

No. 13512

Supreme Court of Illinois

Thatcher.

vs.

Swift.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 9.

Hatcher
vs
Swift

1861.

13512

United States of America
State of Illinois
County of Cook.

S. S.

1
Pleas 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 regular Term of said Cook County Court
of Common Pleas, begun and holden at the Court
House in the City of Chicago in said County, on the
first Monday being the first day of February in the
year of our Lord One Thousand Eight Hundred
and fifty eight and of the Independence of the
United States the Eighty Second. —

Present — The Hon^{ble} John M. Wilson, Judge
Carlos Haven. Prosecuting Atty
John L. Wilson. Sheriff

Attest:

Walter Kimball. Clerk.

Be it remembered that heretofore to wit on
the fourth day of November in the year of our Lord One
Thousand Eight Hundred and fifty seven David C.
Thatcher by R. S. Blackwell his Attorney filed in the
Office of the Clerk of said Court a certain Recipe for
Summons which said Recipe is in words and
figures as follows, to wit.

In the Cook County Court of Common
Pleas, Illinois of the Term of January A.D. 1858

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David C Thatcher

vs

Richard W. Swift

Lyman P Swift &

James S Johnston

Partners under the name
of R W Swift, Brother &
Johnston.

Trespass on the Case upon
promises

Damages 1000 \$ -

The Clerk of said Court will please
issue a summons against the said Defendants at the
suit of the said Plaintiff in the above entitled Cause
directed to the Sheriff of the said County of Cook
and returnable in due form of Law.

R S Blackwell

Attorney for said Plaintiff -

Chicago Nov 4th 1857.

And afterwards to wit on the same day and year
last aforesaid, there issued out of the Office of the Clerk
of said Court, a Writ of Summons in the words and
figures following, to wit -

State of Illinois } S.S.
County of Cook }

The People of the State of Illinois

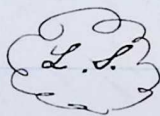
To the Sheriff of said County - Greeting!

We command you that you summon Richard W.
Swift Lyman P. Swift & James S. Johnston if they
shall be found in your County personally to be and
appear before the Cook County Court of Common Pleas

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of said County on the first day of the Term thereof to be holden at the Court House in the City of Chicago in said County on the first Monday of January next to answer unto David C. Thatcher in a plea of trespass on the case upon promises to the damage of the said plaintiff as he says in the sum of One Thousand Dollars. And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball Clerk of our said Court and the seal thereof at the City of Chicago in said County this 11th day of Nov A.D. 1857.



Walter Kimball Clerk

Sheriff's Return.

Served by reading to the within named Richard W. Swift and James S. Johnston the 5th day of Nov 1857. The within named Lyman P. Swift not found in my County the 2^d day of January 1858.

John L. Wilson Sheriff

By John H. Dait Deputy

And afterwards to wit on the said day and year aforesaid came the said David C. Thatcher by his Attorney aforesaid and filed in the Office of the Clerk of said Court his Affidavit and Bond for Attachment in aid, which said Affidavit and Bond are in the words and figures following, to wit

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State of Illinois
Cook County } ss.

In Cook County Court of Common
Pleas, Illinois.

David C Thatcher being first duly sworn upon his Oath deposes and says that Richard K. Swift Lyman P. Swift and James S Johnston partners in trade under the name & firm of R K Swift Brother and Johnston, are justly indebted to this Affiant in the sum of Seven Hundred and fifty Dollars and ninety one Cents (\$750 $\frac{91}{100}$) for money had and received by the said R K Swift Brother and Johnston of this Affiant on the 30th day of October 1857. at and within the County aforesaid, to and for the use and benefit of this Affiant and at their special instance and request, together with ^{legal} interest thereon. that on this day the ^{said} Affiant has instituted a suit by summons against the said R. K. Swift Brother & Johnston in this Court for the recovery of ^{said sum of} money, in the form of an action of trespass on the case upon promises; that the said Lyman P Swift is a non resident of the State of Illinois, to wit, a resident of the State of New York: that the said Lyman P. Swift has lands, tenements and goods & chattels in the said County of Cook & State of Illinois and divers persons are indebted to the said Lyman P. Swift in the said County and State, and this Affiant in view of the facts aforesaid desires an Attachment in aid of his suit aforesaid against

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The Estate and Effects of the said non resident
defendant, Lyman P. Swift directed to the Sheriff
of the said County of Cook and returnable in due
form of Law

Subscribed & sworn to } David C Thatcher.

before me this 4th day of
November A.D. 1857.

Walter Kimball - Clerk.

Know all men by these presents that we
David Thatcher and William Winnecraft are held
and firmly bound unto Lyman P. Swift in the
penal sum of fifteen hundred Dollars, lawful
money of the United States, for the payment of
which said sum, well and truly to be made, we
bind ourselves, our heirs, executors and Administrators
jointly and severally by these presents.

Sealed with our Seals and dated this 4th day of
November A.D. 1857.

The Condition of the above Obligation is
such that whereas the above bounden David C.
Thatcher hath on the day of the date hereof, prayed
an Attachment (in aid of a suit commenced by summons
against the said Lyman P. Swift & others) out of the
Cook County Court of Common Pleas, Cook County
at the suit of the said David C. Thatcher against the
Estate of the ^{above named} ~~said~~ Lyman P. Swift impleaded with
Richard K. Swift and James S. Johnston for the sum

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of Seven hundred and fifty Dollars and the same
 being about to be sued out of said Court returnable
 on the first Monday of January next, to the term of
 the said Court then to be holden. Now if the said
 David C. Thatcher shall prosecute his said suit with
 effect, or in case of failure therein shall well and
 truly pay and satisfy the said Lyman P. Swift all
 such Costs in said suit and such damages as
 shall be awarded against the said David C.
 Thatcher his heirs Executors ^{or} Administrators
 in any suit or suits which may hereafter be
 brought for wrongfully suing out the said Attach-
 ment then the above obligation to be void, otherwise
 to remain in full force and effect.

Signed Seal Delivered	{	David C. Thatcher	L.S.
Impresment of		Wm. W. W. W. W.	L.S.
Clerk			

And afterwards, to wit, on the same day and
 year aforesaid there issued out of the Office of the
 Clerk of said Court a writ of Attachment in
 aid which writ of attachment with the Sheriff's
 return endorsed thereon follows in the words
 to wit:

State of Illinois }
 Cook County } ss.

The people of the State of

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Minois to the Sheriff of the said County Greeting

Whereas David C Thatcher hath complained on Oath to Walter Kimball Clerk of the Cook County Court of Common Pleas, of Cook County, that Lyman P. Swift impleaded in an action of Trespass on the Case upon promises with Richard K Swift and James S Johnston, is justly indebted to the said David C. Thatcher to the amount of Seven Hundred and fifty dollars and ninety one Cents and Oath having been also made that the said Lyman P. Swift impleaded as aforesaid is a non resident of this State, residing in the State of New York one of the United States of America, so that the ordinary process of law cannot be served upon him

And the said David C Thatcher having prayed an attachment in aid of a suit commenced by Summons, and he having given bond and security according to the directions of the Act in such case made and provided - ^{therefore} We ~~ex~~ command you that you attach so much of the estate real or personal of the said Lyman P. Swift to be found in your County as shall be of value sufficient to satisfy said debt and Costs according to the said Complaint; and such Estate, so attached, in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon, according to Law at a term of said Cook County Court of Common Pleas to be holden at Chicago within and for the

County of Cook on the first Monday of January next, so as to compel the said Lyman P Swift to appear and answer the Complaint of the said David C Thatcher; when and where you shall make known to the said Court, how you have executed this Writ. And have you then and there this writ.

Witness Walter Kimball

Clerk of our said Court and the Seal thereof at Chicago in said County this 4th day of November in the year of our Lord One Thousand Eight Hundred and fifty seven.

L. S.

Walter Kimball Clerk.

By virtue of the within writ of attachment and one other N^o 14,995 issued from the ^{same} said Court in favor of William Worcester Plaintiff and against the same Defendants I did, this 4th day of November 1857. levy upon the following described property, to wit. The North two thirds of all that certain part of Lots Seven (7) and Eight (8) Block forty (40) in the original town of Chicago, which is bounded on the East by LaSalle Street and on the North by the South line of the Alley which runs East and West through said Block and which by a recent Survey measures sixty four (64) feet nine (9) inches more or less on LaSalle Street on

9 which it fronts and is of the same width front to rear and is One hundred and Sixty (160) feet deep more or less, And also the interest of the said Lyman P Swift in the West half of the South East quarter of Section Seventeen (17) Township Forty (40) North Range Fourteen (14) East of the Third Principal Meridian in the said County of Cook.

John L Wilson Sheriff
By John H Bart Deputy.

Afterwards to wit on the fourth day of January in the year of our Lord One Thousand Eight Hundred and fifty eight the said David C. Thatcher filed in the Office of the Clerk of the said Court his Declaration and Copy of Account which said Declaration and Copy of Account follows in the words and figures, to wit.

State of Illinois
Cook County - J. J.

In the Cook County Court of
Common Pleas Of the Term
of January A.D. 1858.

Richard H Swift James Johnston and
Lyman P Swift partners in the Banking Exchange
and Mortgage business in the City of Chicago in
said County of Cook under the name style and

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firm of R K Swift Brother and Johnston were
respectively summoned and attached to answer
unto David C Thatcher of a plea of trespass on the
case upon promises and thereupon the said
Plaintiff by Robert S Blackwell his Attorney
Complains

1. For that whereas the said
Defendants heretofore to wit on the 30th day of October
A D 1857. at the County aforesaid in their firm name
aforesaid by Robert C. Wright their Agent, who
signs by the name of R C Wright, made executed
and delivered to the said Plaintiff by the name
of D C Thatcher their certain instrument in
writing of that date which instrument is in the
words and figures following, that is to say,

"N^o 42 R K Swift Brother & Johnston

Chicago October 30th 1857.

"Received from D C Thatcher Seven hundred
and fifty $\frac{9}{100}$ dollars payable in currency to
the bearer hereof for account of Certified Checks.

"\$ 750 $\frac{9}{100}$ R K Swift Brother & Johnston
per R C Wright "

And the plaintiff avers that afterwards
to wit on the day and year aforesaid he demanded the
said sum of Seven hundred and fifty and $\frac{9}{100}$ Dollars
in currency from the said Defendants, which said sum
they the said Defendants neglected and refused to
pay to the said Plaintiff or any part thereof, whereby

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according to the tenor and effect of the said instrument in writing and the Statute in such case made and provided, the said Defendants became liable to pay to the said Plaintiff the said Sum of Seven hundred and fifty Dollars and ninety one cents in the lawful gold or silver coin of the United States of America. And being so indebted the said Defendants in consideration of the premises afterwards to wit on the day and year last aforesaid at the County aforesaid undertook and then and there faithfully promised to pay him the said Plaintiff the said Sum of Seven Hundred and fifty Dollars and ninety one Cents (together with legal interest thereon) when they the said Defendants should be thereunto afterwards requested Yet the said Defendants though often requested so to do, have not as yet paid to the said Plaintiff the said Sum of money above demanded or any part thereof but so to pay the same have hitherto wholly neglected and refused and still do refuse.

2 And for that Whereas heretofore, to wit on the thirtieth day of October in the Year ^{of our Lord} One Thousand Eight Hundred and fifty seven, at Chicago to wit at County of Cook, the said Defendants were indebted to the said Plaintiff in a large Sum of money, to wit, Seven hundred and fifty Dollars and ninety one Cents, and being so indebted and in consideration thereof the said

Defendants under the name style and description of R W Swift Brother & Johnston by their Agent Robert C Wright by the name and style of R C Wright then and there made their certain instrument in writing in the words and figures following

N 42.

R W Swift Brother & Johnston

Chicago October 30th 1857.

Received from D. C. Thatcher Seven hundred and fifty $\frac{91}{100}$ Dollars payable in currency to the bearer hereof for account of Certified Checks —

750 $\frac{91}{100}$

R W Swift Brother & Johnston

per R C Wright

and then and there delivered the same to the plaintiff By means whereof the said Defendants became and were indebted to the said plaintiff in the sum of Seven hundred and fifty Dollars and ninety one cents of lawful money of the United States and being so indebted to the said plaintiff the said Defendants in consideration thereof afterwards lent on the same day and year 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 sum of money last mentioned when the said Defendants should be thereunto afterwards requested.

And Whereas also the said Defendants

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afterwards to wit on the same day and year and at the place aforesaid were indebted to the said Plaintiff in the further sum of Seven hundred and fifty $\frac{91}{100}$ Dollars of like lawful money as aforesaid for money before that time lent and advanced by the said Plaintiff to the said Defendants and at the like request of the said Defendant. And in the like sum for other money by the said Plaintiff before that time, paid laid out and expended for the said Defendants and at the like request of the said Defendants.

AND in the like sum for other money by the said Defendants before that time had and received to and for the use of the said Plaintiff.

AND in the like sum for other money before that time and then due and owing the said Plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said Defendants to said Plaintiff AND in the like sum for the price and value of work then done and material for the same provided by the Plaintiff for the Defendants and at the like request of the Defendants.

AND being so indebted 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 Plaintiff well and truly to pay unto the said Plaintiff the several sums of money in this Count

mentioned when the said Defendants should be thereunto afterwards requested. And whereas also the said Defendants afterwards to wit on the same day and year and 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 Defendants to the said Plaintiff and then and there being in arrear and unpaid, and upon such accounting the said Defendants then and there found to be in arrear and indebted to the said Plaintiff in the further sum of Seven hundred and fifty $\frac{91}{100}$ Dollars of like lawful money as aforesaid And being so found in arrear and indebted to the said Plaintiff the said Defendants in consideration thereof afterwards to wit on the same day and year 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 Defendants should be thereunto afterwards requested.

Nevertheless the said Defendants (al tho often requested &c.) have not yet paid the 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 Defendants have hitherto altogether refused and still do refuse to the

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damage of the said Plaintiff One Thousand Dollars and therefore the said Plaintiff bring suit &c.

R S Blackwell

Plaintiff's Attorney.

Copy of the Account sued on.

N^o 42.

R K Swift Brother & Johnston

Chicago October 30th 1857.

Received from D C Thatcher seven hundred and fifty $9\frac{1}{100}$ Dollars payable in currency to the bearer hereof for account of Antifid Checks.

750 91

R K Swift Brother & Johnston

per R C Wright.

R K Swift Brother & Johnston

To D C Thatcher

D^r

To money lent and advanced	\$ 1,000, 00
To money paid laid out and expended	\$ 1,000, 00
To money had and received to and for the use of Plaintiff	\$ 1,000, 00
To goods wares and merchandise sold & delivered	\$ 1,000, 00
To labor and services	\$ 1,000, 00
To balance due on account stated -	\$ 1,000, 00

And afterwards to wit on the seventh day of January in the year aforesaid there was filed in the Office of the Clerk of the said Court a publication notice and Certificate of such publication in words and figures following to wit:

Publication Notice.

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State of Illinois } Cook County Court of
Cook County } S. C. Common Pleas January Term
A. D. 1858.

David C Thatcher

vs

Lyman P Swift impl'd with Richard W.
Swift and James S. Johnston - Attachment

Public Notice is hereby given to the said Lyman P Swift, impleaded with Richard W. Swift and James S. Johnston, that a writ of Attachment issued out of the Office of the Clerk of Cook County Court of Common Pleas dated the 4th day of November A. D. 1857. at the suit of the said David C. Thatcher against the Estate of the said Lyman P Swift, for the sum of Seven hundred and fifty dollars and ninety one Cents directed to the Sheriff of Cook County which said writ has been returned executed.

Now, therefore unless ^{you} the said Lyman P Swift shall personally be and appear before the said Cook County Court of Common Pleas on or before the first day of the Term thereof, to be holden at the Court House in the City of Chicago on the first Monday of January A. D. 1858, give special bail and plead to the said plaintiff's action, judgment will be entered against you and in favor of the said David C Thatcher and so much of the property attached as may be sufficient to satisfy

the said Judgment and costs will be sold to satisfy
the same -

Walter Kimball Clerk

Robert S Blackwell

Plff's Att'y.

This is to Certify That the annexed notice
was published in the Chicago Journal, a daily
Newspaper printed in the City of Chicago
County of Cook and State of Illinois, to wit
for four successive weeks as follows - The
first insertion on the 6th day of Nov^r 1857 in
Vol 16 N^o of said paper.

Dated at Chicago Jan^y 7th 1858.

Chas L Wilson H^o.

Publisher Chicago Dly Journal

Afterwards to wit on the third day of
February in the year aforesaid came the said
Richard R Swift and James Johnston impleaded
with the said Lyman P Swift and filed their
demurrer in the Office of the Clerk of the said
Court which said Demurrer is in words and
figures as follows.

Cook Com Pleas.

Richard R Swift & James

Johnston impleaded vs

David C Thatcher

Feb Term A.D. 1858.

And the said Richard K Swift and James Johnston
impleaded with Lyman P Swift by Scates M^cA
Jewitt & Peabody their Attorneys comes and defends
the wrong and injury when &c and says that
the first Count of the Declaration aforesaid
and the matters and things &c are insufficient
in law and def^ts are not bound to answer the
same &c.

And for causes of demurrer def^ts implea-
-ded &c show the following

- 1st There is no venue stated for the demand or
refusal alleged therein -
- 2^d The same is argumentative uncertain
informal and otherwise insufficient

Wherefore they pray Judgment &c.

And the said def^ts impleaded &c say that
the second Count in said Declaration & the
matters & things therein stated in manner
& form &c are insufficient in law &c and
Def^ts are not bound to answer the same

Wherefore they pray Judgment &c.

Scates M^cA Jewitt & Peabody

Def^ts Attys.

And afterwards writ on the fifth day of March
in the year aforesaid, said day being one of the days
of the February Term of said Cook County Court of
Common Pleas the following among other proceedings

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was had in the said Court and entered of record
as follows. to wit

David C Thatcher	{	Asst Att in aid.
Richard W Swift		
Lyman P Swift &		
James S Johnston		

AND now on this day comes the said
plaintiff by W S Blackwell his Attorney and
the Defendants Richard W Swift & James S
Johnston by Scates McAllister Jewett & Peabody
their Attornies also come And the Court after
hearing the said Defendants demurrer to
said Plaintiff's declaration herein, being now
fully advised in the premises overrules said
demurrer - And said Defendants elect to
stand by their said demurrer And it is
ordered by the Court that the default of said
Defendants be entered for want of a plea.

AND thereupon said plaintiff files here
in due proof of publication of notice to the
said Defendant Lyman P Swift of the
pendency of this suit on the writ of Attachment
issued in aid in this cause in accordance
with the statute in such case made and
provided and said Lyman P Swift being
three times solemnly called in open Court
comes not nor does any person for him but makes
default which is on motion of said plaintiff
Ordered to be taken and is hereby entered

Wherefore the said Plaintiff ought to have and recover of the said Defendants his damages herein sustained by occasion of the premises, And the Court after hearing the allegations and proofs submitted by said Plaintiff assesses said Plaintiff's damages to the sum of Seven hundred and fifty Dollars and ninety one Cents.

And it is thereupon Considered by the Court that the said Plaintiff have and recover of and from the said Defendants the said sum of \$750 $\frac{91}{100}$ his damages so assessed as aforesaid together with his costs by him in this behalf expended. And that a general Execution issue against the said Defendants Richard W. Swift and James S. Johnston therefor—

And it is further ordered and adjudged that a special Execution issue upon said Judgment against the lands and tenements of the said Lyman W. Swift levied upon under and by virtue of the writ of Attachment issued against him the said Lyman W. Swift as aforesaid. And thereupon the said Defendants—

—prayer an appeal to the Supreme Court of the State of Illinois which is allowed on their filing an Appeal Bond in the sum of One Thousand Dollars with security to be approved by the Judge of this Court said Bond and Bill of Exceptions to be filed in twenty days.

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And afterwards to wit on the thirteenth day of March in the year last aforesaid the said Defendants filed in the Office of the Clerk of the said Court this certain Bond for Appeal which said Bond is in the words and figures following that is to say.

Know all men by these presents that We Richard K Swift Lyman P Swift James S Johnston and Van H Higgins are held and firmly bound unto David C Thatcher in the penal sum of One Thousand Dollars for payment of which well and truly to be made to said David C Thatcher his heirs or assigns We bind ourselves jointly and severally our heirs Executors and Administrators firmly by these presents. Sealed with our seals and dated this Eleventh day of March A.D. 1858.

The Condition of this obligation is such that whereas in a certain suit in the Cook County Court of Common Pleas wherein said David C Thatcher was Plaintiff and said Richard K Swift Lyman P Swift and James S Johnston were Defendants, the said Plaintiff on the fifth day of March A.D. 1858. recovered a judgment against the said Defendants for the sum of Seven hundred and fifty Dollars & thirty one Cents damages besides Costs of suit, from which said judgment said named Defendants have prayed an appeal to the Supreme Court of the State of Illinois which appeal has been granted upon

said Defendants giving this Bonds.

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Now if the said above bounden
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

Approved by me
John M Wilson
Judge.

R K Swift (Seal)
Lyman P. Swift
by J. S. Johnston, ^{his attorney} in fact } (Seal)
J. S. Johnston (Seal)
Van St. Higgins (Seal)

State of Illinois }
Cook County } S.S.

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I Walter Kimball Clerk
of the Cook County Court of Common Pleas
in and for said County Do hereby Certify
that the above and foregoing is a full and
true Transcript of all the papers on file in my
Office and of the proceedings entered of Record
in said Court in the Case wherein David C.
Thatcher is plaintiff and Richard W. Swift
Lyman P. Swift and James S. Johnston
are Defendants.



In testimony whereof
I have hereunto set my hand
and affixed the
and Seal of the said Court
at the City of Chicago in said
County this 20th day of
March A.D. 1858.

Walter Kimball Clerk

Supreme Court. State of Illinois
First Grand Division

Richards R. Swift, Syron P.
Swift & Isaac S. Shurtz
vs
Daisy C. Thatcher
Appellants
Appellee

And now comes the
said appellants by Leaton McAllister Luritt &
Kahney, their Attorneys, and say, that in the
Record and Proceedings aforesaid, and also in
giving the Judgment aforesaid, there is
manifest error, in this, that said "Attachment
in aid" was improperly issued in said Court
and that the same was successfully set out and
discontinued without personal service upon the
defendant therein named, in the principal suit.
And also there is error in this, that the said
Judgment was entered against the said
Syron P. Swift, on said "Attachment in aid"
without any service upon or appearance of
said Syron P. Swift in said Court. Whereas
by the Law of the Land, Judgment should have
been entered in favor of said Syron P. Swift, and said
Attachment in aid should have been dissolved.
And also there is error in overruling the demurrer aforesaid.

And the said Appellants pray that
the Judgment aforesaid for the sums
aforesaid and for other sums in the

Thatcher

Swift

Thatcher

Swift

said Recs and Proceedings being. may
be revised, annulled and altogether
holden for naught. and that they may be
restored to all things about they have lost by
accident of some Indecent

Scats McAllister - Secy of the Society
Atty for Appellants -

Book 65 of Corn Pleas

~~37~~ 39
David C Thatcher

~~37~~ vs ~~39~~

R K Swift et al

Transcript &
Assignment

Filed April 20, 1888

Leland

vs
OK

Fee \$6.50