

No. 12418

Supreme Court of Illinois

Smith.

vs.

Hull, et al.

71641  7

1. State of Illinois
County of Cook } SS.

I was before the Honorable John M. Wilson Judge of the Cook County Court of common Pleas within and for the County of Cook and State of Illinois at the September term of said County Court of common Pleas begun and holden at the Court House in the City of Chicago in said County and State on the second Monday being the tenth day of September in the year of our Lord one thousand eight hundred and fifty five and of the Independence of the United States the Eighteenth.

I saw the Honorable John M. Wilson Judge
Daniel M. Shoy Prosecuting Attorney
James Andrew Sheriff

Attest

Walter Kimball Clerk

Be it remembered that heretofore to wit on the thirty first day of May in the year of our Lord one thousand eight hundred and fifty four came the Plaintiff by his Attorney Paul Cornell and filed in the office of the Clerk of the Cook County Court of common Pleas his Affidavit to hold to Bail Security for costs and preceipe for capias against John W. Hall and Abraham Wyatt Smith in a plea that they render to said Plaintiff the sum of Six thousand & eighty seven dollars & thirty four cents which said Affidavit Preceipe and Bond for costs are in words and figures as follows to wit:

State of Illinois
County of Cook } S.S.

Paul Cornell being first duly sworn according to law deposes and says that he is the Attorney & Agent of George C. Lamb and that John W. Hull and Abraham Hyatt Smith formerly partners in trade doing business under the name and style of Hull and Smith are justly indebted to the said Horace Smith for the use of George C. Lamb upon a certain judgment in favor of Horace Smith Plaintiff and against John W. Hull and Abraham Hyatt Smith Defendants recovered by said Plaintiff in the Superior Court of the City of New York in the State of New York in the Term of February in the year of our Lord Eighteen Hundred and forty two for the sum of six thousand & Seventy one dollar & ninety one cents assessed by said Court and fifteen dollars & forty three cents costs and charges by him the said Plaintiff in his said suit expended amounting to the sum of Six thousand & Eighty seven dollars thirty four cents debt & principal & interest due thereon in the sum of Nine Thousand three hundred & Eighty nine Dollars and Twenty four cents amounting in all to the full sum of Eleven Thousand Four hundred & seventy six Dollars and fifty eight cents being the whole amount due and owing by the said John W. Hull & Abraham Hyatt Smith to the said Horace Smith for the use of said George C. Lamb and that said Judgment is still and unpaid and in full force and not reversed annulled or satisfied in any part.

And this deponent further saith that said Horace Smith for the use of George C. Lamb is about to commence a suit in the Cook County Court of

Common Pleas against said John W. Hull and
Abraham Hyatt Smith on said judgment and
indebtedness and that the benefit of whatever judg-
ment may be obtained will be in danger unless
the said Defendants be held to bail —

Subscribed & sworn
to before me this 31st day
of May 1854.

W. Kimball CLK

Paul Cornell

Security for Costs

Moses Smith for the use of
George C. Lamb

John W. Hull &
Abraham H. Smith

Craig County Court
of Common Pleas

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 24th day of May A.D. 1854

William D. Barrows

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State of Illinois
County of Cook } S.S.

Cook County Court
of Common Pleas
Of the July Vacation
Term A.D. 1854

Morae Smith who
sues for the use of
George C. Lamb

John W. Hull &
Abraham H. Smith

The Clerk will please issue
process in the above, entitled cause to the Sheriff
of Cook County returnable at the July Vacation
term next in a plea of debt that said Defen-
dants render to the Plaintiff the sum of Six
thousand and eighty seven dollars and thirty
four cents Debt which they owe to and unjustly
detain from him to his damage ten thousand
Dollars. and oblige

Yours Counsel Barron
Plff attys

And thereupon on the thirty first day of May in
the year last aforesaid there issued out of the
office of the Clerk of the said Court a writ of
Capias

State of Illinois } S.S.
County of Cook }

The People of the State of Illinois to the Sheriff of said
County - Greeting -

We command you that
you take the bodies of John W. Hull and

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Abraham Hyatt Smith if they shall be found
in your county and safely them keep so that they
be and appear before the Cook County Court
of Common Pleas of said county on the first day
of the term thereof to be holden at the Court
House in Chicago in said county on the first
Monday of July next to answer unto Horace
Smith for the use of George C Lamb in a Plea
of that they render to said plaintiff the sum
of six thousand & eighty seven Dollars & thirty
five cents debt which they owe and unjustly
detain from said plaintiff to the Damage
of the said Plaintiff as he says in the sum of
Ten Thousand Dollars -

L. J. 3

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

Witness Walter Kimball Clerk of our
said Court and the Seal thereof at
Chicago in said County this 31st
day of May A.D. 1854

Walter Kimball Clerk

Which said capias was endorsed as follows
to wit -

Served by arresting the within named
Abraham Hyatt Smith and he having given
Bail as per annexed Bond. I released him from
custody May 31st 1854 - John W. Hulse Not found
in my County -

C. J. Bradley Sheriff
By John Norton Deputy

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To which said capias was attached a Bond
of which the following is a copy.

Know all men by these presents, That we
Abraham Hyatt Smith Walter S Gurnee and
Martin C. Walker of the county of Cook and
State of Illinois are held and firmly bound
unto Cyrus P. Bradley Sheriff of Cook County
in the State of Illinois in the sum of Twentythree
Thousand Dollars lawful money of the United
States for the payment of which sum well and
truly to be made to the said Cyrus P. Bradley
Sheriff as aforesaid or his successors in office ex-
ecutors administrators or assigns we hereby jointly
and severally bind ourselves, our heirs, executors
and administrators -

Witness our hands and seals this thirty first
day of May A.D. eighteen Hundred and fifty-
four - The condition of this obligation is such
that Whereas Hodge Smith for the use of
George C. Lamb has lately sued out of the Cook
County Court of Common Pleas in the County
of Cook a certain writ of capias ad respondendum
in a certain plea of debt that they render to said
Plaintiff the sum of Six Thousand & Eighty seven
Dollars & thirty four cents debt they owe jointly
detain from said Plaintiff against John McKell
and Abraham Hyatt Smith returnable to the
next term of the said Court Common Pleas to be
holden at the Court House in the City of Chicago
in said County on the first Monday of July
next - Now if the said Abraham Hyatt Smith
shall be and appear at the said Court to be
holden at Chicago aforesaid on the said first

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Monday of July next and in case the said
 Walter S. Gurnee and Martin O. Walker shall
 not be received as Bail in the said action
 shall put in good and sufficient bail which
 shall be received by the Plaintiff or shall be
 adjudged sufficient by the Court or the said
 Walter S. Gurnee and Martin O. Walker being
 accepted as Bail shall pay and satisfy the
 costs and condemnation money which may
 be rendered against the said Abraham Hyatt
 Smith in the plea aforesaid or surrender the
 body of the said Abraham Hyatt Smith
 in execution in case the said Abraham Hyatt
 Smith & John M. Hull shall not pay and
 satisfy the said costs and condemnation money
 or surrender himself in execution when by law
 such surrender is required then this obligation
 to be void: otherwise to remain in full force and
 effect.

In presence of

A. Hyatt Smith *Att*
 M. O. Walker *Att*
 W. S. Gurnee *Att*

And thereafter to wit on the first day of June in
 the year last aforesaid, the said Plaintiff by Cornell
 & Barron his attorneys filed in the Office of the Clerk
 of said Court his Declaration against said Defendant
 which said Declaration is in words & figures following
 to wit:

Cook County Court of common Pleas
 Of the July vacation Term AD. 1854
 Cook County: S. S.
 Horace Smith Plaintiff in this

suit who sue for the use of George C. Smith by his Attorneys Cornell & Barron complain of John W. Hull and Abraham Hyatt Smith Defendants in this suit the said Abraham Hyatt Smith being in custody and the said John W. Hull not having been served with process in this suit of a plea that they render to the said Horace Smith the sum of Six thousand and Eighty seven dollars and thirty four cents of lawful money of the United States which they owe to and unjustly detain from him -

For that Whereas the said Plaintiff Horace Smith heretofore to wit; in the Term of February in the year of our Lord one thousand eight hundred and forty two in the superior Court of the City of New York at the City Hall in the City of New York in the State of New York before the Justices of the said Court by the consideration and judgment of the said Court rendered against the said Defendants the said sum of money above demanded which in and by the said Court were then and there adjudged to the said Plaintiff for his damages which he had sustained, as well by reason of the non performance by the said Defendants of certain promises and undertakings there lately made by the said Defendants to the said Plaintiff as for his costs and charges by him about his suit in that behalf expended whereof the said Defendants were convicted as by the record and proceedings thereof remaining in said Court before the aforesaid Justices thereof more fully appears; which said judgment still remains in full force, and not reversed annulled

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satisfied or otherwise vacated -

And the said Plaintiff hath not obtained any execution or satisfaction of or upon the said Judgment, so recovered as aforesaid, whereby an action hath accrued to the said Plaintiff to demand and have of and from the said defendants the said sum of money above demanded -

And whereas also the said Defendants afterwards to wit; on the thirtieth day of May A.D. 1854 at New York to wit; at Chicago in said County of Cook aforesaid were indebted to the said Plaintiff in the sum of Six thousand and eighty seven dollars and thirty four cents of like lawful money as aforesaid for so much money before that time had and received by the said Defendants as Partners acting under the name and style of Hull & Smith to and for the use of the said Plaintiff and to be paid by the said Defendants to the said Plaintiff when by the said Defendants should be thence afterwards requested, wholly and by reason of the said last mentioned sum of money owing and remaining wholly unpaid an action hath accrued to the said Plaintiff to have and demand of and from the said Defendants the said last mentioned sum of six thousand and eighty seven dollars and thirty four cents of the said sum above demanded -

Nevertheless the said Defendants (although often requested so to do) have not as yet paid the said sum of money above demanded, or any part thereof to the said Plaintiff

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but have hitherto wholly refused and neglected
 so to do and still neglect and refuse so to do
 to the damage of the said Plaintiff of Ten
 thousand dollars and therefore he brings suits
 &c

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Levell Barron
 Plff Atty

And afterwards to wit on the twelfth day of June
 in the year last aforesaid there was filed in
 the office of the Clerk of said Court an affid-
 avit for true to procure affidavit of Merit which
 affidavit is in words and figures following to wit

Abraham Hyatt Smith	} Cook County Court of Common Pleas
Impleaded with John H. Hues	
and Hraec Smith further use of George C. Lamb	
Cook County 288	

Henry G. Miller being
 duly sworn deposes and says that he is one of
 the attorneys for the said Abraham Hyatt
 Smith one of the defendants in the above
 entitled suit, that the said Smith is not
 a resident of the State of Illinois but resides
 as deponent believes at Janesville in the State
 of Wisconsin and is now as deponent is infor-
 med and believes on his way to Washington
 City D.C. where he is expecting for some time
 to remain: deponent further says that he is

informed by said Smith that he has a defence to said action upon the merits: and he therefore prays that time may be granted until the first day of August next for the purpose of enabling this defendant to procure an affidavit of merit as required by the Statute and to file such additional pleas to such declaration as the nature of his defence may require.

Subscribed and sworn to this 10th
day of June A.D. 1854 } Henry G. Miller
W. Kimball Clerk

And afterwards to wit; on the day and year last aforesaid, came the defendant by Hoynes and Miller his attorneys, and filed in the office of the Clerk of said Court his pleas, which Plea is in words and figures following to wit;

Leads verily Court } Of the July Vacation
of Common Pleas } Term A.D. 1854

Abraham Hyatt Smith
Impleaded with John W. Hall

advs
Hence Smith for the
messrs George C. Lamb

And the said defendants
by Hoynes & Miller his attorneys come and
defend the wrong and injury where to; and
as to the first count in the said plaintiffs
declaration - says that there is not any record

of the said supposed ~~Recovery~~^{Recovery} in the said court mentioned remaining in the said Superior Court of the City of New York in Manner and form as the said plaintiff hath above in this said declaration alledged and thus the said defendant the said Abraham Hyatt Smith is ready to verify, wherefore he prays Judgment of the said Plaintiff ought to have and maintain his aforesaid action thereof against the said defendant the said Abraham Hyatt Smith together with the said John W. Hull.

And as to the second count in the said plaintiffs declaration the said defendant the said Abraham Hyatt Smith says that he does not together with the said John W. Hull owe the said sum of money in the said court demanded in any part thereof in Manner and form as the said plaintiffs hath above thereof explained against them and of this the said defendant the said Abraham Hyatt Smith puts himself upon the country.

Miller & Hoyme attys for said defendant Smith

And the said Plaintiff do the same likewise
By their Attorneys
Cornell & Barrow

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And afterwards to wit on the twenty third day of June in the year last aforesaid. there was filed in the office of the Clerk of said Court Rule to plead Notice and affidavit of service,

Horace Smith for the
use of George B Lamb

John W. Hull &
Abraham H. Smith

Cook County Court
of Common Pleas

Thursday June 1st 1854

On reading and filing Plaintiffs declaration in this cause and nomination of Cornell & Barron Plaintiffs attorneys - It is ordered that said defendants plead to said Plaintiffs declaration within ten days after service of a copy thereof and a copy of this rule on him or in default thereof his default be entered against said defendants at the July Vacation term of this Court.

Horace Smith for the
use of George B Lamb

John W. Hull &
Abraham H. Smith

Cook County Court
of Common Pleas

To the defendants in the above entitled suit - You are hereby notified that on the first day of the vacation term of said Court we shall move said Court for default and judgment against you in said above entitled cause unless you plead to the declaration filed in said suit according to law.

Chicago June 1st 1854 Cornell & Barron
attys for Plffs

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Hvace Smith who sues } Court County Court of
for the use of Geo. C. Lamb } Common Pleas

John W. Hull & Abraham Hyatt Smith

I Junius Mulvey
being first duly sworn do depose and say that
on the first day of June A.D. 1854, I delivered
to said Abraham Hyatt Smith one of the defendants
in the above entitled cause a copy of the declara-
tion filed in said cause with a copy of the
Rule to plead entered in said cause thereon
endorsed and a notice of which Rule to
plead & notice true copies are herewith attested
and further say not.

Subscribed & sworn to
before me this 23^d day
of June 1854.

W. Simball clerk

Junius Mulvey

And afterwards to wit, on the third day of July
in the year last aforesaid there was filed
in the office of the Clerk of the said Court
an affidavit of Merits - which is in words
and figures following to wit,

Court County Court
Common Pleas

Abraham Smith Impleaded
with John W. Hull

vs
Hvace Smith for the use
of George H. Lamb

District of Columbia } ss

Abraham H. Smith being

duly sworn deposes & says that he is one of the defendants in the above entitled cause and that as he believes he has good and substantial defence to said suit upon the merits —

Abraham Smith

E. C. S.

Sworn to and subscribed before me on the 28 June 1854

Charles W. Selding
Commissioner for the State of Illinois

And afterwards to wit, on the eleventh day of September in the year last aforesaid, there was filed in the office of the Clerk of said Court further Pleas which Pleas are in words and figures as follows to wit;

Abraham H. Smith
Impleaded into John W. Hull

Cook County Court
of Common Pleas

ad
Mercur C. Smith for the
use of George C. Smith

The said Abraham H. Smith and the said defendant by leave of the Court &c. for a further plea in this behalf as to the said first count in the said declaration says that the said plaintiff ought not to have or maintain his aforesaid action therein against him together with the said John W. Hull, because he says that after the recovery of the said judgment and before the commencement of this suit to wit on the first day of May A.D. 1854 to wit;

at the County of Cook aforesaid, the said defendant the said John W. Hull paid and satisfied to the said plaintiff the said sum of six thousand and Eighty seven dollars and thirty four cents in form aforesaid, received, and this the said defendant the said Abraham H. Smith is ready to verify, therefore he prays Judgment of the said plaintiff ought to have and maintain his aforesaid action against him together with the said John W. Hull

and for a further plea as to the said first count in said declaration the said defendant the said Abraham H. Smith says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him together with the said John W. Hull because he says that after the recovery of the said judgment and before the commencement of this suit to wit on the first day of May A.D. 1850. to wit at the County of Cook aforesaid and while the said judgment was the property of the said plaintiff the same was purchased by the said John W. Hull the defendant therein and this defendant the said Abraham H. Smith avers that the said John W. Hull who is one of the defendants against whom said judgment was recovered is now the owner of said judgment and that the said suit is prosecuted for the use and benefit of the said John W. Hull without that the same is prosecuted for the use of the said George C. Lamb as stated by in said plaintiff's declaration: and this the said defendant the said Abraham

H. Smith is ready to verify wherefore he prays
Judgment of the said Plaintiff ought to
have or maintain his aforesaid action thereof
against him together with the said John W. Hall

Hyman P. Miller
Atty for Defd. H. Smith

And afterwards to wit on the fourteenth day
of September in the year last aforesaid
there was filed in the office of the Clerk
of said Court a Replication to said Plea
which Replication is in words and figures
following to wit:

Coast County Court of
Common Pleas
Of the September term 1857

Hyman Smith who can
for the use of George Adams
Abraham Hyatt Smith
Impleaded with John W. Hall

And the said Plaintiff
as to the said plea of the said Defendant Abrah-
am Hyatt Smith impleaded as aforesaid
by him to the first Count of the said decla-
ration put above pleaded says that he the
said Plaintiff by reason of anything by the
said Defendant in that plea alleged
ought not to be barred from having and
maintaining his aforesaid action thereof
against him the said Defendant, because
he says that there is such a Record of the

said recovery remaining in the said Superior Court of Judicature before the aforesaid Justices thereof as he the said Plaintiff hath above in his said declaration in that behalf alledged - And thus he the said Plaintiff prays may be righted of by the country -

And the said defendant like wise doth the same

And the said Plaintiff as to the said plea of the said defendant Abraham Hyatt Smith by him secondly above pleaded to the said first count of the said Plaintiffs declaration says that the said Plaintiff by reason of anything by the said Defendant in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against the aforesaid defendant Abraham Hyatt Smith together with the said John W. Hull because he says that the said defendant John W. Hull did not pay and satisfy to him the said Plaintiff the said sum of money in the said count of the said Plaintiffs declaration mentioned in manner and form as the said Defendants Abraham Hyatt Smith hath above in his said second plea to said first count of said declaration in that behalf alledged (And thus he the said Plaintiff prays may be righted of by the country &c And the said Defendants both the like &c

And the said Plaintiff as to the said plea of the said defendant Abraham Hyatt Smith

by him thirdly above pleaded says that the said Plaintiff ought not by reason of anything by the said Defendant in that plea alleged to be barred from Inquiring and maintaining his aforesaid action thrust against the said Defendant the said John W. Hull did not purchase the said Judgment in the said declaration mentioned of him the said Plaintiff in manner & form as the said Defendant the said Abraham Hyatt Smith impleaded with said John W. Hull hath above in his said third Plea in that behalf alleged And this he the said Plaintiff prays may be enquired off by the country &c

And the said defendant the said Abraham Hyatt Smith doth the like &c

Cornell & Barran
Plffs Attys

And after words to wit in the 19th day of September in the One thousand Eight hundred and fifty seven. Came the said Deft by his said Attorneys and filed in the office of the said Clerk his Motion to discharge Bail which said Motion is in words & figures as follows to wit

Abraham H Smith
impleaded with
John H Hull
ad

Arace Smith who
ans for the use of
George C. Lamb

Crook County Court
Of Carimor Pleas

And now comes the
said defendant the said Abraham H Smith
by Hynes & Miller his attorneys and moves
that the bail taken in the above entitled
cause be discharged on the ground of the
insufficiency of the affdt filed therein -

Hynes & Miller
Atty for deft Smith

And thereafter to wit; on the 19th day of October
in the year last aforesaid, said day being one
of the days of the September term of said court
the following among other proceedings were had
in said cause and entered of record to wit;

Arace Smith for use
of George C. Lamb

John H Hull &
Abraham H Smith

Debt

And now comes the
said defendant Abraham H Smith impleaded

with the said John W. Mull by Hoyer & Miller
his attorneys and enters his motion herein to dis-
charge the Bail taken in this cause and there-
upon comes the said plaintiff by Cornell &
Barron his attorneys and the Court after hea-
ring the argument of counsel and being non-
sally advised in the premises overrules said
motion to which opinion of the Court in over-
ruling said motion the said defendant excepts

And there after to wit: On the 24th day of
March in the year of our Lord one thousand
eight hundred and fifty five the following
further proceedings were had in said cause
and entered of Record to wit:—

Horatio Smith for use
George C. Lamb

John W. Mull &
Abraham Smith

Debt

This day comes the said
plaintiff by Cornell & Barron his attorneys
and on his motion it is ordered that he have
leave to amend his declaration herein
and that he have until the first day of
the next Term of this Court to file the
same, and that the said defendant Smith
plead to said plaintiff's amended declaration

By the first day of the Only term next -
 And thereupon said defendant Smith
 impleaded &c by Hynes Miller his attorney
 comes and enters his Motion herein to discharge
 the bail of said defendant taken by the
 Sheriff on the process issued in this cause -

And afterwards to wit on the 29th day of May in
 the year Eighteen Hundred and fifty five came
 the Plaintiff by his said attorneys and filed
 in the office of the clerk of said Court his
 amended Declaration which said amend-
 ed Declaration is in words and figures as follows

Cook County } ss

Cook County Court
 Of Common Pleas of
 the Jurisdiction Term
 A.D. 1855 -

Morace Smith Plaintiff in this Suit who
 sues for the use of George C. Lamb by his attor-
 neys Cornell and Barron complains of Abraham
 Hyatt Smith Impleaded with John M. Hull
 Defendants in this cause the said Abraham
 M. Smith being in custody and the said
 John M. Hull not having been served with
 process in this Suit of a Plea that they render

to the said Horace Smith the sum of Six thousand
 eighty seven dollars and thirty four cents of
 lawful money of the United States of America
 which they owe to and unjustly detain
 from him. For that whereas the said Plain-
 tiff Horace Smith heretofore suit in the term
 of February in the year of our Lord one thou-
 sand eight hundred and forty two in the
 Superior Court of the City of New York at the
 City Hall in the City of New York in the State
 of New York before the Justice of the said
 Court by the consideration and Judgment
 of the said Court recovered against the said
 Defendants the said sum of money above
 demanded which in and by the said
 Court were then and then adjudged to the
 said Plaintiff for his damage which he has
 sustained as well by reason of the non per-
 formance by the said Defendants of a certain
 promise and undertaking then lately made
 by the said Defendants to the said Plaintiff
 as for his costs and charges by him about his
 suit in that behalf expended whereas the said
 Defendants were convicted as by the record and
 proceedings thereof remaining in the said Court
 before the aforesaid Justice thereof more fully
 appears; which said Judgment still remains
 in full force and not reversed, annulled satis-
 fied or otherwise vacated; And the said
 Plaintiff hath not obtained any execution
 or satisfaction of or upon the said Judgment
 so recovered as aforesaid; whereby an action
 hath accrued to the said Plaintiff to demand
 and have of and from the said Defendants the

sum of money above demanded —

And whereas also the said defendants after-
wards to wit: on the thirteenth day of May A.D. 1854
at New York to wit: at Chicago in said county of
Cook aforesaid were indebted to the said Plaintiff
in the sum of Six Thousand and Eighty seven
Dollars and thirty four cents of like lawful money
of us said for so much money before that time had
and received by the said Defendants as Partners
acting under the name & style of Huce & Smith
to and for the use of the said Plaintiff and to
be paid by the said Defendants to the said
Plaintiff whereupon the said Defendants
should be thereto afterwards requested
whereby and by reason of the said last mentioned
sum of money being and remaining wholly
unpaid a action hath accrued to the said
Plaintiff to have and demand of and from
the said Defendants the said last mentioned
sum of Six Thousand and Eighty seven Dollars
and thirty four cents other prices of the said
sum above demanded —

Nevertheless the said Defendants (although
often requested so to do, have not as yet paid
the said sum of money above demanded or
any part thereof the said Plaintiff but have
hitherto wholly refused & neglected so to do
and still do neglect and refuse so to do

To the damage of the said Plaintiff of
Ten Thousand Dollars and therefore he brings
suit &c

As sued on — Cornell & Barron
Huce & Smith & Horace Smith Plaintiffs, attys
To money had & rec^d \$ 6087.³⁴

And afterwards to wit on the fourteenth day of
 August in the year last aforesaid, the defendants
 by his attorneys Hoynes & Miller, filed in the
 office of the clerk of said court his Plea to the
 said amended declaration which is in words
 and figures following to wit:

Cook County Court of } In vacation before Sept
 Common Pleas } Term A.D. 1855-
 3 }

A Hyatt Smith impleaded
 with John W. Hull

vs
 Horace Smith mof
 George C. Lamb

Plea to Plffs amended
 Declaration

And the said defendant
 the said Abraham Hyatt Smith impleaded
 by Hoynes & Miller his attorneys comes and
 defends the wrong & injury where and say
 that there is not any record of the said supposed
 recovery in the said Dist. Court of said amended
 declaration mentioned remaining in the said
 Superior Court of the City of New York in manner
 and form as the said Plaintiff hath shown in his
 said amended declaration alleged, and thus
 the said Defendants the said Abraham Hyatt
 Smith is ready to verify - wherefore he prays
 judgment if the said plaintiff ought to have
 or maintain his aforesaid action thereal against
 this defendant together with the said John W. Hull

&c

Hoynes & Miller attys for deft Smith

And the said Defendant the said Abraham Hyatt Smith by his attorneys aforesaid & to the second count, in said Plaintiff amended Declaration says that he together with the said John W. Hull does not owe the said sum of money therein demanded or any part thereof in manner or form as the said Plaintiff hath ^{observed} therein complained against him and of this the said Defendant the said Abraham Hyatt Smith puts himself upon the country &c

Robert Miller atty for A H Smith

And the said Plaintiff as to the said last plea by the said Defendant above pleaded doth the same likewise

Cornell Barron
Plffs atty

And afterwards to wit; on the Eleventh day of September in the year last aforesaid, the Plaintiff by his attorneys, Cornell Barron filed in the office of the Clerk of said Court his Replication to said Defendant, A H Smith's first Plea which Replication is in words and figures following to wit;

Grace Smith who sues
for me of Geo. C. Lamb

(2d)
Abraham Hyatt Smith
Impleaded with John W. Hull

And the said Plaintiff
as to the said plea of the said Defendant

N. N. Smith Impleaded as aforesaid by him first above pleaded says that he the said Plaintiff by reason of any thing by the said Defendant in that Plea alledged ought not to be ^{barred} from having and maintaining his aforesaid action thereof against him the said Defendant because he says that there is such a record of the said remedy remaining in the said Superior Court of the City of New York as he the said Plaintiff hath above in his said declaration in that behalf alledged —

And thus he the said Plaintiff prays may be injured of by the country &c

Cornell A Barron
Plffs Attys

And the said Defendants likewise &c

Hoyme & Miller
Defts ~~Plffs~~ Attys

And thereafter to wit on the sixth day of October in the year one thousand Eight hundred and fifty five, said day being still one of the days of the September term of said Court the following among other proceedings

were had in said Cause and entered of
Record to wit:

Moratio Smith for use
of George C Lamb

John H Hull &
Abraham H Smith

} Debt

This day comes the
said defendant Abraham H Smith
by Hryne & Miller his attorneys and
enters his Motion herein to discharge
the Bail given by said defendant
in this Cause and thereupon comes
said Plaintiff by Cornell & Barron
his attorneys and the Court after hea-
ring the argument of counsel sustains
said motion and doth order that
the bail in this Cause be and is
hereby discharged —

And afterwards to wit; on the eighth day of October in the year of our Lord one thousand eight hundred and fifty five said day being still one of the days of the September term of said Court, the following further proceedings were had in said case and entered of Record to wit;

Moratio Smith
for use of George C. Lamb

John H. Hull &
Abraham W. Smith

} Debt

And now comes the said Plaintiff by Lemuel Barron his attorneys and the said defendants Abraham W. Smith by Hyman Miller, his attorneys also come and issue being joined on the said Defendant Smith Plea of "Non Ties" Record herein by agreement of both parties this cause on said Plea is submitted to the Court for trial without the intervention of a jury and the Court after hearing the allegations and proofs argument of Counsel and being now fully advised in the premises finds the same for

the defendant to which finding and decision of the Court the said Plaintiff enters his exceptions.

Therefore it is considered that the said defendant Abraham H. Smith do have and recover of the said Plaintiff his costs by him about his defence in this behalf expended and have execution therefor.

And therefore the said Plaintiff pray and appeal to the Supreme Court which is allowed in this filing an appeal Bond in the usual conditions with Paul Cornell as surety in the sum of one hundred Dollars said Bond & Bill of exceptions to be filed in thirty days from this date.

And then after to wit; on the nineteenth day of October in the year last aforesaid there was filed in the office of the Clerk of said Court by said Plaintiff his appeal Bond which said Bond is in words and figures as follows to wit;

Know all Men by these presents that we George C. Lamb of New York & Horace Smith

of said New York as Principals and Paul Cornell
of Chicago in the county of Cook as Surety
are held and firmly bound unto John W. Hull
& Abraham H. Smith of said Chicago in the sum
of Five Hundred Dollars lawful money of the
United States to be paid to the said Hull & Smith
their Executors, administrators & assigns for which
payment well truly to be made we bind
ourselves and our respective heirs, administrators,
Executors & assigns jointly & severally firmly
by their present—

Sealed with our seals, Dated the
Nineteenth day of October in the year Eighteen
Hundred & fifty five.

The condition of this
obligation is such that whereas at the September
term of the Cook County Court of Common Pleas
holden at Chicago in said County of Cook in
the year Eighteen Hundred & fifty five judg-
ment was rendered by the said Court in
favor of said John W. Hull & Abraham H.
Smith against said Horace Smith in an
action in which Horace Smith by the use of
said George C. Lamb is Plaintiff and the
said Hull & Smith are Defendants and
whereas the said Horace Smith has prayed
an appeal from the said Judgment to the
Supreme Court. Now therefore the condition
of the above obligation is such that if the above
bounden Horace Smith & George C. Lamb
shall duly prosecute the said appeal and
shall pay or cause to be paid the said
Judgment & costs interest and damages
in case the said Judgment shall be

affirmed then the above obligation to be void
otherwise to remain in full force and virtue.

George C. Lamb Esq
By Cornell Barron his atty in fact
Horace Smith Esq
By Cornell Barron his atty in fact
Paul Cornell Esq

And afterwards to wit: on the seventeenth day
of October in the year last aforesaid came
the said Plaintiff by his said attorneys and
filed in the office of the clerk of said court
his Bill of Exceptions which Bill is in words
and figures following to wit:—

State of Illinois
Cook County Court
of Common Pleas

Horace Smith for the use
of George C. Lamb

John W. Hall &
Abraham H. Smith

Afterwards to wit: at the
Cook County Court of Common Pleas held at
Chicago in and for the County of Cook on
the second Monday of September in the
year one thousand eight hundred fifty
six before John W. Wilson Judge thereof
appointed to hold said Court according
to the form of the Statute in such case
made and provided the aforesaid issue

so joined between the said parties as of record
came on to be tried & thereupon the parties hereto
waived a trial by jury and agreed that the
same be submitted to the said Judge subject
to any exception that might be taken to his
decision. At which day came there as well
the said Plaintiff as the said Defendant
by their respective Attorneys, before the said
Judge, and upon the trial of the said
issue the Counsel for the Plaintiff to main-
tain and prove the said issue upon his part
offered in evidence an exemplified copy
of the Record of Judgment previously obtained
by the Plaintiff against the said Defendant
in the State of New York a copy of which
is hereinafter set forth in the Words and figures
following to wit:

The People of the State of New York
By the Grace of God free & independ-
ent —

To All to whom these Presents shall come Greeting
Know ye that we having inspected the file of
the Superior Court of the City of New York
do find there remaining on file a certain
Judgment Record in a cause wherein Horace
Smith is Plaintiff and John H. Bull &
Abraham H. Smith are Defendants in the
words and figures following to wit:

The Superior Court of
the City of New York; Pleas in the Superior
Court of the City of New York in and for
the City and County of New York before

the Justice of the same Court on the eighteenth day of December of December Term in the year of our Lord one thousand eight hundred and sixty one

City & County of New York.

Wm. H. Smith Plaintiff in this suit by Gabriel H. Minton Complainant of John M. Hull & Abraham H. Smith Defendants in this suit the writ of capias ad respondendum issued thereon having been returned by the Sheriff of the City & County of New York to whom the same was in that behalf directed personally served upon the said defendant Abraham H. Smith and the said Sheriff returned thereon that the said Defendant John M. Hull was not found in his bailiwick of a plea of trespass on the case upon promise. - For that whereas at the several days & times hereinafter mentioned and before and afterwards the before named Defendants were partners in trade & as partners using trade & commerce together under the name Style and firm of Hull & Smith to wit at the City & County of New York within the Jurisdiction of this Court and so being partners in trade under the said name Style & firm of Hull & Smith a certain person using the name of J. Lygler heretofore to wit on the twentieth day of July in the year one thousand eight hundred & forty one at Mason Geo. to wit at the City & County of New York within the

Jurisdiction aforesaid made a certain bill of exchange
 in writing, bearing date the day & year aforesaid
 & then & there directed the said Bill of Exchange
 to the said Defendants by their said partnership
 name & addition of Messrs Knell Smith
 New York by which said bill of exchange the
 said person so using the name of J. Corrie
 then and there requested the said Defendants
 in the tenth day of November then next to pay
 to one Levi Eckley or order Six Thousand
 Dollars for value received, and the said
 Levi Eckley to whom or to whose order the
 payment of the said sum of money in the said
 bill of exchange specified was to be made
 as aforesaid, afterwards before the payment
 of the said sum of money mentioned
 in the said bill of exchange or any part
 thereof and also before the time limited and
 appointed by the said bill of Exchange
 for the payment thereof to put on the same
 day and year and at the place aforesaid
 endorsed the said Bill of Exchange in writing
 and by that endorsement ordered & appointed
 the contents thereof to be paid to the said
 Plaintiff or order, and then & there delivered
 the said bill of Exchange so endorsed
 to the said Plaintiff which said bill
 of Exchange the said Defendants afterwards
 to wit on the said twentieth day of July
 in the year one thousand eight hundred
 & forty one at the place aforesaid upon
 eight shillings accepted, payable at the
 American Exchange Bank and the said
 Defendants then & there had notice of the

endorsement so made thereon as aforesaid.
 By reason whereof and according to the
 usage and custom of Merchants the said
 Defendants then and there became liable to
 pay to the said Plaintiff the said sum
 of money in the said bill of exchange
 specified, and being so liable, the said
 Defendants in consideration thereof afterwards
 to wit on the same day and year last aforesaid
 and at the place aforesaid made, took and
 then they faithfully promised the said Plain-
 tiff to pay unto the said Plaintiff the said
 sum of money in the said bill of exchange
 specified according to the tenor effect of the
 said bill of exchange of the acceptance thereof
 and of the said endorsement so thereon
 made as aforesaid. And whereas also the
 said Defendants afterwards to wit on the
 fifteenth day of November in the year one
 Thousand eight hundred and forty one
 at the place aforesaid were indebted to the said
 Plaintiff in the further sum of Two Thousand
 Dollars lawful money of the United States
 of America for money before that time lent
 and advanced by the said Plaintiff to
 the said Defendants and at the special
 instance request of the said Defendants
 and for other money by the said Plaintiff
 before that time paid, laid out and expen-
 ded for the said Defendants and for other
 money by the said Defendants before that
 time paid and received to and for the use
 of the said Plaintiff, and being so indebted
 the said Defendants in consideration thereof

afterwards to wit on the same day and year
 last aforesaid and at the place aforesaid
 undertook and then & there faithfully prom-
 ised the said Plaintiff well & truly to pay
 unto the said Plaintiff the said sum of
 money in this Court mentioned when the
 said Defendants should be thereunto after-
 wards requested, and whereas also the said
 Defendants afterwards to wit on the same
 day & year last aforesaid at the place
 aforesaid accounted together with the
 said Plaintiff of & concerning divers other
 sums of money being that time due owing
 from the said Defendants to the said
 Plaintiff and then & there being in arrears
 & unpaid upon such accounting the
 said Defendants then & there were found
 to be in arrears indebted to the said
 Plaintiff in the further sum of ten thousand
 Dollars of like lawful money as aforesaid;
 And being so found in arrears and indebted
 to the said Plaintiff the said Defendants
 in consideration thereof afterwards to wit
 on the same day & year last aforesaid and
 at the place aforesaid undertook & then &
 there faithfully promised the said Plaintiff
 well & truly to pay unto the said Plaintiff
 the said sum of money last mentioned
 when the said Defendants should be there-
 unto afterwards requested -

Nevertheless the said Defendants (although
 often requested) have not yet paid the said
 several sums of money above mentioned
 or any or either of them or any part thereof

to the said Plaintiff but to pay the same or any part thereof to the said Plaintiff the said Defendants have hitherto wholly refused and still do refuse to the damage of the said Plaintiff of Ten Thousand Dollars and therefore the said Plaintiff brings suit &c And afterwards to wit on the first Monday of February of the Term of February in the year of our Lord one Thousand eight hundred and forty two to wit which day the said John W. Hull & Abraham H. Smith had leave to impeach the said Declaration and then to answer to the same &c before the Justices of the Superior Court of the City of New York at the City Hall of the City of New York as aforesaid comes the said Horace Smith by his attorney aforesaid and prays that the said John W. Hull & Abraham H. Smith may answer his said Declaration - And the said John W. Hull and Abraham Smith although now here on the same day in this same Court solemnly called to not come nor anything say in bar or preclusion of the action against of the said Horace Smith whereby the said Horace Smith remains against the said John W. Hull & Abraham H. Smith without defence &c - Therefore the said Horace Smith ought to recover against the said John W. Hull & Abraham H. Smith his damages by reason of the premises; And hereupon the said Horace Smith freely here in Court confesses that he will not further prosecute his suit against the said John W. Hull & Abraham H. Smith in respect to the premises in the second and third

counts of the said declaration mentioned therefore
as to the promises in those counts mentioned let
the said John M. Hull & Abraham H. Smith be
acquitted and go thereof without day &c: and
because it is suggested & proved & manifestly
appears to the said Court here that the said
H. Smith has sustained damages by
reason of the not performing of the said prom-
ise & undertaking in the said first count of the
said declaration mentioned to Six Thousand
& Seventy one Dollars & ninety one cents besides
his costs and charges by him about his suit
in this behalf expended —

Indignant & personal libelous count
day of damages, one thousand
eight hundred & forty nine

Therefore is considered by the same
Court here that the said H. Smith
is entitled against the said
John M. Hull & Abraham H. Smith
his damages by occasion of the not
performing of the said promise and
undertaking in the first count of the
said declaration mentioned to
Six Thousand & Seventy one Dollars
& ninety one cents by the Court here
assessed and also Fifty seven Dollars
& forty three cents for his costs and charges by
him about his suit in this behalf expended
by the said Court here to the said
H. Smith with his assent adjudged.
Which said damages costs and charges in
the whole amount to Six thousand and eighty
seven Dollars & thirty seven cents —

And the said John M. Hull & Abraham
H. Smith in Mercy &c —

L.S.

Alba which we have caused by these
 presents to be exemplified according to the
 act of Congress and the seal of the Superior
Court of the City of New York to be hereunto
 affixed.

Witness Thomas J. Oakley Esquire
 Chief Justice of our said Court at the City
 Hall of the City of New York this 17th day
 of December A.D. 1853

New York Superior Court } Genl H.C. Lynch Clerk
 Grace Smith }
 against }
 John W. Hull & }
 Abraham H. Smith }

By the Honorable Thomas
 J. Oakley Chief Justice of the Superior Court of
 the City of New York it is hereby certified that
 George H. C. Lynch whose name is subscribed
 to the foregoing Exemplification in the above
 entitled cause is the Clerk of said Court &
 that the attestation thereof is in due form.

Given under my hand at the City
 Hall in the City of New York this 17th day
 of December A.D. 1853

Thos J Oakley
 Chief Justice of the
 Superior Court of the City
 of New York

The counsel for said Defendants objected
 to the admission of such exemplified copy

of Judgment Record for the reason that it did not tend to prove the fact of the joint liability of said Defendants - and thereupon the presiding Judge declared & delivered his opinion that such exemplified copy of Judgment Record as aforesaid could not be admitted as evidence tending to prove the joint liability of said Defendants inasmuch as it appeared from inspection of said copy as aforesaid that service of notice of the pendency of said suit was made upon Abraham H. Smith only and not upon John Whitt the other Defendant. To which opinion and decision of the said Judge of said County Court the said Counsel for the Plaintiff did then and there except - The Counsel for the Plaintiff introduced no further evidence whereupon the said Judge ordered that Judgment be rendered in favor of the Defendants and inasmuch as the said exemplified copy of Judgment record so produced by the Counsel for the Plaintiff and by them insisted on to sustain their action aforesaid do not appear by the record of Judgment in the present suit. The said Counsel for the Plaintiff did then & there prepare their Exceptions to the opinion of the said Judge and requested him to put his seal to this bill of exceptions containing the said matter so aforesaid and produced in evidence on the part of the said Plaintiff as aforesaid according to the form of the Statute in such case made and provided; and thereupon the said Judge at the request of the said

counsel for the plaintiff did put his seal to this Bill of Exceptions pursuant to the aforesaid Statute in such case made and provided on the eighteenth day of October in the year of our Lord one thousand eight hundred and fifty six.

John W. Nelson Judge
of the Cook County Court

State of Illinois
County of Cook } ss.

I Walter Kimball Clerk of the Cook County Court of Common Pleas in and for said County do hereby certify that the above and foregoing is a full and true transcript of all the papers and proceedings entered of Record in said Court in the case in which Horace Smith is Plaintiff and Abraham H. Smith and John McFall are Defendants in an action of Debt.

In testimony whereof I have hereunto subscribed my name & affixed the seal of said Court at the City of Chicago in said Co. this thirty first day of March A.D. 1856.

Walter Kimball, Clerk

#7

State of Illinois } June Term in the year of
 Supreme Court } our Lord one thousand eight
 hundred and fifty six.

Horace Smith who sues for
 the use of George C. Lamb

vs

John W. Hull and
 Abraham H. Smith

In Error

And now on this day, comes the
 said Horace Smith who sues for the use of
 George C. Lamb, by Cornill, Jamison & Bass,
 his attorneys, and says that in the record &
 proceedings aforesaid, and also in the rendition
 of the judgment aforesaid, there is manifest
 error in this, to wit:-

- First- That the said County Court erred
 in rejecting, as evidence for the plain-
 tiff in this case, the Exemplified Copy
 of the Judgment Record of the Superior
 Court of the ~~State~~^{City} of New York, offered
 in evidence by the Plaintiff's counsel.
- Second- That the judgment of said County
 Court was against the law.
- Third- That the judgment of said County
 Court was contrary to the evidence.
- Fourth- That the said County Court erred in
 rendering judgment for the defend-
 ants, and against the Plaintiff.
- Fifth - That by the record aforesaid, it ap-
 pears, that the judgment aforesaid,
 in form aforesaid given, was given
 for the said John W. Hull and Abra-

44. Lane H. Smith against the said Horace Smith
who sued for the use of George C. Lamb, whereas
by the laws of the land the said judgment ought
to have been given for the said Horace Smith
for the use of the said George C. Lamb, against
the said John W. Hull and Abraham H. Smith.

Wherefore the ^{said} Horace Smith who sues for
the use of the said George C. Lamb, prays that
said judgment of the said Cook County Court
of Common Pleas may be reversed, annulled,
and altogether held for naught, and that said
Plaintiff may be restored to all things which
he hath lost by occasion of the said judgment.

Horace Smith for use of
George C. Lamb by
Cornell, Jamison & Bass
his Attorneys.

State of Illinois of
Supreme Court, State of Illinois

Steen W. Smith in-
cluded with John W. Hull

ans

Heaven Smith

June term A.D. 1855

And now comes the
said defendant The said Abram W. Smith and
joins in error and says there are no such errors
in the record and proceedings of said court and
the the entering of judgment therein as is alleged
by said plaintiff in error, and prays that said
judgment may be affirmed

Hayne & Ventin

Myself mirror

Horace Smith
for use of George C. Lamb

us

John W. Hull &
Abraham H. Smith

assignment of errors.

78.

Howard Smith
from Alfred Smith

Archer Smith

John H. Hull

Filed June 3, 1856
Leland
C. R.

Transcript

Transcript 11.00
Paid by Piff M. H. C. H.

11.00

Supreme Court. of State of Illinois -

Abraham H. Smith implicated as
acc

Horace Smith who sues for
the use of Horace Smith

This was an action of debt brought in the
circuit court, County of Cook, Illinois
by the plaintiff against Abraham H.
Smith & John H. Wells, upon a judgment
alleged to have been rendered against both
of the defendants - in the Superior Court of
the City of Chicago. The writ was issued
against both of the defendants - and the
return in the first court was for an
indebtedness alleged to be due from both of
the defendants jointly upon a judgment
stated to have been rendered against both
of them -

There is also a return in debt against the
defendants -

It is unnecessary to notice the additional
pleas filed in the amended return.

To this conclusion is rather the case is
an action which was substantially
like the first - the defendant Smith pleaded
in the first court. And the record is
to the 2d court. And the
pleas are joined upon them. Pleas and
the can now trial by the court -

On the trial the only evidence offered in support of the plaintiff in behalf of the plaintiff in support of the claim was the certified copy of the record of a judgment, recorded in form against the defendants which is made a part of the bill of exceptions and commenced on page 33 of this record -

In the reading of this exemplified copy in evidence the defendants objected on the ground that it did not tend to prove the fact of the joint liability of the defendants - This objection was sustained and the decision of the court is original a error -

That the plaintiff must recover against both of the defendants, in an action of contract a writ at all, can not be denied - And that the record of a judgment which is substantially a recovery against but one party, is not admissible in evidence in an action against two defendants will be presumed to be admitted - As it does not establish a debt & establish any joint indebtedness from the parties against whom the action is brought, it only establishes the fact of an indebtedness due from the party against whom the recovery is had -

It appears from the exemplified copy of the record offered in evidence (see page 34) that the writ in which the recovery was had in the Superior Court, was commenced by a capias which was returned personally served on to Smith and not served on defendants Hull - The declaration was against

The defendants as co-partners - neither defend-
ed and judgment was rendered against
both defendants by default --

It was a formal recovery against both defend-
ants under a statute of New York commonly
called the joint debt act - which in substance
provides that when parties are sued as co-partners
and service is had upon one only of the
defendants, a judgment may be rendered
against all but the execution is limited to
the co-partnership property and the individual
property of the defendant served --

The question whether such a recovery could
be used as evidence to charge both of
the defendants, in a subsequent action
thereon has been fully determined by the
court of appeals of New York in the case of
Oakley v. S. Sprinall & Co. 4 Conn. 514 -
It was there determined that an action
could not be maintained upon a
judgment recovered in this way -- and
that the plea of null. t. recd. was the proper
plea to such an action. --

The answer is made by the highest court
of New York upon the effect to be given
to a judgment of one of the courts of that
state, and involving precisely the question now
before the court. -- This court is asked to extend
the effect of a judgment of a sister state beyond
the limitations fixed by the adjudication of the
highest tribunal of that state --

See D. Gray v. Ketchem & Co. 11 How. 165 -

Wade v. Williams 4 Pick. 232 -

It is always competent for a party sued upon
a judgment rendered against him in another
state, to impeach it when the court had

but jurisdiction of the parties -

Brinell vs. Briggs 9 Mass. 462 -

Mason vs. Dodd 4 N. H. 336

Pruden vs. Fitch 15 N. H. 141

Andrew vs. Montgomery 19 N. H. 164

Shumway vs. Stearns 4. Conn. 292

Benton vs 10 Serg. & Raul. 242 -

Higgin & Quillen
for appellants -

(78)
Sup. Court of Illinois

Abraham W. Smith
vs
supplicavit vs
ad

Veran Smith
vs

Appellus Argumens
vs

Filed June 21. 1858
L. L. Lord
Clerk

Hayden W. Miller
for appellus

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the *Cook County* Circuit Court, for the county of *Cook* Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of *Cook County* of *Common Pleas* of *Cook* county, before the Judge thereof, between *Horace Smith* who sues for the use of *George C. Lamb*

plaintiffs and *John W. Hull & Abraham H. Smith*

defendant it is said manifest error hath intervened, to the injury of the aforesaid

Plaintiffs

as we are informed by *their* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaintiff, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the *Second Monday in June* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. **SAMUEL H. TREAT**, Chief Justice
of our said Court, and the Seal thereof, at Ottawa, this *30* day of *June*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-six

12418-57



Leland
Clerk of the Supreme Court.
By J. B. Rice Deputy

Horace Smith for receiver
By
John W. Hull et al
Writ of Error

Filed June 3, 1858
L Leland
Clerk

RECEIVED
THE CLERK OF THE SUPREME COURT

STATE OF ILLINOIS

Supreme Court }
State of Illinois }

Horace Smith for use &
Plaintiff in error

vs

Abraham H. Smith &
John W. Hull
Defendants in error.

Abs tract of Record.

8 This is an action of Debt⁺ in the Cook
County Court of Common Pleas, on a
record of judgment of the Superior Court
of the City of New York, rendered against
Abraham H. Smith and John W. Hull,
in favor of Horace Smith, for \$6087 ³⁴/₁₀₀
damages and costs, on the 14th day of Jan-
uary A. D. 1842.

The process issuing from the Court be-
low was returned served upon Abraham
H. Smith, one of the defendants; John
5 W. Hull returned not found. +

7. The Declaration was filed on the 12th
day of June A. D. 1854. +

12. To the Declaration the defendant Smith
pleaded nil tunc record, + nil debit, pay-
ment, and that the judgment, at the time
of suit brought, was the property of the
16. defendant, John W. Hull. +

An amended declaration of the plain-
tiff presenting substantially the same

22

cause of action, was filed May 29th 1855.⁺

25

To which amended declaration, defendant Smith pleaded nil til record, and nil debit.⁺

33

And afterwards, on the 8th day of October A. D. 1855, said cause came on for trial before the Cook County Court of Common Pleas, and the cause was submitted to the court on the plea of nil til,^{record.} and thereupon the plaintiff in error offered in evidence the record of judgment⁺ recovered in the Superior Court of the City of New York, in the State of New York, in and by which said record, it appears, that a capias ad respondendum was served on the defendant Abraham H. Smith, and that the same was returned stating that the said John W. Hull was not found.⁺

34

From said record of judgment it also appears, that the said Abraham H. Smith and John W. Hull were partners in trade in the State of New York, and that said judgment was recovered against them as such partners.⁺

34

To the admission of this record of judgment, the defendant Smith objected, for the reason, that it did not tend to prove the joint liability of said Smith & Hull defendants, and the court rejected said record of judgment for that reason.⁺

41

To which opinion of the Court, said Plaintiff, by his counsel, then and there

excepted.

The record shows that there was no further evidence offered by either plaintiff or defendants, and the court thereupon rendered judgment for the defendants.

The errors in this case assigned, are,

1st That the Court below erred in rejecting the record of judgment of the Superior Court of the City of New York, as evidence for the plaintiff.

2nd That the judgment of said Court was against the law.

3^d That the judgment of said Court was contrary to the evidence.

4th That said Court erred in rendering judgment for the defendants and against the plaintiff.

5th That by the record aforesaid, it appears that the judgment ⁱⁿ ~~was~~ the Court below was given for the said Abraham B. Smith and John W. Hull, against the said Horace Smith, for use &c, whereas by the laws of the land said judgment ought to have been rendered for the said Horace

Smith and against the said Abraham
H. Smith and John W. Hull.

Cornell Janson & Bass
Attys for Plaintiff
in error.

Horace Smith for

vs

vs

Abraham H. Smith
& John W. Hull.

Abstract.

Filed June 12/1865,

L Leland
Clerk

78

Horace Smith vs
John Hull et al

78

1856

12418

X