

13537

No. \_\_\_\_\_

# Supreme Court of Illinois

Barnes.

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vs.

Simmons.

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

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No. 269.

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860

*1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 32nd 33rd 34th 35th 36th 37th 38th 39th 40th 41st 42nd 43rd 44th 45th 46th 47th 48th 49th 50th 51st 52nd 53rd 54th 55th 56th 57th 58th 59th 60th 61st 62nd 63rd 64th 65th 66th 67th 68th 69th 70th 71st 72nd 73rd 74th 75th 76th 77th 78th 79th 80th 81st 82nd 83rd 84th 85th 86th 87th 88th 89th 90th 91st 92nd 93rd 94th 95th 96th 97th 98th 99th 100th*

13537

State of Illinois } In the Circuit Court  
Marshall County } of said County & May Term  
A D 1859

Geo. Simmons } Assumpsit  
vs  
L. O. Barnes }

G. O. Barnes, the said deft, after being first duly sworn says that after the trial of the said Cause at the said term and before the adjournment of the Court for the said term he did prepare a bill of exceptions in said Cause and hand to M. Barnes the judge of said Court to sign; that he frequently spoke to said judge relative to signing the same before the adjournment of said Court, and that said judge told this affiant that at the instance and request of J. L. Richmond, one of Plff attys he had deferred signing the same until after the term of the Woodford Circuit Court <sup>and that he had given the paper to Richmond to sign</sup> Affiant says that he thought

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Georg O Barnes  
or  
Georg Simmons

Motion & strike  
Bill of Exemption  
by members and  
Richmond's affidavit

Filed Apr. 19. 1860.  
Deland  
Clk.

Richmond O Barnes  
for appellee

State of Illinois

Supreme Court 3<sup>d</sup> Grand Division

George O. Barnes - Appellant

vs  
George Simmons - Appellee

And now comes the said  
appellee by Richmond & Burns his  
attorneys and moves the Court  
to ~~to~~ strike the Bill of Exceptions  
filed in the above entitled case  
from the file, for the following  
reasons to wit

1<sup>st</sup> Said Bill of Exceptions  
was not signed by the Circuit  
Judge during the term of the  
Circuit Court at which the suit  
was tried - there being no  
order of said Circuit Court  
granting further time (after the  
adjournment of said Court) to  
have the same signed

2<sup>d</sup> Said Bill of Exceptions  
was not filed in the Circuit  
Court when said suit was tried  
during the term when it was  
tried, but nearly a year after

after the adjournment of said  
Term. No leave or order ever  
having been made by said  
Circuit Court granting any  
time after such adjournment  
to file said Bill of Exceptions

3<sup>d</sup> said Bill of  
Exceptions was signed and  
filed as the filing upon the  
same, and the date of the  
signing will show in vocation  
and not in term time as  
required by law

Richard D. Burns

Attys for Appellee  
State of Illinois  
LaSalle County

Samuel S. Richmond

after being sworn on his oath with  
that the bill of Exceptions filed in  
the foregoing cause was not signed  
by the Judge of the Circuit Court of  
LaSalle Co. until after the  
first of April 1860. That said  
cause was tried at the May Term  
of said Circuit Court <sup>before Judge Baugh</sup> AD 1859  
and that said May Term of  
said Circuit Court was adjourned  
and closed during the month of  
May AD 1859  
Subscribed & sworn  
to before me this 18<sup>th</sup> 1860  
L. Leland Clk.

George O Barnes, Appellant  
vs Supreme Court Apr 5, 1860  
George Simmons, Appellee

State of Illinois } Motion & Shew  
Lauder County } Bill of Exceptions  
S. L. Richmond ~~Demur~~ <sup>from the files</sup> after being  
duly sworn on his oath saith that  
he is the person referred to by Geo. O  
Barnes in his affidavit filed on this  
motion, that it is true that said  
Bill of Exceptions was, ~~was~~ written  
out at the term of the Circuit Court  
at which said suit was tried, and  
that it was submitted to affiant  
as atty for Simmons during said  
term that affiant objected to  
said Bill of Exceptions and wrote  
out upon a separate paper his  
objections, and submitted the  
same to the Judge of the Marshall  
County Circuit Court, during said  
term, when said case was tried - that  
as affiant verily believes and  
recollects said Barnes did not  
~~not~~ insist or try to get said  
Bill signed or filed during said  
term, that said bill was <sup>not</sup> given  
to affiant after said term until

Two months after the close of said  
term and was left at affiant's  
(but not at affiant's ~~instance~~ <sup>request</sup> or ~~request~~)  
office from that time until  
after the 1<sup>st</sup> of April 1860, without  
ever being called for by said  
Barnes (who was his own atty)  
although he knew it was there.

Affiant further saith  
that he never gave any consent  
that said Bill of Exceptions  
might be signed or filed at  
any other time than when  
the Court was in session, that  
he never requested Hon W B Bangs  
Judge of said Court to defer signing  
until after the Woodford Circuit Court  
said bill. But on the contrary he  
told said Judge in the month  
of August of 1859 that if it  
was not signed before the  
September term of the Woodford  
Circuit Court that he would  
not consent to its being signed  
at all. That when affiant made  
such statement to said Judge, he  
(the Judge) said something about  
signing said bill as it was, and  
affiant told him in reply that  
the Bill of Exceptions was wrong <sup>(which was true)</sup>  
and that rather than have it signed  
as it then was affiant would  
prefer that the Judge should  
defer signing the same until after  
said September term of said Woodford

Court, though affiant then expressly  
told said Judge that he would not  
consent to the signing being deferred  
at all and should not require any of his clients <sup>sign</sup>

Affiant saith that after the <sup>31st</sup>  
first of April 1860, said Barnes  
enquired of affiant for said Bill  
of Exceptions that affiant told  
him that he thought he had  
it. Affiant looked for it and  
failed to find it but within a  
few days he searched further  
and found it and gave it  
to Barnes

Affiant saith distinctly  
that he never gave any  
consent extending the time  
to file or sign said Bill of  
Exceptions that there are  
all the facts and the whole  
~~truth~~ truth concerning affiant's  
action with reference to said  
to said Bill, that he never told  
any person or ~~step~~ to have or  
~~not~~ to have said Bill signed  
or filed. Affiant saith that  
said Barnes never enquired  
for said bill of him but twice  
and the second time he got it  
and both enquiries were made  
after April 1<sup>st</sup> 1860, that he  
never concealed it or tried in  
any way to keep it from Barnes

On the contrary he tried to find it for  
him and gave it to him as soon as  
he found it.  
Subscribed & sworn to } S. L. Richmond  
before me the 20<sup>th</sup> day  
of April AD 1860  
L. Deland Cky.

Said Richmond as atty now  
suggests that, the ~~whole~~ reason why  
said bill was not signed or filed <sup>in time</sup> is  
wholly the fault of said Barnes, that  
the Judge could not have been compelled  
to ~~have~~ sign the bill in term time  
because it was incorrect nor after  
the close of the term because no  
order was made allowing further  
time, And that it is encouraging the  
grossness of laches to allow this bill  
of exceptions to be signed filed &  
made part of the record, when  
Barnes laid by for nearly a year  
without trying to get it signed  
Richmond, p. appelle

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George O. Barnes  
George O. Barnes  
George Simmons  
Richmond's affidavit  
suggestions.

Filed April 20. 1860  
L. Deland  
Cky.