

**Hill Vs. Smith**

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**Court :** US Supreme Court

**Decided On :** 1858

**Appeal No. :** 62 U.S. 283

**Appellant :** Hill

**Respondent :** Smith

**Judgement :**

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**62 U.S. (21 How.) 283**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF INDIANA*

## **SYLLABUS**

Where it appeared from the record that a party sold land to a railroad company, the price of which was paid in the stock of the company, guaranteed by certain persons to be at par after a named time, and suit was brought upon this written

contract, the case does not appear to be open to a demurrer by the defendants, and the judgment of the court below sustaining such a demurrer must be

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reversed. It is an original contract, and, being declared on as such, the plaintiffs are entitled to judgment.

This was an action brought upon the contract recited in the opinion of the Court, to which there was a general demurrer, which was sustained by the circuit court.

Hill who was the plaintiff, then brought the case up to this Court by a writ of error.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The plaintiff's demand is founded on the following contract, dated August 17, 1853, signed by defendants, and set forth at length in the declaration:

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"Whereas Henry Hill of Delaware County, has proposed to convey to the Cincinnati, Newcastle & Michigan Railroad Company a certain tract of land in Delaware County Containing three hundred and nine acres, for the consideration of six thousand one hundred dollars, to be paid in the capital stock of said company, at par, on the condition that Caleb Smith and other responsible persons will guaranty that the said stock shall be worth par in three years from the present date, and in default thereof, that the company shall make it up to par; and whereas the said Cincinnati, Newcastle & Michigan Railroad Company have agreed by a resolution of their board of directors to accept said proposition, now we, the undersigned, in consideration of the premises, hereby guarantee to the said Henry Hill that the said stock shall be worth par in three years from the date of this instrument, and if at the expiration of that date said stock shall not be worth par, we guarantee the said Henry Hill that the said Cincinnati, Newcastle & Michigan

Railroad Company shall make up to him or pay him whatever sum the said stock shall be worth less than par, so as to make the said stock worth par to said Henry Hill at that date."

The declaration is in proper form, and contains all the averments necessary to show a breach of this contract, and the consequent liability of defendants.

There was a general demurrer to the declaration and judgment for the defendants.

As we have not been furnished with an argument on behalf of defendants, we are at a loss to discover on what grounds it is supposed that this judgment can be supported.

As the contract is in writing, signed by the parties to be charged, it cannot be affected by the statute of frauds, and although the term "guarantee" is usually applied to a collateral undertaking to pay the debt of another, yet when taken in connection with the other terms of the instrument, this is clearly an original, independent contract. If it had been under seal, the term "covenant" would have been the technical synonym for the word "guarantee" as here used.

It states that the defendant would not agree to sell his land

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in exchange for stock, except on condition that defendants should guarantee that the stock in three years would be worth par, or should be made so by the corporation. For this consideration, defendants agree to make it so, or in other words to pay the difference between the cash value of the stock on that day and its nominal value.

On this condition and for this consideration, the plaintiff agreed to convey his land to the railroad company, and on the faith of defendants' undertaking, he had conveyed it and accepted not money, but certain stock, which defendants have agreed to make equal to money by a certain day. The declaration avers that at the time specified, the stock was wholly worthless and of no value and the railroad company utterly insolvent and unable to pay the difference, and that defendants,

having full notice of these facts, refuse to comply with their contract.

There is no reason why this contract should be treated as void because of an illegal or immoral consideration. Its conditions require no previous suit to be instituted against anyone as principal debtor. The declaration contains every necessary averment: a valid contract, a large consideration paid, and a breach of the contract by defendants, all set forth in proper and technical language.

The plaintiff is therefore entitled to judgment on the demurrer unless the court below, in its discretion, shall permit the defendants, on payment of costs, to withdraw their demurrer and plead some good defense in bar.

*The judgment of the court below is reversed, and record remitted for further proceedings.*

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