

13887

No. \_\_\_\_\_

# Supreme Court of Illinois

Harwood.

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vs.

Spencer.

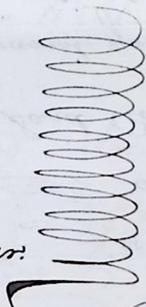
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Pleas continued and held at the Court House in  
Bloomington, within and for the County of McLean in the  
Eighth Judicial Circuit of the State of Illinois before the  
Hon David Davis, Judge of said Eighth Judicial Circuit in  
a certain action therein pending wherein Abel Harwood, was  
Plaintiff and Hamilton Spencer was Defendant and in  
which came final Judgment was rendered at the Special  
June Term of said Court, to wit, on the Eighteenth day of  
June in the year of Our Lord One thousand Eight Hundred  
and fifty seven.

Abel Harwood

vs

Hamilton Spencer



In Assumpsit.

Be it Remembered, that heretofore  
to wit, on the Fourteenth day of February in the year of Our Lord  
One thousand Eight Hundred and fifty seven, came said  
Plaintiff by Swett & Orne his Attorneys, and filed in the  
office of the Clerk of said Circuit Court, a Praecipe, which  
said Praecipe was in words and figures as follows, to wit.

State of Illinois

ss

McLean County



McLean Circuit Court, April Term 1857.

Abel Harwood  
vs  
Hamilton Spencer

Assumpsit  
Damages \$600.-

The Clk. will issue process &c.

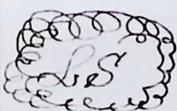
Dwell & Orme. p.g

And thereupon sued out of said Clerks office a writ of  
Summon. which said writ of Summon. was in words and  
figures as follows to wit

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

We command you to summon Hamilton Spencer  
if found in your County. personally to appear before the Circuit  
Court of said County on the first day of the next term thereof  
to be holden at the Court House in Bloomington on the  
first Monday in the month of April next. to answer  
unto Abel Harwood in a plea of Assumpsit. to his Damage  
Six Hundred Dollars as he says. And have you then and  
there this writ. and make return thereon in what manner  
you execute the same.

Witness. William McCullough. Clerk of said Circuit  
Court and the Seal thereof hereto affixed at Bloom-  
ington this 14<sup>th</sup> day of February in the year of  
Our Lord one thousand eight hundred and fifty  
Seven.



W<sup>m</sup>. McCullough Clerk  
By H. Barr. Depty

which said writ of Summons was by the Sheriff of said County, returned into said Clerks office, endorsed as follows to wit.

Executed by reading to the within named Hamilton Spencer, February 16, 1857.

Fees. Service & Return. 60. Travel. 5. 65

J. H. Morse. Shff.

And afterwards, to wit, on the Eleventh day of March in the year last aforesaid, came said Plaintiff by his Attorney and filed in said Clerks office a Declaration and Copy of Note, which said Declaration and Copy of Note were in in words and figures as follows to wit.

State of Illinois  In the McLean County Circuit Court.  
McLean County  of the March Term A.D. 1857.

Abel Harwood, Plaintiff  
in this writ by his Attorneys, complains of Hamilton Spencer Defendant in a plea of Assumpsit. For that whereas the said Defendant, heretofore, to wit, on the Sixteenth day of April in the year Eighteen Hundred and fifty Six, at Bloomington to wit, at the County and State aforesaid, made his certain promissory note in writing, bearing date the day and year aforesaid and then and there delivered the same to James C. Smith and thereby then and there promised to pay to the order of said James C. Smith by the name and style of Jas. C. Smith, Auditor, four months, after the date thereof, at the Merchants and Drivers Bank of Joliet, Illinois, the sum of Four Hundred and ten Dollars

and ten cents, for value received. And the said James C. Smith to whose order, payment of said sum of money in said note specified, was to be made, after the making of said note, and before the payment of said sum of money therein specified to wit, on the day and year aforesaid, at the County and State aforesaid, indorsed said promissory note, by which said indorsement he the said James C. Smith, by the name and style of Jas. C. Smith, Auditor, then and there ordered and appointed, said sum of money in said promissory note specified to be paid to said plaintiff. By reason whereof and by force of the Statute in such case made and provided the said Defendant then and there became liable to pay the said Plaintiff the said sum of money in said promissory note specified, according to the tenor and effect thereof. And being so liable he the said Defendant, in consideration thereof undertook and promised plaintiff to pay said sum of money in said note specified according to the tenor and effect thereof. And whereas the said Defendant on the first day of February in the year eighteen hundred and fifty seven, at the County and State aforesaid, was indebted to said plaintiff in the sum of six hundred Dollars for the price and value of goods, then and there bargained and sold by the plaintiff to the defendant at his request. And in the sum of six hundred Dollars for the price and value of work then and there done and materials provided by the plaintiff for the defendant, at his request. And in the sum of six hundred Dollars for so much money then and there lent by the plaintiff to defendant at his request. And in the sum of six hundred Dollars for money then and there paid by plaintiff for the use of Defendant, at his request.

And in the sum of Six Hundred Dollars, for money then and there received by the Defendant for the use of Plaintiff and in the sum of Six Hundred Dollars for interest due from said Defendant to the said plaintiff, for and in respect of said plaintiff having foreborne and given day of payment of money due from the defendant to the plaintiff at the defendant's request for a long time then elapsed, and in the sum of Six Hundred Dollars for money found to be due from defendant to plaintiff on an account then and there stated between them, and whereas the Defendant afterwards to wit, on the day and year last aforesaid, at the County and State aforesaid, in consideration of the promises, respectively then and there promised to pay the last mentioned several monies respectively to the plaintiff on request, yet he has disregarded his promises and has not paid any of the said moneys or any part thereof to the plaintiff's damage of Six Hundred Dollars and therefore he brings suit &c.

Swell & Orme. Atty's.

Copy of Note.

#410.10

"Chicago, Alton, & St. Louis Railroad"

Bloomington April 16<sup>th</sup>. 1856"

Four months after date I promise to pay to the order of Jas. C. Smith Auditor, at the Merchants & Drovers Bank of Joliet Illinois, Four Hundred & ten <sup>10</sup>/<sub>100</sub> dollars, value received.

No. 225

H. Spencer.

On which is the following endorsement  
"Pay A. Harwood or order Jas. C. Smith, Auditor"

And thereupon afterwards to wit at the March Term of said Circuit Court in the year of Our Lord One thousand Eight hundred and fifty seven. Present

Hon. David Davis	Judge
Ward H. Lamon	Pros. Atty.
William McCullough	Clerk
Joseph H. Moore	Sheriff.

On the ninth day of said Term, being the seventh day of April in the year last aforesaid, came said Defendant by his attorney and moved the Court to quash the writ of summons herein before issued. as appears of Record, in words and figures as follows to wit.

Abel Harwood

vs

Hamilton Spencer



In Assumpsit.

And now at this day comes the said Defendant by his attorney, and enters his motion to quash the writ of summons heretofore issued in this behalf.

And afterwards to wit at the Special June Term of said Circuit Court in the year last aforesaid. Present.

Hon. David Davis.	Judge
William McCullough	Clerk
Joseph H. Moore	Sheriff

On the first day of said Term, being the Fifteenth day of June in the year last aforesaid, the following order was made in this cause, as the same appears of Record. to wit.

Abel Harwood  
vs  
Harrison Spencer

In Assumpsit.

This day on motion of said Plaintiff by his Attorney, said Defendant is by the Court here ruled to plead to the Declaration of said Plaintiff herein filed by Tuesday morning next, or judgment will be rendered against him by default.

And afterwards to wit, on the eighteenth day of June in the year last aforesaid, came said Plaintiff by his Attorney, and filed among the papers of this cause, a note, with the protest of J. J. McDougall, "Notary Public" attached thereto, which said note and protest, were in words and figures as follows, to wit.

\$410.10. Chicago, Alton & St. Louis Railroad.

Bloomington, April, 16<sup>th</sup> 1856.

Four months after date I promise to pay to the order of Jas. C. Smith Auditor at the Merchants & Drivers Bank of Joliet, Illinois, Four Hundred & ten <sup>100</sup>/<sub>100</sub> Dollars, value received  
No. 225. H. Spencer.

State of Illinois  
Will County, City of Joliet

Be it known, that on this nineteenth day of August, 1856, J. J. McDougall, a Notary Public, duly commissioned and sworn, and residing in the City of Joliet in the County and State aforesaid at the request of Messrs. Smith & Woodell, went with the original note herewith annexed to the Merchants & Drivers Bank at Joliet, and demanded payment

of the same, which was refused. Whereupon I the said Notary Public at the request aforesaid, did Protest, and by these presents do solemnly and publicly protest, as well well against the maker, and the endorsers thereof, as against all others, whom it may or doth concern, for exchange, re-exchange and all costs, charges, damage and interest, already incurred and to be hereafter incurred by reason of non payment of said note. And I, the said Notary Public do hereby certify that, on the same day and year above written, proper notices of the foregoing protest, were put in the post office at Joliet as follows.

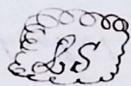
Notice for H. Spencer. Bloomington Ills

" for Jas. C. Smith, Auditor " "

" for A. Harwood, enclosed to Thorpe Smith & Co

" for Thorpe Smith & Co. Bloomington Ills.

Each of the above named places being the reported place of residence of the persons to whom notice was directed.



In testimony whereof I have herewith set my hand and affixed my Notarial Seal the day and year above written

J. J. McDougall, Notary Public.

Fees, Notice 25 cts. Protest and Record 50 cts. Notices 1.00. Seal 25 cts Certificate 25 cts  
# 2.25  
Postage .09  
\$ 2.34

On the Back of said Note was the following endorsement, to wit.

"Pay A. Harwood, or order"

Jas. C. Smith

Auditor.

And thereupon afterwards, to wit. at said Special Term of said Circuit Court. Present.

Hon. Jesse O. Norton	Judge
William McCullough	Clerk
Joseph H. Moore	Sheriff

On the fourth day of said Term, being the eighteenth day of June in the year of our Lord One thousand, Eight hundred and fifty seven, final judgment was rendered in this case, which appears of Record in words and figures as follows to wit.

Abel Barwood		
vs		In Assumpsit.
Hamilton Spencer		

And now at this day this cause coming on to be heard on the motion heretofore made by said Defendant, to quash the Writ of Summons herein issued, and the Court having fairly considered said Motion doth order that the same be overruled. And now come said parties by their Attorneys, and said Defendant having failed to plead herein as by the Court he was ruled to do, comes and defends and says nothing in Bar or conclusion of said Plaintiff's action against him, thereupon it is adjudged by the Court that said Plaintiff hath sustained damages by reason of the non performance of certain promises in his declaration mentioned, but because the amount thereof is unknown to the Court here therefore the Clerk is ordered to assess the same, and the Clerk having assessed the

damages aforesaid. reports the same in writing to the Court here, which report is by the Court approved and ordered to be filed. Therefore it is considered by the Court that said Plaintiff recover of said Defendant the sum of Four Hundred and Thirty Dollars and Sixty Cents (\$430.60) his damages aforesaid in form aforesaid assessed and likewise his costs in this behalf expended. and that he have execution therefor. And now comes said Defendant and prays leave of the Court to file his Bill of exceptions herein. And also prays for an appeal to the Supreme Court of this State. and the same is granted him upon condition that he file Bond herein conditioned as the Law directs. within ninety days. and to be approved by the Clerk of this Court.

And afterwards, to wit. at said Special Term of said Circuit Court. to wit. on the Twenty third day of June in the year last aforesaid, comes said Defendant by his attorneys and presents to the Court his Bill of Exceptions to the ruling of the Court in this cause. and prays that the same may be signed. Sealed and made a part of this Record. which is done. and said Bill of Exceptions is in words and figures as follows, to wit.

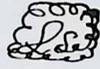
Abel Harwood  
vs  
Barrington Spencer



Assumpit.

Be it Remembered. that the defendant. in the above entitled cause, moved to quash the Summons. which had been issued herein. for the reason

that said Summons had been issued on the 14<sup>th</sup> day of February 1857 returnable to the first Monday in April, three days after the law had been approved. Changing the Term of said Court, from the first Monday of April to the second Monday after the third Monday of March, which said Motion of the Defendant, was overruled by the Court, To which Judgment of the Court, overruling said Motion, the said Defendant, by his Counsel excepts, and prays that this his Bill of Exceptions, may be signed, sealed and made a part of the record, which is done accordingly

J. C. Norton 

And thereupon afterwards, to wit. on the Seventy first day of July in the year last aforesaid, came said Defendant and filed in the office of the Clerk of said Circuit Court an Appeal Bond, which said Bond was in words and figures as follows, to wit.

Know all men by these presents that we Hamilton Spencer and Joel A. Matteson of the State of Illinois are held and firmly Bound unto Abel Starwood in the penal sum of Nine Hundred Dollars, for the payment of which well and truly made we and each of us bind ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents, Sealed with our Seals and dated at Bloomington, this Seventy first day of July Anno Domini One thousand eight hundred and fifty seven.

The Condition of the above obligation is such that whereas the said Abel Starwood did on the Eighteenth day of June

One thousand eight hundred and fifty seven at a Term of the Circuit Court, then being holden, within and for the County of McLean and State of Illinois, obtain a judgment against the above bounden Hamilton Spencer for the sum of Four hundred and thirty Dollars and sixty cents and costs of suit, from which judgment the said Hamilton Spencer has prayed for and obtained an appeal to the Supreme Court of said State. Now if the said Hamilton Spencer shall duly prosecute said appeal, and shall moreover pay the amount of the judgment, costs interest and damages rendered and to be rendered against him the said Hamilton Spencer in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be null and void otherwise to remain in full force and virtue.

Approved This 21<sup>st</sup> day of July

A. D. 1857. by one.

W<sup>m</sup> McCullough Clerk.

H. Spencer

J. A. Matteson

LS

LS

State of Illinois

McLean County

I, William McCullough Clerk of the Circuit Court, within and for said County, do hereby certify that the foregoing is a full and correct copy of the records and papers on file in my office in the foregoing cause.

Witness my hand and the seal of said Circuit Court hereto affixed at Bloomington this twelfth day of November A. D. 1857.

W<sup>m</sup> McCullough, Clerk  
by W. Burr - Deputy



Clk's fees for Records  $\$5\frac{50}{100}$   
Received above fees of  
Plaintiff

Wm McCullough  
for St. Paul & Ft. S.

No. 1535 - C. L.

295

Abel Harwood

vs.

13887

Hamilton Spencer

Record

Filed April 28, 1858

L. Leland

clerk

Just \$430.00

By \$21.50

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Orme - appls -