

12912

No. _____

Supreme Court of Illinois

Swift

vs.

Crumbacker

71641  7

State of Illinois
So Daviess County
14th Judicial Circuit

Pleas in the Circuit
Court in and for said
County in the State aforesaid at the
May Term AD 1858 of said Court begun
and held at Galena in said County
on the third Monday in the month
of May AD 1858 to wit on the 17th day of
May AD 1858 before the Hon^{ble} Benjamin
R Sheldon Judge of the 14th Judicial
Circuit of the State of Illinois
W D Meacham Prosecuting Attorney
S K Miner Sheriff
W R Rowley Clerk

John A Crumbacker who
sues for the use of Amos E Brenizer
vs Samuel W Swift
Debt Be it
remembered that
heretofore to
wit on the 18th day
of February AD 1858 the above named
plaintiff by Rawlins & Shecan their
attorneys filed in the office of the clerk
of said So Daviess County Circuit
Court their precept and bond for
cost in the above entitled cause, which

precipi is in the words and figures following to wit

John N Crumbacker who State of Illinois
sues for the use of Amos Jo Daviess County
C Brenizer In Circuit Court
Of March Term 1858

vs
Samuel W Swift-

William R Rowley Esq. Clerk
of said Court.

Upon filing this precipi in
your office let a summons issue to the
above named defendants. Returnable to
the next term of said Court in an
action of debt = Debt Seventeen
hundred and fifty Dollars. Damages
Five Hundred Dollars

Rawlins & Shuman

Atty for Plff

Endorsed

Filed Feb 18th 1858.

W. R. Rowley. clk

The Bond for costs is as follows to wit-

State of Illinois In Jo Daviess Co Cir Court
County of Jo Daviess Of March Term AD 1858

John N Crumbacker Plaintiff
who sues for the use of A C Brenizer

vs
Samuel W Swift. Defendant - In an action of
Debt

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
cause either to the opposite party or the
officers of this court - in pursuance of
the laws of this State

Dated at Galena this 18th day of February A.D. 1858
Approved A. C. Breizer (S)

W. R. Rowley, Clerk of Adair Co. Cir. Court -

Endorsed

Filed Feby 18th 1858

W. R. Rowley Clerk

The Summons issued in said cause
is in the words and figures following
To wit -

State of Illinois $\frac{2}{3}$ of
Adair County $\frac{2}{3}$ The People of the
State of Illinois to the
Sheriff of said County Greeting.

We command
you to summon Samuel W. Swift
To appear before the Circuit Court of
Adair County, at the next term, to be holden
at Galena on the 2nd Monday of March
next - to answer John A. Crumbacker
who sues for the use of A. C. Breizer

4
in an action of Debts. Debts-Seventeen
hundred and fifty dollars. Damages
Five hundred dollars and have you
then there this writ

Witness William Rowley clerk of
the Circuit Court of So. Davis
County. Illinois and the seal
thereof at Galena this 18th day of
Feb'y AD 1858

Attest W^m Rowley clerk
for F. Boastwick Deputy

Endorsed

Executed this writ this 19th February
1858 by reading the same to the within named
Samuel W. Swift

S. C. Miner Shff

And afterward to wit on the 26th day
of February AD 1858 the plaintiff by his
attorney filed in the office of the Clerk
of the said Circuit Court his declaration
in said Cause which is in the words
and figures following to wit-
State of Illinois

So. Davis County In Circuit Court

Of March Term AD 1858

John N. Crumbacker. who sue for the use

of Amos E. Breuniger by Bawkins and
 Shecan his attorneys Complain of
 Samuel W. Swift who has been summoned
 &c of a plea that he render to the said
 Plaintiff the sum of One Thousand seven
 hundred and fifty Dollars lawful money
 of the United States. which he owes to
 and unjustly detains from him
 For that whereas by a certain agreement
 in writing made the twenty third day of
 June in the year of our Lord One thousand
 eight-hundred and fifty-seven at the
 City of Galena to wit at the County of
 Jo Daviess and State of Illinois between
 the said Plaintiff by the name and des-
 cription of J. N. Crumbacker. on the one
 part and the said defendant by the
 name and description of S. W. Swift
 of the other part - which said agreement
 sealed with the seal of the said defend-
 -ant. The said Plaintiff now brings into
 the Court - here the date whereof is the day
 and year aforesaid) It is witnessed that
 the said plaintiff did contract and agree
 with the said defendant to do the painting
 of a certain Bridge known as the Boomer
 and Bozington Bridge situated or built
 across the Mississippi River at St. Anthony

6
Minnesota Territory in a workmanlike
manner and the said Defendant-
agreed to pay the said Plaintiff the
sum of Fourteen cents for every square
yard of said painting and to furnish
all the materials that it would re-
quire to do said painting at the current
wholesale prices of the same and
also to pay to the said plaintiff a
sum of money not exceeding fifty
Dollars per week to defray the board
and labor expenses of the hands
employed by the said plaintiff
during the progress of said painting
the price of said materials that were
furnished, and the amount of money
that was paid were to be deducted
out of the gross amount that would
be due the said plaintiff for the
said painting when the said
painting should be done & comple-
ted as by the said agreement-
reference being ^{thereby} had will more
fully appear; and the said plaintiff
in fact says, that although he
the said plaintiff in pursuance of
the said agreement after the making
and entering into the same as

7
aforesaid to wit on the day and
year aforesaid at the town the
County aforesaid proceeded to St
Anthony in Minnesota Territory and
did afterwards arrive there for the
purpose of doing the painting of said
Bridge in the said agreement-
mentioned and did according-
ly proceed to and do the painting of
the same at St. Anthony Minnesota
Territory and afterwards to wit on
the fifteenth day of September in
the year aforesaid duly finished
and completed the same in a work-
manlike manner according to the
tenor and effect of the said agree-
ment to wit at St. Anthony in
Minnesota Territory to wit at the
County of St. David's and State aforesaid and although the painting
of said bridge amounting at at
the said rate of fourteen cents for
every square yard according to
the terms of said agreement to
a large sum of money, to wit;
the sum of Seventeen Hundred and
Fifty Dollars of lawful money of

the United States, on the Computation
of the said painting of said bridge
to wit on the fifteenth day of September
in the year aforesaid ^{at} to wit St Anthony
aforesaid at to wit the County of Jo
Davies aforesaid became and was
then and there due and payable to
the said plaintiff and ought then and
there to have been fully paid to him
by the said defendant according to
the tenor and effect of the said agree-
ment yet the said plaintiff in
fact says that the said defendant
although often requested so to do
did not nor would pay the said
sum of Seventeen Hundred and fifty
Dollars or any part thereof to the said
plaintiff but hath hitherto wholly neg-
-lected and refused so to do contra-
-ry to the tenor and effect of said
agreement: Whereby an action hath acc-
-rued to the said plaintiff to demand
and have of and from the said defen-
-dant the said sum of Seventeen hundred
and fifty dollars. so due upon said con-
-tract as aforesaid parcel of the said
One thousand Seven hundred and

9
3
Fifty dollars above demanded. And
Whereas also by a certain other agreement
made afterwards to wit on the twenty
third day of June in the year of Our Lord
One thousand eight hundred and
fifty seven at Galena to wit at the
County of Jo Davies and State of Illinois
between the said defendants by the name
style and description of S W Swift of
the first part and the said plaintiff
by the name style and description of
J. V. Crumbacker of the other or second
part. Which said agreement is in the
words and figures following to wit.
A contract made and entered into
this twenty third day of June eighteen
hundred and fifty seven between S W
Swift of the first part and J. V.
Crumbacker of the second part; both
of the City of Galena and State of Illinois
Witnesseth; that the said Swift lets
or contracts with the said Crumbacker
the painting of a certain bridge known
as the Boomer and Bogington Bridge
situated or built across the Mississippi
at St. Anthony Minnesota Territory
The said Swift agrees to pay the
said Crumbacker fourteen cents for

every square yard it-correctly measures of the said painting The said Swift further agree to furnish all the materials that it requires to do said Job at the current wholesale prices of the same and also to pay to the said Crumbacker a sum of money weekly not-exceeding fifty dollars to defray board and labor expenses of the hands during the progress of the work, the amount to be deducted out of the gross amount-when the ^{job} ~~amount~~ is completed The said Crumbacker on his part agrees to put on the work a sufficient number of men or as many as can work to a advantage and furthermore to complete the work as soon as possible and in a workmanlike manner; and in a Workmanlike manner. And when completed to be delivered to said Swift-in same like manner. — Witness our hands and seals this twenty third day of June Eighteen hundred & fifty-seven

Witnessed by *S. W. Swift* *Seal*
David Bartley *J. V. Crumbacker* *Seal*

And the said plaintiff in fact says, that although he the said Crumbacker in

11
pursuance of the said agreement after
the making and entering into the same
as aforesaid to wit on the day and
year ^{last} aforesaid did proceed to and do
the painting of said Bridge in said
agreement mentioned and afterwards
to wit on the fifteenth day of September
in the year aforesaid duly completed
the same in a workmanlike manner
and did then & there deliver the same
to said defendant in said like
manner according to the tenor
and effect of the said agreement
to wit at St. Anthony Minnesota Territor-
y to wit. at the County of So. Davis and
State aforesaid. And although the sum
of money due the said plaintiff from
the said defendant for the doing of
said painting of the said Bridge
amounting (at the rate of Fourteen Cents
for every square yard correctly meas-
ured according to the terms of said
agreement to a large sum of money
to wit; the sum of One thousand
Seven hundred and fifty Dollars
of lawful money of the United
States on the completion of the pain-
ting of the said Bridge to wit on the

fifteenth day of September in the year
 aforesaid at to wit: the — of Goddard
 aforesaid because and was then and
 there due and payable to the said
 plaintiff and ought then and there
 to have been fully paid to him by
 the said defendant according to
 the tenor and effect of the said
 agreement, yet the said plaintiff in fact says
 that the said Defendant although after requested
 so to do, did not nor would pay the said
 sum of One thousand Seven hundred
 and fifty Dollars or any part thereof to the
 said Plaintiff but hath hitherto wholly
 neglected and refused so to do, contrary
 to the tenor and effect of said agreement
 whereby an action hath accrued to the
 said plaintiff; to demand and have
 of and from the said Defendant the said
 sum of One thousand Seven hundred
 and fifty Dollars so due upon said contr-
 act as aforesaid, other parcel of the said sum
 above demanded. And whereas the said
 Plaintiff afterwards to wit: on the fifteenth
 day of December in the year aforesaid at to
 wit: St Anthony Minnesota Territory, at
 to wit: the county of St David aforesaid

at the special instance and request of the said Defendant, did perform and bestow certain work and labor, care, diligence, and attendance as a painter in & about the business of the said defendant and for the said defendant and used and exercised his skill as such painter in and about such business, at the like special instance and request of the said Defendant, for and in consideration of a certain other sum of money. To wit: The sum of One thousand seven hundred & fifty Dollars of like lawful money of the United States, to be paid by the said defendant to the said Plaintiff for the same, whereby the said Defendant became then & there indebted to the said Plaintiff in the said last mentioned sum of One thousand Seven hundred and Fifty Dollars to be paid by the said defendant, to the said Plaintiff upon request. whereby an action hath accrued to the said Plaintiff to demand & have of and from the said defendant the said last mentioned sum of One thousand Seven hundred and fifty Dollars the residue of the said sum above demanded yet the said Defendant although often requested so to do, hath not as yet paid the said sum of One thousand Seven hundred and Fifty Dollars above demanded, or any part thereof to the said Plaintiff. But he has to do this hitherto

wholly refused, and still doth refuse, to the
 damage of the said Plaintiff of two hundred
 Dollars, and therefore he brings his suit, &c
 Rawlins & Shuan
 Attorneys for Plff.

(Copy of Agreement read over)

A contract made
 and entered into this Twenty third day of
 June Eighteen Hundred and fifty seven
 Between S. H. Swift of the first part and
 J. N. Crumbacker of the second part both
 of the city of Galena and State of Illinois
 Witnesseth that the said Swift let out contracts
 with the said Crumbacker the painting of a
 certain Bridge known as the Boomer and
 Baynington Bridge situated or built across
 the Mississippi River at St. Anthony Minnesota
 Territory. The said Swift agrees to pay the
 said Crumbacker fourteen cents for every
 square yard it correctly measured of the
 said painting. The said Swift further agrees
 to furnish all the materials that it requires
 to do said job at the current wholesale prices
 of the the same, and also to pay to the said
 Crumbacker a sum of money not
 exceeding fifty Dollars to defray board

and labor expenses of the hands during the progress of the work. The amount to be deducted out of the gross amount when the job is completed. The said Crumbacker on his part agrees to put on the work a sufficient number of men, or as many as can work to an advantage, and furthermore to complete the work as soon as possible and in a workmanlike manner, and when completed to be delivered to said Swift in same like manner.

Witness our hands and seals this twenty third day of June Eighteen and Fifty seven.

Witnessed by Samuel W. Swift Seal
David Bartley John C. Crumbacker Seal

Samuel W. Swift

To John C. Crumbacker Dr.

To 12480 yds of painting done under and upon said agreement @ 14 cents per square yard	\$1747.20
To The number of square yards said painting of said Bridge (unpaid above agreement mentioned) measured at 14 cents per square yard	1747.20
" The number of yards amounting to 12480, done under and by virtue of said above agreement	1747.20
" 12480 yds of painting @ 14 cents per yard	1747.20
" 5000 " " Sanding @ 30 " " "	1500.00

In work & labor as painter

1747.20

Endorsed

Filed Feb 26th 1858

H R Rowley clerk

And afterwards to wit: at the March Term A.D. 1858, of the Jo Davis County Circuit Court to wit, on the 16th day of March A.D. 1858 in the records of the proceedings thereof in said cause appears the following entry to wit:

John W. Crumbacker
who sues for the use of Amos
E. Brunizer

Debt

vs
Samuel W. Swift

The Defendant by
Heigley & Richmond his Attorney comes
and files account & pleas

The pleas referred to in the last recited entry
are as follows to wit:

John W. Crumbacker vs Jo Davis County
who sues for the use of Samuel W. Swift
Circuit Court of the
March Term A.D. 1858

And The said defendant by H. F. Johnson
and Weigley & Richmond his attorneys comes
and defends the wrong and injury when &c
and says that he does not owe the said
several sums of money in the plaintiffs dec-
laration mentioned or any or either of them
or any part thereof in manner and form
as the said plaintiff hath above thereof
complained against him and of this
the said defendant puts himself upon
the country &c

Johnson & Weigley & Richmond
Defts attorneys

And the said Plff by
his Attornies doth the like
Rawlins & Shear
Plffs Atty

And for a further
plea in this behalf the said defendant says
actis now, because he says that on the first
day of January A. D. 1858, and before the
commencement of this suit to wit at the
County of So Davids aforesaid he fully paid
and discharged the said several sums of
money in the Plaintiffs declaration men-
tioned and this the said defendant is
ready to verify wherefore he prays Judgment
&c

Johnson & Weigley & Richmond
Attys for Defendant

3 And for a further plea in this behalf
The said Defendant says actio-non because
he says that said supposed agreement in
writing in the Plaintiffs declaration mentioned
nor either of them is the due of the said defe-
ndant's and of this he puts himself upon
The country &c.

Johnson & Weigley & Richmond
Attys for Defendant

And The said Plaintiff
by his Attorney doth the
like,

Rawlin & Shewan
Plffs Attys

4

And for a further
plea in this behalf the said defendant
says actio-non because he says that the
said Plaintiff. never done and performed
The said agreement and undertakings on
his part to be done and performed by the
times and conditions specified in the
agreement in writing in the Plaintiffs
declaration mentioned in manner and
form as the said Plaintiff hath above

Thereof declared against the said Defendant
and of this he puts himself upon the County
&c.

Johnson & Weigley & Richmond
Attys for Defendant

And the said Plff
doth the like

Rawlins & Shuan
Plffs Attys

5

And for a further
plea in this behalf the said Defendant
says actio = non. because he says, that on
the first day of February A. D. 1858 and prior
to the commencement of this suit he fully
performed all the conditions agreements
and undertakings specified in the agree-
ments in writing, in the plaintiff's declaration
mentioned on his part to be done and per-
formed, by the terms and conditions therein
and effect of the said agreement in writing
aforesaid. to wit, at the County of Do Davis
aforesaid, and of this he the said defendant
puts himself upon the County &c

And the said
Plff doth the like
Rawlins & Shuan
Plffs Attys

Johnson & Weigley & Richmond
Attys for Defendant

1 And for a further plea in this behalf
 The said defendant says actio - non because
 That before and at the time of the commencing
 of this suit to wit; at the County of
 St Davids aforesaid was and still is indebted
 to the said defendant in a large sum of
 money to wit. The sum of two thousand
 Dollars lawful money of the United States
 for work and labor care and diligence
 & attendance of the said defendant by the
 said Defendant and his servants before that
 time done performed and bestowed in and
 about the business of the said Plaintiff
 and for the said plaintiff and at his special
 instance and request. And for divers
 & other necessary things by the said defendant
 before that time found provided used and
 applied in and about the said work and
 labor for the said plaintiff and at his request
 and for divers goods wares and merchandise
 sold and delivered by the said defendant
 to the said plaintiff at his request and for
 money by the said defendant before that
 time lent and advanced to, paid laid
 out and expended for the said defendant at
 his request; and for money by the said
 Plaintiff before that time had & received

To & for the use of the Defendant; and for money due and owing from the said Plaintiff to the said Defendant and by the said Defendant forborne to the said Plaintiff for divers long spaces of time before then elapsed, and for money due and owing from the said Plaintiff to the said Defendant upon an account stated between, which said sum of money so due, and owing to the said Defendant exceed the damages sustained by the said Plaintiff by reason of any nonperformance by the said Defendant of the said several supposed undertakings and agreements in the said Plaintiff's declaration mentioned, and out of which said several sums of money so due and owing from the said Plaintiff to the said Defendant. He the said Defendant is ready and willing and hereby offers to set off and allow to the said Plaintiff the full amount of any damages or indebtedness to be by him provided upon the trial of this cause against the said Defendant according to the form of the Statute in such case made and provided, and this the said Defendant is ready to verify wherefore he prays judgment &c

Chuson & Weigley & Richmond

Attys for Defendant

Endorsed

Filed March 16 1858 C. R. & Dowley clerk

The account is as follows.

Copy of account filed with pleas.
 Wm John Crumbacker

	To S. W. Smith	Dr
June 26	To 3 Brushes	\$3.00
" "	" 3 "	4.50
" "	" 2 Bbls ^{2.00} 83 Gall 1.10	93.30
" "	" 1 " ^{1.00} 30 " Spuds 90	28.50
" "	" 12 ^{lbs} Lamp Black	4.80
" "	" 2 Bbls Ohio Paint	22.00
" "	" 1/2 Ddz Sash Tools	1.50
" "	" 1524 ^{lbs} White Lead	154.01
" "	" 1 Bbl Spaul White	12.28
" "	" 3 Brushes	3.75
July 11	" 1 Bbl Ohio Paint	11.00
" "	" 2 Bbls ^{2.00} Oil 81 1/2 Galls 1.15	96.87
" "	" Drayage & Insurance	1.16
27	" 1 Bbl 1.00 Oil 42 Galls 1.15	48.30
" "	" Drayage & Insurance	.64
Aug 5	" 1 Bbl 1.00 Oil 38 1/2 Galls 1.15	44.40
" "	" Drayage & Insurance	.64
15	" 543 lbs White Lead	54.30
" "	" Drayage & Insurance	.14
" "	" 1 Bbl Paint omitted	11.00
1857	" 3 Paint Brushes put up	3.75
June 26	" Cash pd R. S. Harris & Co as per bill	96.87
" "	" " pd fees as per receipt	25.00

	To amt pd L. S. Feet & Bill Rape	15.21
July 17.	" Cash pd Capt Berthly in Gft	50.00
24	" " pd wife	10.00
31	" " pd R Entwistle	19.50
"	" " pd T. Entwistle July 10	8.00
Aug 20	" " pd wife	15.00
"	" " " by Mr Rust	100.00
Octo	" " " Self rec Receipt	25.00
	" " To pay to Watson	96.00
	" " pd Self pr ck to Capt Bailey	25.00
	" " pd G. W. C. bill groceries	30.00

Endorsed

Filed March 16th 1858

Jm R Rowley clerk

71114.57

And afterwards to wit on the 22nd day of March A. D. 1858 as yet of the said March Term A. D. 1858 of said Co. Davids County Circuit Court in the Records of the proceedings thereof in said cause appears the following entry to wit

John A. Crumbacker who
sues for the use of Amos C.
Brinizer vs Debt
Samuel W. Swift

The plaintiff by Rowley
and Shuman his attorneys comes and files Similitor
& Replication to Defendants please

The Similitur refers to in the last recited entry is in the words and figures following to wit:

John W. Crumbacker who	State of Illinois
sues for the use &c	vs
Samuel W. Swift	of Danvers County
	in Circuit Court
	of March Term A.D. 1858.

And the said Plaintiff as to the plea of the said Defendant by him first above pleaded, and whereof he hath put himself upon the country, doth the like.

Rawlins & Shuan Plffs say's
 2^d And the said plaintiff as to the plea of the said Defendant by him secondly above pleaded saith of precludi non. Because he says that the said defendant did not on the first day of January A.D. 1858 and before the commencement of this suit or at any time since, fully pay and discharge the said several sums of money in the said plaintiff's declaration mentioned or any or either of them or any part thereof, in manner and form as the said Defendant hath above in his said second plea, in that behalf alleged. And this the said Plaintiff prays may be inquired of by the country &c

Rawlins & Shuan Attys for Plff

3rd And the said Plaintiff as to the plea of the said Defendant by him thirdly above pleaded and whereof he hath put himself upon the country doth the like.

Rawlinson & Sheuan Atty for Plff.

4th And the said Plaintiff as to the plea of the said Defendant by him fourthly above pleaded and whereof he hath put himself upon the country doth the like.

Rawlinson & Sheuan Atty for Plff

5th And the said Plaintiff as to the plea of the said Defendant by him fifthly above pleaded and whereof he hath put himself upon the country doth the like.

Rawlinson & Sheuan Atty for Plff

6th And the said Plaintiff as to the plea of the said Defendant by him sixthly above pleaded saith of preclusion, because he saith that the said plaintiff was not nor is indebted to the said Defendant in manner and form as the said Defendant hath above in his said sixth & last plea in that behalf alleged. And this the said Plaintiff prays may be inquired of by the country &c.

Rawlinson & Sheuan
Attornies for Plaintiff

Endorsed Filed March 22 1858

J. R. Rowley clerk

And afterwards to wit: on the 23rd day of March A. D. 1858, as yet of the said March Term A. D. 1858 in the Records of the proceedings thereof in said cause appears the following Entry to wit:

John N. Crumbacker who
sues for the use of A. E. Briniger
vs
Samuel W. Swift

Debt

The Defendant
by his attorney comes and files a motion
and affidavit for continuance.

The affidavit referred to is in the words and
figures following to wit:

John Crumbacker vs
Samuel W. Swift

Jo Daviess County
Circuit Court March
Term 1858

Samuel W. Swift after
being duly sworn on oath saith that he is
the Defendant in the above entitled cause
that he believes he cannot safely proceed to the
trial of said cause at the present time of this Court
on account of the absence of William O. Coleman
who resides as affiant is informed and verily

believes, at Red Wing in Minnesota Territory
 affiant further saith that, he expects to be able
 to prove on the trial of this cause by said witness
 that one Draper who affiant expects said plaintiff
 will attempt to use as a witness on the trial
 in this cause was a partner of plaintiff when said
 painting was done and is interested in the
 event of this suit, he said witness was one of
 the hands and helped do the painting upon
 the bridge across the Mississippi River near
 St. Anthony Minnesota for the pay for which
 this suit is brought, that said Crumbacker
 said plaintiff only put one coat of paint upon
 said Bridge, that said Bridge was not painted
 in a workmanlike manner, that some consider-
 able portion of the white lead sent up to St.
 Anthony in said Territory by affiant to be used
 by said plaintiff in painting said Bridge was not
 used upon said Bridge but sold by said
 plaintiff and a much inferior article put
 on instead thereof affiant further saith, that
 he verily believes that what painting was done
 upon said Bridge was not To Exceed Six
 or Seven hundred Dollars, and that he
 believes he can prove the fact to be by said
 Coleman on the trial of said cause, affiant
 further saith that he has not had sufficient

time to procure the deposition of said witness since the process in this cause was served upon him this affiant further saith that said plaintiff has charged affiant about the sum of seven hundred Dollars for doing said painting, affiant further saith that he knows of no other witness within the jurisdiction of this court by whom he can so fully prove the same facts, that this affidavit is not made for delay merely but that Justice may be done.

Subscribed & Sworn to E. W. Swift
 before me this 23 day of E
 March A. D. 1858 E
 J. R. Rowley Clerk E

Endorsed

Filed March 23^d 1858

J. R. Rowley Clerk

And afterwards to wit on the 24th day of March A. D. 1858 as yet of the said March Term A. D. 1858 of said Circuit Court in the record of the proceedings thereof in said cause appears the following entry to wit:

John C. Crumbacker who
sues for the use of A. E. Brunizer
vs
Samuel W. Swift Debt

On Motion and
affidavit of Defendant. It is ordered That
this cause be continued and That the Defendant
pay the costs of the present Term and that Execu-
tion issue against him therefor.

And afterwards to wit, on the 27th day of
May A. D. 1858, at the May Term A. D. 1858 of
said Davidson County Circuit Court in the
Records of the proceedings thereof in said cause
appears the following entry to wit:

John C. Crumbacker
for use of A. E. Brunizer
vs
Samuel W. Swift Debt

Now at this day
came the parties by their attorneys and
upon issue joined. Thereupon came a Jury
of good and lawful men to wit, Edmund
Jeff W^m A. Dorn, W^m Annitt, Michael Simons
Henry Ferguson Samuel Hicks Dennis Posey
John Barncastle, James Ferguson Thomas
McDonald, Robert Townsend & James Reese

who were duly elected tried and sworn and after hearing a part of the evidence the further hearing of this cause is postponed until tomorrow morning.

And afterwards to wit on the 28th day of May A.D. 1858 as yet of the said May term A.D. 1858 of said Circuit Court in the records of the proceedings thereof in said cause appears the following entry to wit:

John C. Kerumbacker who
sues for the use of Ch. E. Brenizer
vs
Samuel W. Smith

Debt

Now at this day come again the Jury heretofore empaneled in this cause and after hearing the remainder of the evidence & the arguments of counsel retire to consider of their verdict and by consent of the parties by their attorneys it is ordered that when the Jury shall have agreed upon a verdict they may seal the same and return it into court tomorrow morning.

And afterwards to wit on the 29th day of May A.D. 1858 as yet of the said May

term of said court in the records of the proceedings thereof in said cause appears the following entry to wit:

John P. Crumbacker for use
of A. E. Brenizer
vs
Samuel W. Swift Debt

Now at this day come again the Jury heretofore impaneled in this cause and return into court the following sealed verdict to wit: we the Jury find the Expenses for the plaintiff his debt at the sum of Five hundred and thirty Eight Dollars and sixty four cents and assess his damages at the sum of twenty two Dollars and eighty nine cents, and the Defendant by his attorney moves the Court for a new trial and files his reasons therefor.

The Motion for a new trial referred to in the last recited entry is in the words and figures following to wit:

John P. Crumbacker } Jo Davis County
for use of Brenizer } Circuit Court of the
vs } May Term 1858
Samuel W. Swift }

And now comes the

said Defendant by Weigley & Richmond
& Johnson his attys and moves the Court
to set aside the verdict of the Jury and grant
a new trial in this cause for the following
reasons to wit:

- 1st The verdict of the Jury is contrary
to the evidence given on the trial.
- 2^d The verdict of the Jury is contrary to
the law and the evidence.
- 3^d The Court gave improper instructions
to the Jury for the plff.
- 4th The Court admitted improper evidence
to the Jury for the Plaintiff
- 5th The Court refused to admit proper
evidence to the Jury for the Defendant
- 6th The defendants damages found by the
Jury are excessive.
- 7th And for other good and sufficient
reasons too numerous to mention.

Johnson & Weigley & Richmond
Attys for Defendant

Endorsed

Filed May 29 1858

Wm A. Rowley Clerk

And afterwards to wit on the 4th day of June A. D. 1858. as yet of the said May Term A. D. 1858, of said So Davis County Circuit Court in the Record of the proceedings thereof in said cause appears the following Entry to wit:

John C. Crumbacker who
sues for the use of A. E. Brunzer
vs
Samuel C. Swift Debt

Now at this day came on to be heard the motion heretofore filed by defendant by his attorneys for a new trial herein, which, after argument by counsel is overruled by the Court to which the Defendant by his attorneys except. It is thereupon considered by the Court that the plaintiff have and recover of the Defendant the said sum of Five hundred and thirty eight Dollars and sixty four cents his Debt, and the further sum of twenty two Dollars and eighty nine cents his damages so as aforesaid found and assessed by the Court together with his costs by him about his suit in this behalf expended, and that execution be

Therefor. And the Defendant prays an appeal to the Supreme Court, which is granted conditioned that he enter into and file with the Clerk of this Court in appeal Bonds properly conditioned in the penal sum of Eight hundred Dollars with Warren H. Huntington and Henry Clymo as sureties within thirty days from this date.

And afterward to wit, on the 12th day of June A.D. 1858 as yet of the said May Term A.D. 1858 of said Circuit Court in the Record of the proceedings thereof in said cause, appears the following entry to wit:

John C. Crumbacker who
sues for the use of A. E. Brainerd
vs
Samuel S. Swift Debt

The Defendant by his attorneys comes and files Bill of Exceptions which is certified by the Court.

The Bill of Exceptions filed in said cause is as follows to wit:

John C. Crumbacker who & Jo Devils
 owns for the use of A. E. Bruzger County
 vs
 Samuel W. Swift { Circuit Court
 of the May
 Term 1858

Be it remembered that on this 27th day of
 May A. D. 1858, the same being one of the days
 of said term of said Court this cause came on to
 be heard before the said Court and a Jury and
 the Plaintiff to maintain the issue on his part
 offered in evidence and read to the Jury the
 following contract or agreement in writing
 to wit:

A Contract made and entered into this
 twenty third day of June eighteen hundred
 and fifty seven. Between S. W. Swift of the first
 part and J. C. Crumbacker of the second part
 both of the City of Galena and State of Illinois
 Witnesseth that the said Swift did contract
 with the said Crumbacker the painting of a
 certain Bridge known as the Boomer and
 Bayington Bridge situated or built across
 the Mississippi River at St Anthony Minnesota
 Territory. The said Swift agrees to pay the
 said Crumbacker fourteen cents for every square
 yard it correctly measures of the said painting
 The said Swift further agrees to furnish all

The materials that it requires to do said job at the current wholesale prices of the same and also to pay to the said Crumbacker a sum of money weekly not exceeding fifty Dollars to defray boards and labor expenses of the hands during the progress of the work. The amount to be deducted out of the Gross amount when the job is completed. The said Crumbacker on his part agrees to put on the work a sufficient number of men, or as many as can work to an advantage, and furthermore to complete the work as soon as possible and in a workmanlike manner, and when completed to be delivered to said Swift in same like manner. Witness our hands and seals this Twenty Third day of June Eighteen and Fifty seven.

Witnessed By *E. J. Swift*
David Bartley } *E. J. Crumbacker*

The Plaintiff then introduced Henry Draper as a witness who after being duly sworn testified as follows: That he knew the parties that he was a painter and had followed that business more or less for the last 12 or 14 years that he helped paint the bridge mentioned in the contract which had been read to

The Jury that the pelf superintended the painting & mixed the paint, that he witness left Calumet for St Anthony Minnesota to do said painting on Wednesday June 18. 1857. and commenced Saturday June 21st of the same year that he went there under the employment of the pelf, that the piers and Tussel works were painted with Ohio paint, that the same were painted with two coats of Ohio paint, that the balance of the bridge consisting of the hand rails and that part above the floor or the wagon track were painted with three coats of white paint that there was 600 yards of white paint, that he measured the bridge that is the painting, that he made 12438 yards in all, that the work was done in a good workmanlike manner that he completed the measurement with William Hadleigh. Deft was there at one time when the bridge was being painted he examined the work as far as it was then done, he said he was afraid Boomer & Boyington would not accept the work as it was not done as he wanted it. I told him as far as I knew it was done according to orders and the paint sent up by Deft was principally used on the bridge, at the time Deft was there Boomer & Boyingtons clerk

was there and a certificate of the ^{directors} ~~directors~~
 of the Bridge company was shown him
 and Boomer & Boyingtons clerks. The clerk
 said "if the bridge company was satisfied
 with the work why should we not be satis-
 fied. The Deft said the certificate was
 all right and told us to go on and finish
 the work as it was commenced which was
 done. Plff said to Deft if you want anything
 more done, now is the time to say so and I will
 do it. Swift said go on and finish it as you
 commenced & have done and get a certificate
 of approval from the directors of the Bridge
 Company and it will be all right which
 was done. The directors five in number
 including the President of the company
 at the request of Plff came on to the bridge
 after it was completed & walked all over
 it, and examined it carefully & said they
 were well pleased with the job, said that
 they were satisfied with the work & told
 Plff to come over to their office and they
 would give him a certificate of approval
 of the work. That Bridge company have an
 office in Minneapolis. Plff went over to
 office as requested came back with certificate
 of approval, saw certificate same evening

knew directors & President of Bridge Company
 all by sight intimately acquainted with two
 or three of them, did not know where all of
 them lived, knew where two or three of them
 lived, saw saw two of the directors that is
 The President and one of directors both of
 whose names are signed to the certificate
 of approval & who were with the other three
 on the Bridge examining the work & had
 several conversations with them about the
 painting after the bridge was finished &
 completed & they told him they had given
 Puff a certificate of approval of the work
 that they said they were well satisfied with
 the work, that the certificate of approval was
 there at the time & I saw it, that he afterwards
 copied it & kept a copy of the same, that the
 original certificate of approval was given
 to defendant, that is the Puff, took it down
 the river to give to Deft, that he knew the di-
 rector & President had seen them or part of them
 a great many times at the Bridge during
 the progress of the work. They were the same
 who had given the certificate of approval
 spoken of & examined by Boomer & Boyingtons
 clerk & Defendant. when Deft was there.
 Deft was there but once, sometime in the month
 of August, all the work was done & finished in a workmanlike

manner. Here the Plff produced the following notice showing the same to the witness. To wit:

Mc Samuel W. Swift
Sir

You will please take notice that you are hereby required to produce on the trial wherein you are Defendant & am Plaintiff suing for the use of A. E. Brinizer now pending in the Circuit Court of St Davids County Illinois the original certificate or acceptance of which the following is a copy to be used as evidence on said trial or we will give parol evidence of its contents.

Minneapolis Sept 12th 04
Per The undersigned

Directors of the Minnesota Bridge Company at the request of J. H. Crumbacker superintendent of the painting, have this day examined it and find it done and all complete in a good workmanlike manner and that we are satisfied with the job.

J. H. Hanson, R. P. Russell & Directors of
F. R. E. Cornell { The Minnesota
C. A. Tuttle { Bridge
D. Morrison { Company

You are also notified & required to produce upon the trial of said cause a like certificate bearing date sometime between the 10th & 20th day of August A.D. 1857, in which the said Directors stated that they were well satisfied with the said painting so far as it was completed at that time and also that they were satisfied with the color of said painting upon Bridge built across the Mississippi River at St Anthony Minnesota Territory, or else we shall upon the trial of said cause offer & give parol evidence of the contents of the said last mentioned certificate as well as of the first above named & set out.

Galena March 23rd A.D. 1858

Geo. W. Crumbacker

who testified that he gave Deft a copy of the same at the last March Term of this Court. The Plff then produced his affidavit of having delivered said certificate to Deft. To wit:

State of Illinois vs Am Circuit Court
of Davis County of May Term 1858

John W. Crumbacker

vs
S. W. Swift

John W. Crumbacker

The Plaintiff in the above entitled cause being first duly sworn says that he did sometime in September 1857 hands to the Defendant the original certificate of the Directors of the Minnesota Bridge Company a copy of which is hereto annexed that this affiant has not the possession or control of the said original certificate but placed the same in the possession of said Defendant as aforesaid.

Sworn to & subscribed

before me this 27th day

of May 1858

Wm. N. Lerumbacker
Jr. R. Corby clerk

The Plff. then produced the following certificate and after proving by the witness that it was a copy of the original certificate of approval which he had before seen offered the same, that is the copy, in evidence to the reading of which the Deft then & there objected for the reason that it was a copy only that the execution of the original had not been proved, that the original had not been shown to be lost or in the possession of the Deft and that it was incompetent evidence. But the court

overruled the objection and permitted the said copy to be read to the Jury which certificate is as follows to wit:

Minneapolis Sept 12th 57

Of the undersigned

Directors of the Minnesota Bridge Company at the request of J. C. Crumbacker superintendent of the painting, have this day examined it, and find it done and all complete in a good workmanlike manner, and that we are satisfied with the job.

J. J. Hanson
R. P. Russell
F. R. E. Cornell
C. A. Tuttle
D. Morrison

Directors of the
Minnesota Bridge
Company

To the reading of which copy and the said decision of the Court the Def^t by his counsel then and there excepted.

The said witness on cross examination then testified as follows that he worked on the Bridge about 8 months that he quit about the last of August that his last commencement of work was the last to quit it, that from the cords as marked on the plat

downwards all of the Bridge is painted with
 Ohio paint that all the balance is painted with
 white lead and has 3 coats that the part painted
 with white lead measures over 2600 yards, did
 not know how much lead was used that
 of the first lot sent up by Deft there was 2003
 lbs Ohio paint over 900 hundred pounds
 white lead and Zinc. That all the piers and
 all the Trussel work was painted with two
 coats of Ohio paint - Except the under portion
 of the cords which was painted with only one
 coat - that Ohio paint so called is of an earthy
 substance - that Deft told him that the Trussel
 work and piers and all below the cords was
 to be painted with two coats of Ohio paint, and
 that all above was to be painted white with
 3 coats and last coat sanded that Plff
 & himself & Coleman & Hatten and several
 others worked on the bridge when Deft was
 there most of the men were priming as one
 was at work with him on the Scaffolds.
 when Deft was there, that he witness did
 not work much where Deft was there. There
 was then two coats on part and three coats
 on part of Job, and some parts only had one
 coat that Plff painted a barn with Ohio
 Paint at St Anthony about the time bridge

x

was painting. The painting of the Bridge was
 nearly finished when Defendant was there.
 Deft came about two o'clock in the afternoon.
 left same evening. That witness went out to work
 with hands on bridge. That Plff & Deft came
 down to the Bridge & witness left the scaffold
 & went over Bridge with Deft, examining
 work & explaining measurement. witness
 had taken measurement of work as the same
 progressed. witness said to Defendant while
 standing at one end of the Bridge on the ground
 & below the same, that a part of the under side
 of the cords below the track had as yet only one
 coat on that Deft said that was plenty it was
 all he ever put on such a place in all the
 painting he ever done for Boomer & Baynington.
 That the truss work of the Bridge is all that
 put below the wagon track or cords. That Plain-
 tiff accounted with Defendant for all ma-
 terials he Deft had sent up there. That of the
 white lead and zinc sent up by Deft
 Plff sold about 700 pounds. That Andrew
 Watson worked on the Bridge from the
 beginning to the close of the job. That
 Entwistle commenced at the beginning
 but quit before the job was done. That
 the South end of the Bridge was not pain-
 ted when he quit. That the north end and

a portion of the cords had 2 coats when Entwistle left that Peff and one Stanton done most of second coating, all worked at the third coat. That Ohio paint costs about \$3. per 100, Zinc about \$10.50 and lead about \$9.50 per 100. 100 pounds of Ohio paint and lead would paint about same amount when Deft was there myself Watson, Stanton and James Hunt were all who were there at work on the Bridge Deft said when there, that the Trussel work and the pier of the Bridge was to be Ohio paint some men came on the bridge to examine it, claimed to be directors of the Bridge Company. I think there were five of them present and examined the Bridge.

Re Examined by Peff

At one time when we were at work painting the Bridge we got out of material and too write to Swift the Deft for one or two barrels of Ohio paint and a barrel of oil, and Deft sent white lead instead, which was kept until Deft came up and then he ordered it sold, which was done and the money for which it was sold was used to pay for other paint that Peff

had bought at St Anthony previously, that
 they finished painting Bridge Sept 11, 1857
 & that he worked on Bridge till the same was
 finished the Plff put up 300 lbs whitening
 which was not used but disposed of for oil
 and other things. Entirely he worked 24 1/2 days
 on the Bridge. I acted as foreman on the work
 The whitening was intended to be ~~used~~ mixed
 with the white lead it was not used because
 the plaintiff wanted to do a good job. Teams
 were crossing bridge when we were painting
 it was not practicable to paint it white, sand
 and dust was falling through. [#] George Etherly
 was then called for the Plaintiff and after
 being sworn testified as follows that Plff
 gave him an order on Deft who accepted it pay-
 able when he got his pay from Boomer and
 Boyington. when Deft accepted it he showed
 me a letter from Boomer and Boyington stating
 that if Deft would call and see them at Rock Island
 they would settle with him for the pay for the bridge
 by giving him paper on short time the order was
 for \$50. it was accepted payable when Deft got his
 money from Boomer & Boyington but Deft stated
 it would not be longer than thirty days and
 might be in a few days. Deft had offered
 to give his note at thirty days but I did not
 want that I wanted the money in fifteen days

Deft afterwards paid the order, but not until long after the expiration of the thirty days Deft stated at one of the conversations I had with him, that Boomer & Boyington and himself could not tell, that the Bridge had only one coat when it ought to have had three.

The Plff then called Holland who after being sworn testified that he was a painter had followed it for 18 years that he had used this paint that it was a pretty fair article of paint, that it was about equal to and would go about as far as Spanish Brown that it would do very well for a rough job.

The Plff then called Milton Spadleigh who after being sworn testified that he was a civil Engineer that he had estimated the number of yards in the Bridge from the dimensions of the timbers and the Bridge given him by the witness Draper and that he made 12438 yards. That he had superintended Bridge building that no part of a Bridge could be called trestle work except that portion which the Bridge stood that the trestle work was that which supported the Bridge that portion which the witness Draper had called trestle

work was true work, according to the definition of Webster.

Here the Plaintiff rested his case.

The Defendant then called William Crummer who after being sworn testified as follows, that was a painter that he had followed the business for some 18 or 19 years that he knew something of this paint that he had used it, that it was a cheap article worth about \$3. per hundred, when bought by the barrel, that white lead and zinc was worth \$8. to \$10.50 per hundred that in his opinion this paint would go as far as Spanish Brown, that it was generally used for rough work, that the pier was the roughest work about a Bridge, that Bridges were ordinarily painted with white lead that all were, that he knew anything about, that Plff told him that he was to give the Bridge two and three coats of paint that he (Plff) asked him (witness) what cheap stuff he could use for priming told him (Plff) that whitening mixed with white lead was good, that he (witness) thought one half white lead and the other half whitening made a good

priming as all white lead if time was given
it to dry. That it took three coats of paint to
make a goods and finished job, that he
had never used any Ohio paint on woods
that he had only used it on other substances

Entwistle called by the Deft and after
being sworn testified that he worked
on the Bridge twenty four and a half days
that there was but one coat of paint put on
the piers and Truss or Trussle work while
I worked on the Bridge or before I left
and the plaintiff said that the piers and
Trussle work was finished that he was
not going to put on that part of the work
but one coat and before I left took down
the scaffolds it was Ohio paint put on piers
and Trussle. Watson and Jeff, helped put it
on. There was only one coat put on the
hand rails when I left. Jeff said the
hand rails were to have three coats. In
painting places where the work could
be seen the Jeff directed us to cover it or
as he said it would not be accepted,
that down where it was difficult to see the
paint, it did not matter how it was done.
Deft sent up 16 or 17 hundred pounds of white

Lead worth from \$8 to \$10.50 per hundred
 one Keg Zinc & Bls Oil, 1 Bl Turpentine & 3
 Bls Ohio paint, 1 Bl Spanish Whiting, some
 Oil and other materials, were sent up after-
 wards, a painter of St Anthony came and
 took away of the lot first sent up one Keg
 of Zinc and one Keg of white lead, there was
 only about one Keg of lead used on the Bri-
 dge while I was there, Deft paid me \$19.50
 for and on the order of the Plff. That part of
 The Bridge painted with Ohio paint was a sort
 of mud color. The Plff told me before the
 work ^{was commenced that they} Bridge was to have two & three coats the work
 done is worth about half as much as three
 coats such a job of paint is not finished
 unless three coats are put on. I would be willing
 to do all the work done on the Bridge for seven
 hundred Dollars & don't think it was worth
 more than that sum I commenced at the
 beginning of the work, that he ^{was} not a painter
 by trade, that he had worked at that
 business a month or so. I left before Swift
 came & before Bridge was finished don't know
 but more coats were put on after I left, on piers
 and truss work, don't know value of painting
 except from my best knowledge I put
 on first coat well.

Watson called for Deft

who after being sworn testified that
 was a painter & knew the Bridge and worked
 on it from the commencement of the work
 began the first of July left St Anthony
 about the 14th Sept work was completed
 about 11th Sept that he was present during
 all the time the work was going on helped
 do the whole of it. The piers and trues or
 trussle work were each painted with
 only one coat of Ohio paint that he helped
 paint them and knew that they only had
 one coat. That the cross and cords only had
 one coat. That the cross were painted black
 that the hand rails had three coats of
 white lead & were sanded. The scaffold-
 ing was never put up after being once
 taken down after the one coat was put
 on that it would take 2 or 3 coats to make
 a good & workmanlike job. The first time
 Sept. sent up materials he sent 16 or 17 hun-
 dred pounds of lead 4 Bls oil one Bl of Turp-
 entine a lot of paint brushes 1 Bl Spanish
 Whiting 3 Bls of Ohio paint and about
 600 pounds of Ohio paint at two other
 times while Lead was worth at St
 Anthony about 12 1/2 cents per pound that
 about 6 Bks of Lead and one of Zinc.

were used on the Bridge of the first lot sent up and the balance of that lot was taken away by some St Anthony man and was not used on the Bridge. That Deft paid me \$96. on the order of the Plff. That at the time Deft was at St Anthony looking at the Bridge as spoken of by Draper he (Draper) did not get off from the Scaffold at all that he witness was painting on the same Scaffold with Draper at the time, and that he (Draper) did not get off the Scaffold while Deft staid to my knowledge that Deft staid about half an hour, that he did not see Draper with the Plff and Deft looking at the Bridge or the painting, that the painting done on the Bridge by the Plff was worth about nine cents per yard that he was the last man to quit the job.

On Cross Examination the witness stated that he would do all the work that was done on the bridge by the Plff for Seven Hundred Dollars that the hands were detained in doing their work on the Bridge about one day on account of being out of materials, Plff even told me that the materials had been

detained at St Paul, that he (mitniss) and Draper worked on the same Scaffold, and worked ahead of the others, that he had not followed painting constantly, that he had never taken but one job & that was in the Country that he had worked generally at journeyman work, that he was a carpenter by trade and that Crumbacker and Stanton worked about ten days behind mitniss and Draper.

This was all the testimony in the case.

At the request of the Plff. the Court then gave the following instructions to the Jury. to wit:

Plff asks Court to

instruct the Jury:

1st If the Jury believe from the evidence that the plaintiff made the contract with the Defendant described in the declaration & that the plaintiff did perform the contract on his part & has not been paid then they should find for the plaintiff, what the evidence shows him entitled to.

Gover

Given

2^d If the Jury believe from the evidence that the plaintiff did perform the said contract with the said Defendant, and in a manner to the satisfaction & acceptance of the Defendant & that said Defendant did accept said work, then the Jury should find for the plaintiff the balance if any which the evidence shows him entitled to.

Given

3^d If the Jury believe from the evidence that the Plaintiff performed the painting upon the Bridge in question in the manner which the Defendant directed him to perform the same & has not been paid therefor, then they should find for the plaintiff, what they believe from the evidence he ought to recover.

Given

4th If the Jury believe from the evidence that the said Bridge was not painted in accordance with the contract read in evidence, but that said Defendant afterwards agreed with the Plff that if the Directors of the Bridge Company were satisfied with the Bridge as painted by the plaintiff - then he the Defendant would

and would pay the materials had been

be satisfied with the same and if the Jury further believe from the evidence that said Directors were satisfied with said painting as performed by the Plff then it is no defence for the Def't to insert that said work was not done in accordance with the contract read in evidence, except as to the difference between the work as actually done & as contracted to be done.

To the giving of each of which instructions the Def't at the time of giving the same excepted. on motion of Def't the Court gave the following instructions to the Jury. To wit:

The Plaintiff

Given

under the pleadings in this case, must prove he performed his contract in order to recover, and if the Jury believe from the evidence, that the plaintiff failed to perform his contract, then they should find for the Defendant.

The Jury returned into Court the following verdict to wit:

we the Jury find the Issues for the Plaintiff his debt at the sum of Five Hundred and Thirty Eight Dollars and sixty four cents and assess his damages at the sum of twenty Two Dollars and Eighty nine cents.

The Defendant then made and filed his motion and reasons for a new trial, To wit:

John C. Krumbacker & Co. Daviess County
 for use of Bruniger & Circuit Court of
 vs The May Term
 Samuel W. Swift & 1858.

And now comes the said Defendant by Weigley & Richards & Johnson his attys and move the court to set aside the verdict of the Jury and grant a new trial in this cause for the following reasons To wit:

- 1st The verdict of the Jury is contrary to the evidence as given on the trial.
- 2^d The verdict of the Jury is contrary to the law and the evidence.
- 3^d The court gave improper instructions to the Jury for the Piff

4th The Court admitted improper evidence to the Jury for the Plaintiff.

5th The Court refused to admit proper evidence to the Jury for the Defendant.

6th The debt and damages found by the Jury are excessive.

7th And for other good and sufficient reasons to numerous to mention.

Johnson & Weigley & Richmond
Attys for Defendant.

Endorsed

Filed May 29th 1858
C. R. Rorley C. K.

The Court overruled the motion for a new trial and rendered the following judgment to wit:

It is thereupon considered by the Court that the Plaintiff have and recover of the Defendant the said sum of Five Hundred and thirty Eight Dollars and Sixty four cents his Debt, and the further sum of twenty two dollars

and Eighty nine cents his damages so
as aforesaid found and assessed by the
jury together with his costs by him about
his suit in this behalf expended, and that
Execution. Issue therefor.

On the verdict to which decision of the
Court in overruling said motion for a
new trial and rendering said judg-
ment the Def^t then and there objected
and excepted and prayed that this
his bill of exceptions might be signed
and sealed by the Court which is done
in open Court.

Signed

Benj R. Sheldon *Clk*

Endorsed

Filed June 12th 1858

J^r R. Rowley *clerk*

The appeal Bonds filed in said cause
is in the words & figures following to wit:

Know all men by these presents, that
we Samuel W. Swift, Warren W. Huntington
and Henry Clynns are held and firmly
bound unto John Crumbacker in the
penal sum of Eight hundred Dollars
lawful money of the United States, for

The payment of which, well and truly
to be made we bind ourselves, our heirs
and administrators jointly, severally
and firmly by these presents. Witness
our hands and seals this twenty sixth
day of June, in the year of our Lord one
thousand Eight Hundred and fifty
Eight (1858)

The condition of the above
obligation is such, that whereas the
above named John Crumbacker did,
at the May term of the Circuit Court,
of Jo Daviess County, Illinois obtain a
judgment against the above bounden
Samuel H. Swift, for the sum of Five
Hundred & Sixty-one and $\frac{67}{100}$ Dollars
and costs; and whereas the above bound
en Samuel H. Swift prayed an appeal
from said judgment to the Supreme
Court; which was granted conditioned
that he would enter into bonds in the
penal sum of Eight Hundred Dollars
within thirty days of the rendition of said
judgment with Warren W. Huntington &
Henry Clymes for his securities; Now
Therefore, if the said Samuel H.
Swift, shall prosecute his appeal

with effect, and shall pay whatever
Judgment, costs, interest and damages
may be awarded against him by the
said Supreme Court, in case the said
Judgment shall be affirmed, then this
obligation shall be void, otherwise to
remain in full force and effect,

Approved,

Wm A Rowley Clerk

Per Henry C. Bray Depy

Samuel W. Swift

W. W. Huntington

Henry C. Bray

Endorsed

Filed June 30th 1858

Wm A Rowley Clerk

Per H. C. Bray Depy

State of Illinois
of Davis County

I, Wm A Rowley Clerk of the
Circuit Court in and for said
County hereby certify the foregoing to
be a true and correct transcript of
the Record & proceedings of said Court
in the above entitled Cause of J. M.
A. Crumbacker for use of A. E. Brewster
vs Samuel W. Swift as the same



appears of record in my office
 In testimony whereof I
 have hereunto set my name
 and affixed the seal of said
 Court at my office in Galena
 this 12th day of March A.D.
 1859
 Attest *Wm R Rowley* Clerk

Fees. Transcript. \$15.20

Certificate 25
 \$15.55

State of Illinois - Supreme Court Third 3^d Division
 April Term 1859.

Samuel W Swift Appellant
 vs.
 John N. Crumbacker who
 Sues for use of Amos E. Bruniger } Appeal from
 Jo Daviess County
 Circuit Court.

Now comes the said appellant by
 Seland & Seland his attorneys & says
 that in the record & proceedings in the
 above entitled Cause, there is manifest
 error in this, to wit:

- 1st The verdict was contrary to the evidence.
- 2^d The verdict was contrary to the law & evidence.
- 3^d The Court gave improper instructions
 for the plaintiff below -
- 4th The Court admitted improper evidence
 for the plaintiff below -

5th The Court refused to admit proper evidence for the defendants below.

6th The debt & damages found by the jury are excessive.

7th The Court erred in overruling the motion for a new trial & rendering said judgment -

8th Other errors apparent on the face of the record -

Wherefore said appellant prays
that said judgment may be
reversed & held for nought &c -
Seland & Seland
for appellant

~~280~~ 280
Samuel W. Swift
vs. 280

John N. Crumbacker who serves
for use of Amos
E. Brenizer —

Record & Errors
Appeal from Jo Davies
Co. Circuit Court —

Filed April 21, 1859
L. Leland
Clerk

\$5.00 D. Clerk