the plain=tiff for the bond — held this was a valid Gift of the bond to the plaintiff, and he is entitled to recover the money collected upon it — 4 Leigh ~~Ele~~ 333 Elam vs. Keen. 2 U States Digest Supl page 86 Sect 76

1 Gallisons Re 419

The Recording of the Deed of Gift from Jesse Evans to Joseph & James Evans in the Recorders Office in Gasconade County was Notice to all persons and the Certificate of acknowledgement & of Record ought to have been admitted as Evidence by the Court — the Court therefore erred in rejecting the same —

See Fraudulent Conveyances Stat of Mo ~~page~~ 1835 & 1834 page Sect

See also Conveyances — Notice — page Stat Mo 1835 & 1834.

The Court erred in rejecting in Evidence the Vouchers in the first Annual Settlement of Thing as Admr. De bonis non of Jesse Evans in the Osage County Court at the Sept Term 1847 of said Coun-

Sixth Was a demand or notice necessary from plaintiff to defendant King before the commencement of this action.

1 The general rule is perfectly well settled, when matter alleged lies peculiarly in the knowledge of the plaintiff, he must aver that the defendant had notice, but when it lies equally in the knowledge of the defendant such averment is unnecessary. Lent Vs Paddleford 10 Mass R 244.

2 The only use of a special request is to avoid vexatious suits, by giving the defendant an opportunity of paying an undisputed demand. It is apparent from the case before us that it would have been fruitless ceremony. Lent Vs Paddleford 10 Mass 244

3 What is considered as sufficient to put a person upon enquiry is considered as conveying notice for the Law imputes to a person knowledge of a fact of which the exercise of common prudence and ordinary diligence must have apprised him — was not the notice such as ought to have put the defendant on enquiry.

Booth vs. Barnum 9 Conn 290
Peters vs. Goodrich 3 Conn Rp 150.

4 The Majority of the Court is of Opinion, that Holbrook who must be presumed to have read this writing could not fail to observe its peculiarities, to have his attention awakened and stimulated by them, and to see the path that would conduct him to a full knowledge of the rights of the plaintiff. Of consequence the Court is of Opinion that he had constructive Notice — 7 Conn Rp 334.
Seyourney vs Munn.

5 Another Question to be considered is where Notice and request to perform are necessary — the rule is that where the right to claim the performance of a contract depends upon the ~~con~~ occurrence of a certain fact, the promisee is not bound to give Notice thereof to the promissor, unless the contract is to be performed on condition that Notice is given, or unless the fact be peculiarly ~~in~~ within the his knowledge, or unless it be reasonably proper under the circumstances of the Case — so also a request to per=

form, need not be avoided unless by the express terms of the contract a request be a condition precedent to performance or be implied from the Nature of the Contract Story on Contracts page 406 Sect 667.

6 It is now uncontrovertably settled that in a trial of the general issue in an Action of Detinue, no demand previous to the commencement of the suit need be proven ~~3 Litt~~ 3 Littell Jones Vs Henry & Boggs 46.

7 A previous suit for the same Cause of action in which the plaintiff has been nonsuited, is both notice and demand of his Claim
Lenn Vs M'Clallance 4 Dev & Batt 458 — 2 U States Digest Supl 459 Sect 50 —

8 A person is guilty of a conversion who intermeddles with my property and disposes of it, and it is no answer that he acted under Authority from another who had himself no Authority to dispose of it — the Court is governed by the principles of Law and not the hardship of any particular Case —

Perkins vs Smith 1 Wilson 328.
Cooper vs Chitty 1 Burrows 20.

9 A bona fide Bailee in possession may not be guilty of conversion before a proper demand and refusal, but if he sell the property whether for himself or his Bailor no demand is necessary by a Stranger, who is the real owner — The sale itself is a conversion, and is, as to the owner, tortious in Law.

10 In every case where a master hires the servant to do a thing, whoever does it by his command is a trespasser, and this, though the servant acted in total ignorance of his Master's right
Chitty, Blackstone Vol 1 page 432.
Note. — Parker vs Godin 2 Strange 813.

11 Lord Holt in Baldwin against Cole says — "The very assuming to ones self the property and right of disposing of another mans goods is a conversion. and certainly a man is guilty of a conversion who takes my property by assignment from another who has no authority to dispose of it, for what is that but assenting that other in carrying his wrongful act into effect
12 Modern 334.

Whatever property or money is law-
fully ~~received~~ recovered by an Executor or Admr
he holds as assets of the Estate, the
want of knowledge or the possession
of knowledge on the part of the Admr
as to the rights or claims of other per-
sons upon the money they received.
Cannot alter the rights of the party
to whom it ultimately belongs.
Valentine Admr. v. Duffy 14 Peters 252.

In a great variety of cases it must
necessarily be a matter of no inconse=
derable doubt and difficulty to decide
what circumstances are sufficient
to put a party upon inquiry.
Vague and indeterminate rumor
or suspicion is quite too loose and
inconvenient in practice, to be ad=
=mitted to be sufficient. but there
will be found almost infinite gra=
=dations of presumption between
such rumor or suspicion, and that
certainty as to facts which no mind
could hesitate to pronounce enough
to call for further inquiry and to
put the party upon his diligence.
No general rule can therefore be laid
down to govern such cases. each
must depend upon its own circumstan=
=ces 1st Story Equity page 402 Sect 400a

Chitty pl 362. 364 Notice of Repeal. (24)

The 1st. 2nd. & 3rd. Instruction ought not to have been given, the therefore error in giving the same.

A brief statement of dates & Entries.
The following is intended as a reference.
Joseph Evans Vs George King Admr
&c filed Septr 1846. Bill of par=
ticulars filed Oct 16th 1846.
Bill of Eq page 31
Bill of particulars — To my share
as one of the Children of Jesse Evans
deceased of the arrearage of the
Pension of said Jesse Evans drawn
by you from the Government of the
United States, through your agent
Stephen F. J. Trabue on the 10th of
Jany 1843. amounting in all to
the sum of $ 2976.66.
Bill of Eq page 33.
James S Evans Admr &c Vs George
King & James S Evans Vs George King
filed Septr 9th 1848. Bill of par=
=ticulars filed Decr 20th 1848. Bill Eq page 1
Entract from Bill of particulars
For and in consideration of his love
good will and affection for these
gave granted and transferred unto
him the said Joseph and the said
James S. Evans the plaintiff (all
the money due him the said Jesse
Evans (since deceased) and to which
he was intitled from the State of
Virginia and the Government of the
United States of America as pay
half pay or in any other way
the same may or might be due

him for his services in the War of the Revolution as an Officer by virtue of any Law or Laws, Resolution or Resolution, either by the Legislature of Virginia or the Congress of the said United States of America) by which said Deed of Gift the said plaintiff will insist that he and the said Joseph Evans (in the life time of the said Joseph Evans) became entitled in common in equal moities to the said Sum of $2976.66 Bill of Exceptions pg 5

Deed of Gift by Jesse Evans to Joseph & James S Evans ~~1834 Septr~~ Decr 3rd 1834. acknowledged 3rd of Septr 1834 - Recorded 25 Decr 1834 Bill of Exceptions 11. 12. & 13.

Extract from said Deed of Gift -

I give to the said Jos. Evans and James S Evans all the money due me from the State of Virginia, and the Government of the United States of America, as pay half pay or in any other way, that may be due me for the said services in the War of the Revolution as an officer, by virtue of any Law or Laws Resolution

or Resolutions, either by the Legislature of Virginia or the Congress of the United States of America.

Bill on page 11

Power of attorney from Riney to Trabue Septr 2nd 1844.

Bill of Exceptions page 16

Extract – Do hereby nominate constitute and appoint Stephen F. J. Trabue of the County of Franklin and State of Kentucky, my agent and attorney in fact, to prosecute to allowance by the presentation of Government petition or otherwise, any and every claim due to said Jesse Evans as half pay for his Revolutionary services under the Laws of Virginia and in pursuant of an act of Congress passed the 5th of July 1832), to wit from the day said officer retired from actual service down to the date of the close of the war. Also from the 4th day of March 1831 to the day of the death of said officer and such other amount or amounts as may be done said officer.

Bill of Ex page 16

Letters of Admn to Riney August 15th 1843
Bill of Ex page 19

Letters of Admn. De bonis non to King May 13th. 1846 Bill En page 20.

King received of Trabue $2976.66 June 30th. 1847. which Trabue collected from the U States Treasury Jany 7th 1845. King paid Trabue $1488.. 33 cents for collecting it. and King acknowledged the receipt of the money from Trabue in his first annual Settlement as Admr. De bonis non of Jesse Evans Septr Term 1847. See Bill of Exceptions page 22 & 23 with the Settlement to page 27.

See Settlement Septr Term 1847

King Dr.	5408.61
King Cr.	4525.45
Bal on hand Septr 9th 1847	883.16
Paid Trabue June 30th 1847	1488..33
Paid himself 9 Septr 1847	624.45
	2112..78
Bal on hand	883..16
	3015..96
Recd of Trabue	2976..66
	839..30

Had King presumptive Notice, or cause of enquiry?
From these authorities we contend there was no necessity either for Notice or demand - but had Notice been necessary ~~under these authorities~~ had he not more than sufficient Cause to put any prudent man upon enquiry. the Deed was made in 1834 and recorded in Gasconade County in a few days after it was made ~~that is~~ according to the Evidence of Jesse King a Son of the defendant it had been ~~taken~~ the subject of Common Conversation in his Fathers family and with his Mother who was a Daughter of Jesse Evans. deceased even since he could recollect at least since its execution in 1834. See Bill of Ex page 29

See also the Evidence of Jesse Farmer Grandson of Jesse Evans deceased and Nephew of George King defendant "he had repeatedly heard the deed of Gift spoken of in defendant family from the time it was made to the present time - he stated that he never heard that the deed of Gift covered the claim for which the present suit was ~~brought~~ instituted until after the suit commenced - nor did he ever hear that plaintiff claimed the money now sued for by said Deed of Gift until after

the commencement of this suit, on the contrary thinks he only heard that they claimed their distributive share as heirs of old Man Evans in addition to what they had before received, that the conversations he had heard in defendants family and in his presence and with him, were in relation to $12000 dollars which plaintiff had received by virtue of the deed of Gift and he never until after the institution of this suit heard that they claimed more by virtue of that deed — ~~29 & 3~~

Bill of Exceptions

Page — 29 & 30

Now under this state of case if Free King the defendant having married the Daughter of Jesse Evans and having been Admr & Admr. De bonis non of his Estate from 1843 to the present time, could he as a man of common prudence and common sense have omitted to read that deed and make himself familiar with its Contents

But did he know where to find it? hear what Jesse Farmer says — That about three years ago when they were all over in Linn Osage County for the purpose of proving up the Will of Jesse Evans deceased (this was May 13th 1846 when Letters

of Administration De bonis Non was granted to Riley on the Estate of Jesse Evans) witness heard a conversation about sending to the Clerk of the Gasconade Circuit Court for a Copy of said deed of Gift that defendant (Riley) was in Linn at the time but dont recollect whether present or not — or who it was that spoke of sending for it whether plaintiff or not.

John B Harrison stated that as Clerk of the Gasconade Circuit Court he had he had Copied said deed of Gift for three Calling for it several times — that he remembered giving James S Evans plaintiff and Jesse R Evans such a Copy — and whom the others were for he does not recollect — that they were all gone several years time

Bill of Ex page 30 —

Now this Conversation that took place at the time of the probate of the Will in Linn Osage County was some two or years after the Execution ~~and recording~~ of the deed in Gasconade County —

It was a "fixed fact" that the deed was with the Clerk of Gasconade County who was most interested in seeing the Deed — who wanted the deed to shield him in his path of duty — who

were interested in preventing the plaintiff from obtaining any thing more by virtue of that deed, all who were over in Linn Osage County for the purpose of proving up the Will of Jesse Evans — they admit they knew of the deed of Assignment ever since it was made they admit that in 1846 those who were in Linn Osage County to prove the Will knew the deed was in the Office of the Clerk of the Gasconade Circuit Court and talked of sending for a Copy — dont recollect that Geo. King talked of sending for a Copy dont recollect that he was present — who were all those who were over in Linn? the relations and Children and Sons & Daughters Nephews and all the fraternity of the descendants of Jesse Evans deceased — King received the Money from Trabue on the 7th of June 1847 more than a year after the time spoken of had he seen the deed of Transfer, or if he had not, is any body to blame for it but himself was there not sufficient ground to put him upon enquiry and would it be a very great stretch of credulity to suppose all interested in it had seen ~~it~~ the deed of Gift — Bill of Em page 11

Seventh. Did the Court err in admitting the Evidence from the Treasury Department of the United States—
See an Act to provide more effectually for the settlement of Accounts between the United States and Receivers of public money. (1st Vol U States Stat at Large) Page 512. Approved March 3rd 1797

1 That in every case of delinquency where suit has been or shall be instituted a transcript from the Books and proceedings of the Treasury certified by the Register, and Authenticated under the seal of the department shall be admitted as evidence.

And all Copies of Bonds, contracts or other papers relating to or connected with the settlement of any account between the United States and an Individual, when certified by the Register to be true Copies of the Originals on file, and Authenticated under the seal of the department as aforesaid may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit, which would be due to the Originals papers if produced and Authenticated in Court

See Note on same page

2 The account was settled by the Third 3rd Auditor of the Treasury, and was duly certified to the 2nd Comptroller of the Treasury, and this balance was by him admitted and certified on the 23rd of April 1823. The account was further certified: "Treasury Department 3rd Auditor Office 1st September 1824, pursuant to an Act to provide for the prompt settlement of public accounts approved the 3rd of March 1817. I Peter Hagner 3rd Auditor &c do hereby certify that the foregoing transcripts are true copies of the Originals on file in this office. to this was annexed a certificate that Peter Hagner was 3rd Auditor &c" In testimony whereof I William H. Crawford secretary of the Treasury have hereunto subscribed my name, and caused to be affixed the seal of this Department at the City of Washington this 1st of September 1824 the seal of the Treasury Department was affixed to the certificate.

By the Court. There are two kinds of transcripts which the Statute authorizes the proper officers to certify first a transcript from "the books and proceedings of the Treasury" and secondly "Copies of bonds con=

contracts and other papers &c which remain on file and relate to the settlement." the certificate under the first head has been literally made in this case, and is a sufficient authentication of the transcript from the books and proceedings of the Treasury" and is a substantial compliance with the requisitions of the Statute. 1st. Vol U States Stat page 513 Note Smith v The U States 5 Peters 292.

3 The officers of the Treasury may well certify facts which come under their official notice, but they cannot certify those which do not come within their own knowledge. the execution of Bills of Exchange and orders for money on the Treasury, though they may they be "connected with the settlement of an account", cannot be officially known to the accounting officers. In such case however provision has been made by Law, by which such instruments are made evidence without proof of the handwriting of the Drawer. the act of Congress of the third 3d of March 1797 makes all copies of papers relating to the settlement of accounts at the Treasury, properly certified when produced in Court, amount to the transcript of equal validity with the Originals. Under this provision had Copies of the Bills of Exchange and Orders on which these Items were paid to Smith & M'Cormick, been duly certified and annexed to the transcript the same effect must have been given to them by the Circuit Court as if the Originals had been produced and proved. And every transcript of accounts from the Treasury which contains Items of payments made

to others on the authority of the person charged, should have annexed to it a duly certified copy of the instrument which authorized such payments. And so in every case where the government endeavors by suit, to hold an individual liable for acts of his agent. the agency on which the act of the government was founded, should be made to appear by a duly certified copy of the power. the defendant would be at liberty to impeach the evidence thus certified, and under peculiar circumstances, of alleged fraud, the Court might require the production of the original instrument — this however would depend upon the exercise of the discretion of the Court, and could only be enforced by a continuance of the cause until the original should be produced. 1st Vol U States Stat page 514 — U States vs Jones & Peters 375.

See also an Act to provide for the prompt settlement of public accounts — approved March 3rd 1817 — 3 Vol U States Stat (Sect 11) page 336 — Also, see the whole Act — also see an Act further to amend the several acts relative to the Treasury War & Navy departments approved May 7th 1822 Stat U States Vol 3rd page 688

(Vol 3rd page 688.

4 That the provision ~~made~~ con=
contained in the second Section
of the Act passed the 3rd of March
1797. entitled "an Act to provide
more effectually for the settlement
of accounts between the U States,
and receivers of public money, which
directs in every Case where Suit has
been, or shall be, instituted a
transcript from the books and
proceedings of the Treasury, certi=
fied by the Register shall be admit=
=ted as evidence, be extended in re=
gard to the accounts of the War &
Navy Departments to the Auditors
respectively charged with the exam
ination of those accounts, and
that certificates, signed by them,
shall be of the same effect, as
that directed to be signed by the
Register. 3 Vol U States Stat page
367 Sect 11 ——

Transcripts
~~Shall the~~ ~~Records & papers~~ ~~be deemed~~ from the
books and proceedings ~~of the~~ of the
Treasury Department of the U States
thus certified, shall be admitted as evidence
in the State Courts ——
See 3rd Littell 330 Wickliffe vs
Hale

5 Courts will ~~politically~~ Judicially recognize the political constitution and frame of their own Government, its essential political ~~political~~ Agents or public Officers, sharing in its regular administration, and its essential and regular political operations and action. thus Notice is taken by all Tribunals of the accession of the Chief Executive of the Nation or State, under whose Authority they act, the genuineness of his signature, the heads of departments and principal Officers of State, the election or resignation of a Senator of the United States, the appointment of a foreign Cabinet Minister, Marshalls and Sheriffs and the genuineness of their Signatures Courts of general Jurisdiction their Judges and course of proceeding in fine Courts will generally take Notice of whatever ought to be generally known within the Limits of their Jurisdiction.
1 Greenleaf Ev page 64. Sect 6
See also Greenleaf Section 479. pub Documents

6 Courts also recognise without other proof than Inspection the seals of State of other Nations which have been recognized by the own Sovereign.
1 Greenleaf Ev page 64 Sect 6

7 In proving a record by a copy under seal it is to be remembered that Courts recognise without proof the seal of State, and the seals of the Superior Courts of Justice, and of all Courts established by public Statutes. and by parity of reason it would seem, that no extraneous proof ought to be required of the seal of any department of State or public Office established by Law and required to be known to have a seal. And here it may be observed that Copies of records and Judicial proceedings under seal are deemed of higher credit than sworn Copies, as having passed under a more exact critical Examination. 1 Greenleaf Ev page 658 Sect 503

8 See Sect 504 Greenleaf. In regard to the several States composing the U States. — "full faith & credit &c shall be given in each State &c" Authentication of public acts records &c —

9 Sect 488 Do Authentication of foreign Laws ~~under~~ by an Exemplification ~~under~~ of a Copy under the grand seal of State, or by a Copy proved

by a witness (to be a true Copy) who has examined and compared it with the Original, or by the certificate of an Officer properly authorized by Law to give the Copy, which certificate must also itself be duly authenticated 1 Greenleaf Ev page 645 Sect 488.

10 The relation of the United States to each other in all matters not surrendered to the general Government by the National Constitution are those of foreign States in close friendship each being sovereign and independent — Under the ~~Statute~~ Act of Congress of U States May 26th 1790. it is held that the Seal of the State is sufficient ~~in place~~ Authentication without the attestation of any Officer or any other proof, and it will be presumed prima facie that the Seal was affixed by the proper Officer. 1 Greenleaf page ~~449~~ 646 Sect. 489.

11 The reciprocal relations between the National Government, and the several States composing the United States, are not foreign

but domestic.- hence the Courts of the United States take Judicial Notice of all public Laws of the Respective States whenever they are called upon to Consider and apply them, and in like manner the Courts of the several States take Judicial Notice of all public Acts of Congress, including those which relate to the district of Columbia, without any formal proof. but private Statutes must be proved in the ordinary mode 1st Greenleaf page 647 Sect 490.——

12 Whatever Copy from any department of the General Government, is so authenticated or proved, as to be admissible in the Federal Courts is admissible in the State Courts. Wickliffe vs Hill 3rd Littell 330.

Evans vs. King

Extracts of the
Law and Evidence
relied on by plain
=tiff

Hayden & Ansell

[46]

Supreme Court.
January Term 1852.

James S Evans plaintiff.
against
George King defendant.

Statement of the Case

On the 9th day of September 1848 James S Evans filed in the office of the Clerk of the Callaway Circuit Court his Declaration in Assumpset against George King (See Bill of Exceptions page 1 & 2.) and afterwards on the 10th day of October 1848 the defendant produced his Motion for the production of a Bill of particulars, and the same was filed - and afterwards at the Term aforesaid the defendant produced his plea and the plaintiff his Replication (See Bill of Exceptions page 4. 5 & 6.) and afterwards on the 16th day of October 1850 Came the parties aforesaid and the Jury impannelled and sworn in the Cause Came into Court and thereupon the plaintiff took a Nonsuit - plaintiff filed his motion to set aside the Nonsuit and for a new Trial which was overruled by the Court (See Bill of Exceptions page 18) and on the 23rd day of October 1850 the plaintiff produced his Bill of Exceptions, which was examined signed sealed and allowed by the Court and made a part of the Record as follows -

On the trial of the Cause plaintiff offered in Evidence a deed of gift from Jesse Evans dec'd, to Joseph Evans and Jesse R. Evans (See Bill of Exceptions page 11 & 12) and after establishing the death of the subscribing witnesses Charles Bolton and John F. Rutter and that their signatures were genuine by the testimony of John B. Harrison and Robert Moore the same was offered to the Jury to the giving of said deed in evidence defendant objected but the Court overruled the objection and defendant ~~[illegible]~~ objected and excepted. Defendant admitted the death of Jesse Evans and also of Joseph Evans prior to the commencement of this suit.

Plaintiff offered to read to the Jury the certificate of acknowledgment and of Record of said deed of gift (See Bill of Exceptions page 12 & 13. defendant objected and the Court sustained the objection, to which opinion of the Court, plaintiff objected and excepted. Plaintiff proposed reading in evidence a certified Copy of all the papers and proceedings had and on file in the Treasury department at Washington City District of Columbia, including a Copy of a Power of Attorney from defendant to Stephen F. Trabue as well as the papers touching the same in the Office of the Register & 3rd Auditor of said department, all of which were authenticated under the Seal

of said department (See Bill of Exceptions page 13 to 19) to the reading of which defendant objected because they were improperly certified, and because not legal testimony. the Court overruled the objection and the same were read to the Jury, to which defendant objected and excepted.

Plaintiff then offered and read in Evidence a certified Copy of Letters of Administration and of Administration de bonis non with the Will annexed granted by the County Court of Osage County to defendant on the Estate of Jesse Evans deceased (See Bill of Exceptions page 19. 20. & 21.)

Plaintiff then offered in Evidence and proposed reading to the Jury a certified Copy of an Instrument of writing signed by the defendant and made a voucher in his 1st settlement with the County Court of Osage County by which said writing he acknowledged the receipt of the money from his Attorney Stephen F J Trabue which writing is in words &c as follows (See Bill of Exceptions page 22) to the reading of which defendant objected and the Court sustained the objection whereupon plaintiff objected and excepted.

Plaintiff then offered and proposed reading to the Jury a certified Copy of the 1st Annual settlement of said defendant as Admr. De bonis non of the Estate of the said Jesse Evans decd together ~~De bonis non~~ with the Vouchers thereof

including the writing aforesaid - defendant objected to the reading of the Vouchers or any of them including the writing above mentioned as one of them. the Court sustained the objection and refused the reading of the Vouchers of said settlement and the writing aforesaid included. to which Opinion of the Court the plaintiff objected and excepted. and thereupon the plaintiff read to the Jury a certified Copy of said Settlement of said Admr. made with the County Court of said County at its September Term 1847 without any of the Vouchers including the writing aforesaid (See Bill of Exception page 23 to 29)

Plaintiff then introduced Jesse King as a witness who after being duly sworn stated that he was the Son of defendant that he had heard of this deed of Gift almost from his Infancy, and that it had been the subject of common (Conversation) in his father's family and with his Mother who was a daughter of Jesse Evans deceased, ever since he could recollect, at least since its execution in 1834.

Plaintiff then introduced Jesse Farmer who after being duly sworn as a witness stated that he was Grandson of old man Evans, and nephew of defendant. that he had repeatedly heard the deed of Gift spoken in defendants family from the time it

was made in 1834 to the present time. he stated a part of the conversation he had with old man Evans in relation to it soon after it was made.
On cross examination he was asked to state the whole of conversation with old man Evans which was objected to by plaintiff and objection overruled. he stated that he never heard that the deed of gift covered the claim for which the present suit was instituted until after the suit commenced. nor did he ever hear they plaintiff claimed the money now sued for by said deed of gift until after the commencement of this suit. on the contrary thereof he only heard they claimed their distributive share as heirs of old man Evans in addition to what they had before received. that the conversations he heard in defendants family and in his presence and with him were in relation to $12.000 which plaintiff had received by virtue of the deed of gift. and he never until after the institution of this suit heard that they claimed more by virtue of that deed. that about three years since when they were all over in Linn Osage County Mo. for the purpose of proving up the Will of Jesse Evans deceased witness heard a conversation about sending to the Clerk of the Osage Gasconade Circuit Court for a Copy of said deed of gift. That defendant was in Linn at the time but dont recollect whether present or not or who it was that spoke of sending for it, whether ~~plaintiff~~ defendant or not.—

John B Harrison stated that as Clerk of the Gasconade Circuit Court he had Copied said deed of gift for those calling for it several times. that he remembered giving James S Evans plaintiff and Jesse B Evans such a Copy. and whom the others were for he does not recollect, that they were all given several years since.

The plaintiff rested in rebutting the suit heretofore instituted in this Court of Joseph Evans against George King Admr. &c with the Bill of particulars (See Bill of Exceptions page 30 to 33.

On the 13th day of April 1848 the above Cause was submitted to the Court as a Jury and the plaintiff took a Nonsuit.

Here the plaintiff closed his testimony and this was all the testimony offered in the Cause either by plaintiff or defendant. and thereupon the defendant asked instructions numbered 1. 2. 3. 4 (See Bill of Exceptions page

To the giving of which plaintiff objected, but the Court overruled the objection as to the 1st 2nd & 3rd. and gave them and sustained the objection as to the 4th and refused it.

To which opinion of the Court in giving the 1st 2nd & 3rd instruction asked by defendant, plaintiff objected and excepted. And to the refusal of the 4th defendant objected and excepted. and thereupon the plaintiff took a Nonsuit with leave to

set the same aside, which was granted. Plaintiff filed his motion (See Bill of Exceptions page 10) asking the Court to set aside the Nonsuit and grant him a new trial which motion was overruled by the Court. to which Opinion of the Court in overruling said motion plaintiff objected and excepted.

Points and Authorities
Hayden & Ansell for plaintiff

1st. That by the deed of Gift made by Jesse Evans in his life time, transferring to plaintiff and Joseph Evans the money due him for his Military services in the War of the Revolution they became entitled to the same and that the collection thereof by defendant Riney without the consent of said Jesse and Joseph, was a receipt of it to and for their use, and for the recovery thereof the present Action may be maintained.

2nd. That in order to recover in this Case it was not necessary for the plaintiff to prove that he demanded the money of the defendant or gave him Notice of his claim to the same prior to the Commencement of this suit

3 That on the Trial of the Cause the Circuit Court rejected legal & relevant evidence offered to the Jury by the plaintiff, and permitted the defendant to give to the Jury illegal and irrelevant testimony in the Cause —

4 The Circuit Court at the instance of the defendant gave to the Jury Illegal and Irrelevant instructions as to the Law of the Case.

5 That the Circuit Court erred in refusing to set aside the non-suit taken by the plaintiff, and in refusing to grant him a new Trial.

First The action for money had and re=
=ceived was properly brought in this
Cause - (See authorities below)

Wiseman Vs Lyman 7 Mass R 233.
Chitty on Contracts page 605 Note 1.
Hall Vs. Marston 17 Mass R 579.
Claflin Vs. Godfrey 21 Pick 6
Mason Vs Waite 17 Mass R 562.
Eddy Vs. Smith 13 Wend 490.
Kane Vs. Paul 14 Peters 33
De Vanlengins Admr Vs Duffy
14 Peters 282
Moses Vs Macferlan 2 Burrows 362
Chitty on ~~contracts~~ pleading page 384. 385. 386 top paging

Second The fourth Instruction asked by de=
-fendant was properly refused by
the Court on the ground that Jas
S Evans had an Individual claim
against Geryg King which he had
the right to recover in his Individ
ual capacity from said King
either in his (~~James Evans~~ said Kings) Inde-
vidual or representative Charac
ter.
De Valengins Admr Vs Duffy 14 Peters
282.
Kane Vs. Paul 14 Peters 33.

Interest 3rd N Y Term R Pease Vs Bar-
=ber 266.

Third That by the deed of Gift made by Jesse Evans in his life time transferring to James & Evans and Joseph Evans the money due him for his Military services in the War of the Revolution, they became entitled to the same, and the collection there of by defendant King was in his own wrong, and no Notice or demand was necessary from plaintiff to said King previous to his bringing the suit for the Money.

See Act for the relief of certain surviving Officers and Soldiers of the Army of the Revolution. Approved May 15th 1828 Vol 4 Stat at Large page 269.

An Act supplementary to the Act for the relief of certain surviving Officers and Soldiers of the Revolution. Approved June 7th 1832 Stat at Large page 529.

An Act making provision for the payment of Pensions to Executors and Administrators of deceased Pensioners in certain Cases. Approved June 19th 1840 Stat at Larges Vol 5 page 385.

An Act to provide for liquidating & paying certain claims of the State of Virginia. Approved July 5th 1832 Vol 4 Stat U States 563.

Fourth ~~Was~~ The Money due Jesse Evans under the said Act of July 5th 1832 was assignable?

2 Storys Eq page 368. 369. 370. 371 Sect 1040 d. e Note 1 page 371. 2 Storys Eq page 382 Sect 1047 - page 362 Sect 1040 page 392 Sect 1057 ~~Sect~~ Page 366 Sect 1040 b. Sect 1056.

Fifth. A Deed of Gift sufficient to pass personal property to the Donee without actual delivery of the property -

Banks Admr. vs Marksbury 3 Litt 275
Inlow v. Thomas 6 Mon 74
Horn vs Gartman 2 U S Dig Supl page 86 Sect 85 - 1 Branch 63 S.C. 2 Bla 334 Note 3.
Grangiac vs Arden 10 Johns R 293
2 U States Dig Supl page 84 Sect 44 page 85 Sect 72 page 86 Sect 75. 76 85. 86. 88. page 83 Sect 25.
Linnendole vs Doe 14 Johns 222.
Voluntary conveyances good in apt against creditors 1st Storys Eq page 375 Sect 371

page 356 Sect 353.354.355.356 [60]
Mr Cutchen vs M Cutchen 9 Porter 650. 2 U States Digest page 86 Sect 86 Supl
Abbott vs Williams 2 Brevard 78 2 U States Digest page 85 Sect 72 Supl. 4 Leigh 333 Elam vs Keen 2 U States Dig Supl page Sect 1 Gallisons R 419

Smith ~~Was~~ A demand or Notice was not necessary from plaintiff to defendant before the commencement of this action?

Chitty pleading note & Request 362.364.
Lent vs Paddleford 10 Mass R 244
Booth vs Barnum 9 Conn 290
Peters vs Goodrich 3 Conn R 150
7 Conn R 334 Sigourney vs Munn
Story on Contracts page 406 Sect 667
3 Littell Jones vs Henry & Boggs 46
Linn vs McClelland 4 Dev & Batt 458
Perkins vs Smith 1 Wilson 328
Cooper vs Chitty 1 Burrows 20
Parker vs Godin 2 Strange 813
12 Modern 334.
Valeyrius Admr vs Duffy 14 Peters 252. 1st Storys Eq page 402 Sect 400 a

See Fraudulent Conveyances Stat of Mo 1835 & 1825 page Sect
See also Conveyances - Notice page Sect Stat Mo. 1835 & 1834

Seventh ~~Dix~~ The Court did not err in admitting the Evidence from the Treasury department of the ~~Texas~~ United States?

See an Act to provide more effectually for the settlement of accounts between the United States and Receivers of public money Approved March 3rd 1799. United States Stat Vol 1 page 572.

See also Note to page 572 Stat U States taken from Smith vs The United States 5 Peters 292. also Note to page 513 U States vs Jones 8 Peters 375.

See also an Act to provide for the prompt settlement of public accounts Approved March 3rd 1817 Stat United States Vol 3rd page 336 Sect 11.

See 1st Greenleaf Ev page 64 Sect 6 page 658 Sect 503. Sect 504. Sect 488. page 646 Sect 489. page 647 Sect 490

Wickliffe vs Hill 3 Littell 330.

An Act further to amend the several Acts relative to the Treasury, War and Navy departments Approved May 7th 1822 Stat U States Vol 3 pg 688.

Instructions

given 1st Upon the Evidence given, the plaintiff cannot recover —

given 2nd The plaintiff cannot recover in this action upon the proof given, without evidence that before the Commencement of the suit, he demanded the money sought to be recovered of the defendant.

given 3rd The plaintiff cannot recover in this action upon the proof given, without evidence that he had given the defendant Notice of his right to the Money before the commencement of this suit —

refused 4th The plaintiff cannot recover in this action upon the proof given against the defendant in his Individual Capacity.

James S. Evans - ~~Respondent~~ appellants, vs George King - ~~appellant~~ Respondent

appeal from a law judgement of the ~~Boone circuit~~ Callaway circuit Court.

This was an action of assumpsit for money had and received - and was tried in the Callaway circuit court at the October Term 1850 on the general issue

The Plaintiff sought to recover $2976. and interest, the arrearages of half pay due Jesse Evans deceased as a captain in the Virginia line from 4 March 1831 to 29 July 1843 at $240 per annum under the act of congress of the 5 July 1832 which ~~was~~ the defendant had received from the Government of the United States as Jesse Evans' administrator and put into his money as assetts

On the trial, the Plaintiff after giving evidence of the death of Jesse Evans - the grant of administration upon his estate to the defendant and his receipt of the money as Evans' administrator from the Government of the United States, read in Evidence a deed of ~~assignment~~ voluntary assignment from the intestate to the Plaintiff and Joseph Evans now deceased, of the 3d of December 1834 - By this deed the intestate gave to Joseph and James S. Evans (among other things) "all the money due me (here) from the State

of Virginia and the Government of the United States of America as pay, half pay or in any other way, that may be due to me (him) for said services in the war of the Revolution as an officer by virtue of any law or laws resolution or resolutions either by the Legislature of Virginia or the congress of the United States of America"

There was no evidence of any demand upon suit commenced - or of any notice being given by the Plaintiff to the defendant of his right to the half pay under the deed of gift or otherwise - One witness a son of the defendant and grandson of Jesse Evans the intestate testified that he had heard the deed of gift spoken of in his fathers family ever since 1834 - another witness a nephew of the defendant and grandson of Jesse Evans testified that he had also heard the deed of gift spoken of in defendants family ever since 1834 - but always understood upon the commencement of this suit that the donees only claimed under the deed of gift the $12.000 they had received from the United States - and set up no claim to the present money, other than as distributees for their distributive share -

On this evidence the court at the instance of the defendant, declared as the law of the case

1st That the Plaintiff could not recover upon the proof given

2d That the Plaintiff could not recover upon the proof given without evidence of a demand before the commencement of the suit.

3. That the Plaintiff could not recover upon the proof given without evidence that he had given notice to the defendant of his right to the money -

Upon these instructions the Plaintiff took a non suit and after a motion to set it aside, which was over ruled, appealed to this court.

Points and Authorities relied on in support of the judgement, by Leonard & Sheeley for Respondents -

First.

The money due from the Government for half pay did not pass by this deed of assignment ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~

1. It was an imperfect gift - a voluntary assignment, not sufficient of itself to pass the money - and being without ~~[illegible]~~ value, not intitled to aid from a court of Equity - Stongs Equity - Sects. 706a - 793a - 973 - 988 & 1040c - Edwards vs Jones 7 Simons 325 - S. C. 1. Mylne & Craig 226 - ~~[illegible]~~ Coleman vs Sarrel 1. Ves jr 50 - Ex Parte, Pye - 18 Ves. 140 - Halloway vs Headington - 8 Simons Rep 324.

2. The alienation of such a provision is against the policy of the law, ~~which~~

by which it is granted. The honor of the Government is concerned in providing a decent support for these public benefactors - and the Nation has an interest in preserving them from want & destitution
Story Eq. Sect. 1040 d. & 1040 e.

Second. If an equitable right to the money vested in the Plaintiff by the deed of assignment, the administrator was the proper to recover it and the money having come lawfully into his possession, a demand before suit was necessary to ~~entitle~~ entitle Plaintiff to recover
Ferris vs Paris & others 10 John Rep 284
Taylor vs Bates 5 Cow. 378.

Third - Even if no such demand be necessary, yet as the legal right to receive the money is in the administrator - he is not liable to the Plaintiffs action till he has notice of Plaintiffs right

Fourth - If the defendant be liable at all, he is liable in her representative capacity - and not personally -

Congrove's administrator vs Sanders 3 J. J. Marshall Rep. 575. Frye vs Lockwood 4 Cow 456. Ripley vs Pelston 9. John Rep. 201. Sadler vs Evans 4 Burr 1984. Townson vs Wilson 1. Camp 397. De Valengins administrator vs Duffy 14 Wilson Rep. 282.

Sup. Court.

George King
appellant

vs

Jas S. Evans
Respondent

Brief for
appellant

Leonard &
Shelby -

[2]

Evans vs. King =

P. R. Hayden as Counsel for Evans Submits the following points ~~and~~ views for the Considera-
-tion of the Supreme Court.

1st That by the Deed of Gift made by Jesse Evans in his life time transfering to the plaintiff & Joseph Evans the money due him for his military services in the ~~Virginia~~ War of the Revolution, they became entitled to the same — the Deed having been made upon a good & meritorious Consideration: That in Equity the right passed to the assignees & it was not in the power of the assignor in his life time, nor in King, his legal Representative, since his Death, to Repudiate the transfer = That if the assignor himself had Collected the money after the assignment of the Claim, he would have been Chargeable with the money, & Collected as money had and received to & for the use of the assignees; That as King is the Legal Representative of Evans, he had no more right to Collect the money & carry it into Evan's estate, than the Testator had, & having Collected it, the money cannot be holden by him otherwise than as money belonging to the assignees, & for their use:

2d That as the money was Collected by King without the Consent of the assignees, & by him Converted to the use of the estate of Evans (as is shewn by his Settlement

as administrator with the Osage County (Court) he holds the money claiming a right thereto adversely to the right of the plaintiffs, and therefore, he has no right to insist in his defence to this action that the action was brought previous to a demand ~~of payment~~ of the Defendant of the money sued for = That the law requires in no case a ~~previous~~ demand (previous to the suit) of the money sued for, where the same has been received tortiously, or without the consent of the true owner of it, or where the same has been lawfully received as Trustee or Bailee, & afterwards holden against the consent of the owner, or where the same has been converted to the use of the holder in violation of the right of the Cestue que trust: That the legal necessity for a previous demand is founded upon the principle that the party sued must be in fault at the time of the commencement of the suit; & this cannot be when the party is holding the money with the consent of the owner, and as his Trustee or Bailee - And hence the necessity of a demand previous to the suit =

That in this case the Defendant, King, was in fault at the very time of his receiving the money - He received it at his peril, and is as much liable for it as he would be had he found a Horse or other chattle of the plaintiff with the Horses or other chattels of the dec^d, & had sold the same for money, & was now holding the same adversely to the plaintiff's right, as the administrator of said Estate:

That the Defendant having received the money as administrator may be charged by the plaintiff

de bonis testatoris, or de bonis propriis, at the election of the plaintiff = That he may be charged de bonis testatoris upon the ground, or principle, that he received the money as the administrator of the Estate, and if charged in that Capacity he would be estopped to deny the fact that he so received it; But being charged in this case de bonis propriis he is responsible upon the ground, that he received the plaintiff's money and holds it against his consent, and has never had ~~xxxx~~ ~~Lxxx~~ any lawfue right to the possession thereof = He had no right to a notice from the plaintiff of the plaintiffs claim to the money prior to the collection of it by him - He has no right to impose any such condition upon the plaintiffs claim to the money - it is a condition that the Law never imposes ~~against the right~~ upon a party who has an absolute right to money or property in the hands of another, who holds it adversely to him = The ~~party~~ deft collected it at his peril, & the Law will not presume that the plaintiff had any knowledge prior to the collection, that the Defendant intended to intermeddle with his claim upon the Government - And the fact that the Defendant was ignorant of the plaintiff's right does not ~~invest~~ divest the plaintiff of such right, or invest it in the ~~Estate of~~ Deft as admr = There is ~~in~~ evidence that the Defendant had notice of the plaintiff's right to the claim, sufficient to have put defendant upon inquiry

in regard to it = ~~And if notice was necessary to have been given the Defendant~~ and therefore, if it had been necessary ~~to have~~ for plff to have given the notice, this evidence ought to have been left by the Court with the jury for them to weigh in determining that question; & therefore the Circuit Court erred in giving the Defendants first Instruction to the jury = See 14th Peters U. S. Rep page Valenzin's Admr. vs Duffy 283 & following =

3d The gift is a perfect gift, and made in the only way that a Chose in action can be transferred to the assignee, and to obtain the possession of the money it is not necessary for the plaintiff to go into Equity = His remedy, ~~as adopted~~ at law, is ample, & he has adopted it: Even if he had resorted to Chancery that Court would have enforced the payment of it, unless an objection were urged against the exercise of that jurisdiction upon the ground that the action for money had & received at law would lie, & therefore that Chancery should not be appealed to = Courts of Equity will always support a Gift, by deed, founded upon a good or meritorious Consideration, & a Gift from a father to his son or grand-son is such a Consideration = And it is only where the Gift in such cases infringes the rights of Creditors or purchasers that Chancery will ~~in such~~ refuse its aid

when invoked by the Donee = In this case the Claim assigned the plaintiff was one to which the Donor was entitled absolutely, as against the General Government, & upon which that Government could not & has not imposed any Conditions or restrictions whatever as to its transfer by the assignor = It was a Debt due the assignor ~~which had been~~ by the State of Virginia for his services as a soldier in her Leine in the War of the Revolution & assumed by the U. S = And, although it might have been necessary for the plaintiffs to have sought its recovery in the name of the assignor, if living, or in the name of his Legal representative since his Death, had the Defendant not have obtruded himself in the Collection of it; yet the defendant by this act has not acquired any right ~~in this action~~ thereby to resist the plaintiff's recovery in this action =

P. K. Hay Dm
atty for pltff

Evans
agt } Hayden's
King Points & Brief —

for Evans —

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