

13517

No. _____

Supreme Court of Illinois

Smith

vs.

Wilson.

153-244
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 134.

1861
Smith
vs
Wilson

13517

In Supreme Court
State of Illinois

George Smith
Plff in Error

April Term 1867

vs.
John B. Wilson
Def in Error

Ernest Cook

Plff in Error relies, (saying other errors)
upon the fact as shown by the record
that after judgment rendered in his
favor at the October Term 1860 by
the Court below, the Court enter-
tained a motion to reinstate said
the same, and claims that under
the decision and opinion of the
Supreme Court, in Isaac Cook vs
Daniel F. Wood & als. (not yet re-
ported but to appear in 24th Ill. Reps)

The Circuit Court had no power
to change its previous judgment

30 Wheaton 591

2 Drach. C.C. R 433

10 Peters 480

1 W & Minor 61

2 Wash 373

6 " 511

3 Fidd & Bach. 975

Kellogg Munson

Att'y for Plff in Error

W. W. Fennell of Counsel

In Supreme Court of Illinois,

THIRD GRAND DIVISION.

GEORGE SMITH,
Plaintiff in error.

vs.

JOHN B. WILSON,
Defendant in error.

APRIL 5, 1861.

ERROR TO CIRCUIT COURT OF COOK COUNTY.

ABSTRACT.

This was an action of assumpsit commenced before a Justice of the Peace and taken by Defendant below by appeal to the Circuit Court of Cook County.

- 1 Placita.
- 1 Appeal bond filed by Defendant below, (Plaintiff in error,) in office of Clerk of Circuit Court, April 11, A. D. 1860, and copy of appeal bond.
- 2 Transcript of Justice, March 19, 1860, summons issued to constable—returnable
- 3 March 24th. March 24, case continued on motion of Defendant below to March 29.
- 3 March 29, motion for change of venue by Defendant, and affidavit sworn to and
- 3 filed. Motion overruled by Justice. Defendant withdraws his appearance. Judgment that Plaintiff recover \$71.81 Dollars and costs.
- 3 Certificate of Justice.
- 3 Summons issued by Justice.
- 4 Return.
- 4 Affidavit for change of venue. States that Defendant verily believes that he cannot have a fair and impartial trial of this action before the Justice aforesaid.
- 5 Supersedeas from Circuit Courts, issued April 11, A. D. 1860.
- 6 Summons from Circuit Court to John B. Wilson, appellee and Plaintiff below. Dated April 11, A. D. 1860.
- 7 Affidavit of merits filed by Appellant and Defendant (Plaintiff in error here) in Circuit Court.
- 7 Return of writ of Supersedeas—served April 17, 1860.
- 8 Return of summons to Appellee and Plaintiff below, (Defendant in Error,) May 29, 1860. "Not found."
- 8 ~~Noting~~ of alias summons to Appellee and Plaintiff below, July 23d, 1860, and copy of summons.
- 9 Return of alias summons Sept. 3, 1860, Plaintiff and Appellee below, Defendant in error here. "Not found."
- 10 Dismissal, Oct. 15, 1860, of said suit, by the Circuit Court of Cook County, said day being one of the days of the October Term, A. D. 1860, of said Court, at the costs of the Plaintiff and Appellee below, (Defendant in error here,) on motion of Defendant's Attorneys, two writs of summons having been issued, and returned "not found," for want of prosecution.
- 11 On the 4th day of December, 1860, the same being one of the days of the Nov. Term, 1860, of said Court, affidavit to reinstate filed on behalf of Plaintiff below, Defendant here.
- 11 Copy of affidavit.
- 12 December 4th, 1860, being one of the ^{days of the} November Term, 1860, of said Court,
- 13 cause, on motion of Counsel for Plaintiff below, Defendant in error here reinstated.
- 13 Dec. 20th, 1860, appeal dismissed on motion of Attorneys for Plaintiff below, (Defendant in error,) for want of prosecution at costs of Defendant below, and thereupon Plaintiff below moved the Court for a judgment awarding him ten per cent. damages for delay.
- 14 Dec. 21, 1860. Motion of Plaintiff below allowed, and ten per cent damages awarded, and judgment entered for sum of eighteen dollars against Defendant below
- 15 Defendant below prays an appeal.
- 17 Certificate of Clerk of Circuit Court.

Issuing

J. W. Fuller

Counsel for Plaintiff below

134

George Smith
Sgt. in Evon

John B. Wilson
Deft. in Evon

Abstract

Filed Apr. 23rd 1861

L. Leland
Clerk

Now all men by these presents that our
George Smith as Principal and
Frank Hottinger as Surety are held and
firmly bound unto John D. Wilson in the
peculiar sum of Two hundred dollars
good and lawful money of the Uni-
ted States, for the payment of which
said sum well and truly to be made
the said George Smith and Frank
Hottinger bind themselves their heirs
executors and administrators jointly
jointly and severally by these presents
Witness their hand and seals respec-
tively, this 18th day of February 1861

The condition of the above obliga-
tion is such, that whereas the above
named John D. Wilson did at the
Stovepipe Term A.D. 1860 of Circuit Court
held in and for Cook County in the
State of Illinois recover a judgment
against the above bounden George Smith
for the sum of

To Wmase which said judgment the
said George Smith has sued out a
writ of Error from the Supreme
Court, within and for the 3^d Judicial
Division of the said State which said
writ of Error is made a super-
seas show if the said George
Smith shall duly prosecute
said writ of Error, and pay or
cause to be paid the amount of
said judgment, & all expenses, costs,

~~interest~~ and damages, which the
said Supreme Court shall ad-
judge against the said George Smith
and abide the order and judgment
of said Supreme Court in this behalf
then this obligation is to be void, other-
wise to remain in full force and
Effect-

George Smith *Real*
J. W. Wetters *Real*

State of Illinois
Cook County *ss.*

George Smith and Homer Ab-
binger being each duly and severally
sworn, each for himself doth depose
and say that he is entitled to the sum
of thirty hundred dollars or more and
above all his debts and liabilities
and his property exempt by law
from execution George Smith

sworn to & Subscribed before me this 21 day of February 1861 } J. W. Wetters

Wm. Church Clerk of the Circuit
Court of Cook County Ill

Supreme Court

George Smith
Plff in Error

vs

John D. Mison
Def't in Error

Superior Court

Filed Feb. 26. 1880
L. Deland
Clerk

Kellogg & Mison
attys for
Plffs atty.

- 4 Affidavit for change of venue, stating that Defendant truly believes that he cannot have a fair and impartial trial of this action before the Justice
- 5 Supersedeas from Circuit Court is -
sued April 11th 1860 -
- 6 Summons from Circuit Court ~~from~~
to John D. Wilson Defendant in Error and
Plaintiff below. Dated April 11th 1860 -
- 7 Affidavit of merits filed by Plff in
Error here (Def't below.) in Circuit Court
- 7 Return to writ of Supersedeas
- 8 Return of Summons to appellee & plff
below. (Defendant in Error here) May 29
1860. "not found"
- 8 Issuing of alias Summons to appellee
and Plaintiff below July 23^d 1860. & copy
of Summons
- 9 Return of alias Summons Sept 3^d 1860
Plaintiff & appellee below, Defendant in
Error here ("not found") -
- 10 Dismissal Oct 15th 1860 of the original
suit by the Circuit Court of Cook County
said day being one of the days of the
October Term A.D. 1860 of said Court, at
the costs of the Plaintiff and appellee
below, (Defendant in Error here, on motion

of Defendants Attorneys, two writs of Summons having been issued and returned "not found" - for want of prosecution -

11 On the 4th day of December 1860 being one of the days of the November Term AD 1860 of said Court, Affidavit to Reinstatement filed on behalf of plaintiff below. Defendant here -

11 Affidavit -

12 Dec 4th 1860 being one of the November Term 1860 of said Court, the cause on motion of counsel for plaintiff below. Deft here, is Reinstated -

13. Dec 24th 1860 Appeal dismissed on Motion of Attorney for Plaintiff below (Defendant in Error here) for want of prosecution, Motion for Damages of ten per cent allowance

14. Dec 21st 1860. Motion of plaintiff for allowance granted, and Judgment Entered for Damages -

15th Certificate of Clerk

August M. Mearns
Attorney for Plaintiff

Supplement

George Smith
Puffin Ender

to
J. B. Milne
Puffin Ender

Abstract

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between John B. Wilson

plaintiff, and George Smith

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

as we are informed by his complainant 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 plaint 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 first Tuesday after the third Monday in April 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 26th day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.
by J. B. Rice Deputy

George Smith

No.

vs.

John B. Wilson

WRIT OF ERROR.

*This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.*

L. Leland

by J. B. Wilson *Gleek.*
Deputy

FILED

February 28th A. D. 1861

L. Leland

Gleek.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George W. Moore Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the third Monday, (being the thirteenth day) of November in the year of our Lord one thousand eight hundred and eighty-fifth and of the Independence of the said United States the eighty-fifth

Present, Honorable George W. Moore Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Warren States Attorney.

John Spray Sheriff of Cook County.

Attest, Wm. Church Clerk.

Be it remembered, that heretofore to-wit: on the Eleventh day of April in the year of our Lord One thousand Eight hundred and eighty-fifth, there was filed in the Office of the Clerk of the Court aforesaid, a certain Appeal Bond, together with a transcript of proceedings and papers from Justice Court, as follows, to-wit:

1. Bond.

It now all men by these presents that we George Smith and John H. Meyer are held and firmly bound unto John B. Wilson in the penal sum of One hundred and fifty-dollar 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.

We thus our hands and seals

this tenth day of April A D 1860

The condition of the above obligation is such, whereas the said John B Wilson did on the twenty-ninth day of March A D 1860, before Mr J Wallis Esq; a Justice of the Peace for the County of Cook, recover a judgment against the above bounden George Smith for the sum of Seventy One dollar and Eighty one Cents, and costs of suit from which said judgment, the said George Smith has taken an appeal to the Circuit Court of the County of Cook, Aforesaid, and State of Illinois, Now if the said George Smith shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Taken and Approved by } George Smith
me this 11th day of April } John Meyer
A D 1860

Wm L Church Clerk

Transcript
John B. Wilson
George Smith

Demand \$100. on Note

March 19th 1860 summons issued
to Constable. Kettinger, returnable March 24th 2 PM

and returned by same March 21 served by reading
March 24th Case continued to March 29th
on motion of defendant, March 29th motion for
change of venue by defendant and affidavit sworn
to and filed, Motion overruled by justice, defendant
then withdraws appearance. Judgment that plaintiff
recover Seventy One ⁸¹/₁₀₀ dollars and costs.

State of Illinois }
Cook County }

I William J. Wallis a Justice
of the Peace, in and for the said County, do hereby
Certify that the foregoing is a true copy of the
proceeding in the Case therein Entitled. Had before
me.

Witness my hand this 10th day
of April A.D. 1860

William J. Wallis
Justice of the Peace

Summons

State of Illinois }
Cook County }

The People of the State of Illinois to
Any Constable of said County: Greeting.
You are hereby commanded to sum-
mon George Smith to appear before me at my
Office in Chicago on the 24th day of March
A.D. 1860, at 2 O'clock P.M. to answer the Complaint

of John B. Wilson, for a failure to pay him a
certain sum not exceeding one hundred dollars,
and hereof make due return as the law directs,
Given under my hand and seal this 19th day of
March A.D. 1866

William S. Wallis Esq
Justice of the Peace.

Return

Borned by reading to the within named defendant
this 21st day of March 1866
Jes. Melige & 75 John. Kellogg
Constable

Affidavit

In Justice Court
before Justice Wallis
John B. Wilson }
George Smith } looks County. ss

George Smith being duly
sworn says that he is the defendant in this suit
and that he verily believes that he cannot have
a fair and impartial trial of this action before
Wm S. Wallis Esq the Justice before whom said
suit is pending, and therefore prays that
it may be removed
sworn to before me this 28th } George Smith
of March 1866. William S. Wallis J.P.

And afterwards, to-wit: on the same day and year last aforesaid, there was issued out of the office of the clerk of the Circuit Court aforesaid, and under the seal thereof, the People writ of Supersedeas and summons, directed to the Sheriff of said County to Execute in the words and figures following. To-wit: —
Supersedeas.

State of Illinois } p
Cook County }

The People of the State of Illinois
to Jm J. Wallis Esquire Justice of the Peace in
and for said County Breeling.

Whereas you the said Jm J. Wallis as Justice of the Peace as aforesaid, did on the 29th day of March A D 1860 render a judgment in a certain suit lately instituted and then pending before you wherein John B. Nelson — plaintiff and George Smith defendant, in favor of the said plaintiff and against the said defendant for the sum of seventy one dollar and eighty one cent besides Costs of suit, as it is paid.

And whereas the said George Smith has taken an appeal from the said judgment to our Circuit Court for the County of Cook, and thereupon executed an appeal bond with security according to law, now on file in the Office of the clerk

of said Circuit Court

Therefore we command and Enjoin you the said W. S. Wallis Justice of the Peace as aforesaid, that you do absolutely and Entirely supersede and desist from proceeding any further in said suit and all proceedings in relation thereto you do absolutely suspend until the further order of our said Circuit Court,

DECE

Witness William B. Church, Clerk of our said Court, and the seal thereof at Chicago in said County this Eleventh day of April A.D. 1860

Wm B. Church Clerk

Summons.

State of Illinois } ss
Cook County }

The People of the State of Illinois, to the Sheriff of said County: Greeting

We command you that you summon John B. Nelson if he shall be found in your County, personally to be and appear before the Circuit Court of Cook County on the first day of the next term thereof, to be holden at the Court House in Chicago, in said County, on the Fourth Monday of May next to answer unto George Smith an appeal from the judgment of Wm S. Wallis Esquire a Justice of the Peace within said County. And have you then and there this writ, with an endorsement thereon in which

manner you shall have Executed the same.

Wm

Witness William S Church Clerk of our
said Court and the seal thereof at
Chicago aforesaid this Eleventh day of
April A.D. 1860

Wm S Church Clerk

And afterwards to-wit: on the sixteenth day of April
in the year aforesaid, said defendant filed in said
Circuit Court his Affidavit of merits in the word
and figures following to-wit:

State of Illinois }
Circuit Court Cook County } ss

George Smith }
vs } On Appeal
John B. Wilson }

George Smith the appellant in
the above entitled cause, being duly sworn deposes
& says that he believes he has a good defense to said
suit upon the merits.

Sworn to before me this
16th day of April 1860

George Smith

Wm S Church Clerk

And afterwards to-wit: on the 28th day of April in the
year aforesaid, said writ of supersedeas was returned

into said Circuit Court by said Sheriff. Endorsed
as follows, to-wit:

Served by reading to the within named
W. D. Wallis the 17th day of April 1860 for service, 50
Mileage 10, Return 10. - 7th

John Gray Sheriff
By George Anderson Deputy

And afterwards, to-wit: on the 29th day of May in the
year aforesaid, said writ of summons was returned
into said Circuit Court by said Sheriff. Endorsed
as follows, to-wit:

" The within named John B. Nelson
not found in my County the 26th day of May 1860
Service. - Return 10th John Gray. Sheriff
By George Anderson Deputy

And afterwards, to-wit: on the 23^d day of July, in
the year aforesaid, there was issued out of the Office
of the Clerk of the Circuit Court aforesaid, and under
the seal thereof, the People's writ of Alias summons di-
rected to the Sheriff of said County to execute, in the
words and figures following, to-wit:

State of Illinois } ss.
Cook County }

The People of the State of Illinois, to the
Sheriff of said County, Greeting
We command you, we have before, that you summon

5
John B. Wilson, if he shall be found in your
County, personally to be and appear before the
Circuit Court of Cook County on the first day
of the next term thereof, to be holden at the
Court House ^{in Chicago} in said County, on the first Monday
of September next, to answer unto George Smith
in an appeal from the judgment of, Amos J. Wallis
Esquire a Justice of the Peace within said County,

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

Witness William S. Church Clerk
of our said Court, and the seal there
of at Chicago aforesaid this 23^d day
of July. A.D. 1860
Wm S. Church Clerk

And afterwards, to-wit: on the Third day of September
in the year aforesaid, said writ of Alias Summons
was returned into said Circuit Court by said
Sheriff, Endorsed as follows, to-wit:

"The writt'n named John B. Wilson
not found in my County, the 1st day of September 1860
return 10th
John S. Bay, Sheriff
By George Anderson deputy

And afterwards: to-wit: at the
October Term of said Court, to-wit: on the 13th
day of October in the year aforesaid, the following
Among other proceedings, were had and Entered
of Record. to-wit:

1936 }
John B. Wilson }
George Smith } Appeal

This day comes the said defendant
by Kellogg and Dauchy his Attorneys, and it appear-
ing to the Court, that two writs of summons have been
issued herein against the plaintiff, and that they
have severally been returned by the proper officer
endorsed "not found". It is therefore on motion of
said defendant's Counsel ordered that the said
suit be dismissed at plaintiff's cost for want of
prosecution, and the same hereby is dismissed
accordingly.

And afterwards, to-wit: on the 4th
day of December in the year aforesaid, said Plaintiff
by Charles Gregory his Attorney filed in said Circuit
Court his Affidavit to reinstate, in the words and
figures following: to-wit:

In the Circuit Court of Cook County
State of Illinois
State of Illinois } ss
Cook County }

6
John B. Wilson }
George Smith }

Charles A. Gregory being first duly sworn, says that he is the Attorney of said John B. Wilson, employed to conduct the above named suit in said Court, that said cause was originally brought before a Justice of the Peace in the City of Chicago County aforesaid, and judgment was rendered in favor of said plaintiff that said defendant appealed said cause into the said Court, and afterwards said defendant or his Attorney caused two writs of summons to the said Appellee to be issued out of said Court, and to be returned "nihil", to the said Appellee as this Affiant is informed and believes was at said time of said return of said writs in the said City of Chicago and could readily have been found served with summons at any time. and this Affiant further says that at said October term, and after the return of said writs as aforesaid, the said Appellant or his Attorney or attorneys in the absence of the Attorney of said Appellee and without the knowledge of said Appellee or of his said Attorney fraudulently & unauthorizedly caused the said suit to be dismissed from off the docket of said Court at the cost of said Appellee, and that at the time of said

dismissal. said Case had not been reached
on the Call of the docket of said Court, and
had not then and has not yet been reached
or called for trial — That said Appellee is
ready for trial, and is desirous of prosecuting
his said suit, and has a meritorious Case against
said Appellant. And now prays by his said
Attorney, that said Case, so as aforesaid fraudulently
dismissed, may be reinstated upon the docket
and stand for trial the same as tho it had
not been dismissed — Affiant says that the
fact of said dismissal, has only within a few
days last past come to his knowledge or to the
knowledge of said Appellee.
Subscribed & sworn to this } Charles A. Gregory
4th day of December A.D. 1860
Wm. S. Church Clk

And afterwards, to-wit: at the November Term of
said Circuit Court, to-wit: on the Fourth day of
December in the year aforesaid, the following, among
other proceedings, were had and Entered of record
to-wit:

John B. Wilson	}	Motion re
George Smith		

On reading and filing the affi-
davit of said Plaintiff, and on motion of Counsel

7

Say and Gregory of Counsel for said plaintiff. It is ordered that the order of dismissal heretofore Entered in said Cause be and the same hereby is set aside and for nought Estimated, and it is further ordered the said Plaintiff pay and satisfy the Costs of Entering said order of dismissal and setting the same aside

And afterwards, to-wit: at the same Term of said Court last aforesaid, to-wit: on the 20th day of December in the Year aforesaid, the following, Among other proceedings, were had and Entered of Record, to-wit:-

193.6 }
 " John B. Wilson }
 George Smith } Appeal

This day Comes the said plaintiff by Arnold Say and Gregory his Attorneys, and the said defendant being now three times solemnly called in open Court, comes not nor does any person for him but herein he fails to prosecute his Appeal in this behalf. Wherefore on motion of said plaintiffs Counsel, it is ordered that the appeal herein be and the same hereby is dismissed at defendants Costs for want of prosecution, and that a Proceudo issue to the Court below. Whereupon the plaintiff moves the Court for a judgment awarding him ten per cent damages for delay

And afterwards, to-wit: at the same term of said Court last aforesaid, to-wit: on the Twenty first day of December, in the year aforesaid the following, among other proceedings, were had and Entered of Record, to-wit:

19306 }
John O. Wilson }
George Smith } Appeal

This day comes the said plaintiff by Arnold Say and Gregory his attorneys, and the Court being now fully advised of and concerning the motion of the plaintiff heretofore Entered in said cause to be awarded ten per cent damages therein for delay, doth sustain the same; And orders that the said plaintiff do and he hereby is awarded, ten per cent damages, herein for delay, amounting to the sum of seven dollar and Eighteen Cents, and that he have judgment against the defendant therefor.

Therefore it is considered by the Court, that said plaintiff do have and recover of the said defendant, the said sum of seven dollar and Eighteen Cents, for his damages aforesaid together with his Costs and Charges by him about his suit in this behalf Expended, and have Execution therefor.

And afterwards, to-wit: at the same term last aforesaid, of said Court, to-wit: on the Twenty second day of December in the year last aforesaid

the following. Among other proceedings, were had and
Entered of record. to-wit:

19306 }
John B Wilson }
George Smith } Appeal

This day comes the said defendant
by W. W. Fuller his attorney, and prays an appeal
herein to the Supreme Court of the State of Illinois, which
is granted by the Court upon condition that the said
defendant shall within ten days from this date. Ex-
-ecute and file with the clerk of this Court his
Appeal Bond in the penal sum of Four Hundred
dollars conditioned according to Law with
as surety thereto -

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of all papers and all proceedings entered of record in a certain cause hitherto pending in said Court on the Common Law side thereof, wherein John B. Wilson was plaintiff and George Smith Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this 17 day of February A. D. 1861

Wm L Church Clerk.

Let a supersedeas issue. Bond, two hundred dollars. George Smith & French Hoblinger
Surties

J. D. Eaton

Supreme Court

George Smith
Offin Bros

vs

J. D. Eaton
Deft

Record

Wm. Church

In Supreme Court of the State of Illinois - Third
Grand Division

George Smith

April Term AD 1861

Plaintiff in Error

vs

John B Wilson

Defendant in Error

Error to the Circuit Court
of Cook County—

Afterwards, to wit, on the first Tuesday after the third
Monday in April, AD, 1861, at this same term before
Judges of the Supreme Court of the State of Illinois.
comes the said George Smith by Kellogg & Munsey, ...
his Attorneys, and says that in the record & proceedings
aforesaid, and also in rendering the judgment aforesaid
there is manifest error, in this, to wit, 1st that final
judgment of dismissal of said suit was entered
in said cause of the October Term, AD, 1860 of said
Circuit Court of Cook County and said cause ^{reinstated} ~~reinstated~~
& the application to reinstate the same made, at
the November term AD, 1860 of said Court
2nd That after the lapse of the term of said Court
at which judgment was rendered for the dismissal
of said cause, the Court entertained a motion to
reinstate & did reinstate said cause at a subsequent
term thereof

3rd That said cause was reinstated without notice
to said Plaintiff in Error of the motion to that effect
made by said Defendant in Error

4th That the Court entered judgment for Damages
under the Statute after having reinstated the
said cause without notice to said plaintiff in
Error

5th That damages were awarded by the Court to the Defendant in Error for the non prosecution of his said appeal in the Court below although he had as by the record appears, in fact prosecuted the same to final judgment of dismissal of said Cause

6th That damages were awarded against Plaintiff in Error by Said Circuit Court without notice to said Plaintiff in Error of the application therefor

7th That said Court below should have rendered judgment of dismissal in favor of the Defendant below because of the refusal of the justice below to grant the motion for a change of venue on affidavit filed as by law he was required to do And the said George Smith prays that the judgment aforesaid for the errors aforesaid & other errors in the record & proceedings aforesaid, may be reversed, annulled and altogether held for nothing, & that he may be restored to all things which he has lost by occasion of such judgment

M W Fuller with
Kellogg & Munson
Attys for Plf, in Error

United States of America }
State of Illinois }^{vs.}

George Smith - *plff. in error* }
vs. }
John B. Wilson - *def't in error* }

In the Supreme Court
of the State of Illinois. Of the April
Term A.D. 1861.

And hereupon, afterwards, to
wit, on the Third Monday of April in the
April Term, in the year of our Lord Eighteen
hundred and sixty one, the said John B.
Wilson by Amosday & Gregory his attorneys
fully comes here into Court, and says, that
there is no error either in the record and proceedings
aforesaid, or in giving the judgment aforesaid;
and he prays that the said Supreme Court
now here may proceed to examine as well
the record and proceedings aforesaid, as the
matters ~~and~~ aforesaid above assigned for
error; and that the judgment aforesaid,
in form aforesaid given may be in all
things affirmed, &c.

Amosday & Gregory
Attorneys for def't in Error.

Supreme Court.

Smith

vs.

Wilson.

Joinder in Error.

George Smith, Plaintiff in Error
vs.

John B. Wilson defendant in Error

In the Supreme Court of
Illinois - of the April Term A.D. 1861.

It is hereby stipulated that the
error assigned in the fourth
assignment of errors in the above
Record is expressly waived. And it
is hereby admitted that the said
Plaintiff in Error, the defendant
and appellant below, did have
due notice and was present in
Court when said case was called
for trial in the said Circuit Court.

The said defendant in
Error has leave to assign cross
errors upon said record.

Dated this 16th day of April, A.D. 1861

Wm. Fuller
Atty. for Pl. in Error
Chas. A. Gregory
Atty for deft in Error

Assignment of Cross Errors by The
said deft in Error

George Smith (Plaintiff in Error)

vs.

John B. Wilson (defendant in error)

In the Supreme Court of
Illinois April Term A.D. 1861.

And afterwards, to wit, &c. - the said
John B. Wilson ^{by C. A. Hargrave his attorney} ~~deft in Error~~ ^{crossed}
^{and under stipulation herewith filed assigns the following}
Cross Errors says that in the record and proceedings

X. aforesaid and also in dismissing the said
^{suit} ~~case~~ at plaintiffs costs for want of pro-
secution as aforesaid there is manifest error
in this, to wit:

1st That the ^{said} Circuit Court dismissed
said suit at plaintiffs costs for want
of prosecution, without notice to said
plaintiff below -

2 That the said Circuit Court allowed the said
motion of said deft below, and dismissed
said suit for want of prosecution ^{long} before
the said suit was reached and called
on the Docket for trial, and without
notice to said plaintiff below -

3 That the said Circuit Court dismissed
said suit for want of prosecution at
the costs of said plaintiff below ~~before~~
~~said plaintiff~~ without any default
on the part of said plaintiff below, &
without notice to said plaintiff below of
the said defendants notice to dismiss -
And the said John

B. Wilson prays the order and judgment of said Circuit Court, ~~for the errors aforesaid & others~~ in & by which said suit was dismissed as aforesaid may be reversed and annulled for the errors aforesaid & other errors, & that said cause may be reinstated upon the docket of said Circuit Court & stand for trial if the said Supreme Court shall reverse the said final judgment of said Circuit Court in favor of said ~~defendant~~ ^{defendant} in error, and that this court will ~~order the costs~~ ^{give the costs} defendant in error his costs &c

Charles A. Gregory
attorney for defendant in error.

And the said said George Smith ^{W. W. Fuller is attorney} says there is no error in said order & judgment ~~of~~ and the proceedings of said Circuit Court in the record aforesaid as aforesaid in said cross errors, &c and prays that said judgment may be in all things affirmed on

W. W. Fuller
att. for Plaintiff

Sup Court 134
George Smith

John B. Wilson

Error to Cook

Reversal
Assignment
of Errors

Filed February 26, 1881
L. Holland
Clerk