

No. 12188

Supreme Court of Illinois

Cole

vs.

Howell

Know all men by these presents, that we
Lyman Cole, William McKay and Hollis
Cummings of the County of Carroll and State
of Illinois, are held and firmly bound unto
Hugh Howell also of the same County and
State in the penal sum of Two Hundred
dollars, current money of the United States
for the payment of which, well and truly to be
made, we bind ourselves, our heirs, executors
and administrators, jointly, severally and firmly
by these presents, Witness our hands and seals, this
28th day of February A.D. 1849.

The Condition of the above obligation
is such that whereas, the said Hugh Howell
did on the 26th day of September A.D. 1848 in
the Circuit Court in and for the County
and State aforesaid, recover a judgment
against the above bounden Lyman Cole
for the sum of ninety eight dollars and ninety
five cents ~~and~~ and for costs and charges
by the said Hugh Howell in and about
this suit expended in the Court and the
Justice Court - from which said judgment
of the said Circuit Court the said Lyman
Cole, has prayed for and obtained an
appeal to the Supreme Court of ~~the~~ ^{Said} State.
Now if the said Lyman Cole shall duly
prosecute his said appeal with effect
and shall moreover pay the amount of the
judgment, costs interest and damages
undened and to be rendered against him
in case the said judgment shall be
affirmed in the said Supreme Court then

the above obligation to be void, otherwise
to remain in full force and virtue
taken, and entered into,
before, me at my Office
in Mount Canoe this 1st
day of March, A.D. 1849
Test

Symon B. ^{junior} ~~Seal~~ ^{Seal}

William M. ^{junior} ~~Seal~~ ^{Seal}

Shells Cummings ^{junior} ~~Seal~~ ^{Seal}

Jacob S. Emmert Clerk Canoe Circuit Court

Endorsements Hays Board No. 2, Col's J Cummings
demanded \$98.40 - May 2^d 1868
Hoyt admitted by reading to Col.
Court Feb 5-4 " 57
50 Service & Mileage 50 Cts Wm Davis
Coral

Carroll County, N

Wm. Downing J. P. 22

Lyman Cole

Nov 1846 5 1/2 days plastering @ \$1.50 per day 8.25
 1847 Jan 28 1 day drawing Rock self & team 1.50
 Feb 4 1/2 " drawing Rock self & team 75
 6th \$9.80 Lent Money 9.80
 13th 14.00 " " 14.00
 April Drawing and laying up 1785 Rails
 and 220 Stakes at \$1.00 per Hundred 20.00
 May 15 1/2 days self and team drawing &
 threshing wheat and drawing it \$1.50 per day 21.25
 £121.80-2

Boarding Hawley 2 1/2 days	37
Boarding Lyman Cole "	37
July Drawing & Laying 160 Raib	1.00
building wall curb and clearing well & Rope	2.50
Making 2 1/2 Rods board fence ^{55 rods} & setting Post	2.00
Repairing 40 Rods of Rod fence	4.00
Harvesting and Stacking 12 acres of Fall Wheat @ 2 per Acre	24.00
Aug 5 th Keeping a Watch over Crops & Keeping the same from being destroyed from May to August	20.00
Drawing and laying up 500 Raib and setting, Drawing 200 Stacks at \$1.00 per team	5.00
Feb 6 th Thrashing and Marketing Wheat	15.60
To Thrashing and Marketing 41 bush Spring Wheat	5.00
5 th Feeding Cattle and tending the same	2.00
Nov 1 st Thrashing 90 bush Oats @ 5 per Bush	4.50
1848 Feb 27-28 Keeping team & teamster	1.50
March 1 1/2 days horses & Wagon	2.25
To three weeks board 150 per week	4.50
Going to Cummings with team Jan 24 by Cash	.75 20.00
To Neck Yoke and Single tra	1.00
To use of Plough & Horse Reapin 2 weeks	1.00

Balance sued for \$98.75

" May 6th 1848 - the suit being called no appearance
of defendant - after hearing the testimony of
the witnesses on the part of the Plaintiff,
Judgement was rendered against the said
Defendant for \$48.13 1/2 and cost of
suit with interest from date "

The above proceeding appear from the transcripts
of the Justice - H. Douing

State of Illinois }
Carroll County }

Pleas in the Circuit
Court of said County before the Hon.
Thomas C. Browne one of the Associate
Justices of the Supreme Court and presiding
Judge of the Sixth Judicial Circuit in said
State.

Hugh Howell } Plaintiff,

vs
Lyman Cole } Defendant.

Be it remembered
that heretofore to wit - on the Thirty first
day of May A. D. 1848 in the Clerk's Office
of said Court was filed a transcript from
the docket of Herman Downing a Justice of the
Peace in and for said County of the above
entitled cause, and on the Twenty fifth day
of September A. D. 1848 at the September
term A. D. 1848 of said Circuit Court in
the records of said Court in said above
entitled cause is the following entry to wit,

Hugh Howell }
vs } appeal

Lyman Cole }

And now at this day came
the said parties by their attorneys - and
by order of Court, a Jury came to try
the issue joined, of good and lawful men
to wit; J. H. Jenkins, John Canble, David
Kingsy, Joseph Smith, George Barnes, S. D.
Hubell, Jr. Strickler, Andrew Fredly, William
Reed, George T. Harris, B. C. Bailey &
H. Edgerly, who being duly elected, tried
and sworn to try the issue joined, and

accepted by the parties - and being charged by the Court not to converse with each other in relation to the matter upon which they are impanelled, nor to speak to any other person upon the subject, and to meet the Court at 8 o'clock to-morrow morning.

And afterwards to wit on the 26th day of September of the term of the Court aforesaid in the records thereof is the following entry to wit,

Hugh Howell }

vs
Lyman Cole }

appeal

And now, the jury impanelled in this cause being called, were present and answered to their names, and the defendant by his Attorney moves the Court to exclude testimony on the part of the Plaintiff to establish his demand, until he had withdrawn his plea of Setoff & bill of particulars filed in the original suit commenced in this Court, which motion is by the Court overruled, to which the defendant excepts - the said defendant then moved the Court to consolidate the two actions, which was overruled by the Court, to which the defendant excepts, and the jury having heard the evidence on the part of the Plaintiff (the defendant declined to offer any) retired to consider of their verdict, and afterwards they came into Court and say, We the jury find the

Defendant indebted to the Plaintiff in the sum of One Hundred fifty eight dollars and nineteen cents - and thereupon the Plaintiff by his Attorney enters a writ of ~~Scire Facias~~ Fifty nine dollars and twenty four cents. Whereupon it is considered by the Court that the said Plaintiff have and recover of the said defendant the sum of Ninety eight dollars and ninety five cents, debt, together with his costs and charges by him in and about this suit expended, both in the Court below and in this Court, and that he have execution therefor.

And afterwards, on the same day last aforesaid, ~~was made~~ in the records of said Court the following entry to wit;

Hugh Stewart

vs.
Lyman Cole

Appeal

And now comes the said defendant, by his Attorney and prays an appeal from the judgment rendered in this cause. Whereupon it is ordered by the Court, that an appeal be granted, upon the defendants filing Bond in the sum of Two Hundred dollars, with George Swiggart as security, conformably to law, in twenty days from the rising of this Court.

The following Bill of Exceptions & affidavit was filed.

Lyman Cole } Circuit Court
vs
Hugh Howell } Appeal.

State of Illinois

Carroll County ss Be it remembered
that at the September Term A.D. 1848
of the Carroll County Circuit Court, before
the Hon. Thomas C. Brune Circuit Judge,
came Hugh Howell by his Attorney into
said Court upon the trial of this case,
brought from before Herman Downing
a Justice of the Peace of said County -
and the said Lyman Cole by his attorney
offered to show to the Court, that an original
suit was then pending in this Court brought
by this defendant against the said Hugh
Howell, which original suit was commenced
and service had upon the said Howell
^{reference to the said Bill of particulars & plea of set-off}
prior to the commencement of this suit
^{reference to the said Bill of particulars & plea of set-off}
before the said Justice also offered to show to
the Court that the Plaintiff in this suit
had filed his plea of Set-off and Bill
of particulars in said original suit - which
Bill of Particulars was the same upon which
this action was founded, which evidence
on the part of the defendant was refused
by the Court - a jury having been
impannelled the defendant subjected to
the introduction of any testimony on the
part of the Plaintiff to establish his demand
until he had withdrawn plea of set-off &
Bill of Particulars filed in the original suit

commenced in this Court - which objections
by the defendant were overruled by the Court.
The defendant moved the Court, founded
upon affidavit, the same on file, that the
actions by Lyman Cole vs Hugh Howell and
Hugh Howell vs Lyman Cole be consolidated,
upon the ground of involving the same question
or items of account, which motion of
the defendant was overruled by the Court;
whereupon the said counsel for the said
defendant, did then and there on the
behalf of said defendant except to the
^{aforsaid} opinion of the said Circuit Court, and
insisted on the said several matters as
an absolute bar to the said action.
And the said Circuit Judge under the
charge and with the directions aforsaid,
left the aforsaid issue and the evidence
~~on trial~~ so given on the trial thereof as aforsaid
to the said Jury - and the Jury aforsaid
then and there gave their verdict for the said
Plaintiff One hundred and fifty eight ²⁹/₁₀₀ dollars,
and ~~and~~ a remittitur for fifty nine ²⁴/₁₀₀ dollars
entered by the Plaintiff, and inasmuch
as the said several matters so offered to be
produced and given in evidence on the part
of the said defendant and by his counsel
aforsaid objected and insisted on, as a bar
to the action aforsaid do not appear by
the records of the verdict in this case, the
said counsel for the said defendant did
then and there propose their aforsaid exception
to the opinion of the said Circuit Judge
and requested him to put his Seal to this

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Bill of exceptions containing the said
several matters so produced and given in
evidence on the part of said Defendant as
aforesaid according to the form of the Statute
in such case made and provided, and
thereupon the said Circuit Judge at the
request of the said Counsel for the defendant
did put his Seal to this Bill of exceptions,
pursuant to the aforesaid Statute in such
case made and provided on the 26th day
of September in the Year of our Lord
One thousand eight hundred and forty eight.

The C. Brown Seal

Endorsed on the back.

Filed September 26th 1848.

Leonard Goss Clerk.

Lymon Cole }
vs }
Hugh Howell } Appeal in Carroll County
Circuit Court.

Hugh Howell }
vs }
Lymon Cole } Circuit Court
September Term
A.D. 1848

This Affiant Lymon Cole
being sworn, says that the above suits involve the
same questions & that the said actions are such as
may be properly joined in the same suit and that
the questions which will arise in both said actions are
substantially the same -

Sworn to, and subscribed
before me this 26th day }
of September A.D. 1848 } Lymon Cole.

Leonard Goss Clerk } Endorsed on the back.

Filed September 26th 1848 - Leonard Goss Clerk

Execution issued Oct 20th 1848, for the aforementioned debt with a *Pro Bill*.

For Plaintiff's Costs	\$29.88 ³ / ₄
Defendants do	16.25 ³ / ₄

Execution returned Dec^r 30th 1848 - with the credit of \$1.00 -

Jan^y 19th 1849 *alias* Execution issued for with additional costs of \$1.98³/₄ -

State of Illinois

Candl County ss

I, Jacob J. Emmert
Clerk of the Circuit in and for said
County do hereby certify the foregoing to
be a true and correct copy from the record
of the proceedings of said Court of all the
entries and orders made by said Court in said
cause of Hugh Howell vs Lyman Cole, and also
a copy of the bill of exceptions & affidavit in said cause
and further proceedings in execution thereof

~~Witness~~ In testimony whereof
I have hereunto set my hand
and affixed the Seal of said
Court at my office in Mount
Carmel this 12th day of February
A.D. 1849

Attest Jacob J. Emmert Clerk

J. Jacob J. Emmert believe that
Rollis Cummings & William McKay are respon-
sible persons and that they would be sufficient
security ^{in an appeal Bond for \$200} for all cost ^{which may accrue} resulting in this cause.
Jacob J. Emmert, Clerk.

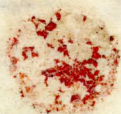
The writ of *habeas corpus* to be issued in this cause, will be made a supersedeas
on the plaintiff in sum entering into bond to the Defendant in sum,
in the penalty of two hundred dollars, with *Abner Cummings*
& *William H. Kay* as sureties, and conditioned as the law directs.

Feby. 19th 1849.

S. H. Heat, C. Justice. Sup. Court.

Joseph Howell
or *Wm Hancock*
Cyprian Cook

Filed March 20. 1849.
William Clark



In the Supreme Court for the
State of Illinois—
Symeon Cole }
vs } Writ of Error from
Hugh Howell } Carroll—

The Plaintiff in Error
says that in the record and
proceedings of the Circuit
Court for Carroll County in this
Cause there is manifest Error in
the following Particulars.

- 1st The Court erred in rendering judgment
against the Plaintiff in Error—
- 2nd The Actions Symeon Cole vs Hugh Howell
& Hugh Howell vs Symeon Cole, should have
been consolidated upon the motion of
the Plaintiff in Error.
- 3rd The Defendant should have been
compelled to set his action & withdraw
his plea of set-off in the suit of
Symeon Cole vs Hugh Howell then pending
and being between the same parties to this
record—
- 4th The evidence of the Plaintiff in error
ought to have been admitted—
- 5th The Court erred in rendering judgment
against the Plaintiff when another suit
was pending between the same parties, in
which the same questions were involved
and wherein both parties had joined
issue— wherefore the Plaintiff in error
prays that said judgment may be re-
versed—

John Wilcox for Plff.

Symon Cole
v.
Hugh Howell
App. of Error

Filed March 20. 1849.
Melan Ct.

Mount Carroll March 8th 1849

Dear Sir,

Enclosed please find a record
in case of Appeal from Justice, Howell
vs Cole. You will find endorsed upon
the record an order by C. J. Treat for
writ of Error & Supersedeas. Please let
the writ & Supersedeas issue immediately
directed to our Clerk & Sheriff Mount
Carroll, Carroll Co. Illinois - in compliance
with order. The Bond, with the
required security you will find within.
To Ck Supreme Court } Yours Truly
Ottawa - } John Wilson
Illinois } Atty. for Appel -

13.
Lyman Cole
vs
Hugh Howell -
Record etc.

Filed etc. Co. 1849.
J. Ireland Ck.

Illinois, ss. }
Clerk's Office of the Supreme Court, }

I hereby Certify, That a
Writ of Error hath issued from this Office, for the
reversal of a judgment obtained by Hugh Howell
against Symon Cole in the Circuit Court of
Carroll County, at the September Term A.D. 1848
in a certain appealed suit from a Justice of the Peace,
~~for~~ which Writ of Error is to operate as a Supersedeas,
& as such is to be obeyed by all concerned.

Given under my hand, & the seal
of said Supreme Court, at Ottawa,
this 20th day of March in the year
of our Lord one thousand eight hun-
dred & forty nine.

W. Leland Clerk of the Supreme
Court 3^d Grand Division.

Supreme Court

Lyman Cole

Hugh Howell

Superior

To June Term 1849

Filed June 1. 1849
S. L. Clark

State of Illinois, Etc.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of *Carroll*—Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Carroll*—county, before the Judge thereof, between *Hugh Howell*—

plaintiff and *Sydney Cole*—

defendant it is said manifest error hath intervened to the injury of the aforesaid *Cole*

as we are informed by *his*—complaint, and we being willing that error, if any there be, should be corrected 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 plaintiff 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 *Second Monday of June*—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. *Samuel A. Treat*
 Chief Justice of our said Court, and the
 seal thereof at Ottawa, this *twentieth* day of
March—in the year of our Lord
 one thousand eight hundred and forty-*nine*.

Kelaud

Clerk of the Supreme Court.

Syman Cole
 by
 Hugh Howell
 Mit. of Error
 To June Term 1849.

Filed Clerk. 20. 1849.
 L. Leland Clerk.

This writ of Error is made
 a Supersedeas as to be obeyed
 accordingly.
 L. Leland Clerk.

State of Illinois, }
 Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF *Carroll* County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the circuit court of *Carroll* county, before the Judge thereof, between *Hugh Howell*, plaintiff

& *Lyman Cole*

defendant it is said that manifest error hath intervened to the injury of the said *Cole*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Hugh Howell*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Hugh Howell* notice, together with this writ.

WITNESS, the Hon. *Samuel H. Treat*
 Chief Justice of our said Court, and the seal thereof,
 at Ottawa, this *20th* day of *March*
 in the year of our Lord, one thousand eight hundred
 and forty-*nine*.

Nelaud

Clerk of the Supreme Court.

13.
Supreme Court
Lyman Cole
vs
Hugh Howell
Sci. Fa.

To Shff. of Canoll Co.

June Term 1849.

By virtue of the within
writ to me directed, I on
this 16th day of May A.D. 1849
in the presence of

Cabingrey

John A. Dushell

I of vision H. of my person of freshetons of said County
gave notice by reading to
the within named
Hugh Howell

John B. Rhodes Sheriff

By Depe Rapps Deftⁿ Sheriff

Sheriff fees

Serving 50
4 miles travel 15
returning 12
87th

Fifth June 1st 1849.
Celand Clk.

No. 13

Sydney Cole

Hugh^r Howell

1849

12/88