

No. 12688

Supreme Court of Illinois

Uhrlaub et al

vs.

Lord

United States of America
State of Illinois
County of Cook

Shs.

Now before the
Honorable John M. Nelson, Judge of the Cook
County Court of Common Pleas, within and
for the County of Cook and State of Illinois,
at a regular Term of said Cook County Court
of Common Pleas, begun and holden at the
Court House in the City of Chicago in said
County, on the first Monday being the first
day of February in the year of our Lord one
Thousand Eight Hundred and fifty eight,
and of the Independence of the United States
the Eighty Second.

Present the Honorable John M. Nelson, Judge
Charles H. H. H. Prosecuting Attorney
John L. Nelson Sheriff
Attest Walter Kimball Clerk.

Be it Remembered, That heretofore to wit,
on the Twentyseventh day of November A.D.
Eighteen Hundred, and fifty seven, Samuel
Lord by George Scoville his Attorney filed in
the office of the Clerk of said Cook County
Court of Common Pleas, his Bond for Costs
and Prece for Summons, which said Bond
and Prece are as follows to wit,

Samuel Lord

vs } Cook County Court
Hermann Whelan } of Common Pleas,
& William Sattler }

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party, or to any of the officers of this Court, in pursuance of the laws of this State,
Dated this 27th day of } Geo. Scoville,
November A.D. 1857 }

State of Illinois } Cook County Court
County of Cook ss. } of Common Pleas,
January Term A.D. 1858

Samuel Lord

vs } Asst. Dist. Ct. & Hosp.—
Hermann Whelan }
& William Sattler }

The Clerk of said Court will issue a summons in the above cause, directed to the Sheriff of Cook County in a plea of Trespass on the Case on promissory, returnable at the January Term of said Court A.D. 1858 to the damage of the plaintiff of Four Thousand Dollars.

Geo. Scoville

Plaintiff's Attorney.

To W. Kimball Esq. Clerk

Chicago Nov. 27, 1857.

And afterwards, to wit, on the same day and year last aforesaid, there issued out of the office of the Clerk of said County, the Proper writ of Summons. Which said writ, and the Sheriff's return thereon endorsed, are in the words and figures following to wit.

State of Illinois }
County of Cook 1857.

The People of the State of Illinois,
To the Sheriff of said County; Greeting—

We command you that you summon Herman Holant and William Satter if they shall be found in your County personally to be and appear before the Court County Court of Common Pleas, of said County, on the first day of the next term thereof, to be holden at the Court House in the City of Chicago in said County on the first Monday of January next, to answer unto Samuel Lord, in a plea of Trespass on the case on promises, to the damage of the said plaintiff as he says in the sum of Four Thousand Dollars,

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same,

Witness Walter Kimball Clerk of
our said County and the Seal thereof, at
the City of Chicago in said County
this 27th day of Nov. A.D. 1857

Walter Kimball Clerk

Endorsed. Served by reading to the within named Her-
man Holant, & Wm Satter Dec. 1st. 1857.

Jahm L. Wilson Sheriff
By Seth Taylor Deputy

And afterwards to wit. on the Twentyfourth day of December in the year last aforesaid, the said plaintiff by his said Attorney, filed in the office of the Clerk of said Court, his Declaration, in the words and figures following. to wit.

Cook County Court of Common Pleas
Of the January Term A.D. 1858
State of Illinois
County of Cook ss.

Jamuel Lord, plaintiff in this suit by George Scoville his Attorney, complains of Hermann Whorlaut & William Sattler, (sued as Copartners under the firm name of Whorlaut Sattler & Co.) Defendants who are summoned &c. of a plea of trespass on the case on promises. For that whereas the said defendants, heretofore to wit. on the Twentyfifth day of July in the year of our Lord one thousand Eight hundred and fifty seven, at Chicago, to wit. at said County of Cook, made their certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to the firm of R. H. Swift, Brother & Johnston, in and by which said note said defendants, by the name, style and description of Whorlaut Sattler & Co. promised to pay the order of the said R. H. Swift, Brother and Johnston, ninety three days without grace, after the date of said note, the sum of Two Thousand Dollars at the office of Swift, Ransom & Co. 31. Pine St. New York. for value received. And the said R. H. Swift,

Brother Johnston, to whom or to whose order said note was payable, afterwards, to wit, on the day and year aforesaid, by the name and style of R. H. Swift, Bos. & Johnston, to wit, at the County of Cook aforesaid, endorsed said note in writing, by which said endorsement the said R. H. Swift, Brother Johnston, then and there ordered and appointed, the said sum of money in said note mentioned to be paid to said plaintiff, and then and there delivered said note so indorsed, to the said, plaintiff.

By means, whereof, and by force of the Statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note, and being so liable in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect of the said note, and of the indorsement aforesaid, to wit, at the place aforesaid.

And whereas also the said defendants afterwards to wit, on the twentieth day of November in the year of our Lord one thousand eight hundred and fifty seven, to wit, at said County, became and were indebted unto the plaintiff, in a large sum of money, to wit, Twentyfive Hundred Dollars, for money before that time lent and advanced to said defendants, by said plaintiff, at said defendants request, and also, in the like sum for money before that time paid, laid out and expended for said defendants by said plaintiff, at the like - Special request of said defendants. And in the like sum for money before that time lent and

received, by said defendants, to and for the use of
said plaintiff, and also in the like sum, for
goods, wares and Merchandise before that time
sold and delivered, by said plaintiff, to said
defendants, at the like special instance and
request. And also in the like sum, for the
labor, care and diligence of said plaintiff be-
fore that time done and performed by said
plaintiff for said defendants, And at the like
instance and request of said defendants. And also
in the like sum then and there found to be due
and owing, to said plaintiff on an account
stated between them. And being so indebted
said defendants in consideration thereof then and
there undertook and promised to pay said plain-
tiff said several sums of money above men-
tioned, when thereunto afterwards requested,

But the said defendants not regarding
their said promises and undertakings, but
contriving &c. although often requested so to do.
have not paid said plaintiff either of said sums
of money above mentioned, or any part thereof
but ~~still~~ have hitherto wholly neglected and re-
fused, and still do neglect and refuse,
to the damage of said plaintiff of Four Thousand
Dollars. And therefore he brings this suit &c.

Jos. Scoville

Plaintiffs Attorney,

Copy of Instrument and Account sued on

\$2000 ⁰⁰/₁₀₀ Chicago July 25th 1859
Ninetythree days without grace after
date we promise to pay to the order of R. H.
Swift, Brother and Johnston. Ten Thousand
Dollars. at the office of Swift Ransom & Co, 31
Pine St. New York. Value received.
Whorlout Sattler & Co.

(Endorsed)

Pay Samuel Lord, Cash or order
R. H. Swift Bro. & Johnston.

Whorlout Sattler & Co.

To Samuel Lord	Dr.
To Money lent & advanced	\$2500.
To money paid laid out & expended	\$2500.
To money had received to and for the use of said Plaintiff	\$2500.
To Goods Wares Merchandise Sold & delivered	\$2500.
To Labor & services	\$2500.
To Balance due on account stated	\$2500.

And afterwards. to wit. on the Fourth day of
January in the year of our Lord One Thousand
Eight Hundred and fifty eight. the said
Defendants by Davis & Wisser. their attorneys
filed in the office of the Clerk of said Court
their Plea, notice and Affidavit, in the words
and figures following. to wit.

State of Illinois }
County of Cook }

Herman Wholant }
William Satter }
 ats }
Samuel Lord } In the Cook County Court
 of Common Pleas
 January Term A.D. 1858.

And the said defendants Herman Wholant & William Satter, by Davis & Nissen their Attorneys, come and defend the wrong and injury whereof, and say that they did not undertake or promise in manner and form as the said plaintiff has above thereof complained against the said defendants, and of this they the said defendants put themselves upon the Country to

Davis & Nissen
Defts Attys.

To George Scoville Esq.
The plaintiff Attorney.

Take notice that the above named defendants, on the trial of the above entitled Cause will give in evidence, under the general issue therein above pleaded, and insist that the said promissory note in the said filed Copy of the said plaintiffs declaration mentioned, was endorsed by the said firm of R. H. Swift Brothers & Johnston, to whom or to whose order the said note is made payable, to the said plaintiff after the day on which the sum of money therein mentioned, became due and payable according to the tenor and effect of said promissory note, and that the said firm of R. H. Swift Brothers & Johnston, before and at the time of the commencement of this suit, were and still are indebted to

the said defendants in the sum of Four Thousand Dollars lawful money of the United States of America, for money by the said defendants, before that time lent and advanced to and paid laid out and expended for the said firm of R. H. Swift Brothers & Johnston, and at the special instance and request of the said R. H. Swift Brothers & Johnston, and for money by the said firm of R. H. Swift Brothers & Johnston, before that time had and received to and for the use of the said defendants, and for money due and owing from the said firm of R. H. Swift Brothers and Johnston to the said defendants, for interest upon and for the forbearance of divers large sums of money due and owing from the said firm of R. H. Swift Brothers & Johnston, to the said defendants, and by the said defendants for borne to the said firm of R. H. Swift Brothers & Johnston, for divers long spaces of time before then elapsed, and for money due and owing from the said firm of R. H. Swift Brothers & Johnston, to the said defendants, upon an account stated between them, And that the said defendants will set off and allow, to the said plaintiff on the said trial so much of the said sum of Four Thousand Dollars, so due and owing from the said firm of R. H. Swift Brothers & Johnston to the said defendants against any demand of said plaintiff take proof on said trial, as will be sufficient to satisfy and discharge such demand, according to the form of the Statute in such case made and provided.

And the said plaintiff will further take notice that the above named defendants on the trial of the said cause will further give in evidence under the general issue, above therein

by them pleaded, that the said promissory note, in the said first Count of the said plaintiffs declaration mentioned and described, is still really and legally the property of the said firm of R. H. Swift Brothers & Johnston, to whom or to whose order the said sum of money therein specified is thereby made payable, and that the said plaintiff did not give any valuable consideration to the said firm of R. H. Swift Brothers & Johnston for the indorsement of the said note to the said plaintiff, in said first Count of said declaration mentioned, and the said defendant further in fact says that the said indorsement of said note to said plaintiff was made without any valuable consideration, and that said plaintiff is merely the agent of said firm of R. H. Swift Brothers & Johnston in the collection of said note, and accountable to said firm for the proceeds thereof, and the said defendant further say that the said firm of R. H. Swift Brothers & Johnston, before and at the commencement of this suit were and still are indebted to the said defendants in the further sum of Four Thousand Dollars lawful money of the United States for other money by the said defendants, before that time lent and advanced to, paid, laid out & expended for the said firm of R. H. Swift Brothers & Johnston, and at the special instance and request of said R. H. Swift Brothers & Johnston and for other money by the said firm of R. H. Swift Brothers & Johnston, before that time had and received to and for the use of the said defendants, and for other money due and owing from the said firm of R. H. Swift Brothers & Johnston, to the said defendants, for interest upon and for forbearance of divers large sums of money,

due and owing from the said R. H. Swift Brother
& Johnston to the said defendants, and by the said
defendants forborne to the said R. H. Swift Brother
& Johnston for divers long spaces of time before then
elapsed, and for other money due and owing from
the said R. H. Swift Brother & Johnston to the
said defendants upon an account stated between them.
And that the said defendants will set off and allow
to the said plaintiff on the said trial, so much of the
said last mentioned sum of Four Thousand Dollars
so due and owing from the said R. H. Swift
Brother & Johnston to the said defendants against
any demand of the said plaintiffs to be proved on
the said trial, as will be sufficient to satisfy
and discharge such demand, according to the
form of the Statute in such case made and pro-
vided.

Dated this 29th December 1857

Yours &c.

Davis & Nissen
Defendants attorneys.

State of Illinois }
County of Cook } ss.

Samuel Lord

vs

Bernard Whorlaut
& William Satter

} In the Cook County Court
of Common Pleas
January Term A.D. 1858

Bernard Whorlaut of said County and State, being
duly sworn says and deposes, that he is one of the
defendants in the above entitled cause, and this
affiant further says that he verily believes
that the said defendants have a good defence

to said suit upon the merits.
I sworn to and subscribed } Hermann Mhrtaub
before me this 28th December AD. 1857
C. D. Wolf J. P.

And afterwards to wit, on the Twentieth day of
March in the year last aforesaid, said day
being one of the days of the February Term of
said Cook County Court of Common Pleas
the following among other proceedings, was
had in said Court and entered of Record, to wit,

Samuel Lord }
vs } Affidavit.
Hermann Mhrtaub }
& William Satter }

This day comes the said
plaintiff by George Scoville his Attorney, and the
said defendants by Davis & Nissen, their Attor-
neys also come, and issue being joined here-
in, it is ordered that a jury come, and there-
upon come a jury of good and lawful men,
to wit, P. W. Intyre, D. Harris, D. Carver, H.
B. Tounceand, J. A. Ballard, W. A. Morgan,
W. B. Dempsey, Saul Haller, H. B. Whittington,
H. McMurray, J. K. Barnes, & Royal Fox—
who being duly elected tried and sworn, well
and truly to try the issue joined as aforesaid,
after the allegations and proofs submitted
by said plaintiff, retire to consider of their ver-
dict, and afterwards come into Court, and
say, we the jury find the issues for the plain-
tiff, and we assess his damages to the sum

of Two Thousand and fifty five Dollars and
Seventy three Cents.

And said defendants thereupon
enter their motion herein for a new trial in
this cause.

And afterwards to wit. on the Twenty fourth
day of March in the year last aforesaid. said
day being also one of the days of the February
Term of said County. the following. among
other proceedings. was had in said County
and entered of Record. to wit.

Samuel Lord	} Appraisers.
vs	
Herman Whorant & William Satter	

And now again come said
parties by their attorneys aforesaid. and the
Court now after hearing said defendants
motion for a new trial herein. being fully
advised in the premises. overrules said
motion, to which ruling of the Court the said
defendants enter their Exceptions.

Therefore it is considered. that the said
plaintiff do have and recover of the said defend-
ants, his damages of Two Thousand and fifty
five Dollars. and Seventy three Cents in
four aforesaid by the Jury here assessed, and
also his costs and Charges by him about
his suit in this behalf expended and have
execution therefor.

And said defendants there-

upon doing an appeal to the Supreme Court of the State of Illinois. which is allowed by the Court. upon their filing their Appeal Bond, in the sum of Two Thousand five hundred Dollars, with security to be approved by the Judge of this Court. Said Bond and Bill of Exceptions to be filed within ten days from this day.

And afterwards. to wit, on the Twenty seventh day of March. in the year last aforesaid the said defendants by their said attorneys filed in the office of the Clerk of said Court. their Appeal Bond and Bill of Exceptions. which said Bond and Bill are in the words and figures following to wit.

Know all men by these presents. That we Hermann Whorant, William Satter, John Rankin and Hermann Westermeyer are held and firmly bound unto Samuel Lord in the penal sum of Two Thousand Five Hundred Dollars. which payment well and truly to be made. and performed we do hereby bind ourselves. our heirs. Executors and administrators. firmly by these presents. Witness our hands and seal this 24th day of March A.D. 1858.

The Condition of the above obligation is such. Whereas the said Lord had latently. viz. at the February Term of the Cook County Court of Common Pleas. in and for the County of Cook and State of Illinois. recovered a judgment against the above bounden Whorant Satter in the sum of

and costs of suit, and whereas the said Whorlaut & Sattler have on the Twenty-fourth day of March A.D. 1858 prayed an appeal to the Supreme Court of the State of Illinois from said judgment, which prayer has been granted, and an appeal ^{as aforesaid} ~~has~~ been taken by said Whorlaut & Sattler to said Supreme Court.

Now then, if the said Whorlaut & Sattler shall well and truly pay or cause to be paid, the judgments, costs, damages and interest in case the said judgment shall be affirmed by said Supreme Court, and shall duly prosecute the said appeal, then this obligation to be null and void, otherwise to remain in full force and virtue.

Approved by me
John M. Wilson
Judge.

Hermann Whorlaut Secy
Hos Sattler Secy
John Rankin Secy
Hermann Westermann Secy

In the Cook County Court of Common Pleas

Samuel Lord
vs
Hermann Whorlaut
& William Sattler

Be it Remembered, that on the 20th day of March, in the February Term of the Cook County Court of Common Pleas A.D. 1858, the said defendants filed a motion to set aside the judgment rendered in this cause, and that a new trial be had: and the said motion, having been thereafter, to wit,

on the 24th day of March A.D. 1859. brought to a hearing. The said defendants in support thereof offered in evidence the following affidavits.

State of Illinois

County of Cook St. Hermann Unlaut being

deposed and says that he is one of the defendants in the suit in which the motion affixed to this affidavit is made, that he believes the promissory note upon which judgment was rendered in favor of the plaintiff to be the property of one Richard H. Swift, and others partners of the firm of R. H. Swift Brother & Johnston, that the said note was given for money obtained of the said R. H. Swift Brother & Johnston Bankers of the City of Chicago, in the course of the affairs business, that the said R. H. Swift Brother & Johnston failed in business in the fall of 1857, and were at that time owing your affiant & said Sattler the sum of about \$210. for money of them at that time held by the said R. H. Swift Johnston & Co. on deposit as Bankers, ^{as} aforesaid, which sum is still due and owing from the said firm of R. H. Swift Brother & Johnston to your affiant and said Sattler. And your affiant says that the said R. H. Swift Brother & Johnston are further indebted to him and said Sattler in the sum of Two Thousand and Seventy two Dollars and Sixty Six Cents, for certain Anticipated of deposit held by this affiant and said Sattler, which sum is yet unpaid, and if the said

note is really the property of said R. H. Swift Brother Johnston. that this affair should and ought to be allowed, to set off the sum so due him & said Sattler, against the sum claimed by virtue of said promissory note on which said suit is brought.

Your affiant further avers that he believes that said R. H. Swift Brother Johnston assigned said note to said Samuel Lord, the plaintiff in this case, ^{solely} for the purpose of cutting off any claim which your affiant and said Sattler might have against the said R. H. Swift Brother & Johnston for the reasons herein before set forth, and that therefore he caused a bill of discovery praying for an injunction against the prosecution of said suit, to be filed on the chancery side of this Court.

This affiant further states on information and belief that an injunction was granted by this Court as prayed for in said Bill, and that on filing the answer thereto a reference was had to the master and upon his report an order was entered dissolving said injunction.

Your affiant further states on information and belief that the said reference was taken up by said Master on the afternoon of the 19th day of March, and that on the 20th day of March, on the same day on which this motion is filed, the said plaintiff by his attorney appeared in Court and took judgment against the said defendants, for the full amount claimed in said note. The affiant further avers that to the best of his knowledge the said plaintiff has no other claim against him and said

Satisfy except upon the said note.

This affidavit further states that he had no opportunity to produce witnesses at said trial, that he was taken by surprise by said judgment, and had no due and sufficient notice of the intention of the plaintiffs to proceed to a trial. That he desired to produce as witnesses at said trial Richard H. Swift and James S. Johnston of said R. H. Swift Brother Johnston, and also one Robert C. Wright in the employ of said firm. That he hoped to establish by these witnesses,

1st That the said R. H. Swift Brother and Johnston have still an interest in said note and that the said plaintiff sues only for their use and benefit.

2nd
This affidavit further says that on said reference to said Master he had no opportunity to interrogate the said Swift, Johnston or Wright and that he believes they were not produced as witnesses before the Master at said reference. That he desires the opportunity of putting them upon the stand that the truth in regard to the transfer of said note may be elicited. That if the whole truth should be elicited this affidavit believes it will appear that the defendants in this suit have a right to set off against the said note the full amount of their claims as aforesaid against R. H. Swift Brother & Johnston.

Signed

Subscribed

Norman Holcomb

before me this 20th March 1858

William J. Hallis Jr.

Further Affidavit in support of the annexed
motion.

State of Illinois
County of Cook ss.

L. J. J. Nissen being duly
sworn deposes and says that he is of counsel to
the said defendants; that the case, to-wit, the
order of reference mentioned in the foregoing
affidavit of said Whelan was taken up by the
Master in the afternoon of the nineteenth of
March 1858. That on the morning of the 20th
of March following, the Master's report was filed
and injunction dissolved, and a trial was at
once had of said suit, at Law and a verdict
rendered against the defendants.

That this affiant had instructions from said
defendants to place as witnesses on the stand
those named in the foregoing affidavit, and
for the purpose therein mentioned, and that he
had intended on the morning of said March
20th to issue subpoenas for said witnesses,
that they might be examined at said trial
That this affiant had no opportunity of exam-
ining the said Master's Report and to file
exceptions to the same, and had not notice of
the filing of said Report, and the time of the
applying to the Court to dissolve the said injunc-
tion.

(Signed) L. J. J. Nissen
Sworn to and subscribed
before me this 20th March 1858

F. S. Howe
Notary Public

State of Illinois

Cook County, Ill. H. Davis being duly sworn
says that he is one of the Counsel and Attorneys
of said Wholant & Saltter ^{defendants} in the above mentioned
cause. That the said cause was passed on the reg-
ular call of the docket, having been enjoined by
said Court on bill of said defendants filed on the
Chancery side. That said motion to dissolve said
injunction was referred to Master & taken up
by him in the afternoon of March 19th 1858,
at which time and place the said Wholant &
Saltter were not present in person or by Coun-
sel. That the Attorney of said Lord Holifield
this affiant date in the afternoon of said March
19th that the case in which this motion is made
would be taken up in the morning of March 20.
That your affiant had intended to subpoena his
witnesses for the trial of said cause and did
not anticipate that any hearing would be had
further than to dissolve the injunction. That he
was instructed by his Client said Wholant to
produce on trial said Smith, said Wright and
said Johnston as witnesses, and was intending
to subpoena them. When he learned that judg-
ment had been rendered therein.

Hastrouck Davis

Subscribed & sworn to before me

this 22nd day of March A.D. 1858

W. Kimball, Clerk

Which was all the
evidence offered by the said defendants in sup-
port of their said motion, and the said plain-
iff then and there offered in evidence the follow-

ing affidavits.

Cook County Court of Common Pleas

Samuel Lord }
vs
Hermann Mrlaub }
& William Sattler }

State of Illinois }

Court of Cook Co. S. O. Affidavit being duly
sworn says that on the 18th day of March 1858
he served a notice in the Chancery suit, in this
Court between the parties aforesaid of which the
following is a copy, on L. J. J. Nissen Esq
one of the Complainants Solicitors.

Cook County Ct of Com. Pleas
Samuel Lord

vs
Hermann Mrlaub & William Sattler }

Messrs Davis & Nissen

Gentl^{ms} Please take notice
that I shall call up the motion to dissolve the
injunction in this case before the Master in Chan-
cery at his office, tomorrow at 11 o'clock A.M.

Yours &c.

Chicago March 18.
1858

Geo. Scoville

Deft's Solr

That on the 19th day of March 1858 at
about 11 o'clock in the forenoon this deponent
served a written notice on Messrs Davis & Nissen
complainants Solicitors in said Chancery suit
signed by said George Scoville, stating that
the hearing before the Master in Chancery

upon the motion to dissolve the injunction in
said Chancery suit, had been adjourned to
two o'clock P.M. of that day precisely, and
further that on the same 19th day of March
in the afternoon between four and five o'clock
this deponent served a notice on said Missin
begined by said Scoville, of which the follow-
ing is a copy to wit.

Cook County Court of Common Pleas

Samuel Lord }

Hermann Holant }

William Satter }

Messrs Davis & Stearns

Defts Attys

Yours please taken notice that I
shall call up this suit for trial tomorrow morning
at the opening of Court or as soon thereafter as
a hearing can be had.

Yours &c.

Jas. Scoville

Chicago March 19. 1858

Plffs attys

And further said not

Signed

F. O. Affeld

Subscribed & sworn to before
me this 22nd March 1858



Jas. H. Scoville

Notary Public

Cook County Court of Common Pleas

Samuel Lord
vs
Bernard Wilentz
& William Sattler

State of Illinois }
County of Cook } ss,

George Scoville being duly sworn saith that he caused the notices mentioned in the affidavit of F. O. Affeld filed herewith in this suit to be served on Messrs Davis & Nissen. That as Solicitor for said Samuel Lord this deponent attended at the office of the Master in Chancery on the 19th day of March instant at ten o'clock A.M. in pursuance of the first of said notices and was then and there informed by said Master that on account of other business he would not be able to take up the motions in said suit of Wilentz & Sattler vs Samuel Lord until 2 o'clock P.M. of that day, and he then adjourned the hearing thereof until that time and requested this deponent to give notice thereof to said Complainants Solicitors, and accordingly this deponent caused the second notice mentioned in said affidavit of said Affeld to be served on said Davis & Nissen. That at two o'clock on said day this deponent attended before said Master in pursuance of said notice and adjournment at his office and then and there called up for hearing the motions filed by said Complainants Solicitors to strike the answer of said Complainant Samuel Lord from the files and also the motion to dissolve the injunction in said suit. That no one appeared there for said Complain-

and. That said master found and reports
against the motion of said Complainants to
Strike the defendants answer from file and in
favor of the defendants motion to dissolve said
injunction and that his report was filed in said
Chancery suit, the same day, to wit March
19th 1858. That after the filing of said Report
on the same day this deponent caused the third
notice mentioned in the said Affidavit of said
Affid to be served on said Davis & Missen;
That at the opening of court on the 20th day
of March instant, in pursuance of said last
mentioned notice this deponent attended and
after waiting an hour for said Davis & Missen,
and neither of them appearing, called up this
suit for trial and judgment was rendered
upon the verdict of a jury herein in favor
of said plaintiff for the sum of \$2055.75
being the amount of the promissory note
sued on in this case and interest.

Signed
Subscribed & sworn before Geo. Scoville
me March 22nd 1858

W. Kimball, Clk.

Which was all the
evidence offered by the said plaintiff in opposi-
tion to said motion for a new trial. Whereupon
the Judge of said Court overruled the said motion
for a new trial. Whereupon the Counsel of the said
defendants made their exceptions to the said opin-
ion and decision of said Judge in that behalf
and inasmuch as the matters aforesaid do
not appear upon the record of the said motion
the Counsel on behalf of said Hermann Mohr

and William Satter prayed that the said
Judge would sign and seal this bill of excep-
tions containing the matters given in evidence
as aforesaid, according to the Statute in such
cases made and provided. And thereupon the
Hon. Judge aforesaid at the request of said
Counsel for the said defendants did sign
and seal this bill of exceptions pursuant to
aforesaid Statute in such case made and
provided. John W. Wilson Seal

State of Illinois
County of Cook ss.

J. Walter Kimball, Clerk
of the Cook County Court of Common Pleas
within and for said County, do hereby certify
that the foregoing is a full and true transcript
of the papers on file in my office and the
proceedings entered of Record in said Court
in the case wherein Samuel Ford is plaintiff
and Hermann Wholant and William Satter
are defendants.

In Testimony Whereof I hereunto
subscribe my name and affix
the Seal of said Court at the City
of Chicago in said County this
30th day of March A.D. 1858
Walter Kimball
Clerk

Cash on hand of Court

128

Plaintiff's account

Plaintiff's account

\$5.00

Filed April 16, 1881

vide back
per file

\$5.00 Paid
by Plaintiff's attorney
J. H. C.

Plaintiff's

Supreme Court

Herman Whirlaub
& William Sattler

Samuel Lord.

} Appeal from the
Cook County Court of
Common Pleas.

Messrs Davis & Nissen -

Gent^l Please to take notice
that I have caused a transcript
of the record in this case to be
filed in the Supreme Court, and
have entered a motion to dismiss
the appeal upon grounds filed as
follows,

1st ~~For~~ The appeal bond is insufficient
in not describing any judgment
appealed from -

2^d The bill of exceptions does not
purport to give the evidence in-
troduced on the trial of the
suit in the Court below -

And for other reasons appearing
in the record -

I have also entered a motion for
allowance of damages because of the
appeal being taken for delay -

I shall call up said motions
for hearing at the opening of the

Court at Ottawa, on the morning of
Thursday, April 22^d. 1858, or as soon
thereafter as a hearing can be had.

You are herewith served with a
brief of points & authorities on above
motions -

Yours &c

Geo. Scoville

Deft atty

Chicago, Apr. 15th 1858.

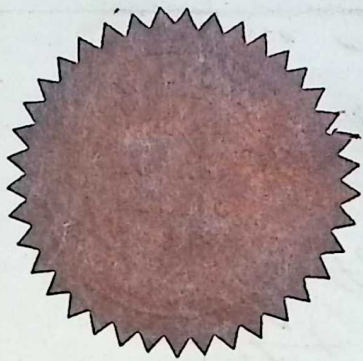
F. O. Affeld being duly sworn deposes & says that he
served a copy of the above and of the brief hereto
annexed on Mr. ^{of the firm of Davis & Nissen} Nissen, the day & year above
written.

F. O. Affeld

Subscribed & Sworn before me

this 17th day of April A.D. 1858

Geo. W. Scoville Notary Public



It is agreed that the foregoing motion
shall not be called up before opening of the
Court Apr 27th 1858.

Geo. Scoville
att'y for Lord

H. Davis for Appellants

Supreme Court

Jacob Lord

at

Whitcomb & Whittier

Notice

In the Supreme Court of the State of Illinois---Appeal from the
Cook County Court of Common Pleas.

UHRLAUB & SATTLER,

vs.

SAMUEL LORD.

} Motion of Deft. to dismiss
Appeal.

The defendant submits the following points and authorities:

The Appeal Bond is defective in not describing any judgment appealed from.

The Appellee could not recover in suit on the bond.

Though the Appellants are not obliged to prosecute their appeal to this term of the Court, the appeal being prayed within thirty days of the term, yet the Appellee may file a transcript, and move to dismiss the appeal, on notice to the Appellants.

<i>Brooks et al vs. President, &c.,</i>	1 Scam. 568.
<i>Watson et al vs. Thrall,</i>	3 Gilm. 69.
<i>Curry vs. Hinman,</i>	3 Gilm. 90.
<i>Johnson et al vs. Barber,</i>	4 Gilm. 1.
<i>Reynolds vs. Perry,</i>	11 Ills. 534.

The Bill of Exceptions does not purport to give the evidence adduced on the trial. It only gives "all the evidence" on the motion for new trial. This Court cannot determine whether the ^{Court below} Circuit erred or not, without all the evidence before it. The evidence on the trial may have been conclusive in the mind of the Court, and sufficient in fact, as against the affidavits offered on the motion for new trial.

<i>Swain et al vs. Carood,</i>	2 Scam. 506.
<i>Granger vs. Warrington,</i>	3 Gilm. 310.

The Appellee submits the following points and authorities on his motion for an allowance of damages.

The record shows that the Plaintiffs in the Court below did not attempt to defend the suit on the trial; That the suit was brought on a promissory note. That the bill of exceptions was filed on the 27th of March, twenty-four days before the session of the Supreme Court.

The affidavit filed on behalf of the Appellee shows that the record was made up by the Clerk of the Court below immediately thereafter, that the Attorney of the Appellant refused to bring the case into the present term of this Court, claiming the right to have it go over another year.

See *Simms vs. Klien*, Breese 292.

Supreme Court

Whelan & Sattler

Saml. Lord

Notice & stipulation

Filed April 21, 1858
in Deland
CLK.

Supreme Court
Whelan & Sattler
vs

Saml. Lord

Notice & brief

In the Supreme Court of the State of Illinois---Appeal from the
Cook County Court of Common Pleas.

UHRLAUB & SATTLER, *Appellants*

vs.

SAMUEL LORD. *Appellee*

*Motion of Def. to dismiss
Appeal.*

The condition of the bond in this case is as follows:

"The condition of the above obligation is such, that whereas, the said Lord has lately, viz: at the February term of the Cook County Court of Common Pleas in & for the County of Cook & State of Illinois, recovered a judgment against the above bondsmen UHRLAUB & SATTLER in the sum of \$1000 & costs of suit; and whereas said UHRLAUB & SATTLER have prayed an appeal to the Supreme Court of the State of Illinois from said judgment"

The defendant submits the following points and authorities:

The Appeal Bond is defective in not describing any judgment appealed from. *Ex parte Wood et al. 6 Cowen 585.*

The Appellee could not recover in suit on the bond.

Though the Appellants are not obliged to prosecute their appeal to this term of the Court, the appeal being prayed within thirty days of the term, yet the Appellee may file a transcript, and move to dismiss the appeal, on notice to the Appellants.

<i>Brooks et al vs. President, &c.,</i>	1 Scam. 568.
<i>Watson et al vs. Thrall,</i>	3 Gilm. 69.
<i>Curry vs. Hinman,</i>	3 Gilm. 90.
<i>Johnson et al vs. Barber,</i>	4 Gilm. 1.
<i>Reynolds vs. Perry,</i>	11 Ills. 534.

The Bill of Exceptions does not purport to give the evidence adduced on the trial. It only gives "all the evidence" on the motion for new trial. This Court cannot determine whether the ^{Court below} Circuit erred or not, without all the evidence before it. The evidence on the trial may have been conclusive in the mind of the Court, and sufficient in fact, as against the affidavits offered on the motion for new trial.

<i>Steain et al vs. Cawood,</i>	2 Scam. 506.
<i>Granger vs. Warrington,</i>	3 Gilm. 310.

The Appellee submits the following points and authorities on his motion for an allowance of damages.

The record shows that the Plaintiffs in the Court below did not attempt to defend the suit on the trial; That the suit was brought on a promissory note. That the bill of exceptions was filed on the 27th of March, twenty-four days before the session of the Supreme Court.

The affidavit filed on behalf of the Appellee shows that the record was made up by the Clerk of the Court below immediately thereafter, that the Attorney of the Appellant refused to bring the case into the present term of this Court, claiming the right to have it go over another year.

See *Simms vs. Klien*, Breese 292.

*Geo. Scoville
att'y for appellee*

In case a supersedeas should be asked for in this case (if the appeal is dismissed) I beg leave to call the attention of the court to the point that the affidavits of depts on the motion for new trial do not state that they expected or believed they could prove any specific facts by the witnesses whose testimony it was alleged was wanted.

Again, it appears from all the affidavits, taken together, that the depts had time to subpoena their witnesses, though they state they had not.

Again, this suit standing enjoined, with a constant effort of the plff to procure a dissolution of the injunction, the depts were bound to be ready for a trial at any time when the injunction should be dissolved.

Geo. Scoville
att. for appellee.
Plff below.

Supreme Court
128

Whitcomb & Sallies

4

Saml Lovel

Appellee, Prizer
Ans. to dis. in re

Filed April 27 1858
S. Ireland
CLP

In the Supreme Court, Appeal from
Samuel Lord } the Cook County
 ats. } Court of Common
Herman Uhrlaub, et al. } Pleas.

State of Illinois }
County of Cook } George Seville, being duly
sworn, saith that he is at-
torney for the appellee, Samuel Lord,
in this case; that the transcript of the
record to be filed in the Supreme Court in
this case, was made out by the Clerk
of the Cook County Court of Common
Pleas, within a few days after the appeal
was prayed herein, and by the 8th
day this month as this deponent is in-
formed & believes; That soon after
that time, and about a week since
this date, this deponent enquired of
Mr. Nissen, one of appellants attorneys in
this case, if they would take this suit
into the next term of the Supreme
Court, and was told by him that
they ~~did~~ would not take it there
until the term to be holden next year;
and this deponent thereupon told
said Nissen that he should take
the case into the next term of said
Supreme Court, to which said Nissen

objected & said, in substance, that the appellants would not consent, & that they should claim all the time the statute gave them, & but gave no other reason for the delay. And this deponent verily believes that the refusal to bring the case into the next term of said Supreme Court by said appellants, as aforesaid, is for purposes of delay merely -

Subscribed & sworn to
before me this 15th
day of April A.D. 1858.

Geo. Scoville

Geo. W. Scoville
Notary Public

Supreme Court

Saul Lord

at

Whitcomb & Lattin

App

<u>Supreme Court.</u> Herman Uhrlaub + William Sattler <u>Samuel Lord</u>	} Appeal from Cook County Court of Common Pleas.
--	--

The ^{appellee} ~~defendant~~, by Geo. Scoville
 his attorney, comes and moves
 the court to dismiss the appeal
 in this case for the following
 causes -

- 1st The appeal bond is insuffi-
 cient, in not describing any judg-
 ment appealed from.
- 2^d The bill of exceptions does not
 purport to give the evidence
 introduced on the trial of the
 suit in the Court below.

& for other reasons appearing
 in the record in this case -

Geo. Scoville
~~Def~~ atty for
 appellee

¹²⁸
Supreme Court

Samuel Lord

et al

Whelan & Sattler

Mo. to dismiss

appeal

Geo. Scoville

deft's atty

Supreme Court.

Herman Uhlir
& William Satter

vs
Samuel Lord

} Appeal from
Cook County Court
of Common Pleas.

The ~~defendant~~ ^{Appellee} comes & moves for
an allowance of damages under the
statute, on the ground that the ap-
peal in this case was taken for de-
lay, as appears from the record, &
affidavit filed herewith.

George Scoville
Supt atty for
appellee

¹²⁸
Supreme Court

Samuel Lord

at

Whitcomb & Sattles

Mo. for allowance
of damages

In the Supreme Court of the State of
Maine to the The April Term. AD. 1858.
Appeal from the Cook County Court of Common Pleas,
Herman Whurlaub &
William Pattter

^{vs}
Samuel Lorile

Points and authorities
submitted by the Plffs counsel on the motion
by deft to dismiss the appeal

I. The appeal bond is sufficient —

a. It conforms to the requirement
of the statute. Rev. Stat. ch. 83. sec 47

b. It is not necessary that the amount
of the judgement appealed from should be set
out in the condition of the appeal bond.

Griffette v. Sciplex. 5. Halsted. 228.

c It describes the judgement appealed
from with sufficient certainty to recover judgement
upon it.

U.S. v Maurice L. Brockinbrough. 96.

Witsett v. Womack. 8. Ala. 466.

Whittaker v Sumner. 9. Pick 311

Phil on Ev. vol. 4. p 521. Commonwealth.

Affidavit of the Clerk of Cook
Pleas Court of which a copy is
annexed —

II. The second point urged by the defendant that "the Bill of exceptions does not purport to give all the evidence adduced on the trial" does not properly arise ~~at this time~~

a. The court should not enter into the merits of the case at this time without the ~~Appellants~~ consent.

Hagar v Phillips 13. Ill. 292

b on motion to dismiss an appeal the court should confine itself to the questions whether the appeal has ^{been} providently granted

Reynolds v Perry 11. Ill. 584.

c or whether the appeal once rightly granted has been perfected by compliance with the conditions imposed by the statute and no case has been reported in which this court has gone further.

Watson v Thrall 3. Gil 69.

Curry v Heinman 3. Gil 90.

Johnson & al v Barton 4. Gil 1.

e The requirements of the statute having been fully complied with the appeal is rightly taken and formally perfected and cannot be dismissed on motion—

III. The Bill of Exceptions need not "purport" to give all the evidence adduced on trial —

a The statute allows an appeal from a decision overruling a motion for a new trial

Rev. Stat. Ch. 83. sec 23

b. The appellants motion may have been grounded as this is on the case having been taken up out of order and ~~his~~ on a surprise. In such case the appellant could not be present at the trial nor know what evidence was there adduced. & The affidavits on which his motion was based are all the evidence which could be incorporated in the bill of exceptions.

c. The decisions referred to in the defendants brief were predicated on the fact that the evidence on which the motion for a new trial was made in the court below was not before this court. If there be evidence enough to show good grounds for the motion it is all the court will require.

Saunders v McClintock 4. Scam. 419.

d. ~~Motion for a new trial on the ground of newly discovered evidence may be made without incorporating in the bill the testimony given on trial —~~

~~Smith v Schultz 1. Scam. 477.~~

e The bill need not "purport" to give all the evidence — if the court is satisfied that it does so it is sufficient — and where an

action is brought upon a written contract which is
set out in the declaration a statement that this
is all the evidence would be superfluous.

Stickney, cal v Cassell 1 Gil. 420.

IV The giving damages for delay
is not authorized by the statute.

H. Davie

L. J. J. Nissen

of Counsel for
Plffs

Sup Court.
128.

Worland &
Sattler

vs
Sam'l Lord

Plffs by

Filed April 22, 1859
L. J. J. Nissen
617