

No. 8512

Supreme Court of Illinois

Rowley Smith & Co.

vs.

James Smith et al

At a Circuit Court commenced and holden at the Court
house in Nashville Washington County Illinois on the 23rd day
of March A.D. 1838 The following proceedings was had in the
following cause to wit

Rowley Smith & Co } Bill for Injunction

^{vs.}
Bond Gray Smith et al August Term 1837 of the ^{County} Washington Circuit Court
To the Honorable Sidney Breese presiding Judge of the Washington
County Circuit Court in and for the County of Washington State
of Illinois in Chancery Sitting Your Orators - John Smith
a resident of Union County State of Illinois John L Post a
resident of Fayette County State of Illinois David A C Rowley and
Michael Noel Residents of the State of New York Contractors and
Late doing business Under the name and style of Rowley Smith & Co
Respectfully ~~show~~ ^{show} unto your honor that some time in the month of
September in the year 1833 Suits were commenced against them by the
name and description of Rowley Smith & Co before one James Smith a
Justice of the Peace and a Resident of Washington County aforesaid in
favor of divers persons - that is to say one suit in favor of James McShane
for \$22.51 cents One in favor of John Lewis for \$21.92 cents Two in favor
of J Dempsey One for \$11.35 cents the other for \$26.07 cents One in favor of
J Dorsey for \$22.61 cents and Two in favor of Edward Cain One for
\$38.71 cents the other for \$8.88 cents - That no process was ever
served upon your Orators John C Smith Noel Rowley nor did
they ever enter their appearance or authorize any one to do so for
them either in the Circuit or Justice Court but the suit
John L Post appeared before said Smith Justice as aforesaid
and changed the Verdict in case in favor of said Case to
One Micajah House a Justice of the of the same County of
Washington in the State of Illinois but that the other cases were

determined by said Smith who rendered judgment against the firm of Rowley Smith & Co for the amount of their demands above stated in favor said Plaintiffs with costs of suits and that said House Justice as aforesaid also rendered a Judgment against Rowley Smith & Co for the amounts of the demands sued for by said claim and costs of suit - That at the time said suits were commenced before said Justice of the Peace Your Orators were in Partnership and did business under the name and Style of Rowley Smith & Co and the said James Smith a Justice of the Peace before whom said suits were commenced as Your Orators have been credibly informed was at the time of the commencement of said suits the real owner of said claims having purchased the said claims from the Plaintiffs in whose names said suits were commenced and is now with one Richard S Bond who owns one part of said Judgments purchased since the rendition of said Judgments the beneficial owner of said Judgments - That the said claims are all unjust and Your Orators did not owe one cent of them as they cannot prove to the satisfaction of this Honorable Court and of which the said James Smith was well aware and that he the said James Smith well knew before he purchased said claims that Your Orators had a bona fide defence thereto and did not in fact owe one cent - and the pretended Witnesses summoned in behalf of the said claimants were all the same and all of the said suits before the said Justice were tried or heard on the same day excepting the Suits charged to said House - That Your Orators dissolved partnership after the said Judgments were rendered by said Justice and after appeals were taken as hereinafter mentioned said partnership being dissolved before the entry of the orders

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hereinafter mentioned in the Circuit Court of Washington County and the said John L Post in the absence of your Orators Smith Toll & Rowley without any knowledge in their part took appeals in all of said suits to the Circuit Court of Washington County but the said suits were continued at the first term of Court — That at next term of said Circuit Court your Orators John L Post employed one P E Horner an attorney at Law and a resident of Washington County aforesaid to attend to and defend said suits instructing said Horner distinctly to defend said suits entirely through and not to make any arrangement agreement or compromise relative to them but that said James Smith himself or by his agents or confederates made an arrangement or agreement with said Horner to have the following order of Court entered up in all of said suits without any authority whatever from your Orators or either of them for so doing either express or implied —

October Term Washington Circuit Court Thursday October 19th 1834

Edward Linn

vs

} Appeal

Rowley Smith & Co and now on this day comes this Plaintiff by Bond & Gray his Attorneys and said Defendants by Horner their attorney & by Contract of Parties Judgment below is affirmed & that said Plaintiffs have and recover of and from said defendants all his costs & charges about this suit and Execution is awarded therefor. The above order in the one case of said Linn being the same in form as those Entered in all the other cases which said Orders of Court were entered up in each case without calling any witnesses or imprisoning any jury or investigation at all whatever being had therein although your Orators witnesses were all

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in attendance and ready to be sworn on the trial of said appeals and although your Orators John L Post had expressly employed said Hoosmer to defend your Orators in said appeal cases that said suits were all brought on open accounts for work and Labor pretended to have been done on a portion of the Central Rail Road by the said Claimants in said suits for your Orators which your Orators deemed and were prepared on the trial of said appeals to disprove if they had been permitted so to do and your Orators did not in fact owe one cent of the said claims as they are well able to prove to the satisfaction of this Honorable Court but in consequence of the fraudulent ^{secret} ~~best~~ arrangements made by said Smith and his agents with said Hoosmer your Orators were entirely prevented from having the said claims investigated in the Circuit Court and were taken advantage of in a most unscrupulous manner by said Smith and his confederates and wholly unable to defend themselves in said Circuit Court of Washington County— and your Orators charge that said entries were so made in said Circuit Court by the fraudulent Management and contrivance of the said Smith and associates that they were and are absolutely null and void ~~and~~ and were a ^{fraud} ~~fraud~~ upon them— But so it is may please your honor that the said Justice of the Peace James Smith before whom all said suits were commenced caused or procured a number of witnesses to be subpoenaed both before himself and in the Circuit Court and before the said Justice the other Justice of the Peace and was even subpoenaed himself in all said cases in the Circuit Court and after he had obtained said fraudulent order of Court induced all the

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other witnesses to claim for their attendance separately in each case & actually claimed himself in each case and having thus managed matters had all of said claims transferred to himself and has now procured executions in each case from the Circuit Court in Washington County amounting in all to three hundred and seventy five Dollars or so being the aggregate amount of debt and cost without any authority whatever for so doing One third of the amount actually being for costs and placed the same in the hands of Salem Goodner the Sheriff of Washington County Illinois who has levied said Executions upon the real Estate of Your Orators John C Smith situate in Ashley being Smith and Watson addition to the town of Ashley in Washington County Your Orators further charge - that said Judgments in said Circuit Court of Washington County or the affirmance of the Judgments of the Justices of the Peace Smith & Horner were obtained by the fraud and collusion of said Horner acting as attorney for your Orators in making the arrangement or agreement with the said Smith and his confederates and having as such attorney no authority to make such arrangement or agreement from Your Orators and Your Orators further charge that they are credibly informed and believe that said Horner is wholly irresponsible pecuniary That Salem Goodner advertised the above named real estate for sale on the 14th day of August 1836 but that the sale of said property was restrained by ^{with} ~~issue~~ of injunction issuing from this Honorable Court Ordering said Salem Goodner & other persons to refrain from all proceedings in the matter - That said injunction was dissolved on the 3rd day of June 1837 by the Honorable Circuit Court of Bond County on account of the insufficiency of the bond filed in the suit then commenced Your

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Orators further charge that the said James Smith after having induced the other witnesses to put in their claims for attendance in each case as aforesaid brought said claims for attendance of said witnesses for little or nothing and now he consciously & dishonestly seeks to make it all out of the property of your Orators John C Smith Your Orators therefore pray that the said James Smith Richard S Bond James Mc Lane John Lewis S Dempsey Edward Guin and James Smith S Dorsey and P H Cosmer Salem Goodner and John White the present Sheriff of Washington County may be made defendants to this bill and may answer the same and that upon proof of the facts your honour may be pleased to award them a new trial herein upon such equitable terms as to your honour may seem just and that in the meantime a writ of injunction do issue herein enjoining said defendants and all others from harassing your Orators at Law by said Executions by sale of the real Estate above referred to or by the levying upon or sale of any other property or by any other means whatever until a hearing of this bill and further that since of Summons do issue herein and for such other and further relief in the premises as to your honour may seem just and right and there they will ever pray as in duty bound

R. Nelson &
J. Greathouse } R

State of Illinois, ss
Bond County. } ~~Compt. Secs~~ This officer John Post
Compt. herein
being first duly according to Law deposed and says that the
matters and things in the foregoing bill contained are true.

7 So far as stated in the affiant's own knowledge and so far
as related in the knowledge of others this affiant believes
to be true and that this affidavit is made on his own behalf
as well as on behalf of his co-complainants

Subscribed to before } John L Post
me this 14th day of June 1837 }
Alex Wilson Clerk }

State of Illinois } set The above and foregoing Bill of Complaint
} having been presented to me and having examined
the same and of opinion that an injunction ought to be
awarded it is therefore hereby ordered that upon the complainants
executing a bond before the clerk of the circuit court for the
County of Washington as required by Law with J. J. Van Dyke
as their ^{Security} ~~Security~~ the clerk of said Washington Circuit Court
issue a writ of injunction according to the prayer of the Bill

In Witness whereof I William C. Parrish Judge of
the 3rd Principal judicial circuit of the State of Illinois
have set my hand this 7th day of September A.D. 1837
William C. Parrish

Judge &c &c

October Term Washington Circuit Court

Thursday October 19th 1837

Edward Quinn

vs

} Appeal

Rowley Smith & Co and now on this day comes the said
Pliff by Bond & Gray his attorneys & said Defats by Corner
their atty & by consent of Parties Judgment below is affirmed
& that said Pliff have & recover of and from said Defats all his

costs & charges about this suit & Execution is awarded therefore

State of Illinois } I, Harry H. Fulbot Clerk of the Circuit
Washington County } Court in and for said county do certify
That the foregoing is a true and correct copy of an Order as
Taken from the records of said Court in the above entitled
cause
Given under my hand and the
seal of said Court this 7th day of
August A.D. 1836
H. H. Fulbot Ck

James McLaine
vs
Rowley Smith & Co } Appeal
Same Order as above

Edward Gair
vs
Rowley Smith & Co } Appeal
Same Order as above

Wm. Dempsey } Appeal
vs
Rowley Smith & Co } Same Order

John Lewis
vs
Rowley Smith & Co } Appeal
Same Order

9 James Dempsey }
vs } Appeal
Rowley Smith & Co } same Order

James Dorsey }
vs } Appeal
Rowley Smith & Co } same Order

State of Illinois } I Harry W. Talbot Clerk of the Circuit Court
Washington County } in and for said County do certify that the
Orders of Court in the last mentioned and entitled cases are the same
in form as in the case of Edward Caine vs Rowley Smith & Co
above recited as appears of Record

Witness my hand and the seal of
said Court this August 9th 1836

H. W. Talbot Clerk

Copy of Bond

Know all men by these presents that we De Witt Rowley
J Condit Smith John L Post and Michael Noel contractors
and late doing business under the name and style of Rowley
Smith & Co and John J Van Dyke are held and firmly bound
to James C Smith Richard A Bond James McPherson John
Lewis James Dempsey Edward Caine James Dorsey Plotting
& James Salem Goodner and John White in the penal sum
of seven hundred and fifty Dollars lawful Money of the
United States for the payment of which well and truly to be
made we bind ourselves our heirs executors and administrators
Jointly severally and firmly by these presents Witness our hands

and seals this 10th day of September AD 1837

The condition of the above obligation is such that whereas the following judgments were obtained against the above bonded Rowley Smith & Co in the circuit court of Washington County at the October term AD 1834 to wit One in favor of James McChaine for \$22.61 debt and \$19.18 $\frac{1}{2}$ costs one in favor of John Lewis for \$24.93 debt and \$20.85 costs two in favor of Edward Cairn one for \$38.71 debt and \$27.32 $\frac{1}{2}$ costs the other for \$8.88 debt and \$24.83 $\frac{3}{4}$ costs two in favor of James Dimpsey one for \$11.38 debt and \$21.77 costs the other for \$36.07 debt and \$22.77 costs and one in favor James Dorsey for \$22.61 debt and \$22.18 $\frac{3}{4}$ costs amounting in all to the sum of \$314 of the beneficial interest in which said judgments is alleged to have been assigned to the above named James & Smith and Richard S Bond and whereas the said Rowley Smith & Co have filed their bill in the circuit court of Washington County aforesaid praying that the said judgments be enjoined for the reasons in complainants bill set forth Now therefore if the said Rowley Smith & Co shall and will well and truly pay or cause to be paid all money and costs that may now be due or may hereafter become due to the said several plaintiffs in said suits or their assigns the said Smith and Bond or to the parties legally entitled thereto and also all such costs and damages as shall be awarded against the said complainants Rowley Smith & Co in case the injunction shall be dissolved then and in that case the foregoing bond to be void otherwise to remain in full force and virtue of Law. John S Post for

Rowley Smith & Co
J Van Dyke

Edw
Wall

Copy of Injunction.

State of Illinois }
 Washington County } The People of the State of Illinois To James Smith
 Richard S Bond James McShane John Lewis & Dempsey
 Edward Cairn James Smith & Dorsey P E Hersmer Salem
 Goodner & John White their Counsellors, attorneys Solicitors and
 agents Greeting

Whereas John C Smith John Bond David H
 Bowley & Michael Noel have lately exhibited their bill of Complaint
 to the Judge of the Circuit Court in & for the 2nd Judicial
 Circuit in said State on the Chancery side thereof against
 you the said James Smith Richard S Bond James McShane
 John Lewis & Dempsey Edward Cairn James Smith &
 Dorsey P E Hersmer Salem Goodner & John White Defendants
 wherein among other things it is alleged that you unjustly
 prosecute the said Complainants at Law touching the matters
 & things therein stated & set forth We therefore in consideration of
 the Premises do strictly enjoin and command you the said
 James Smith Richard S Bond James McShane John Lewis
 & Dempsey Edward Cairn James Smith & Dorsey P E Hersmer
 Salem Goodner & John White and all And every the Persons
 above mentioned that you and each of you do absolutely and
 entirely desist from all further proceedings at Law against
 the said Complainants concerning any of the matters in the
 said Bill Complaint ~~and~~ of which you and each of you shall
 appear to and fully answer the Complainants Bill and the said
 Court make other order to the contrary thereof fail not under the
 penalty of what the Law directs—Witness Henry H Culbert Clerk of the
 Circuit Court in and for the County of Washington & the Judicial
 seat thereof at office in Nashville this November 3rd 1837—H H Culbert Clerk

To the Sheriff of Washington County to Execute—

Endorsed James Smith P. C. Hoerner Salem Goodner & John White all waived the Reading and accepted the service this March 1st 1838 and the other within named Defendants not found in my Co this 12th day of March 1838

John White Sheriff W. Co

Copy Summons;

The State of Illinois } set

Washington County } The People of the State of Illinois
To the Sheriff of said county Greeting;

We

Command you that you Summon James Smith
Richard S Bond James McPherson John Lewis S Dempsey
Edward Cair James Smith S Dorsey P. C. Hoerner
Salem Goodner & John White if shall be found in
your County personally to be and appear before the Circuit Court
of said County on the 1st day of the next Term thereof to be holden
at the Court House in Nashville on the 1st Monday in the Month
of March next to answer the matters & things contained in a certain
Bill in Chancery as exhibited against them by David A. C. Rindley
John D. Post John C. Smith & Michael Noel— And have
you then and there this writ read make return thereon
in what manner you executed the same

Witness Henry H. Talbot Clerk of our Circuit Court
at Nashville this 3rd day of December in the year
of our Lord one thousand eight hundred and
fifty seven Test— H. H. Talbot Clerk Circuit Court

Subscribed & Sworn to }
before me March 23rd 1838 }

W. H. Talbot Clerk

(Copy of Appeal Bond)

Know all men by these presents that we John Condit
Smith John S. Post Michael Steel and L. W. Rowley late
doing business under the firm and style of Rowley Smith
& Co principals and J. P. Van Dyke Security are held
and firmly bound unto Richard S. Bond James Smith
Edward Rahil Edward Cain James M. Shane James
Dempsey John Lewis James Dorsey Pottery & Hornard and
William H. Gray Salem Goodner & John White in the
penal sum of One Thousand Dollars for the payment
whereof well and truly to be made we do hereby bind our
selves jointly severally and firmly by these presents witness
Our hands and seals this day of May A.D. 1838
The condition of the foregoing bond ^{is} such that whereas
the above bounden obligors have filed their bill on the
chancery side of the Washington Circuit Court State
of Illinois for an injunction and relief against
the above named obligors which injunction was
dissolved and the said bill at the March Term
A.D. 1838 of the said Circuit Court dismissed at the
cost of the above bounden obligors from which
judgment of the said Circuit Court the above bounden
obligors have appealed to the Supreme Court of this State
for the First Grand division to be holden at Mt Vernon

(15)

On the first Monday in November next

Know if the above bounden obligors shall and will
well and truly pay or cause to be paid all judgments
interest damages and all costs recovered by the above
named obligors or either of them in their actions at
Law against the above bounden obligors and shall
also pay the judgment appeal from in case the same shall
be affirmed and shall also prosecute their said Appeal
with effect then the foregoing obligation to be void other
wise the same shall be and remain in full force
and virtue at law

John Candis Smith Esq
John L Post Esq
Michael Noel Esq
D W Rowley Esq
J P Van Dyke Esq

(Copy of Record)

Rowley Smith vs
R S Bond vs } Bill for Injunction
Complainants by Nelson their Solicitor & said Defendants by
Bond their Solicitor & move the Court to dissolve Injunction
& dismiss Bill & cross Motion entered by Complainants that
Injunction be permitted to stand - and now on Wednesday March
31st Motion to dissolve &c is heard and Motion allowed and
this cause is dismissed at Compls costs - and now same
Complainants and pray an appeal to the Supreme Court
Appeal Granted upon their entering into Bond in sixty
days from this date with James Rumsey or John Van Dyke
as security - conditioned according to Law

State of Illinois } I Harry H. Saltst clerk of the Circuit
 Washington County } Court in and for said County do certify
 That the above and foregoing is a true and perfect Copy
 of Record and all Papers in the above entitled cause
 Given Under my hand and official
 seal at office in Washville
 on this 1st day of July A.D. 1838
 Harry H. Saltst clerk

37
 J. Smith &
 by
 J. J. Conline
 Attorneys of
 Record

Filed 16. October 1838.

J. H. Harrison atty

Tested by J. H. Harrison & J. H. Harrison

True & so

**IN THE SUPREME COURT—STATE OF ILLINOIS—FIRST GRAND
DIVISION—TO NOVEMBER TERM, A. D. 1858.**

ROWLEY, SMITH & Co., Appellants,
vs.
BOND, GRAY & SMITH, Appellees. } Appeal from Washington.

ABSTRACT OF APPELLANT'S CASE.

The appellants filed their bill in the Circuit Court of Washington county on the Chancery side of said Court, alledging that the Appellants were, excepting Appellant Post, non-residents of this State. That the Appellee McShane and several others sued the appellants before a Justice of the Peace. The appellee, James Smith, the said Justice, the appellants being all, except said Post, absent from the State at the time said suits were commenced, and were absent all the time until the judgments were rendered against them on appeal in the Circuit Court.

Post only appeared, the Justice rendered judgment in favor of the appellee, McShane, Lewis, Dampsey, Dorsey and Cain, and appeals were taken by said Post in all said suits without any knowledge of his doing so, on the part of the other appellants, and without any authority from them whatever.

That Post had witnesses subpoenaed on his behalf, and employed an attorney to defend the suits of appellees which suits were brought on open accounts and had been called up by the said Justice, beforewhom the suits were commenced and who knew they were unjust.

That at the Circuit Court of Washington County held in October 1856, by contract between the appellees and their attorneys, and the attorney of said John L. Post, and without his knowledge or consent, and without a trial by jury or before the Court, the judgments of Justice were all affirmed with full costs in each case.

That the witnesses in all the above cases were the same—the said Justice being one of them, and claimed his attendance, and execution has been awarded on said judgments of said Circuit Court and levied on the property of Smith, one of the appellants. The appellants charge judgments of said Circuit Court to be a fraud upon them.

And that neither Smith nor any of his co-appellants knew or consented to, or in any manner authorized said judgment of the Circuit Court, an injunction and a new trial or relief was prayed for and an injunction awarded at the March term 1858, of the Washington circuit court. On motion of appellees the injunction was dissolved and the cause dismissed at costs of appellants.

The appellants prayed an appeal to this Court, and assigns for error the decree of the Washington Circuit Court, dismissing cause and refusing appellants time to file a sufficient injunction bond.

R. S. NELSON, for Appellants.

James Smith, Richard, J. Bond
 James McShane John Lewis
 J. Dempsey, Edward Cain
 J. Dorsey, P. E. Hosmer & Salem
 Goodwin & John White

Respondents in the Court
 below

acts { Bill for injunction
 & relief

John Credit Smith

John L. Post

Michael Noel

Dewitt, C. Howley

{ Compt's
 in the Court
 below

Respondent vs Compt's for

Costs

John Credit Smith

John L. Post

Michael Noel

Dewitt, C. Howley

{ Appellants
 { appeal from
 Washington

James Smith Richard, J. Bond & County

James McShane, John

Lewis, J. Dempsey, Edward

Cain J. Dorsey, Hosmer &

Hosmer Salem Goodwin &

John White

{ appellee

The clerk of the Supreme

Court with please directed the above
 Cannon

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Rowley Smith & Co

By

R. S. Bona et al

Receipt

Jan. 16. 1858.

N. Johnston Clerk

IN THE SUPREME COURT—STATE OF ILLINOIS—FIRST GRAND
DIVISION—TO NOVEMBER TERM, A. D. 1858.

ROWLEY, SMITH & Co., Appellants, }
vs. } Appeal from Washington.
BOND, GRAY & SMITH, Appellees. }

ABSTRACT OF APPELLANT'S CASE.

The appellants filed their bill in the Circuit Court of Washington county on the Chancery side of said Court, alledging that the Appellants were, excepting Appellant Post, non-residents of this State. That the Appellee McShane and several others sued the appellants before a Justice of the Peace. The appellee, James Smith, the said Justice, the appellants being all, except said Post, absent from the State at the time said suits were commenced, and were absent all the time until the judgments were rendered against them on appeal in the Circuit Court.

Post only appeared, the Justice rendered judgment in favor of the appellee, McShane, Lewis, Dampsey, Dorsey and Cain, and appeals were taken by said Post in all said suits without any knowledge of his doing so, on the part of the other appellants, and without any authority from them whatever.

That Post had witnesses subpoenaed on his behalf, and employed an attorney to defend the suits of appellees which suits were brought on open accounts and had been called up by the said Justice, beforewhom the suits were commenced and who knew they were unjust.

That at the Circuit County of Washington County held in October 1856, by contract between the appellees and their attorneys, and the attorney of said John L. Post, and without his knowledge or consent, and without a trial by jury or before the Court, the judgments of Justice were all affirmed with full costs in each case.

That the witnesses in all the above cases were the same—the said Justice being one of them, and claimed his attendance, and execution has been awarded on said judgments of said Circuit Court and levied on the property of Smith, one of the appellants. The appellants charge judgments of said Circuit Court to be a fraud upon them.

And that neither Smith nor any of his co-appellants knew or consented to, or in any manner authorized said judgment of the Circuit Court, an injunction and a new trial or relief was prayed for and an injunction awarded at the March term 1858, of the Washington circuit court. On motion of appellees the injunction was dissolved and the cause dismissed at costs of appellants.

The appellants prayed an appeal to this Court, and assigns for error the decree of the Washington Circuit Court, dismissing cause and refusing appellants time to file a sufficient injunction bond.

R. S. NELSON, for Appellants.

No 37

Nov. A.D. 1858

Rowley Smith & Co —

J. Candlish Smith & others

Appellants.

vs

James Smith & others —

R. S. Brown & others.

Appellees —

8572

Appl. for Writ of Habeas Corpus

Reversed for
Majority in error