

No. 12897

Supreme Court of Illinois

Swift

vs.

White

71641  7

1 United State of America
State of Illinois. County of Cook &c.

Pleas before
the Honorable George Manierre Judge of the
seventh Judicial Circuit of the State of Illinois
and sole presiding Judge of the Circuit Court of
Cook County in the State aforesaid at a special
term thereof begun and held at the Court
House in the city of Chicago. in said County
on the fourth Monday (being the twenty eighth
day) of June. in the year of our Lord one thousand
eight hundred and fifty eight. and
of the Independence of the United States.
the Eighty second. in pursuance of an order
made and entered of Record at a former
term of said Court. which said order is
in the words and figures. following. to wit:
Ordered that a special term of this the circuit
Court in and for said County. be and
the same hereby is appointed. to be held at
the Court House in the city of Chicago. on
the fourth Monday of June. in the year
one thousand eight hundred and fifty
eight for the trial of civil and criminal
causes. and for the disposal of all business
properly cognizable at such term
whether of a civil or criminal nature and
that the clerk of this Court give notice of

3 the appointment of said term to the supervisors of said County with a request that the said supervisors select and cause to be summoned a Grand and Petit jury to attend the term so appointed.

Present Honorable George Manierre Judge of the
1st Judicial Circuit, Illinois
Carlos Haven States Attorney
John S Wilson Sheriff Cook County
Attest William S Church Clerk

4 Be it remembered that heretofore, to wit on the first day of April A D 1858 Jacob J Whitt Jr by Garrison and Hudson his attorneys sued out of the office of the clerk of the court aforesaid their certain certain Peoples writ of summons directed to the Sheriff of Cook County to execute and clothed in the words and figures following, to wit:

State of Illinois
County of Cook &c.

The People of the State of Illinois. To the Sheriff of said County: Greeting
We command you that you summon Richard H Swift, Lyman P Swift and James S Johnston if they shall be found in your County, personally to be and appear before the circuit court of Cook County on

5- the first day of the next term thereof, to be
holden at the Court House, in Chicago in
said County, on the second Monday of April
next, to answer unto Jacob J Whitt Jr in
a plea of trespass on the case upon promises to
the damage of the said plaintiff as is said,
in the sum of Two Thousand Dollars,
and have you then and there this writ
with our endorsement, thereon, in what man-
ner you shall have executed the same.

Witness William S Church clerk
of our said Court and the seal
thereof, at Chicago, aforesaid, this 1st
day of April A D 1858,
Wm L Church clerk

4 And afterwards, to wit: on the same day
and year last aforesaid Jacob J Whitt Jr
by his said attorneys filed in the office of the
Clerk of said Court his declarations against
Richard K Swift Symon P Swift and James
S Johnston defendants which is in the words
and figures following, to wit:

Circuit Court of Cook County
State of Illinois Of April Term 1858
County of Cook }
Jacob J Whitt Jr plaintiff
in this suit by Garrison and Hudson his
attorneys complains of Richard K Swift

7 Symon P Swift and James S Johnston
defendants in this cause who were sum-
-moned to answer plaintiff of a plea of tres-
-pass on the case on promises.

For that whereas
the said defendants on the 29th day of
September in the year of our Lord one
thousand eight hundred and fifty seven
at Chicago in the county of Cook aforesaid
being then and there copartners and doing
business in the firm name and style
of R K Swift, Brother of Johnston as Ben-
-Rers became and were indebted to the
8 said plaintiff in the sum of two thousand
dollars of lawful money of the United States
9 of America, for divers goods, wares currency
and merchandises, by the said plaintiff
before that time sold and delivered to the
said defendants, and at the special instance
and request of the said defendants, and
being so indebted to the said plaintiff the
said defendants in consideration thereof
afterwards, to wit, on the same day and
year and at the place aforesaid undertook
and then and there faithfully promised
the said plaintiff well and truly to pay
unto the said plaintiff the said sum
of money last mentioned when the said
defendants should be thereunto afterwards

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requested. And whereas also the said defendants afterwards, to wit: on the same day and year and at the place aforesaid in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendants sold and delivered to the said defendants divers other goods wares currency and merchandises of the said plaintiff the said defendants then and there undertook and faithfully promised the said plaintiff that the said defendants would well and truly pay to the said plaintiff so much money as the last aforesaid goods wares currency and merchandises, at the time of the sale and delivery thereof were reasonably worth when the said defendants should be brought afterwards requested and the said plaintiff avers that the goods wares currency and merchandises last mentioned, at the time of the sale and delivery thereof were reasonably worth the further sum of Two Thousand Dollars of like lawful money aforesaid. To wit: at the place aforesaid whereof the said defendants afterwards, on the same day and year and at the place aforesaid had notice. And whereas also the said defendants afterwards, to wit: on the same day and year and at the place

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aforesaid were indebted to the said plaintiff
 in the further sum of two thousand doll
 ars of like lawful money as aforesaid
 for money before that time lent and
 advanced by the said plaintiff to the said
 defendants and at the like request of
 the said defendants. And for other money
 by the said plaintiff before that time
 paid out and expended for the said
 defendants and at the like request of
 the said defendants. And for other money
 by the said defendants before that time

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had and received to and for the use of
 the said plaintiff. And being so indebted

14

the said defendants in consideration ^{thereof} after
 wards to wit: on the same day and year
 and at the place aforesaid undertook
 and then and there promised the said
 plaintiff well and truly to pay unto
 the said plaintiff the said several sums
 of money in this count mentioned when
 the said defendants should be thereunto
 afterwards requested. and whereas also the
 said defendants afterwards to wit: on the
 same day and year and at the place afo
 resaid accounted together with the said
 plaintiff of and concerning divers other
 sums of money before that time due and
 owing from the said defendants to the

15

said plaintiff and then and there being
in arrear and unpaid and upon such
accounting the said defendants then
and there were found to be in arrear
and unpaid and upon such accounting
indebted to the said plaintiff in the
further sum of two thousand dollars
of like lawful money as aforesaid^{2d}
being so found in arrear and indebted
to the said plaintiff. the said defendants
in consideration thereof afterwards to wit
on the same day and year and at the
place aforesaid undertook and then and

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there faithfully promised the said plaintiff
well and truly to pay unto the said
plaintiff the said sum of money last
mentioned when the said defendants
should be thereunto afterwards requested
and whereas also the said defendants
were indebted to said plaintiff in the
further sum of two thousand dollars
for so much money before that time
and then due and payable from said
defendants as such copartners as afore-
said to the said plaintiff for interest
upon and for the forbearance of divers
large sums of money before then lent
and advanced by the said plaintiff to
the said defendants at their special instance

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and request and by him said plaintiff
 forbore to the said defendant for divers
 long spaces of time before then elapsed
 at the like special instance and request
 of the said defendants. and also for other
 money before that time. to wit: the time last
 aforesaid and then due and payable from
 the said defendants to the said plaintiff. for
 interest upon and for the forbearance of
 divers other large sums of money before then
 due and owing from said defendants to said
 plaintiff and by him said plaintiff forbore
 58 to the said defendants for divers long spaces of
 time before then elapsed at the like special
 instance and request of the said defendants
 and being so indebted said defendants in
 consideration thereof afterwards to wit: on the
 day and year last aforesaid at the place
 aforesaid undertook and then and there
 faithfully promised the said plaintiff to
 pay him the said two thousand dollars when
 they said defendants should be thereunto after-
 wards requested.

Nevertheless the said defendants
 (although often requested &c) have not yet
 paid the several sums of money above men-
 tioned. or any or either of them or any part
 thereof to the said plaintiff. but to pay the

14 some on my part thereof to the said
plaintiff the said defendants have hit
erto altogether refused and still do refuse
to the damage of the said plaintiff of two
thousand dollars and therefore the said
plaintiff bring suit &c.

Garrison and Hudson Plffs atty
Copy of account sued upon or Bill of Particulars
R K Swift Brother and Johnson
Vs Jacob J Whitt Jr Dr

1857	Sept 24	So cas lent	\$ 2000 -
"	"	Money Deposited	\$ 2000 -
"	"	Currency	\$ 2000 -
"	"	Cash paid to for Plff	\$ 2000 -
20	"	Cash paid out & expended for debts	\$ 2000 -
"	"	Balance due on settlement	\$ 2000 -
"	"	Balance on money and currency	
"	"	deposited with them	\$ 2000 -
"	"	Interest due	\$ 2000 -

And afterwards. to wit: on the 29th day of
June in the year aforesaid said writ was
returned into the court aforesaid by said
Sheriff endorsed as follows. to wit:

Served by
reading to the within named R K Swift
and James S Johnston the 1st day of April
1858 Des^r service 100.2 mile 10 / return 10 = 120
John S Wilson Sheriff By Seth Daylor deputy

21 And afterwards to wit: on the thirteenth day of April in the year aforesaid said defendants Richard K Swift and James S Johnston impleaded with Lynman P Swift by Scates McAllister Jewett and Peabody their attorneys filed in the court aforesaid their plea to the plaintiffs declaration which is in the words and figures following to wit: Richard K Swift and James S Johnston impleaded with Lynman P Swift

Cook County Cir Court
April Term A D 1858

22 ^{and} Jacob J Whitt Jr And the said Richard K Swift and James S Johnston impleaded as aforesaid by Scates McAllister Jewett and Peabody their attorneys come and defend the wrong and injury when &c and say that they did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against them and of this they put themselves upon the country &c

Scates McAllister Jewett & Peabody
Defts Attys

And afterwards to wit: at the June special term of said court to wit: on

the seventeenth day of July A.D. 1858
the following proceedings among others
in said court were had and entered of
record in said cause. to wit:

Jacob S Whitt Jr
13212 v Assumpsit
Richard K Swift
Symon P Swift^{2d}
James S Johnston

This day comes the
said plaintiff by Garrison and Hudson
his attorneys and the said defendants
Richard K Swift and James S John-
24 = ston impleaded with the said Symon
P Swift by Scates McAllister Jewett
and Peabody their attorneys also
comes and issues being joined here-
= in between the said plaintiff and
the said defendants Richard K
Swift and James S Johnston impleaded
as aforesaid on motion it is ordered
that a jury come to try said issues Where-
= upon comes the jurors of a jury of good
and lawful men to wit:

Attest
David Hitchcock J K Barnes A H Bell
Benjamin A Kley Alonzo Snow
S Gunderson Theodore Drieger J M Hatch

William Dougman. E & White. William
27 Sabian.

Who being duly elected tried and
sworn well and truly to try the issue
joined herein aforesaid, and after hearing
the evidence adduced, and the arguments
of counsel, as well on the part of the said
plaintiff as of the said defendants Richard
H Swift & James S Johnston impleaded as
aforesaid and the instructions of the court
retire to consider of their verdict under the
charge of a sworn officer of the court
and afterwards come into court and say
28 "We the jury find the issues herein for
the said plaintiff and assess his damages
at the sum of one thousand two hundred
and ninety three dollars and forty two
cents."

§ 1298⁴² Therefore it is considered by the court
that the said plaintiff do have and recover
of the said defendants Richard H Swift
and James S Johnston impleaded with
the said Lyman P Swift his damages
of one thousand two hundred and ninety
three dollars and forty two cents in form
as aforesaid by the jury assessed together
with his costs and charges by him about
his suit in this behalf expended and
have execution therefor.

29 And afterwards to wit: at the same special
term of said court. to wit: on the 21st day
of July A D 1858 the following proceedings
among others in said court. were had and
entered of record in said cause. to wit:

Jacob J Whitt Jr

Assumpsit

Richard H Swift James S
Johnston impleaded with
Syrman P Swift

30 This day come the
said defendants by Scates McAllister Jewett
and Peabody their attorneys and pray an
appeal herein to the Supreme court of the
State of Illinois. which is granted by the
court on condition that the said defendants
by saturday next execute and file with
the clerk of this court their appeal Bond
herein in the penal sum of Two thousand
five hundred and eighty six dollars and
eighty four cents conditioned according to
law with Van H Higgins as surety thereon.

And thereupon afterwards. to wit: on the
23rd day of July in the year last aforesaid
said defendants impleaded as aforesaid filed
their certain appeal Bond with said clerk
which is in the words and figures following

4
to wit:

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Know all men by these presents that we Richard K. Swift, James S. Johnston and Van H. Higgins of the county of Cook and State of Illinois are held and firmly bound unto Jacob J. Whitt Jr also of said county and state in the penal sum of twenty five hundred and eighty six dollars and eighty four cents (\$2586⁸⁴) lawful money of the United States for the payment of which ^{we are to} be made we bind ourselves our heirs executors and administrators jointly severally and firmly by the presents.

32 Witness our hands and seals this twenty first day of July A D 1858.

The condition of the above obligation is such that whereas the said Jacob J. Whitt Jr did on the seventeenth day of July A D 1858 in the Circuit Court in and for the county of Cook and State of Illinois and of the July special term thereof A D 1858 recover a judgment against the above bounden Richard K. Swift and James S. Johnston impleaded with one Symon P. Swift for the sum of twelve hundred and ninety three dollars and forty two cents (\$1293⁴²) besides costs of suit from which said judgment of the

33 said Circuit Court the said Richard K Swift and James S Johnston have prayed for and obtained an appeal to the supreme Court of said state

Now therefore if the said Richard K Swift and James S Johnston shall duly prosecute their said appeal with effect, and moreover pay the amount of the judgment costs, interests and damages recovered and to be rendered against them in case the said judgment shall be affirmed in the said Supreme Court then the obligations to be void otherwise to remain in
34 full force and virtue

In Presence of R K Swift
J S Johnston
Wm H Higgins

Seal
Seal
Seal



State of Illinois, }
COUNTY OF COOK. } S. S.

I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of the writ papers & pleadings.

in a certain cause lately pending in said Court on the
Common law side thereof, wherein Jacob White

Is was Plaintiff and

vs. Geo. A. Smith et al. were defendants

WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this 19th day of April A. D. 1857

Rec'd 3 85

Wm. L. Church

Clerk.

Richard K. Supt. 3

4.
Jacob J. Wittle 3

Appeal from Court
And now comes the plaintiffs
in over say that there is ~~an~~
error in said record and
proceedings in this.

1st There was no proper
term of the court

2nd The proceedings calling
the special term were irregular

3rd The judgment is void

4. The service of process is
insufficient.

5th The writ was discontinued
as to Lyman Pluett by not
having a return made as to
him

6 There was no pre-judgment
in the case

7. The judgment is corrupt
and void

~~The Court~~

& The declaration is insufficient
to sustain the judgment

For these and other causes
they move for a reversal of
said judgment, and that they
be ordered to all their costs
lost or

By Sherman Ward Bond
Atty for Plaintiff in
Error

And now comes the said J. C. of J. White
the Appellee herein & Plaintiff in the Court
below by Garrison & Hudson his Attorney
And says that there is no error in the
Record ^{as above mentioned} ~~proceeding~~ Judgment & prays the

Court to affirm the same & that judgment be affirmed

Garrison & Hudson
attys -

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Richard K. Smith state

Jacob S. White

Rec'd

Filed April 2d 1835

L. Leland
clerk

Wait for

Supreme Court
Jacob & Whit

~~at~~ } Appeal from
R. N. Lupton }
} Court Co
} Circuit Court
Jacob & Whit } 3

This appeal in this case
is dismissed at the costs
of the appellant. no damages
to be charged.

Shumway Kate. Worne
Atty for Plaintiff in
Error

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Supreme Court

R H Swift
et al

Joseph J Whelan Jr

Stipulations to
have appeal
dismissed

Filed May 16, 1839

L. Leland
Clerk