

12734

No. _____

Supreme Court of Illinois

Eames

vs.

Hennesy

71641  7

207 - 208

208

Wm. C. C. C.

11

Wm. C. C. C.

Wm. C. C. C.

12734

1859

Prepared

W. C. C.

Vol. 1-

State of Illinois }
County of Cook } ss.

Now before the Honorable
John M. Wilson Judge of the Cook County
Court of Common Pleas. within and for the
County of Cook and State of Illinois. at a
Vacation Term of said Cook County Court of
Common Pleas. begun and holden at the Court
House in the City of Chicago in said County
and State on the first Monday being the
Second day of November in the year four
thousand eight hundred and fifty
seven and of the Independence of the United
States the Eighty Second.

Present the Honorable John M. Wilson Judge
John L. Wilson Sheriff
Attest Walter Kimball Clerk

Be it Remembered. That heretofore to wit.
on the Eleventh day of April A.D. Eighteen
Hundred and fifty seven Thomas Bennie
by Tuley Huntington & Gary his Attorneys
filed in the office of the Clerk of the Cook
County Court of Common Pleas his Petition
for Summons and Declaration in the
words and figures following to wit.

Thomas Hennessy, In the Cook County Court
 as } of Common Pleas
 James H. Cairnes, Of the June Term A.D. 1857

Trespass on the case upon promises
 Damages Two Hundred Dollars
 Clerk will please issue summons in an
 action to be commenced as above, directed
 to the Sheriff of Cook County
 Chicago April 9th 1857

Tulay Huntington & Gary
 Plffs attys

State of Illinois } In the Cook County Court
 Cook County ss. of Common Pleas
 Of the June Term A.D. 1857

Thomas Hennessy plaintiff in this suit by
 Tulay Huntington & Gary his Attorneys Claimants
 of James H. Cairnes who was summoned &c.
 of a plea of Trespass on the case upon promises.

For that whereas the said defendant
 heretofore, to wit on the 9th day of January
 A.D. 1855, to wit. at Chicago in said County
 of Cook, according to the usage and practice of
 merchants made his certain draft or order
 in writing for the payment of money, commonly
 called a Check on a banker bearing date

a certain day and year therein mentioned
 to wit, the day and year aforesaid, and then and
 there directed the said draft or order to certain
 persons by the names style and firm of
 E. H. Huntington & Co., and thereby then and there
 required the said E. H. Huntington & Co. to pay to
 the said plaintiff or bearer, one hundred and
 nine dollars and twenty cents, and then
 and there delivered the said draft or order to
 the said plaintiff. And the said plaintiff
 avers that after the making of the said draft or
 order and before the payment of the said sum
 of money therein specified to wit, on the day
 and year aforesaid, to wit, at Chicago aforesaid,
 the said draft or order was presented and shown
 to the said E. H. Huntington & Co. for payment
 thereof according to the said usage & practice
 of merchants, and they were then and there re-
 quested, to pay the said sum of money therein
 specified according to the tenor & effect thereof,
 but that the said E. H. Huntington & Co. did not
 nor would intentionally at the said time when the
 said draft or order was so shown and presented
 to them for payment thereof as aforesaid, or at
 any time afterwards pay the said sum of money
 therein specified or any part thereof but then
 and there wholly neglected and refused so to do,
 whereof the said defendant afterwards, to wit on
 the day and year aforesaid, at Chicago,

aforesaid had notice, by means whereof the said defendant then and there became liable to pay to the said plaintiff: the said sum of money in the said draft or order specified when the said defendant should be thereunto afterwards requested & being so liable, the said defendant in consideration thereof afterwards, to wit, on the day and year aforesaid at Chicago aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said draft or order mentioned & when he the said defendant, should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the Ninth day of January in the year of our Lord one thousand eight hundred and fifty five at the place aforesaid was indebted to the said plaintiff in the sum of Two Hundred Dollars lawful money of the United States of America for so much money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant And for other money by the said plaintiff before that time paid laid out and expended for the said defendant, and at the like request of the said defendant, And for other money by the said defendant before that time had and received to and for the use of the said plaintiff,

And being so indebted the said defendant in consideration thereof, afterwards to wit, on the same day and year last aforesaid and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this Count mentioned when the said defendant should be thereto afterwards requested, And whereas also the said defendant afterwards to wit, on the same day and year last aforesaid at the place aforesaid accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of Ten Hundred Dollars of like lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiff the said defendant, in consideration thereof afterwards to wit, on the same day and year last aforesaid and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereto afterwards requested.

Nevertheless the said defendant (although often requested &c.) has not yet paid the said several sums of money above mentioned or any or either of them or any part thereof to the said plaintiff. but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto wholly refused, and still does refuse, to the damage of the said plaintiff of Two Hundred Dollars, and therefore the said plaintiff brings suit &c.

Juley Huntington & Gary
Plffs at lvs

Copy of Instrument Due upon

No. — Chicago Jan. 9. 1853
E. H. Huntington & Co.

Pay to T. Hennessy or bearer One Hundred and nine 20/100 Dollars. and Charge the same to account of

\$109.20 (Signed) J. H. Carnes

Copy of Account said upon
James H. Carnes

1853	To. Thomas Hennessy Ad	
Jan 9	T money loaned	\$200.00
" "	" " paid laid out and expended	\$200.00
" "	" " had & received	\$200.00
" "	" this amount due upon an account stated	\$200.00

E. H. Huntington & Co.
34 Clark Street

And afterwards, to wit on the same day and
year last aforesaid, there issued out of the
Office of the Clerk of said Court the Peoples
writ of Summons. Which said writ, and
the Sheriff return thereon subscribed are in
the words and figures following to wit.

State of Illinois }
County of Cook } ss.

The People of the State
of Illinois. To the Sheriff of said County Greeting.

We command you that you sum-
mon James H. Eames, if he shall be found in
your County, personally to be and appear before
the Cook County Court of Common Pleas of
said County on the first day of the next term
thereof, to be holden at the Court House in
the City of Chicago in said County on the
first Monday of June next, to answer
unto Thomas Hennessey in a plea of Trespass
on the case on promises to the damage of the
said plaintiff as he says in the sum of
Two Hundred Dollars.

And have you then, and ^{thereby} this writ with an enforce-
ment thereon in what manner you shall have
executed the same.

Witness Walter Kimball Clerk of said
Court & the Seal thereof at the City
of Chicago in said County this

11th day of April A.D. 1857
 Walter Kimball Clerk

Endorsed

Served by reading to the within-
 named James H. Barnes the 14th day of April
 1857 John L. Wilson Shff
 By George Anderson
 Deputey

And afterwards, to wit on the Fourth day
 of June in the year last aforesaid the said
 defendant by William T. Burgess his
 Attorney filed in the office of the Clerk of
 said Court his Pleas and Affidavit of merits
 in the words and figures following, to wit

In the Cook County Court of Common Pleas
 June Term 1857
 James H. Barnes
 vs
 Thomas Hennessy } And

And the said defendant
 by William T. Burgess his Attorney comes
 and defends the wrong and injury whereof
 and says that he did not undertake and
 promise in manner and form as the said
 plaintiff hath above thereof complained against
 him, and of this he puts himself upon the
 Country &c.

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And for a further plea in this behalf said defendant says actio non, because he says that the check in the said first count of said declaration set out was given without any good or valuable consideration, in this that the same was for certain fees which the said plaintiff as a constable in and for said County claimed he had a right to charge the said defendant, with but which in fact he had no right so to charge, and the same were illegal and charged without warrant of Law, and this the said defendant is ready to verify, wherefore he prays Judgment &c.

And for a further plea in this behalf said defendant says actio non, because he says that at the said time when the said plaintiff was a constable in for said County, and as such set up and claimed that certain fees were due and payable from the said defendant to him in virtue of his said office and for services by him rendered in the course of his said office and the sole and only consideration for which said check was given was in payment of & for such fees so claimed to be due by the said plaintiff to him as such Constable as aforesaid.

And the said defendant in fact avers that the said fees were illegal and the services for which they were charged, had not in fact

been rendered by the said plaintiff, and as the said defendant says that the consideration for said check has wholly failed, and this he is ready to verify, wherefore he prays Judgment &c.

And for as further plea in this behalf said defendant says, altho now, because he says, as to one hundred dollars of said check that at the said time when &c. the said plaintiff was a constable in and for said County and as such set up and claimed that certain fees were due and payable to him from the defendant in virtue of his said office as such constable to a large amount, to wit the sum of one Hundred Dollars, and that the said check was given in part for the payment of said fees so claimed to be due to him said plaintiff as such constable as aforesaid and the said plaintiff in fact avers that the said fees were illegal and the services for which the same were charged had not been rendered in fact and so the said defendant says that the consideration for said check hath failed to the said amount of one hundred Dollars aforesaid, the illegal fees aforesaid & for the rest and residue of said check he saith that he hath fully paid and satisfied the same and this he is ready to verify, wherefore he prays Judgment &c. W. T. Burgess

In the Court Com. Pleas
James H. Canis
ad } ass
Thomas Hennessy }

State of Illinois }
County of Cook M. James H. Canis being
duly sworn doth depose and say that he
has a good defence upon the merits in
this cause as he is advised and verily be-
lieves. J. H. Canis

Subscribed and sworn
to before me this 4th
day of June A.D. 1857
Moses Hallitt
Notary Public

And afterwards to wit on the 9th day of
June in the year last aforesaid the said
plaintiff by his attorney aforesaid. filed
in the office of the clerk aforesaid County his
Replications in the words and figures fol-
lowing - to wit.

Thomas Hennessy In the Court Com. Pleas
vs. } Court of Common Pleas
James H. Canis June Term A.D. 1857

And the said plaintiff acts the said plea.

of the said defendant, by him first above pleaded, and whereas he hath put himself upon the Country doth the like;

And the said plaintiff as to the said plea of said defendant by him secondly above pleaded saith that the said plaintiff by reason of anything by the said defendant in that plea alleged ought not to be barred from having or maintaining his aforesaid action thereof against the said defendant because he saith that the said Check was not given for certain sum which were illegal and charged without warrant of law in manner and form as the said defendant in said second plea hath alleged in that behalf, and this he the said plaintiff prays may be inquired of by the Country &c.

And the said plaintiff as to the said plea of the said defendant by him thirdly, above pleaded saith that the said plaintiff by reason of anything by the said defendant in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant because he saith that the consideration for said Check has not failed in manner and form as the said defendant hath above in his said third plea in that behalf alleged, and this he the said plaintiff prays may be inquired

of by the Country &c. And the said plaintiff
as to the said plea of the said defendant by
him fourthly above pleaded saith that the
said plaintiff by reason of anything in that
plea alleged ought not to be barred from
having and maintaining his aforesaid
action thereof against the said defendant
because he saith that the consideration for
said Check has not failed to the amount of
One Hundred Dollars, nor has the said defen-
dant paid and satisfied the rest and residue
of said Check in manner and form as
the said defendant hath above in his said
fourth plea in that behalf alleged and
tho' he the said plaintiff prays may be
enquired of by the Country &c.

Jules Huntington Esq
Atty for Plff

And afterwards to wit on the Ninth day
of October in the year aforesaid the said
defendant by his said attorney filed in
the office of the Clerk of said Court an
Affidavit in words and figures following.
to wit.

In the Cook County Court of Common Pleas
 James H. Cairnes
 vs
 Hennessy } Asst.

State of Illinois }
 County of Cook ss.

James H. Cairnes said defendant being duly sworn doth depose and say that he cannot safely proceed to the trial of this cause on this day on account of the absence of James Jones a resident of the City of Chicago in said County and a material witness for this defendant in the trial of this cause. That he expects to be able to prove by said witness that the said plaintiff about the last of November A.D. 1854, claiming to hold the Schooner Baltic under an attachment issued by a Justice of the Peace of Cook County and to have levied upon the same under said writ, placed the said Schooner in the possession of said James Jones to keep. That at the time of this levy he said Jones was Captain of said vessel in the employ of its owners, that he kept charge of the vessel and was paid therefor by the owners, that said plaintiff has not paid him anything therefor nor offered to do so, and there was no compensation agreed upon between them the said Jones and said plaintiff, therefore, and that

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he said Jones, has and makes no claim upon
said plaintiff for taking care of the said vessel.
And that soon after said levy was made &
within five days thereafter said Jones stripped
said vessel of her sails and loose rigging
and towed her up the South Branch where
she was soon after frozen in and where
she remained without any person in the
actual charge of her until the next Spring,
that during that winter her cabin was broken
open & furniture belonging to the vessel
stolen therefrom and lost.

And this deponent
further says that this suit is brought by said
Constable upon a Check, that said Check
was given for the fees claimed by said plaintiff
to be due to him as such Constable of said
County under said Attachment writ, that
soon after said suit was commenced and
about a month thereafter but whether before
or after Judgment if any therein this deponent
cannot now recollect the matter and paid
the amount due the plaintiffs in the suit and
all the costs except those of said plaintiff,
that he said plaintiff then claimed that there
was seventy dollars or thereabouts due him
for his fees, which this defendant refused
to pay, that to enforce said costs said
plaintiff undertook to sell said vessel

and thereupon this deponent gave him the check for the amount claimed by him. That the only consideration therefor is the amount claimed by said plaintiff for his fees under said attachment. That as near as this deponent can recollect the amount claimed in the Attachment suit was about sixty dollars - due the plaintiff therein.

That said Jones is now Captain of the Experiment a Schooner plying between Nalamagoo & Chicago - that said Schooner is expected in in about a week or ten days - That she left this port last week, that this deponent met said Captain shortly before he left port and told him he wanted him in this case. that he replied he could not stay, and before this deponent could get out a Subpoena for, and have it served upon him, he had left port. That Subpoenas were issued in this cause for said Jones on Tuesday last, as this deponent is advised by his Counsel W. T. Burges, and placed in the hands of the Sheriff of this County for service. That this application for continuance is not made for delay but that justice may be done.

J. H. Eames

Sworn to and subscribed

before me this 9th day
of October A.D. 1857

Moses Hall

Notary Public

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

Thomas Hennessy
as }
James H. Barnes } Appt

This day comes the said plaintiff by Tuley Huntington Lacey his Attorney, and the defendant by W. T. Burgess his Attorney also comes. And the Court after hearing said defendants motion to continue this cause, overrules said motion.

And thereupon by agreement of parties this cause is submitted to the Court for trial, without the intervention of a jury, and the Court after hearing the testimony adduced and arguments of counsel takes the matter under advisement.

And afterwards to wit, on the Seventh day of November in the year aforesaid. said day being one of the days of the November Vacation Term of said Court. the following among other proceedings was had in said Court and entered of Record, to wit.

Thomas Kennedy }
 vs } Appt
 James H. Barnes }

And now again come the parties aforesaid, by their said Attorneys, and the Court being now fully advised in the premises, after due consideration thereof finds the issue for the Plaintiff, and assesses his damages to the sum of One Hundred and twenty seven dollars and seventy two cents. And thereupon said defendant moves the Court for a new trial herein which is denied by the Court and said defendant now here enters his Exceptions to the ruling of the Court herein.

Therefore it is considered that the said Plaintiff do have & recover of the said defendant his damages of One Hundred and twenty seven Dollars and Seventy two cents in form aforesaid by the Court here assessed, and also his costs and charges by him about his suit in this behalf expended and have execution therefor.

And afterwards, to wit, on the Nineteenth day of December in the year aforesaid the said day being one of the days of the November Special Term of said

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Court, the following, among other proceedings, was had in said Court and entered of Record, to wit.

Thomas Hennessy
vs
James H. Barnes } App

And now comes the said defendant by his said Attorney and prays an appeal to the Supreme Court of the State of Illinois, which is allowed on his filing an appeal Bond in the sum of Three Hundred Dollars, with security to be approved by the Judge of this Court, said Bond and Bill of Exceptions to be filed in thirty days

And afterwards to wit, on the Seventh day of January A.D. Eighteen Hundred and fifty eight, the said defendant by his said Attorney filed in the office of the Clerk of said Court his Bill of Exceptions in the words and figures following, to wit.

In the Cook County Court of Common Pleas
 of November Special Term A.D. 1857
 Before the Hon. John M. Wilson Judge Cb.
 James H. Canes

vs

Hennings

State of Illinois }

County of Cook ss. Be it Remembered that
 herebefore to wit, on the Ninth day of October
 A.D. 1857, during the September Term of this
 Court of that place, came the parties by
 their attorneys, and the said defendant on
 reading and reading and filing the affi-
 davit of the defendant, in the words and
 figures following to wit,

In the Cook County Court of Common Pleas
 James H. Canes

vs

Hennings

Ass't

State of Illinois }

County of Cook ss.

James H. Canes said defendant being duly
 sworn doth swear and say that he cannot
 safely proceed to the trial of this cause on this
 day on account of the absence of James
 Jones, a resident of the City of Chicago in
 said County & a material witness for the
 defendant on the trial of this cause

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X That he expects to be able to prove by said witnesses that the said plaintiff about the last of November A.D. 1854 claiming to have the Schooner Baltic under an attachment issued by a Justice of the Peace of Cook County and to have levied upon the same under said writ, placed the said Schooner in the possession of said James Jones to keep. That at the time of the levy, he said Jones was Captain of said vessel in the employ of its owners, that he kept charge of the vessel and was paid therefor by the owners. That said plaintiff has not paid him anything therefor, nor offered to do so, and there was no compensation agreed upon between them the said Jones and said plaintiff, therefor, and that he said Jones has and now, no claim upon said plaintiff for taking care of the said vessel. And that soon after said levy was made, and within five days thereafter, said Jones stripped said vessel of her sails and loose rigging, and towed her up the South Branch when she was soon after frozen in, and when she remained without any person in the actual charge of her until the next Spring, that during that Winter, her cabin was broken open and furniture belonging to the vessel stolen therefrom, &c. last. And the deponent further says that this suit is brought by said Constable

upon a check. That said check was given for the sum claimed by said plaintiff to be due to him as such Constable of said County under said attachment writ. That soon after said suit was commenced & about a month thereafter, but whether before or after judgment if any therein this deponent cannot now recollect. He settled and paid the amount due the plaintiff in the suit, and all the costs except those of said plaintiff. That he the said plaintiff then claimed that there was Seventy Dollars or thereabouts due him for his fees, which this defendant refused to pay. That to enforce said costs said plaintiff undertook to sell said vessel, and thereupon this deponent gave him the check for the amount claimed by him, and that the only consideration therefor is the amount claimed by said plaintiff for his fees under said attachment. That as near as this deponent can recollect the amount claimed in the attachment suit was about Sixty Dollars, due the plaintiff therein. That said Jones is now Captain of the Experiment a Schooner plying between Kalamazoo and Chicago. That said Schooner is expected in in about a week or ten days. That she left this port last week. That this deponent saw said Captain shortly before he left

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port and told him he wanted him in this case, that he replied he could not stay, and before this deponent could get out a subpoena forthwith it served upon him he had left port. That subpoena was issued in this cause for said Jones on Tuesday last as this deponent is advised by his Counsel W. T. Burgess and placed in the hands of the Sheriff of this County for service. That this application for Continuance is not made for delay, but that justice may be done.

Sworn to & Subscribed

J. H. Eames

before me this 9th day
of October A.D. 1857

Moses Hallett

Notary Public

thereupon moves the Court for a continuance of this cause, which motion being resisted by the plaintiff is denied by the Court and the defendant then and there excepted to the ruling of the Court upon the motion which was noted.

And that afterwards and on the ninth day of October 1857, during the same September Term, this cause came on for trial, and by agreement of parties, was submitted to the Court. And the said plaintiff introduced, and read in evidence to the Court, a certain Check in the words

and figures following viz.

Chicago Jan 9. 1855

E. H. Huntington Esq. Pay to J. H. Eames
or bearer One Thousand & Nine 20/100
Dollars, and charge the same to account of
\$109.20 - J. H. Eames

And the defendant admitting presentment
refusal to pay and notice thereof, the Plt
closed his case.

And then the defendant in-
troduced David C. Blatter, who being duly
sworn testified that he was a Justice of the
Peace of Cook County, in the City of Chicago
and was during the year 1854 that a suit
was commenced before him by Attachment
of which the following are the entries made
upon his Docket therein from time to time
the witness read from his docket as
follows, to wit.

Edgar M. Doalittle asst

Att

+ Andrew Miller

vs

Attachment

James H. Eames Demand \$91.86

Justice's fees

aff't 25, writ 75 doc

20, Eng 2, writs 25, 2'

Writs per 100 Judgt 25,

Ex 25. = 2.95

On oath of Plaintiff made pur-

suant to Statute, writ of attachment

issued 23rd November 1854 return-

able 1st December at 9 o'clock AM.

to Const. Hennessy, Writ 23rd Const-

Return writ executed by attaching the

25 Const fee
 50.
 1 mile .05
 Making raised
 8 days 16.00
 2.95
 \$19.50

Schooner Baltic with sail rigging &c.
 trading to Capt'n & Owner Eames,
 Decr 1. came tried & Judgt rendered
 against debt for Debt \$91.86
 Costs 19.50
 Order of sale issued Dec. 12. 1854

The witness further stated that the costs on the margin, are the costs taxed by him at the entry of the Judgt. That the plaintiff in this case was a constable of this County at that time, that he issued to him the attachment and the order of sale, issued after rendering Judgt. that he had searched for said attachment and order of sale but could not find them, that they were mislaid. That such search had been made by ^{him} that day with reference to his duty. That he was not certain that the order of sale had ever been returned, as there was no entry on his docket, but if so he could not find it. That his costs had all been paid by the defendant. That the writ of attachment was in the ordinary form and returnable as stated in the Docket Entry. and the order of sale was in the ordinary form, and directed the sale of the Baltic to satisfy the debt and costs taxed.

Eames I. Knott a witness

produced by the defendant and sworn testified. That he was the Attorney for the plaintiff in the suit entered on the Docket of said Justice & alluded to by said witness Blatter. That after the judgment was rendered, the defendant Eames paid him the debt in full, for which judgment was rendered, but he did not remember having informed Hennessy of the fact. nor did he direct the order of sale to be returned; That he was afterwards present at an interview between the said parties to this suit at his office where the check produced by the Plff was made. That the said Hennessy claimed to be entitled to the amount of said check for his fee as constable in said attachment suit and for his services and expenses in looking upon and keeping the Schooner Bullie for forty eight days. That said Eames denied that he was entitled to any such fee or had kept the vessel for that length of time, and was willing to pay him about sixteen dollars. Hennessy was threatening either to sell the vessel for his fee, if Eames would not pay them, or to perfect a sale he had already made. Witness thought from what was said that there had been a sale of the vessel & that Eames was the purchaser but was not certain. Eames made out a check for the amount and handed it over saying

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at the same time. that he gave it under protest,
+ should stop the payment of it. Hennessy
then refused to take it, and it was torn up.
After some more conversation of the same char-
acter, Barnes insisting that his claims for
keeping the vessel were not legal, and Hennessy
insisting upon them before he would give up
the vessel, Barnes finally drew this check, the
one presented in evidence & Hennessy gave
up his claims to the vessel. Witness thinks
that some writing to that effect was drawn
up but does not know what its contents were.
it might be a bill of sale from Hennessy
to Barnes. Witness before this had told
Hennessy that the debt and costs except his
were paid.

Hennessy claimed the amount of
the check for his fees in the attachment
suit, and for his services and expenses in
putting a man in charge of the vessel in
the Chicago River in the city of Chicago from
the time of the commencement of the attach-
ment suit, to the time of the settlement.

This was all the evidence in the
cause, and the Court having heard the
evidence, and arguments of Counsel took
the case under advisement.

And now on
this day of November & during this

November Special Term A.D. 1857 of this Court, again came the parties by their counsel, and the Court now here, being fully advised in the premises finds the issues in this case for the Plff and assesses his damages at the sum of

to which finding the defendant then and there excepted. And the said defendant thereupon moves for a new trial which motion is overruled and denied by the Court, to which ruling the said defendant then and there excepted.

And inasmuch as the said several matters and things do not appear of Record to that end the said defendant tenders now here in open Court, this his Bill of Exceptions, to be signed and sealed by the Judge of this Court, and it is so accordingly done this day of November A.D. 1857—

John M. Wilson Clerk

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And afterwards to wit on the Twenty
third day of January in the year last
aforesaid the said defendant by his said
Attorney filed in the office of the Clerk
of said Court his Appeal Bond in
the words and figures following to wit,

In the Cook County Court of Common Pleas
Thomas Hennessy
vs } Asst.
James H. Canus }

State of Illinois }
County of Cook ss.

Know all men by these presents, that We
James H. Canus as principal and S. G.
Sutherland as his Surety, are held and
firmly bound unto Thomas Hennessy in
the penal sum of Three Hundred Dollars
for the payment of which well and truly
to be made unto the said Thomas Hennessy
his heirs Executors administrators or assigns
we do bind ourselves, our heirs Executors
& administrators jointly severally and firm-
ly by these presents, Signed Sealed & dated this 31st
day of December AD. 1857 The condition of this
obligation is such that whereas at the
November Special Term of said County
CD. 1857 the said plaintiff by the judgment
and consideration of said Court recovered

against said Camer in the above entitled
 suit, the sum of One Hundred and twenty
 seven Dollars + cents for his damages
 and also his costs in that behalf ex-
 pended, from which judgment the
 said Camer hath prayed an appeal
 to the Supreme Court of said State, which
 hath been allowed by the Court on his filing
 Bond as required by law.

Now therefore if
 the said Camer shall prosecute his said
 appeal to effect and without delay and
 shall pay the judgment costs interest
 and damages in case the said judg-
 ment shall be affirmed then the above
 Bond to be void, or otherwise to remain
 in full force, J. H. Camer

Seal

Seal

Seal

Seal

Seal

Seal

Seal

Seal

Seal

Seal

Seal

Seal

Seal

Approved

J. G. Sutherland

John Johnson

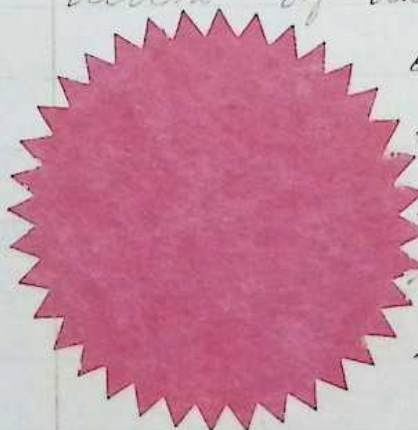
Judge etc.

State of Illinois }

County of Cook }

ss. I Walter Kimball
 Clerk of the Cook County Court of
 Common Pleas within and for said
 County and State do hereby certify that
 the above and foregoing is a full and
 true transcript of the papers on file in

my office and the proceedings entered
of Record in said Court in the case in
which Thomas Kennedy is plaintiff
and James H Eames defendant, in an
action of assumpsit.



In Testimony Whereof I hereunto
subscribe my name and affix
the Seal of said Court at the
City of Chicago in said County
the 5th day of March AD 1868
Walter Kimball Clerk

11 7 1881 Thomas H. H. H.

Thomas H. H. H.
or
James H. H. H.

Transcript

Fees for Transcript paid
McKimber \$8.00
Clerk

In the Supreme court of the
State of Illinois - For the
Third Grand Division -
Of the April Term A.D. 1858

James H James
Appellant
vs

Thomas Hennessy
Appellee

} Appeal from the
Cook County Court of
Common Pleas -

And now comes the said
appellant by his Attorney William T.
Bryce, and says that in the record
and proceedings aforesaid and also in
giving the judgment aforesaid there is
manifest & material error in this

1 That the court refused the motion
made on the 9th Dec. 1857 for the con-
tinuance of the cause.

2 That the court ^{below} found the issues
in the cause upon the evidence before
~~for the appellee~~ under the pleadings for
the appellee, whereas the same should
have been found for the appellant.

3 That the court below refused the
motion for a new trial, and awarded

judgment upon the aforesaid finding
for the said Appellee -

4

That the judgment of the Court
below was for the appellee against the
appellant whereas it should by the
law of the land have been for the ap-
pellant against the appellee

And the said appellant prays
that the judgment aforesaid for the
errors aforesaid & other errors in the
records and proceedings aforesaid may
be reversed annulled & altogether
held for nothing & that he may be
restored to all things which he hath
lost by occasion of the said judgment &

W. J. P. Dwyer
Atty for Appt

In nullum est enatum

Seates for Defendant

177-20
James H. Ennis
App^l
vs

Thos. Hurnsey
App^l

Trans: &
Asst Enos

Filed April 21, 1838
Leland
clerk

85/pd clerk

Mr. J. P. Bump
for app^l