

No. 13114

Supreme Court of Illinois

Smith

vs.

Brown

71641  7

STATE OF ILLINOIS,
SUPREME COURT
Third Grand Division
No. 1116
1883

Smith
vs

Brace

3114

Profr

United States of America }
State of Illinois. Cook County } ss.

Met before the Honorable the Judges of Superior
Court of Chicago, within and for the County of Cook
and State of Illinois at a regular term of said
Superior Court of Chicago begun and holden at the
Court House in the City of Chicago in said County
and State on the first Monday being the fourth
day of September in the year of our Lord one
thousand eight hundred and fifty nine and of the
Independence of the United States of America the
Eighty fourth.

Present The Hon: John M. Wilson . . . Chief Justice
of Superior Court of Chicago.
Wm. H. Higgins Grant Granch . . . Judges
Charles Hawen Prosecuting Attorney
John Gray Sheriff of Cook County.

Attest

Walter Kimbale. Clerk.

Be it remembered that heretofore to wit on the second day of April in the year of our Lord one thousand eight hundred and fifty eight came George Smith and Elisha W. Willard, Plaintiffs, by their attorneys, and filed in the Office of the Clerk of the Cook County Court of Common Pleas (now Superior Court of Chicago) their certain Precept for Summons, in the words and figures following, to wit.

"George Smith and Elisha
W. Willard

Cook Co. Court of Com. Pleas.

— (w) —

June Term A. D. 1858.

Robert Rainer, Chas. B. Brown

Read. A. Williams, Wm. D.

Debt \$10,000

Miller, Geo. M. Avery and

Damages \$ 500.

N. S. Bouton

Action of debt - Debt Two thousand dollars - Damages Five hundred dollars.

The Clerk will please issue Summons as above,
and oblige

Isaac T. Winston

Chicago April 1st 1858.

Plaintiffs Attys.

And thereupon accordingly on the second day of April A. D. Eighteen hundred and fifty eight, summons issued out of and under the Seal of said Court, against the Defendants therein named: Which said summons with the Sheriff's return therein endorsed, is 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 summon Robert Rainey, Charles
B. Brown, Isaac A. Williams, Nathl. F. Miller, Thos. M. Avery & Wm.
Benton, if they 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 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 George Smith and Elisha H. Willard in a Plea
of Debt, that they rendered unto the said George Smith and Elisha
H. Willard their Debt in the sum of Two thousand dollars which
they owe and unlawfully detain from the said George Smith and
Elisha H. Willard, to the damage of said Plaintiffs as they pay in the
sum of Five hundred dollars.

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

Witness Walter Kimbale Clerk of our said
Court and the Seal thereof, at the City of Chicago
in said County this 2nd day of April A.D. 1858
Walter Kimbale. Clerk."

Seal
Enclosed

" Served by reaching to the within named Charles B.
Brown, Thomas M. Avery, and W. S. Benton the 10th day of April
1858; Also by reaching to the within named Isaac A. Williams and
Nathl. F. Miller the 26th day of April 1858. The within named
Robert Rainey not found in my County. John, J. Wilson, Sheriff
By John H. Hart. Deputy."

And thereafter also on the said second day of April A.D.
Eighteen hundred and fifty eight, the said Plaintiffs, by their said
Attorneys, filed in the office of the Clerk of said Court, their Declaration
in said Cause, in the words and figures following to wit,

" Book 60: Court of Common Pleas

June Term A.D. 1858.

State of Illinois)

County of Cook } George Smith and Elisha W. Williams who
are defendants in trade under the firm name and style of George
Smith & Co, Plaintiffs in this suit, by Isaac T. Winston their Attorney
Complainant of Robert Rawley, Chas. B. Brown, Isaac A. Williams, Wm. H.
D. Miller, Geo. W. Avery and A. S. Boston of a Plea that they
render to the said George Smith and Elisha W. Williams the sum
of Two thousand dollars lawful money of the United States, which the
said defendants owe to and unjustly detain from them.

For that whereas herebefore to wit on the twentieth day of
March in the year of our Lord one thousand eight hundred and
fifty six at Chicago to wit, at Cook County aforesaid the said
Defendants made their certain writing obligatory in the words and
figures following, to wit: " Know all men by these Presents, the
said Robert Rawley, Chas. B. Brown, Isaac A. Williams, Wm. H.
D. Miller, Geo. W. Avery and A. S. Boston, of the City of Chicago
and State of Illinois are held and firmly bound unto George
Smith & Co, of the City of Chicago, and State of Illinois, in the sum
of Two thousand (2,000) dollars lawful money of the United States
of America to be paid to the said George Smith & Co for which

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"payment well and truly to be made we bind ourselves jointly and
"severally, and each one of our heirs, executors and administrators
"firmly by these presents sealed with our Seals and dated this
"tenth day of March in the year of our Lord Eighteen hundred
"and fifty six."

"The Condition of this obligation is such that if the above
"bounden Robert Rainey shall well and truly perform the duties
"assigned to and trust reposed in him as Teller to said firm, as long
"as he shall continue in that capacity, or if the said Robert Rainey
"shall well and truly perform the duties of every other office, duty or
"employment to which he may be appointed in the office of said firm
"and also such other duty or duties as may from time to time be
"assigned to him by the said firm or undertaken by him in relation
"to the said firm and shall also faithfully keep the secrets of the said
"firm, which may come to his knowledge in the service of the said
"and if he shall at all times during the time aforesaid consult and
"promote the interests of the said firm, and shall make known to
"said firm without delay every fraud, false entry, error or mistake
"which he shall or may know of, or discover to have been made or
"to have taken place in the Books of said firm, or in any matters
"transaction or thing relating to the business and affairs thereof, then
"the above obligation to be void, otherwise to remain in full force,
"and virtue."

(signed) 'Robert Rainey (Seal)

Chas B. Brown (Seal)

Reed A. Williams (Seal)

Wm. D. Miller (Seal)

Thos. M. Avery (Seal)

M. S. Boutwell. (Seal)."

and sealed with their seals, and delivered the same to the said Plaintiffs and that by said writing obligatory said defendants acknowledged themselves to be held and firmly bound unto the said Plaintiffs by the name and style of George Smith & Co. in the said sum of Ten thousand dollars in the said Bond mentioned upon the condition therein set forth.

And the said Plaintiffs further state that afterwards to wit on the day and year aforesaid the said Robert Ramsey entered upon the duties of Teller of said Firm in said Bond mentioned and continued in the discharge of such duties for a long space of time to wit for the space of Eighteen Months and upwards and that during said time and while in the employment of said Plaintiffs and while filling the office of Teller to said Firm the said Robert Ramsey so negligently and unfaithfully performed the duties assigned to, and trust-reposed in him as such Teller, that by and through the thus carelessness negligence & improper conduct of said Ramsey in that behalf, a large sum of money to wit, the sum of Eleven hundred and thirty one dollars and nine cents (\$1131⁰⁹) which was the property of said Plaintiffs became and was wholly lost to the said Plaintiffs By means whereof said Defendants became and were liable to pay said sum of Ten thousand dollars in said Bond mentioned to said Plaintiffs when they should be thereunto afterwards requested.

Yet the said Defendants (though often requested so to do) have not as yet paid the said sum of Ten thousand dollars above demanded or any part thereof to the said Plaintiffs but have hitherto wholly neglected and refused and still do neglect and refuse so to do.

To the damage of the said Plaintiffs of Five hundred dollars and therefore they bring their suit.

Judas & Kinostm. Plffs Exhys.?"

And thereafter to wit on the Eighteenth day of June A. D.,
Eighteen hundred and fifty eight the said Defendants (except Rainey)
by their Attorneys, filed in the Office of the Clerk of said Court, their
Plea to said Declaration in the words and figures following to wit.

'Berk County Court of Common Pleas.

Charles B. Brown, Read. A.

Williams, Wats. J. Miller,

Thomas M. Avery, & N. S.

Boughton, impleaded with

Robert Rainey

— acts —

George Smith and Elisha

H. Hiland

And the said Defendants Charles B.
Brown, Read. A. Williams, Wats. J. Miller, Thomas M. Avery and
N. S. Boughton Impleaded &c. by Goodrich, Harwell & Smith their
Attorneys come and defend the wrong and injury where &c. and
say that the said supposed writing obligatory in said Declaration
mentioned is not their deed, and of this they put themselves upon the
Country &c.

And for a further Plea in this behalf the said Defendants
say that they together with the said Robert Rainey defendant, do not
owe the said sum of money above in said Declaration demanded, or
any part thereof in manner and form as the said Plaintiffs have
above thereof complained against them and of this they put themselves
upon the Country &c.

And for a further Plea in this behalf the said defendants

say actio non because they say that the said Defendant Robert Rainey did at all times well and truly perform the duties assigned to him, and ^{the} trust reposed in him as the Teller of the said Plaintiffs according to the form and effect of the condition of the writing obligatory in said Declaration mentioned at to wit, the said Court of Cook and of this the said Defendants put themselves upon the Country &c

And for a further Plea in this behalf the said defendants say actio non because they say the sum of Eleven hundred and thirty one dollars and nine Cents did not, nor did any sum become lost to the said Plaintiffs by or through the carelessness or improper conduct of the said Defendant Robert Rainey and of this they put themselves upon the Country &c

Goodrich, Farwell & Smith

Defts Attys.

And thereafter to wit on the twenty eighth day of August A.D. Eighteen hundred and fifty eight, the said Plaintiffs, by their said Attorneys, filed in the Office of the Clerk of said Court, their Replications to said Pleas of said Defendants, in the words and figures following, to wit:

George Smith and Elisha

H. Wilcox

(vs)

Charles B. Brown, Reas. A. Williams

Mark D. Miller, Thomas M. Avery &

M. D. Bouton, impeached with Robert Rainey

Cook Co. Court of C.P.

September Term 1858.

And the said Plaintiffs as to the Plea of the said Defendants by them first above pleaded, and whereof they have put themselves upon the Country, do the like.

And as to the Plea of the said Defendants by them secondly above pleaded and whereof they have put themselves upon the Country, the said Plaintiffs do the like.

And for a Replication in this behalf the said Plaintiffs say as to the said Plea of the said Defendants by them thirdly above pleaded, precludi non, Because they say, that the said Robert Rainey, remained and continued in the service and employment of the said Plaintiffs as such Teller, as in the condition of the said writing obligatory mentioned for a long space of time to wit from the day and year aforesaid until and upon the 1st day of November A.D. 1854 and that during the said time that the said Robert Rainey so remained and continued in the said service and employment of the said Plaintiffs as such Teller as aforesaid to wit on the 24th day of March A.D. 1856 and on divers other days and times between that day and the said 1st day of November A.D. 1854 to wit at Cork County aforesaid the said Robert Rainey as such Teller as aforesaid had and received for and account of said Plaintiffs divers sums of money amounting in the whole to a large sum of money, to wit, the sum of Eleven hundred and thirty one dollars and nine cents lawful money of the United States Yet the said Robert Rainey, although often requested so to do, hath not yet accounted for or paid the same or any part thereof, to said Plaintiffs but hath therein wholly failed and made default, and the said sum of money so had and received by the said Robert Rainey as aforesaid is still wholly unpaid and unsatisfied to the said Plaintiffs contrary

to the form and effect of the said condition of the said writing is obligatory, to wit at Cook County aforesaid And thus the said Plaintiffs are ready to verify Wherefore they pray judgment and their debt aforesaid together with their costs by them sustained on reason of the default thereof to be adjudged to them &c

And the said Plaintiffs as to the Plea of the said Defendants by them forthwith above pleaded and whereof they have put themselves upon the Country do the like.

Jacob P. Winston

Opps Othys."

And thereafter to wit on the third day of December A. D. Eighteen hundred and fifty eight, the said Defendants by their said Attorneys filed in the office of the Clerk of said Court, their Rejoinder to said Replication in the words and figures following, to wit,

* Cook County Court of Common Pleas

Charles B. Brown & Others

Impleaded with &c

— and —

George Smith and Eliza

W. Hillard

November Special Term 1858.

And the said defendants as to the Replication of the said Plaintiffs to the Plea of the said Defendants by them forthwith above pleaded, say and shew because they say that the said Robert Rainey did not make default in accounting to said Plaintiffs for money had and received by him for and in account of said Plaintiffs in manner and form as in said Replication

alleged and of this the said Defendants put themselves upon the country &c

Goodrich, Farwell & Smith

Defendants Attys."

And afterwards to wit on the fourth day of December (being one of the days of the November Special Term of said Court in the year of our Lord one thousand eight hundred and fifty eight) the following proceedings were had in said cause and entered of record in said Court, to wit.

"George Smith and Elisha W.

Willard

(in

Robert Rainey, Charles B. Brown

Reed A. Williams, Wats, T. Miller

Thomas M. Avery & N. S. Bouton

Debt.

This day came the said Plaintiffs by Lucia & Winston their attorneys and due personal service of process of Summons issued in this cause having been had on the said Defendant Robert Rainey and being three times solemnly called in open Court came not nor does any person for him but herein he makes default which is on Motion ordered to be taken and is hereby entered of record, and thereupon comes the said Defendants Charles B. Brown, Reed A. Williams, Wats T. Miller, Thomas M. Avery and N. S. Bouton by Goodrich Farwell & Smith their Attorneys, and issues being joined herein with the said defendants it is ordered that a Jury come to try the issues joined with the said defendants and to assess the damages against said Defendant

Robert Rainey impleaded with the aforesaid Defendants and defaulted herein Whereupon comes the Jury of good and lawful men to wit George Delmator, R. S. Adams, W. H. Miso, D. Bloom, John Rainey, Oliver Walker, John R. Allen, R. H. Howe, Thos. Hubbard, G. L. Chilcote, James Chapman and A. P. Fish who being duly sworn tried and sworn to try the issues joined aforesaid and assess damages herein against said Defendant Robert Rainey defaulted herein and after hearing the evidence arguments of Counsel and instructions of the Court retire to consider of their Verdict and the hour of adjournment having arrived, upon argument of parties it is ordered that when the Jury shall have agreed upon a Verdict and assessed damages herein they shall reduce the Verdict to writing sign and seal the same and afterwards separate and meet the Court on Monday morning next at nine o'clock.

And afterwards to wit on the sixth day of December (being 2^d of the said November Special Term of said Court) A.D. eighteen hundred and fifty eight the following further proceedings were had in said cause, and entered of record in said Court to wit.

George Smith and Elisha
H. Willard

(vs)

Robert Rainey, Charles B. Brown,
Rosa A. Williams, Wm. T. Miller
Thomas M. Avery & N. S. Benson

Debt.

And now at this day comes again the said Plaintiffs by Lucia & Whiston their Attorneys and the said

Defendants Charles B. Brown, Read A. Williams, Wm. D. Miller, Thomas M. Query and N. S. Bouton unpleaded with the said defendant Robert Rainey by Goodrich, Forester Smith their Attorneys also come and thereupon also come the Jury empanelled herein on Saturday of last week for the trial of this cause and submit their Verdict and say that the Jury find issues joined herein for said Plaintiffs and find said Defendants to owe and be indebted to said Plaintiffs as in their declaration alleged to the sum of Two thousand dollars, and assess their damages against the said Defendants and the said defendant Robert Rainey on his default herein to the sum of One thousand one hundred and thirty one dollars and nine Cents.

And thereupon comes the said Defendants Charles B. Brown, Read A. Williams, Wm. D. Miller, Thomas M. Query & N. S. Bouton by their Counsel and submit to the Court their Motion to set aside the Verdict of the Jury aforesaid, and in arrest of judgment on said Verdict and for a New Trial herein.

And thereupon also comes the said Defendant Robert Rainey unpleaded aforesaid by his Counsel and enters his appearance herein and submits his Motion to set aside his default and assessment of the Jury as aforesaid,

And thereupon said Plaintiffs move the Court for leave to amend the ad damnum in Narr: filed herein.

And afterwards to wit on the Eleventh day of December (being the 1st of the said November Special Term of said Court) A.D. Eighteen hundred and fifty eight the following further proceedings were had in said cause and entered of record in said Court to wit.

"George Smith and Eliza
W. Wilcox

(U)

Robert Rainey, Charles B. Brown } Debt

Rosa A. Williams, Watts D. Miller

Thomas M. Cherry & N. S. Bouton

And now at this day again comes the
said Plaintiff by Quack & Whiston their Attorneys and submits their
Cross Motion herein for leave to amend and add a damages clause in the
Declaration in this cause.

And afterwards to wit on the twenty fifth day of
January (being one of the days of the January Special Term of
said Court) A. D. eighteen hundred and fifty nine, the following
proceedings were had in said cause and entered of record in said
Court to wit,

"George Smith and Eliza
W. Wilcox

(U)

Robert Rainey, Charles B. Brown } Debt

Rosa A. Williams, Thomas M. Cherry

N. S. Bouton and Watts D. Miller

This day come the said Plaintiffs
by Quack & Whiston their Attorneys, and the said defendants by
Goodrich, Farwell & Smith their Attorneys also come and the Court
having heard Counsel on the Motion of said defendant Rainey to

set aside the default and assessment of damages heretofore taken and entered herein against him and the Court being well advised thereon doth order that the same be and they hereby are vacated and set aside with leave to said defendant to file pleas herein.

And thereupon came the said other Defendants Charles B. Brown, Reuben A. Williams, Thomas M. Avery, W. S. Bouton and Walter D. Miller, and move the Court to set aside the Verdict of the Jury heretofore rendered herein against them, and for an arrest of judgment herein, and the Court having heard Counsel thereon and being well advised in the premises overrules said Motion, to which ruling of the Court the said defendants by their attorneys now here except and Twenty days allowed them to file their Bill of Exceptions herein.

And thereupon the Motion of the said Plaintiffs heretofore made herein for leave to amend the ad damnum in their Narr filed herein coming on to be heard, and the Court upon hearing Counsel thereon and being fully advised in the premises grants said Motion, to which ruling of the Court in allowing said Motion the said Defendants by their Counsel now here except.

And afterwards to wit on the sixteenth day of February (being one of the days of the February Term of said Court) A. D. eighteen hundred and fifty nine, the following proceedings were had in said cause and entered of record in said Court to wit

" George Smith and Elisha
H. Hildard

(u)

Robert Ramey, Charles B.

Debt

Brown, Read, Ch. Williams

Wats. J. Miller, Thomas

M. Cherry & N. S. Bouton.

Ordered on Motion of said
Defendants that the time to file Bill of Exceptions herein be
extended ten days from the 20th February.

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And thereafter to wit on the Twenty eighth day of February A. D. Eighteen hundred and fifty nine the said Defendants by their said Attorneys filed in the Office of the Clerk of said Court, their Bill of Exceptions in the words and figures following to wit:

' Cook County Court of Common Pleas.

Charles B. Brown, Read A. C.

Williams, Watts T. Miller

Thomas M. Sherry and N. S.

Renton impleaded with

Robert Rainey

Bill of Exceptions.

at

George Smith and Esther

M. Willard

Be it remembered that on the 4th day of December A. D. 1858 (that being one of the days of the November Special Term of this Court) this cause came on to be tried before the Honorable John M. Wilson, Judge of said Court, and a Jury duly elected tried and sworn to try the issues of fact joined therein as to all of the Defendants except the said Robert Rainey and to assess the damages as to all the Defendants. Since the Counsel for said Plaintiffs introduced and read in evidence on said Trial, the Bond or writing obligatory, a Copy of which is set forth in the Plaintiffs Declaration in this Cause.

The Plaintiffs then called as a witness in their behalf George H. Dearing, who being sworn testified in substance as

follows

I am in the employ of the Plaintiffs George Smith & Co., and have been for eight years past. I have been principal Bookkeeper for them for about six years and a half. I know the Defendant Robert Rainey, he has been in the Plaintiffs employ as receiving and note taker. He commenced service in their employ in the Spring of the year eighteen hundred and fifty six. I don't remember the exact date. He continued in the employ of the Plaintiffs up to and including the 17th day of November 1857 when his service terminated.

(A book was here shown to the witness which he examined)

The witness then testified that said book was what is called a Cash balance book - that the entries therein are all in the handwriting of said Rainey and that said book is the Cash balance book kept and used by said Rainey while in the employ of said Plaintiffs.

(This Cash balance book is marked "Exhibit A" on the inside of the cover thereof, and is also signed by the Attorneys for the Plaintiffs and Defendants in this cause on the inside of said cover for the purpose of identification, and by stipulation of said Attorneys attached to the forepart of said Book, this same is to be deemed and considered as a part of this Bill of Exceptions, the same as though its contents was copied at length into said Bill, and the said Book is to be produced and read and used in the argument of the cause in the Supreme Court and is to be left with the Charges thereof for the purpose of being examined and used

them in investigating and deciding said cause).

The said witness further testified that said Cash balance book is the book in which said Rainey struck his Cash balance from day to day by putting down the amount entered in another Book kept by him called a "Cash Book" during the day and also the amount of Cash on hand at Night and thus put down the smaller sum from the greater, which would show the Cash balance for the day, and would show Cash short or Cash over, depending upon which sum was the larger. That this Book was kept by said Rainey exclusively.

(Another book was then shown to said witness and examined by him)

He then testified that he recognized this Book as the Cash book before mentioned by him - and said that said book was the Cash book used by said Rainey while in the plaintiffs employ from the 4th day of November 1857 up to and including the 11th day of same month under which date the balance of \$1131.09 is struck.

(This Cash Book is marked "Exhibit" "13" on the first fly leaf in the forepart of said Book, and is also properly marked by the Attorneys for the plaintiffs and the defendants in this Cause for the purpose of identification, and a stipulation between the parties to this Cause is attached to said Book of the same purport and effect as that attached to the aforesaid "Cash balance book," and this book so far as it relates to entries made therein up to and including November 11th 1857 is to be deemed and considered as a part of this Bill of Exceptions.)

The said witness further testified that the balance as

stated by said Rainey on said Cash balance book under date of November 14th 1857 showed Cash short \$817.⁷² and that the balance as stated in said Cash balance book under date of November 17th 1857 shows Cash short to the amount of \$1131.⁰⁹.

The said witness also further testified that the last entry but one in said Cash balance book under date of "Saturday Nov. 11. 1857" showed a deficit by said Rainey to said Plaintiff of \$817.⁷² That the last entry in said book under date of "November 17. 1857" showed a deficit balance of \$1131.⁰⁹.

That no entry whatever intermediate that of the 11th & 17th Nov: appeared on said Book. That nothing appeared on said book to show or account for the discrepancy of the amount of deficit at those dates being the difference between the sum of \$817.⁷² stated to exist on the 14th and the sum of \$1131.⁰⁹ stated to exist on the 17th. Said witness testified that the said discrepancy occurred was as follows, as appears from the said Book "B". That after the entry made in said Book "A" on the 14th Nov: and between that date and the 16th Nov: said Rainey collected of a debtor, (as appears by entry in Rainey's handwriting in book "B" under date of Nov: 14th 1857) of the Plaintiff the sum of \$1050.⁰⁰ which did not appear on said Book "A". That there appears in said Book (i.e.) Exhibit "B" under date of Nov: 16. 1857 a full explanation as to how said discrepancy arose. That said last book under said last date at pages 21 and 22 show the exact balance due the Plaintiff from Rainey to be the sum of \$1131.⁰⁹, as the account balance there shows. That the same

is the final accounting between the plaintiffs and Rainey.

That not including the first item of \$240. 21 on the right hand side of said book marked X in pencil and the first item of \$240 and the second item of \$267. 31 on the left hand side in said book each crossed in pencil making the sum of \$240. 21, the exact amount of the item of \$240. 21 crossed in pencil on the right hand side of said account in said book, and neither of which three items are material to be considered in arriving at the true balance, the items of credit to said Rainey as appears on said right hand side of said book of account are as follows.

1 st	amount handed over to the paying teller of Plaintiffs	\$22400. 0
2 nd	amount paid receiving teller S. K.	244.
3 rd	" " " "	3117
4 th	" " " " Gold	1181. 11
5 th	" " " "	110. 0
6 th	Recurrent, Counterfeit & altered Notes	888.
7 th	Do,	146
Making paid over		\$25316. 44

That the amount of debtor is as follows.

1 st	Amount shown by said Rainey's cash balance book being Book "C" shown to have been in his hands as appears by entry under date of "Saturday Nov 11. 1857."	\$25345. 31
2 nd	Sum of \$2. 18 which said witness testified was received by Rainey as protest on file	...

27 Collected for Plaintiffs 2, 18

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Paper of Plaintiffs which the witness testified was
collected after 11th Nov. and not entered in Cash
balance book "A" and being last item on
left hand side of book "B" is 1050

"Making Rainey's Debtor \$ 261117. 149

From which the witness deducts Rainey

Credit of \$ 25316. 149

Leaving balance against Rainey of \$ 1131. 09

as testified by said witness.

The said witness further testified that said entry of
acknowledgment of balance of \$1131. 09, entered in said book
"A" under date of Novr 17. 1857 was made by said Rainey
and if made on the day it bears date, it was made while
was still the teller of Plaintiffs.

Said witness also testified that said Rainey as also
the other tellers of Plaintiffs had provided for them suitable
boxes with locks, in which to put and keep plaintiffs money
for greater security if they desired so to put or keep it.

The said witness also testified that the books by
him kept of said Plaintiffs including said Book "B" showed
the deficit of said Rainey to be said sum of \$1131. 09.
That it appeared that amount over and above the sums by
Rainey paid over and accounted for to balance the said book
as appears on pages 21 and 22 of said Book "B" under
date of 1st Novr 1857

The said witness further testified that he had no
knowledge as to the manner in which the deficit occurred in

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Ramsey's account between Nov. 11th and Nov. 14. 1864 except the entries in paid book in Ramsey's handwriting.

On Cross Examination paid witness testified that these Books, the Cash balance book and Cash book were kept in the Bank and open to inspection by the Bank Officers and Clerks and that the Plaintiff Willard was in the Bank constantly, and nearly every day during the time said Ramsey was in Plaintiff's employ. That the entries were made by Ramsey in the Cash balance book each day, usually at the close of business as the entries indicate, but sometimes on the next morning - That the Cash book is a book kept by Ramsey in which he entered the different sums of money received by him at the Counter as Teller from different customers and from different sources during each day, that the amount of each sum would be entered by Ramsey in paid Cash book as soon as Counter and then at the close of business for the day, or on the next morning he would he would add up the amount of such entries and set it down in the Cash balance book and then count the money he had on hand as the receipts of the day and set the amount down also in paid Cash balance book and then subtract the smaller sum from the greater which would show amount of Cash short or Cash over as the case might be, that he had no knowledge as to the amount of money said Ramsey actually received, while in Plaintiff's employ or whether he received more than he paid over and accounted for aside from these entries and balances struck by Ramsey himself in these Cash books and Cash balance book.

That previous to the fourth of November 1887 Ramey was bank books similar similar to one introduced in evidence. That during the time Ramey was in plaintiffs employ their Banking House was situate on the East side of Clark Street Chicago. That Rameys Desk was situate on North side of Bank and about midway from the front entrance. There were other tellers whose desks were each side from his at the same counter. There are no barriers between the tellers desks all can pass to and fro. There are glass frames on the Counter making partitions between the tellers desks separating them from each other, but there is nothing to prevent the tellers from passing behind the Counter opposite each others desk. In front of each Teller there is a gate and railing, each Teller keeps his money within a glass frame, but it was a common practice for Tellers to exchange money with each other, when one Teller wanted to use a particular kind of money, which he did not happen to have on hand in his department, he would exchange money which he had with some other Teller who happened to have the kind of money he wanted.

Said witness further testified that he could not estimate with accuracy without further examination the exact amount of money which Ramey handled each day while in plaintiffs employ. That the highest amount handled by him in one day was \$8,000, and the lowest amount was \$3,000, and that the average per day would range somewhere between those sums.

The said Plaintiff then introduced in evidence the said

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Cash balance book and the said Cash book - and thereupon rested their case.

Whereupon the said Defendants who had pleaded by their Counsel moved that the Court strike out also of the evidence introduced by said Plaintiffs on the ground that they had failed to make out a case, or show a breach of said bond, which rendered the sureties therein liable, nor was there testimony introduced by said Plaintiffs upon which they had a right to go to the Jury, upon the question of such breach.

And the said Court overruled said Motion and refused to strike out said testimony.

To which decision of said Court the said defendants then and there accepted.

The Counsel for the said Defendants who had pleaded called as a witness in their behalf the said George H. Dearing who testified

That the said Plaintiffs had in their employ during the time said Dearing was in their service in all three Receiving Stills, one paying Stiller and Clerks and other Employees to the number of Fourteen.

The Counsel for said Defendants then asked the said witness, the following question.

"May not the Cash account of a receiving Stiller be short to the amount as stated by Dearing in his case in his Cash-balance-book in course of transactions of the amount as reckoning through the period of time, which he did, without a

want of capacity, care, skill or diligence on the part of the teller?

The Counsel for the Plaintiffs objected to the question as calling for immaterial and incompetent testimony. The said Court sustained said objection and excluded said testimony.

The said Counsel for said Defendants then and there excepted.

The Counsel for said Defendants then asked said witness the following question.

Is the mere fact of a Cash balance being struck by Rainey against himself of \$1131.09 on the 14th of November 1884 an indication that such balance has been caused by any want of Skill care or diligence on the part of said Rainey in the discharge of his duties, considering the length of time which elapsed while it was accruing, and the amount of money handled by him?

The Counsel for said Plaintiffs also objected to this question on the same grounds as to the preceding question and the said Court sustained said objection and excluded said evidence.

To which decision of said Court sustaining said objection and excluding said evidence the said Counsel for said Defendants then and there excepted.

The Counsel for said Defendants then asked the said witness the following question.

State whether the Cash Accounts of all the Tellers, both receiving and paying, who were in Plaintiffs Employ at the same time with Rainey, were not short more or less, at different times while Rainey was in Plaintiffs Employ?

The said Counsel for said Plaintiffs objected to this question on same grounds as to preceding questions. The Court sustained said objection and excluded said evidence.

To which decision the said Counsel for said Defendants then and there excepted.

The said witness then testified in answer to enquiry by Defendants Counsel, that H. H. James. E. H. Russell. M. C. Follansbey, A. H. Skinkle & James T. Skinkle have each been Tellers in the Plaintiffs employ while he (witness) was there.

The said Counsel for said Defendants then asked said witness the following question.

State what sort of Tellers each of these men were as to ability skill and diligence in their employment?

The Counsel for said Plaintiffs objected to said question on the same grounds as to preceding questions. And the said Court sustained said objection and excluded said evidence.

To which decision the said Counsel for said Defendants then and there excepted.

The Counsel for said Defendants then asked the said witness the following question.

State whether the Cash accounts of each of these

Tellers have not been shot more or less at different times, and if so, state to what extent?

The Counsel for said Plaintiffs objected to this question on the same grounds as to preceding questions and the Court sustained said objection and excluded said evidence.

To which decision said Counsel for said Defendants then and there excepted.

The said witness then stated on enquiry by said Defendants Counsel that he had had an experience of eight years in the Banking business.

The said Counsel for said Defendants then asked the said witness the following question:

State whether or not so far as your experience has extended, mistakes do not necessarily and uniformly occur in transactions of Receiving Tellers of competent skill and ability handling the amount of money which was handled by Rainey and under the circumstances under which he handled it?

The Counsel for said Plaintiffs objected to said question on the same grounds as the preceding questions. And the said Court sustained said objection and excluded said evidence.

To which decision the said Counsel for said Defendants then and there excepted.

The said Defendants Counsel then called as a witness J. H. Curre, who being duly sworn testified as follows:

That he had had an experience of Five years in the Banking business in different Banking houses in said City of Chicago.

The said Counsel for said Defendants then offered to prove by this witness and also by E. I. Siskham and R. K. Swift, Bankers of long experience, and who were in readiness to be sworn.

That as a matter of fact and experience the Cash accounts of Receiving Tellers of competent skill and ability in handling large amounts of money as Rainey did in this case are necessarily and unavoidably, more or less, short and in frequent instances as much and even more than Rainey's Cash account was short in this case.

The said Counsel for said Plaintiffs objected to the introduction of the proof offered on the same ground as to the questions aforementioned, and the said Court sustained said objection and excluded said evidence offered.

To which decision of said Court sustaining said objection and excluding said testimony offered the said Counsel for said Defendants then and there accepted.

The said Defendants Counsel then called as a witness James H. Shinkle, who being sworn testified

That he was a Teller in the Plaintiffs Bank for sometime and was there in their employ when Rainey quit - that he knew how a large portion of the deficit occurred between the Cash balance of \$814.42

under date of November 11th 1857 and the Cash balance of \$1131.09 under date of November 17th 1857 as stated by Rainey in his Cash balance book. Short sometime previous to Rainey quitting, a package of money, was received at Plaintiffs Bank by Rainey as Teller purporting to be \$500 amount and was so marked on the bandage, from Hales Brothers, Bankers at Aurora, Illinois. Rainey credited Hales Brother and charged his account with the amount, Rainey passed the package over to the Plaintiffs paying Teller, who had it in his possession about a week when he paid it out to a customer as \$500, the customer handed it back to the Paying Teller claiming that it was \$200 as short, which upon Examination was found to be true. The paying teller then took it back to Rainey and received in its place \$300 in currency from Rainey, Rainey kept the package on hand some little time until he could see Hales & Brother in relation to it and see if he could not find out how the mistake occurred. He afterwards saw one of the firm and he said he did not know anything about it - After Rainey had given up tracing out the mistake, he charged up the \$200 to his account - up to this time he had kept the package on hand and counted it \$500 in making up his balances in hopes that the mistake could be rectified. This was the way \$200 of this deficit was made up. Another hundred dollars was made up in this way - A package of money which came from Rainey's department was paid to F. L. Adams a Banker in Chicago. Adams sent it back by his Messenger boy \$100 short - the package was taken away from Plaintiffs Bank

32 by the boy and was brought back by him when it was asserted to be \$100. short. Rainey objected to redeeming it and charging it to himself as it had been out of his possession and in the possession of others, but the Plaintiff Wilard compelled him to do so. The witness here stated that he had been in Plaintiff's employ over four years.

The paid Counsel for said Defendants then asked said witness the following question.

Tell you state whether packages of money received from other Banks as those you have just spoken of are or are not frequently found to be short?

The Counsel for Plaintiffs objected to this question as calling for immaterial and incompetent testimony. The Court sustained said objection and excluded said testimony.

In which decision the paid Counsel for said Defendants then and there accepted.

The paid Counsel for said Defendants then asked the said witness the following question.

State whether or not mistakes do not frequently and constantly occur by Receiving Tellers of competent skill and ability and without any negligence on their part in Counting and receiving money?

This question was objected to by said Plaintiffs Attorney and the objection sustained, and the testimony excluded.

In which decision the paid Counsel for said Defendants then and there accepted.

The Defendants Counsel then offered to prove by this witness that Rainey as such Teller received money from Plaintiffs customers in numerous small and large sums and in mixed denominations of small and large Bills each day which went to make up the aggregate receipts for each day?

The Counsel for said plaintiffs objected to such testimony and the Court sustained the objection and excluded the testimony.

To which decision the said Counsel for said Defendants then and there excepted.

The said Defendants Counsel then asked said witness the following question.

State what part of a Teller Rainey was while in Plaintiffs employ as to his diligence accuracy and attention to business?

The Counsel for the Plaintiffs objected to this question and the Court sustained the objection and excluded the testimony.

To which decision the Counsel for said Defendants then and there excepted.

On Cross Examination the said witness testified.

That Rainey received the said \$500 package from Hato & Brother - That he saw him receive it, but did not permit him count it. That he did not know whether Rainey took the two hundred dollars out of the package or not - That he could not recollect the exact time when this occurred in relation to Hato & Brother's package of money. That Hato did not correct the mistake or pay back the \$200 when his attention was

called to it, but said that he did not make any mistake and did not know anything about it. That the package paid to Adams boy and brought back by him \$100 short was put up by Rainey. That he did not see him count it before it went out of the Bank.

The Defendants here rested their case.

The foregoing is also the testimony introduced in this case on the trial thereof on the part of said Plaintiffs and on the part of said Defendants.

After arguments of Counsel, the Court gave the following instruction in writing to the Jury on the part of said Plaintiffs:

"If the Jury believe from the evidence that the Defendants other than Rainey executed their Bond to the Plaintiffs as surety for Rainey, conditioned that Rainey should 'well and truly perform the duties assigned to and trust reposed in him as Teller,' the Plaintiffs are liable to the Plaintiffs in this action for any loss they have shown, that they have sustained by or through their Teller Rainey arising either from his carelessness or negligence or 'mistake'."

To the giving of which instruction the Counsel for said Defendants then and there excepted.

And the said Court also gave the following instruction in writing to the said Jury on behalf of said Plaintiffs:

"If the Jury believe from the Evidence that when Rainey the Teller left the Plaintiffs employ he failed to pay over or account for any money of the said Plaintiffs by him received the presumption is that he by his carelessness lost the same."

and the burden is on him or his parties to show the contrary.

To the giving of which instruction the said
counsel for said Defendants then there excepted.

The said Court also gave to the said Jury on behalf of
said Plaintiffs the following instruction in writing.

"If the Jury believe from the evidence that Rainey the
"Teller while acting as such and before he was discharged
"admitted in writing or otherwise that he was indebted to the
"Plaintiffs in any sum of money arising while acting as such
"Teller from his failure to discharge his duty as such. This
"admission if thus made is binding on all the Defendants."

To the giving of which instruction the said
counsel for said Defendants then and there
excepted.

The said Court also gave the following instruction to
said Jury in writing on behalf of said Plaintiffs.

"The condition in the Bond well and truly to perform
"the duties assigned to and trust reposed in him as Teller included
"not only honesty, but reasonable skill and diligence and if
"the Jury believe the Plaintiffs have sustained loss from the
"carelessness, negligence or misconduct of Rainey, then the Jury
"should find for the Plaintiffs."

To the giving of which instruction the said
counsel for said Defendants then and there
excepted.

The said Court also gave the following instruction
in writing to said Jury on behalf of said Plaintiffs.

"The Plaintiffs were not bound to inform the Defendants

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of the deficits occurring at various times of the Silver Mining Co.
if they knew of the same and the mere omission or neglect on
the part of the Plaintiffs to inform the parties of such deficits
would not discharge the parties from liability."

To the giving of which instruction the said
counsel for said Defendants then and
there excepted.

The said Court also gave the following instruction in
writing to said Jury on behalf of said Plaintiffs.

"If the Jury believe from the evidence that the defendant
Robert Rainey, upon his leaving the service of the Plaintiffs, the
is to say on the 17th day of November 1854 failed to pay over
or to account to the said Plaintiffs for any portion of the
moneys of said Plaintiffs received by him as Teller of the
Bank, while acting as such Teller under the writing obligate
in the Declaration mentioned then the Jury may and ought
to infer that the said moneys so unaccounted for, were by
his carelessness, negligence & improper conduct wasted or lost
by the said Robert Rainey, or applied to his own use, and
that under such circumstances the Defendants are liable to the
Bank for the moneys which he so failed to pay over or account
for to the said Plaintiffs."

To the giving of which instruction by said
Court to said Jury the said counsel for
said Defendants then and there excepted.

The said Court also gave the following instruction in
writing to said Jury on behalf of said Plaintiffs.

"The question of the honesty or dishonesty of Rainey

"not in issue in this suit and the burden of proof is upon the
'Defendants to show that the money was lost without negligence
'or carelessness or improper conduct."

To the giving of which instruction by said
Court to said Jury, the said Counsel for
said Defendants then and there accepted.

The said Court also gave to the Jury the following
written instruction in writing.

"If the Jury believe from the evidence that the Defen-
'dant Rains received any amount of money for which he did not
'account to the Plaintiffs, the law presumes it was lost by
'negligence and carelessness and the entries proved to be in his
'handwriting are evidence of the receipt of the money, and the
'Defendants must prove by evidence that the money was lost
'without the negligence or carelessness of Rains or the Jury
'must find for the Plaintiffs the amount of money he has
'received and failed to pay over to the Plaintiffs."

To the giving of which instruction by the
said Court to the said Jury, the said
Counsel for said Defendants then and there accep-

The said Counsel for said Defendants then requested
said Court to give the following instruction in writing to said
Jury on behalf of said Defendants who have pleaded.

"That the Condition of the Bond in suit only binds
'the parties to answer for the honesty of said Robert Rains
'while in the Plaintiffs employ and does not bind them to answer
'for any mere want of skill or ability on the part of said Rains
'and to entitle said Plaintiffs to recover they must prove a

"affirmatively to the reasonable satisfaction of the Jury that said
 "Kearney has been guilty of some wilful breach of trust by a
 "unlawfully & fraudulently appropriating to his own use the
 "money unaccounted for by him, or that the same was lost
 "by such gross carelessness on the part of said Kearney as shall
 "be evidence to this Jury of fraud and corruption on his part or
 "that the same was lost by some other dishonest or fraudulent
 "conduct of said Kearney."

The said Court refused to give said instruction to
 said Jury.

To which decision of said Court refusing to
 give said instruction the said Counsel for
 said Defendants then and there objected.

The said Counsel for said Defendants then requested the
 said Court to give to the said Jury on behalf of said Defendants
 the following instruction in writing.

"That fraud or dishonesty cannot be presumed but
 "must be proved affirmatively, therefore the mere proving Kearney's
 "account short is not sufficient, but the Plaintiffs are bound to
 "go further and show how such deficit occurred, and that the
 "same was occasioned by the dishonest and fraudulent conduct
 "of said Kearney, and unless such dishonest and fraudulent conduct
 "is proved to the satisfaction of the Jury, the law is for the
 "Defendants and the Plaintiffs cannot recover."

But the said Court refused to give to said Jury said
 instruction.

The said Counsel for said Defendants then
 and there objected.

The said Counsel for said Defendants then requested the said Court to instruct the said Jury in writing on behalf of said Defendants as follows.

"That in no way does the Bond in question render the purchaser liable or responsible for anything more than ordinary care and skill on the part of said Rainey and that the want of such ordinary care and skill will not be presumed, but must be proved affirmatively by the Plaintiffs and unless so proved, and that money was lost in consequence, the Plaintiffs cannot recover."

But the said Court refused to give said instruction.

To which decision of said Court refusing to instruct said Jury the said Counsel for said Defendants then and there excepted.

The said Counsel for said Defendants then requested said Court to instruct the said Jury in writing as follows.

"If the Jury believe from the evidence that the defendant complained of and proved by the Plaintiffs in the account of the Defendant Rainey in the discharge of his duties as receiver and note seller occurred without any want on the part of a Rainey of reasonable skill and diligence, then the law is for the Defendants."

But the said Court refused to give said instruction and the said Counsel for said Defendants then and there excepted to the decision of said Court refusing said instruction.

The said Court did thereupon at the request of said Defendants Counsel instruct said Jury in writing as follows.

"The Jury must be satisfied from the evidence that the

"Plaintiffs have proved the money claimed to have come into the hands of Rainey, before they can recover in this case."

The said Court did also at the request of said defendants instruct the Jury in writing as follows.

"The entries of the Defendant Rainey in his book, of deficiencies are not conclusive against the Defendants, but are subject to explanation and if the Jury believe from the evidence that any such entries were made in ~~error~~ or when he was not properly chargeable with the same, or any part thereof, then as to such entries the Defendants are not chargeable."

The cause was then premised to said Jury with directions to seal their Verdict if they should agree and bring in and render said sealed Verdict the next Monday morning, to which the Court would adjourn (the Counsel for respective parties consenting that said Jury might bring in a sealed verdict, if they agree)

The said Jury retired under charge of the proper officer and upon the opening of Court on the next Monday morning being the 6th day of said Month of December, the said Jury came into Court and delivered the following sealed Verdict in writing which was signed by each of the Jurors

"We the Jury find the issues joined for the Plaintiffs, and we assess the damages against all the Defendants to the sum of \$1131.09."

The said Court thereupon directed that a Verdict be entered in due form by the Clerk in accordance with the said finding of said Jury, which was done.

And the said Counsel for said Defendants (except the defendant Ramey) immediately upon the entry of said Verdict entered a Motion in said Court on behalf of said Defendants in arrest of judgment thereon on the ground that the Jury found and included in their Verdict damages for an amount exceeding the ad damnum in the Declaration; And also a Motion for a New Trial on the same ground.

1st That by the said Verdict the Jury have found damages to an amount exceeding the damages claimed in the Declaration,

2nd That the said Verdict is against law and evidence.

3rd That the Court erred in refusing to strike out the Plaintiffs witness on the application of said Defendants.

4th That the Court erred in refusing the instructions to the Jury asked for by the said Defendants and in rejecting witness offered by said Defendants.

5th That the said Court gave erroneous instructions to the Jury on behalf of said Plaintiffs.

And afterwards and while the said Motions were pending and undetermined to wit on the 11th day of December A.D. 1858 that being one of the days of the said Special Term of said Court the said Attorneys for said Plaintiffs entered a Cross Motion in said Court in said Court for leave to amend the Plaintiffs declaration inserting in the ad damnum therein the word "Twelve" instead and erasing the word "Five" therein, so as to make the clause read "to the damage of the said Plaintiffs of Twelve hundred dollars."

And afterwards to wit on the 25th of January A.D. 1859 that being one of the days of the January Special Term of said Court the aforesaid Motion on the part of said Plaintiffs and the said

Motions on the part of the said Defendants came on to be heard and determined, and the said Counsel for the said Defendants then and there upon said hearing objected to the granting of said Motion of said Plaintiffs except upon terms that a New trial be awarded to enable the said Defendants to make their defence to the demand so enlarged by the proposed increase of said ad damnum.

But the said Court overruled said objection and granted said Motion of said Plaintiffs absolutely and refused to impose the said terms demanded by said Defendants; And also then and there overruled the aforesaid Motion of said Defendants in arrest of judgment, and for a New Trial.

To which decisions of said Court overruling said Motion in arrest of judgment and for a New Trial and permitting said amendment absolutely and without imposing said terms and each and every of them and every part thereof the said Counsel for said Defendants then and there except

* The said Counsel for said Plaintiffs previous to the determination of the aforesaid Motion to wit on the 11th day of January, that being one of the days of said Special term of said Court, the said Counsel for said Plaintiffs entered a Motion in said cause to set aside the default and assessment of damages entered and made against the said Ranney on the ground that he had not been given notice to appear at the time of the default and assessment; Which said Motion came on to be heard and determined on said 25th day of January 1859, and upon the said hearing the said Counsel for said Defendants who have pleaded objected to setting aside the assessment as to Ranney unless the Verdict and assessment be set aside

as to them also.

The Court overruled said objection and set aside said plea and answerment as to said Ramey.

To which decision of said Court the said

Counsel for said Defendants then then excepted.

And inasmuch as the matters and exceptions aforesaid do not appear upon the Record of the trial and proceedings aforesaid the said Defendants who have pleaded pray that this their Bill of Exceptions may be signed and sealed by the Court and made part of the Record herein. Which is done accordingly
Chicago, February 28. 1859: "

John M. Wilson (Seal) "

And afterwards to wit on the sixth day of September (being one of the days of the said September Term of said Superior Court of Chicago, formerly Cook County Court of Common Pleas) in the year of our Lord one thousand eight hundred and fifty nine, the following further proceedings were had in said cause, and entered of record in said Court, to wit:

" George Smith and Eliza

W. Milera

(in)

Robert Ramey, Charles B. Brown

Reed A. Williams, Nathl. J. Miller

Thomas M. Avery & N. J. Bouton

Debt

And now at this day again comes said

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Plaintiffs by Judd & Winston their Attorneys and thereupon comes
Goodrich Harwell Smith Attorneys for said Defendant Robert Rainey
and withdraw from the files of this Court his pleas herein pleaded
whereby said Defendant remains therein undefended against said
Plaintiffs and being three times solemnly called in open Court comes not
nor does any person for him, but herein he makes default and fails
to appear and pays nothing further in bar or preclusion of the action
of said Plaintiffs against him which is on Motion ordered to be taken
and his default is hereby entered of record, want of plea and
appearance. Wherefore said Plaintiffs ought to have and recover
of said defendant their Debt in the Declaration mentioned, and also
their damages for detention thereof, and the Court now here after hearing
the proofs and allegations submitted by said Plaintiffs and being
fully advised in the premises finds said Defendant to owe and
be indebted to said Plaintiffs as in their Declaration alleged to the
sum of Two thousand dollars and assesses their damages for detention
of said Debt to the sum of One thousand one hundred and thirty
one dollars and nine cents.

Therefore it is considered that the said Plaintiffs do have
and recover of all the said Defendants their Debt in their declaration
mentioned of \$ Two thousand dollars and also their damages of
\$1131.09 One thousand one hundred and thirty one dollars and nine cents
in form aforesaid by the Court here assessed as well by the Jury
rendered upon their Verdict in this behalf, together with their costs
and charges by them about their suit in this behalf expended and
have execution therefor.

And thereupon comes said defendants, Charles B.
Brown, Read A. Williams, Watts D. Miller, Thomas M. Cherry

and A. S. Bouton and pray an appeal herein to the Supreme Court
which is allowed to them upon condition that they file herein within
thirty days from this date their Appeal Bond with security to be
approved by one of the Judges of this Court in the penal sum
of Fifteen hundred dollars.

And thereafter to wit on the tenth day of September A.D. Eighteen hundred and fifty nine, the said Defendants accordingly filed in the Office of the Clerk of said Court their Appeal Bond in said cause; Where said Bond is in the words and figures following to wit,

Know all Men by these Presents That we Thomas M. Avery, Charles B. Brown, Wm. J. Miller, Nathaniel S. Broughton, Raa. A. Williams and John M. Williams of the City of Chicago County of Cook and State of Illinois are held and firmly bound unto George Smith and Elisha W. Willard in the special sum of One thousand five hundred dollars lawful money of the United States to be paid to the said George Smith and Elisha W. Willard their executors, administrators or assigns for whole payment well and lawfully made, we bind ourselves our and each of our heirs executors and administrators jointly and severally firmly by these Presents.

Sealed with our seals dated this sixth day of September one thousand eight hundred and fifty nine.

Whereas the said George Smith and Elisha W. Willard as Plaintiffs in a certain action of debt heretofore by them brought & prosecuted in the Cook County Court of Common Pleas (now Superior Court of Chicago) have this day recovered a judgment in said Superior Court of Chicago at the September Term thereof against one Robert Rainey and the said Thomas M. Avery, Charles B. Brown, Wm. J. Miller, Nathaniel S. Broughton and Raa. A. Williams impleaded with the said Robert Rainey, upon a special Bond Conditioned for the performance of Covenants, for debt Two thousand dollars (being the amount of the penalty of said Bond) and damages Eleven hundred and thirty one dollars and nine cents, besides costs of suit, from

which Judgment the said Thomas M. Avery, Charles B. Brown, Watts, J. Miller, Nathaniel S. Bouton and Isaac A. Williams have prayed an Appeal to the Supreme Court of the State of Illinois; Which appeal has been this day allowed by the said Superior Court of Chicago.

Now therefore the condition of this obligation is such, that the said Thomas M. Avery, Charles B. Brown, Watts, J. Miller, Nathaniel S. Bouton and Isaac A. Williams shall duly prosecute said Appeal and in case said judgment shall be affirmed shall pay said judgment, costs, interest and damages then this obligation to null and void otherwise to remain in full force and effect.

Sealed and delivered in
presence of

(signed)

Thos M. Avery

(Seal)

Isaac A. Williams

(Seal)

Watts, J. Miller

(Seal)

Approved by me

Chas B. Brown

(Seal)

Wm. H. Higgins

Nathl. S. Bouton

(Seal)

Judge

J. M. Williams

(Seal)

Sept 10: 1859 "

State of Illinois }
 Cook County . . } *H*

I Walter Kimball, Clerk of Superior Court
 of Chicago (formerly Cook County Court of Common Pleas) in and
 for the County of Cook in the State of Illinois Do hereby certify
 the above and foregoing to be a full true and perfect Transcript
 of the Process, Process, Pleadings, Bill of Exceptions and Appeal
 Bond, now on file in my office, together with the orders and
 judgment entered of record in said Court, in a certain suit
 therein, wherein George Smith and Eliza H. Williams were
 Plaintiffs and Charles B. Brown, Isaac C. Williams, Walter H. Miller
 Thomas M. Avery and N. S. Benson, impleaded with Robert Rain
 were Defendants.



In testimony whereof I have hereunto set
 my hand and affixed the Seal of said Super
 Court, at the City of Chicago in said County
 the Twenty Second day of December in the
 year of our Lord one thousand eight hundred
 and fifty nine.

Walter Kimball Clerk

Supreme Court
Charles B. Brown
& others Impleaded
vs Robert Ramsey
as
George Smith &
Elisha W. Willard

And now comes the said
Plaintiffs by Thorwell & Smith
their attorneys and say that in the
record and proceedings aforesaid
and also in the giving the judgment
aforesaid there is manifest Error
in this:)
pet

The declaration is bad in substance; it
states no sufficient breach of the
condition of the bond.

2nd

The Court Erred in overruling ^{motion} made at close of Plaintiff's Case to strike out all the evidence gr

The decisions of the Court below sustaining objections to questions put to witnesses Seemey & Skubbe, and each and every of them were erroneous gr

The Court below Erred in Excluding what the defendants below offered to prove by witnesses, Ewer, Lusham & Swift gr

The said Court Erred in Excluding what the defendants below offered to prove by the witness Skubbe gr

Each and every of the instructions given by the Court below to the jury to which Exceptions were taken and noted by the Defendants below were erroneous gr Each of the ^{said} instructions asked for by the Defendants & refused by the Court below should have been given and the said Court Erred in refusing the same

The Court granted in overruling the series
 defendant's motion in court by judge
 The said Court overruled in overruling
 the said defendant's motion to set aside
 the verdict and for a new trial
 The said Court overruled in overruling
 granting said Plaintiff's motion to amend
 the last demand clause of the declaration
 without imposing the bringing a new trial
 as demanded by said defendant & in
 permitting judgment to be entered for
 full amount of damages in verdict
 in verdict of the jury
 The verdict by the jury is, shall wellly
 accept of it & will not consent the verdict
 must rendered thereon
 The judgment is announced & continuing
 Russell & Smith
 atty for Plaintiff

State of Illinois
 Cook County.
 Superior Court of Chicago

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 atty for Plaintiff

George Smith Esq
 vs
 Chas B. Brown & others
 Defendants
 Record.

Filed March 23, 1860
 L. Leland
 Clerk