

No. 12654

Supreme Court of Illinois

Swift, et al.

vs.

Green, et al

1/5 15

Richard H. Swift

George Green

175

12654

1858

X

Referred

1.
United States of
North America
State of Illinois
County of Cook

31

Shas before the Honorable
George Maniera Judge of the
Fourth Judicial Circuit of the
State of Illinois and sole
presiding Judge of the Circuit
Court of Cook County in said
State at a Special Term thereof
begun and held at the Court
House in the City of Chicago
in said County on the Second
Monday (being the Eleventh Day)
of January in the year of our
Lord One Thousand Eight
Hundred and fifty Eight
of the independence of the said
United States the Eighty Second
in pursuance of an order of this
Court made and entered of record
at the last term being
appointing a Special Term
of the Court in accordance
with the Statute in such case
made & provided.

Present

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Sam George Manierre
Judge of the Judicial Circuit
John L Wilson Sheriff
of Cook Co
Charles Mann States
att'y
Witness
H. M. Church Clerk

Be it Remembered to wit: That
on the 31st day of December AD
1857. there was filed in the office
of the Clerk of the Circuit Court
of Cook County aforesaid a certain
process for demanding which is in
the words and figures following to wit:

Edw. C. Circuit Ct
George Green John Mean
& Ryan Rice Copartners under
name of Green Mean & Rice

or
Richard D. Smith, Lyman
P. D. Smith & James J. Schuster
Copartners under name of "R. D.
Smith Brother & Schuster"
H. M. Church Clerk

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Please issue Writ in above
Cause returnable to the Evening
Next Term

Dam: \$500.⁰⁰

Chicago Dec 31. 1883

Yours &c
G. H. (Clerk) M. Thompson
Suff. Atty.

And afterwards to wit On the 31st
day of December A.D. 1883 there
issued out of the office of the
Clerk of the Circuit Court of said
County certain writs and commands
called summonses which said writs
is in the words and figures
following to wit:

State of Illinois
County of Cook

The Clerk of the State of
Illinois to the Sheriff of said
County - Greeting:

We command you
that you summon & return to
Jesse Lyman D. Smith & James
J. Johnston Co partners under
name of J. L. Smith Bros and
Johnston if they shall be found

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a joint decree, 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 Second Monday of
 January next, to answer unto
 George Greene John. Meane
 & Ryman Rice Co partners
 under the name of Green Meane
 & Rice in a plea of Infringement
 in the case in premises to the
 damage of the said Plaintiff
 as is said in the term of
 Five Thousand Dollars.

And have you then and
 there this said, with an
 endorsement thereon, in what
 manner you shall have
 executed the same

Witness William L. Chance
 Clerk of our said Court
 and the seal thereof at
 Chicago aforesaid this 3rd
 day of December A.D. 1857
 Wm L Chance
 Clerk



And in the Lack of the last
mentioned and foregoing writ
of process appears endorsement
which are in the words and
figures following to wit:

Received in reading to the
^{of J. H. Smith and J. H. Smith} the other
defendants not found in any copy
of the same the defendants, the
31st day of December
1857

John Wilson
By George Thompson Deputy

Filed January 14, 1858
John Church
Clerk

And afterwards to wit on the
31st day of December A.D. 1857
there was filed in the
Office of the Clerk of the
Circuit Court aforesaid a
certain Security for Costs which
is in the words and figures
following to wit:

Good Circuit Court

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George Green John
Hew & Lyden & Co
Partners under the
name of "Green & Co
Office

advs
Richard B. Smith
Lyman E. Smith &
James S. Johnston
Co-partners under name
of "R. B. Smith Brothers &
Johnston

May 1857

I do enter myself
Securing for costs in this
Cause & acknowledge myself
bound to pay all costs which
may accrue in this action
Either to the opposite party
or to any of the officers of
this Court in pursuance of
the laws of this State

Chicago Dec 21 1857

J. H. Adams

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And afterwards to wit: on
the 1st day of December A.D.
1857 there was filed in the
office of the Clerk of the
Circuit Court of Cook County in
the State aforesaid a certain
Declaration which is in the
words and figures following
to wit:—

Cook County Circuit Court
Of the January Special Term
A.D. 1858:

State of Illinois
County of Cook

George Greene John
Heare & Byron Rice Copartners
under the name of Greene
Heare & Partners in this
Suit by G. W. & J. A. Thompson
their Attorneys Complain of
Richard & Smith Lyman &
Smith & James J. Johnston
Copartners under the name
of J. & Smith Brothers and
Johnston " Defendants of a
plea of Inassumpsit on the case
on promises:—

Further Whereas, The said
 Defendant heretofore, to wit:
 on the first day of December
 in the year of Our Lord one
 thousand Eight hundred
 and fifty seven at Chicago
 to wit, at said County of
 Cook made their certain
 Draft or order in writing
 called a Certified Check or
 other instrument in writing
 bearing date the year & days
 aforesaid and then and there
 delivered the same to one J. G.
 Adams in & by which said
 Draft or order in writing
 the said defendants by the name
 & style of R. H. Swift Brothers
 and Johnston promised to pay
 said J. G. Adams or order
 three hundred dollars
 payable in currency to the
 bearer thereof for account of
 Certified Checks and the
 said J. G. Adams then
 endorsed & delivered the same
 to the said Plaintiffs who
 are still the lawful holders or
 bearers thereof. By means

9. whereof & by force of the law the
said defendants became liable
to pay said plaintiffs said
sum of money in currency
mentioned in said instrument
in writing a certified check
and being so liable in
consideration thereof then
and there undertook and
promised to pay the same
to said plaintiffs according to
to the tenor and effect thereof
of the endorsement aforesaid
to wit at the place aforesaid
and the said defendants
have hitherto wholly refused
to pay the said plaintiffs the
said sum of money in currency
according to the tenor & effect
of said sum of money certified
check or instrument in writing
although the same was
afterwards to wit on the 3rd
day of December A.D. 1857
duly presented to said
plaintiffs for payment whereby
by force of the law the said
defendants became liable to
pay said plaintiffs said

Check or instrument in writing
 in money and being so liable
 in Consideration thereof then and
 there undertook & promised to
 pay the same in money
 to said Plffs. to wit at the
 place aforesaid,
 And also in that whereas
 the said Defendants heretofore
 to wit on the first day of
 December A D 1857 at
 Chicago, to wit. at said
 County of Cook made their
 certain instrument in writing
 in the words and figures
 following that is to say:

"
 No 208.

H. H. Swift Brother and
 John T. M. i-

Chicago 1st December 1857
 Pay A. G. Adams in order
 Three Hundred dollars
 payable in Currency to the
 bearer hereof for account
 of Certified Checks
 \$300⁰⁰

H. H. Swift Brothers
 John T. M. for H. H. Swift

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and then and there delivered
the same to J. B. Adams in and
by which said instrument in
writing the said Adams
promised to pay said Adams
in order on demand thereof
three hundred dollars in
currency to the bearer of said
instrument in writing and
the said J. B. Adams then
endorsed and delivered the
same to the said Ruffs
who are still the bearers
thereof by means whereof
by force of the Statute
the said defendants
became liable to pay the
said instrument in writing
to the said plaintiffs and being
so liable in consideration thereof
then and there undertook &
promised to pay the same
to said Ruffs on demand
according to the legal
effect & tenor thereof & of the
endorsement aforesaid to
wit, at the place aforesaid
and the said defendants
were hitherto voluntarily

refused to pay the said
 Pliffs the sum of money,
 in currency mentioned in
 said instrument according
 to the true and effect
 thereof & of the endorsement
 aforesaid although the
 same was to wit in the
 31st day of December A.D.
 1857 duly presented to said
 defendants and the payment
 thereof demanded
 Whereby and by force of
 the law the said defendants
 became liable to pay the
 said Pliffs the sum and
 value of said currency
 mentioned in said instrument
 in writing, in money, and
 being so liable in consideration
 thereof then and there
 undertook & promised to
 pay the same in money to
 the said Pliffs to wit
 at the place aforesaid

And whereas also the
 said Defendant, afterwards
 to wit in the 31st day

of December in the year
 of Our Lord one thousand
 Eight Hundred and
 fifty seven to wit, at the
 County aforesaid, became and
 were indebted to the said
 Plaintiff in a large sum
 of money, to wit, the sum
 of Five Hundred Dollars
 of lawful money for the
 work and labor, care and
 diligence attention and
 attendance of the said
 Plaintiff, by the said Plaintiff
 before that time done and performed
 custom and given in and about the
 goods, chattels, wares, ~~and~~ machinery
 property, premises, possessions and
 business of the said Defendants and
 at the special instance and
 request of said Defendants and
 also for divers materials and
 other necessary things by the said
 Plaintiff before that time found
 furnished, provided, used and
 applied in and about that work
 and labor for the said Defendants
 at the like special ~~request~~ instance
 and request of said Defendants

and being so indebted to the said
 Plaintiffs the said Defendants
 in Consideration thereof, afterwards,
 to wit: on the same day, and
 year, and at the place aforesaid
 undertook, and then and there
 faithfully promised the said Plaintiffs
 well and truly to pay to said
 Plaintiffs said sum of money
 last mentioned, when the said
 Defendants should be thereunto
 afterwards requested.

And whereas, also, afterwards
 to wit: on the same day and year
 and at the place aforesaid
 in Consideration that the said
 Plaintiffs had before that time
 done performed bestowed and given
 other work and labor, care and
 diligence, attention and attendance
 of the said plaintiffs in and
 about the goods, chattels, wares
 machinery, stock, business
 possessions and concerns of the said
 Defendants at the request of said
 Defendants and had also at the
 like special instance and request
 of said Defendants before that time
 year, furnished provided and

applied divers other materials and necessary things in and about the said last mentioned work and labor of the said Plaintiffs. The said Defendants undertook, and then and there faithfully promised the said Plaintiffs well and truly to pay to the said Plaintiffs so much money as the last aforesaid work and labor and materials of the said Plaintiffs at the time aforesaid, were reasonably worth, when said Defendants should be thereunto afterwards requested; and the said Plaintiffs aver that the same, at said time, were reasonably worth the further large sum of Five Hundred Dollars of like lawful money, at the time and place aforesaid whereof the said Defendants afterwards to wit, at the time and place aforesaid, had notice.

And whereas, also, the said Defendants, afterwards, to wit, on the same day and year and at the place aforesaid, became and was indebted to the said

Plaintiffs in a large sum of money
 to wit, the sum of Five Hundred
 Dollars, of lawful money, for
 divers goods, wares and
 merchandize, by the said Plaintiffs
 before that time sold and delivered
 to the said Defendants and at
 the Special instance and request
 of the said Defendants and
 being so indebted to the said
 Plaintiffs the said Defendants
 in Consideration thereof, afterwards
 to wit, on the same day and year,
 and at the place aforesaid,
 undertook, and then and there
 faithfully promised the said
 Plaintiffs well and truly to pay
 to the said Plaintiffs the said
 sum of money last mentioned, when
 the said Defendants should be
 thereunto afterwards requested

And Thomas also.

afterwards, to wit, on the same
 day and year and at the place
 aforesaid, in Consideration that
 the said Plaintiffs had before
 that time at the like Special
 instance and request of the said

Defendants sold and delivered
 to the said Defendant divers
 other goods, wares and merchandise
 of the said Plaintiffs the said
 Defendants then and there undertook
 and faithfully promised the said
 Plaintiffs that the said Plaintiffs
 Defendants would well and truly pay
 to the said Plaintiffs so much money
 as the last aforesaid goods wares
 and merchandise, at the time
 of the sale and delivery thereof
 were reasonably worth, when the
 said Defendants should be
 thereunto afterwards requested
 and the said Plaintiffs were
 that the said goods wares and
 merchandise last mentioned, at
 the time of the sale and
 delivery thereof were reasonably
 worth the further large sum of
 money, to wit, the sum of Five
 Hundred dollars, of like lawful
 money aforesaid, to wit, at the
 place aforesaid, when the said
 Defendants appeared in the
 same day and year and at the
 place aforesaid had notice —

And whereas, also, the said
 Defendants afterwards to wit
 on the same day and year
 and at the place aforesaid
 were indebted to the said
 Plaintiffs in the further large
 sum of money to wit, the sum
 of Five Thousand Dollars, of like
 lawful money as aforesaid for money
 before that time lent and advanced
 by the said Plaintiffs to the
 said Defendants and at the
 like request of the said
 Defendants And for other money
 by the said Plaintiffs before that
 time paid, laid out, and
 expended for the said Defendants
 and at the like request of
 the said Defendants And for
 other money by the said Defendants
 before that time had and
 received to and for the use of the
 said Plaintiffs. And for other
 money before that time and then
 due and owing the said
 Plaintiffs for interest upon and
 for the forfeiture of divers
 other sums of money before that
 time and then due and owing

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from said Defendants to said
 Plaintiffs and being indebted
 the said Defendants in consideration
 thereof, afterwards, to wit, on the
 same day and year, and at the
 place aforesaid understood and
 then and there faithfully
 promised the said Plaintiffs
 well and truly to pay unto the
 said Plaintiffs the said several
 sums of money in this Count
 mentioned, when the said Defendants
 should be thereunto afterwards
 required.

And whereas, also,
 the said Defendants afterwards
 to wit, on the same day and
 year and at the place
 aforesaid, accounted with the
 said Plaintiffs of and concerning
 divers other sums of money, before
 that time due and owing from the
 said Defendants to the said
 Plaintiffs and then and there
 being in arrears and unpaid
 and upon such accounting
 the said Defendants then and
 there were found to be in arrears
 and indebted to the said

Plaintiffs in the further large sum
 of money, to wit, the sum of Five
 Hundred Dollars, of like lawful
 money as aforesaid. And being
 so found in Verdict and indebted
 to the said Plaintiffs the said
 Defendants did Consideration
 thereof, afterwards, to wit, on
 the same day and year and
 at the place aforesaid, did then and there faithfully
 promise the said Plaintiffs
 well and truly to pay unto
 the said Plaintiffs the said
 sum of money last mentioned
 when the said Defendants
 should be thereunto afterwards
 requested -

Never theless, the said
 Defendants (although after
 requested &c) have not yet paid
 the said several sums of money
 above mentioned, or any or either
 of them, or any part thereof
 to the said Plaintiffs but to
 pay the same or any part thereof
 to the said Plaintiffs the said
 Defendants have hitherto altogether
 refused and still do refuse to

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the damage of the said Plaintiff
of Five Hundred Dollars and
therefore the said Plaintiff's
bring suit &c

J. H. C. J. H. Thompson
Plaintiff's Attorneys

Copy of Instrument and Account
due on.

" No 208

R. R. Swift Brother & Johnston

Chicago 1st December 1887

Pay J. H. Adams or order Three.

Hundred Dollars, payable in currency
to the Cashier for account of
Certified Checks

\$ 300⁰⁰ R. R. Swift Brother & Johnston
per R. C. Wright

(Endorsed)

"Pay Greene, Meane & Rice or order
without Recourse

J. H. Adams

R. R. Swift Br. & Johnston
To Greene Meane & Rice

I money had & rec \$ 500.00

" money paid paid out & expended 500.00

" money sent & advanced 500.00

" acct. stated 500.00

And afterwards to wit: on
the 16th day of January and
1858 it being one of the days of
the regular January Special Term
of said Court for said year.
The following coming after proceedings
was read and entered of Record therein
to wit

George Greene John Mann
@ Bynn. Rice

Richard H. Swift. Lyman
P. Swift @ James J
Johnston

This day came the said
Plaintiffs by their attorneys and
the personal service of process &
summons issued in this cause
having been had on said defendants
Richard H. Swift Lyman P. Swift
and James J Johnston, and then
being three times solemnly called
came not nor does any person
for them but herein they make
default which on motion is
ordered to be taken and entered of

And afterwards to wit on the 16th
day of January A.D. 1857 there was
filed in the office of the Clerk of the
Circuit Court aforesaid a certain
original instrument of writing which
is in the words and figures
following to wit:—

No 208

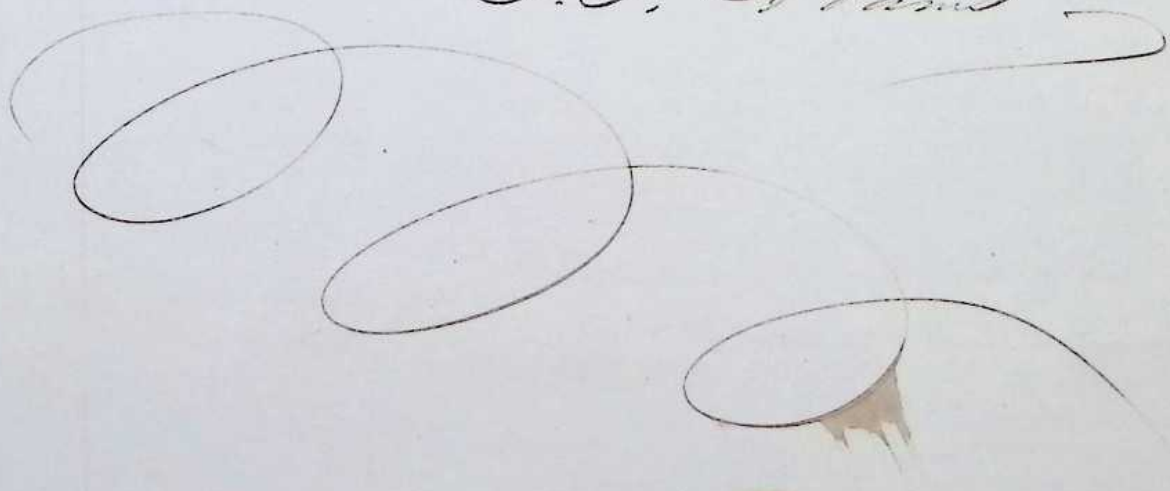
R. H. Swift, Brother & Johnston
Chicago 1st December 1857

Pay J. G. Adams in order
Three Hundred Dollars payable in
Currency to the bearer hereof for
Account of Certified Check

P 300⁰⁰ R. H. Swift, Brother & Johnston
per R. H. Swift

Enclosed in the back

Witnessed
J. G. Adams



I Record Therefore said plaintiffs
ought to have and recover of
said defendants their
damages herein sustained by
occasion of the premises and
the Court after hearing the
allegations and proofs submitted
by the said plaintiffs and
being fully advised in the
premises assesses said plaintiffs
damages herein to the sum of
~~Three Hundred~~ Ten Hundred
and ninety one Dollars and
Twenty Five Cents

And I do hereby certify that
said plaintiffs do have
and recover of said
defendants their damages

\$291 ⁷⁵/₁₀₀ of ~~Three~~ Ten Hundred and
Ninety One Dollars and
Twenty Five Cents, in form as
aforesaid assessed together with
their Costs and Charges by them
in this behalf expended and
have Execution therefor.

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And afterwards I met in the
 16th day of January A.D. 1858
 there was filed in the office
 of the Clerk of the Circuit Court
 of said a certain original
 instrument of writing which is
 in the words and figures
 following I wit:

\$200.

Wm. H. B. Brother and
 John H. B.

Chicago 1st December 1857
 Pay \$200.00
 Hundred Dollars payable in
 Currency to the Bearer or Bearer
 for account of Certified Checks

\$500.00 Wm. H. B. Brother and John H. B.
 per J. H. B.

Endorsed

Without Recourse
 J. H. Adams

And afterwards I met in the
 20th day of February A.D. 1858
 there was filed in the office

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And afterwards to wit in the
24th day of January A.D. 1858
it being the 24th day of the month
of the Term the Term of said
Court for said year the following
among other proceedings was had
and entered of Record in said Court
to wit:

May 24
1858

George Green, John Mann
vs
Richard R. Swift, Lyman P.
Smith and James S.
Johnson

Following came the
said defendants and from an
appeal of this cause to the
Supreme Court of the State of
Illinois, which is granted
and one week given to file
Bond in the penal sum of Six
Hundred Dollars with and
at Higgins and James S.
Hew as sureties conditioned
according to law

And afterwards to wit in the
2nd day of February A.D. 1858

There was filed in the office
of the Clerk of the Circuit Court
a certain certain certain certain
which is in the number and
figure following to wit:

That we of Edward H. Smith
Herman P. Smith, James S. Schuster
Samuel S. Higgins and James S. Lee
are held and firmly bound
unto George Green, John Hearn
and Henry Rice in the bond
sum of Six Thousand Dollars
for payment of which sum
and truly to be made, to said
George Green, John Hearn & Henry
Rice their heirs or assigns, we
bind ourselves jointly and
severally our heirs, Executors and
administrators, firmly by these
present, Sealed with our seals
and dated this Twenty Eighth
day of January A.D. 1858

The condition of this obligation
is such, that whereas, in a
certain suit in the Circuit Court
of Cook County in the State of
Illinois wherein said George

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Then John Moore and William
 Rice were Plaintiffs and said
 Richard H. Swift, Lyman P.
 Swift and James T. Roberts
 were Defendants. The said
 Plaintiffs on the Tenth
 day of January A.D. 1858
 recovered a judgment against
 the said Defendants for the
 sum of Five Hundred and ninety
 one Dollars and thirty Five
 Cents damages, besides costs
 of Suit from which said
 Judgment said Defendants have
 prayed an appeal to the
 Supreme Court of the State
 of Illinois which appeal has
 been granted upon said
 Defendants giving this Bond
 for the said above
 burdened Defendants shall
 well and truly pay the Judgment
 costs interest and damages
 in case the said Judgment
 shall be affirmed by said Supreme
 Court, and shall duly prosecute
 their said appeal then the
 above obligation to be void
 otherwise of force

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Our said Court this 8th day
of March A.D. 1858
J. M. Church
Clerk

Superior Court. State of Illinois
April Term A.D. 1858
Richard H. Swift, Lyman P.
Swift & Lucius S. Shusterman
v.
George Green, John Moore
& Byron Rice

And now come the said Richard
H. Swift, Lyman P. Swift & Lucius S. Shusterman
by Scott McAllister Smith & Peabody, their attys
and say that in the Record and Proceedings
aforesaid and in the granting of the Indigent
aforesaid, there is manifest error in this
that said Indigent is rendered against
all of said Parties without any service of
Process upon or appearance for said Lyman
P. Swift, and when no Indigent could be
rendered against him

And the said Richard H. Swift, Lyman

I Swift and James S. Johnston pray that
 that the Judgment aforesaid, for the Errors
 aforesaid, and for other errors in the said Record
 and Proceedings being, may be reversed, annulled
 and holden for naught, and that things may
 be restored to all things which they have lost
 by occasion of said Judgment &c.

Scot. McAllister Secute & Peabody,
 Atty for appellants.

Book Co. Cir. (und)
Geo. Green et al
18
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R. H. Swift et al

11 Dec 116

O'Connor

Boyd

Complete Grand
Voyage of Lewis

April to September

Ch.

P. S. P.

And April 1848
Belmont
Vt.

Geo. S. P.

Oct 1848

State of Illinois, Supreme Court---3d Division

RICHARD K. SWIFT,
LYMAN P. SWIFT, and
JAMES S. JOHNSTON
Appellants.

vs.

GEORGE GREEN,
JOHN WARE, and
BYRON RICE,
Appellees.

} Appeal from the Cook County Circuit Court.

} Abstract of Record.

This was an action of Assumpsit brought by the appellees against the appellants to the special January term 1858 of said court. The return upon the summons dated the 31st day of December 1857 recites a service on Richard K. Swift and James S. Johnston only. As to the other defendant, it was returned "not found."

The declaration contains two special counts but as no questions are raised upon the declaration, an abstract of it may be omitted.

On the 16th day of January 1858 a judgment by default was entered against all the defendants, for the sum of two hundred and ninety one dollars seventy-five cents. The record shows no appearance in court of the defendant Lyman P. Swift.

The rendition of judgment against all the defendants, the defendant Lyman P. Swift, not having been served with process and no appearance having been entered for him is assigned for error.

Points made and authorities cited by the appellants.

It was error to enter the default and take judgment against more of the defendants than were in court, either by service of process or by voluntary appearance.

O'Connor et al vs. Mullen 11 Ill 116.

Davidson et al vs. Bond et al, 12 Ill. Ex.

*Henry McCallie, Jr. Swift & Johnston
Attorneys for Appellants*

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115-15
Superior Court
Richard H. Smith
as
George Green et al

Filed Apr 22, 1835
J. Leland
Clerk

A. K. M. Allen
J. H. Jewell
per A. J. Pitt