

No. 13142

Supreme Court of Illinois

^{EHA}
White~~ell~~ll

vs.

Smith

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 8.

Whitehead
vs
Smith

1860

1860

3142

7

Alexander Whitehall }
vs } Appeal from Chicago
Orel R. Smith }

Argument for the Appellee, Smith.

The most prominent point made by the appellant's counsel in this cause is, that the secondary evidence objected to by defendant below, should have been excluded, no foundation having been laid for its introduction - Now the bill of Exceptions in this cause does not purport to contain all the evidence - This court will presume that there was sufficient evidence produced, therefore, to warrant the introduction of the secondary evidence, for this court has decided that where the record does not show that all the facts are incorporated in it, which were in evidence before the circuit court, that this court will presume that the circuit court decided correctly on the question before it. Miller vs Metzger 16 Ills. 392 and the cases there cited -

But the record shows that there was a sufficient foundation laid for the introduction of the secondary evidence - The witness Bryant states that Ayres the Justice brought to him as the nearest justice his books and a box of papers telling him that there was the books and papers belonging to his office; that witness had made an examination for the affidavit and warrant in the box left by Ayres and every place in the office where the papers might have been placed, and he could not find them; that Ayres generally pinned his papers to the docket but witness could not find them there; that Ayres had left other papers with G. B. Jones but witness did not know what they were - nothing can be presumed in favor of the appellant from the last statement of the witness - By the 112 section of the justices act, it is made the duty of the justice when removing from the county (and this is what Ayres did in this case) to deliver over his docket and the

papers relating to the business transacted before him to the nearest justice of the peace of the county - Now the law presumes that every officer does his duty until the contrary is shown - that it was Ayres duty to leave that affidavit and warrant with Bryant as the nearest justice there can be no doubt - Now the law is laid down to be that "when it is the duty of a party possessing an instrument to deposit it in a particular place, and it is not found there, the presumption is that it is destroyed" -

2 Phillips on Evidence last Ed. page 5-56 - Now the parties seeking to use the affidavit and warrant were not bound to look beyond the office of Bryant. There by law it should be, but the witness swears it was not, neither could it be found among any of the papers left with him by Ayres -

Precisely in point upon this question are the cases of *Rex vs The Inhabitants of Southbridge* 8 Barnwell & Cresswell 96 (15 English Com. Law 157) - Also *Fennell vs Worthington* 1 Man. & Granger 491 (39 English Com. Law 543)

These cases are analagous in the facts upon which they are based to the one at bar and I think decisive of the right to introduce secondary evidence in this case of the contents of the affidavit & warrant -

See further notes 446, 473 on pages 515 and 559 of 2nd Phillips on Evidence last Edition -

To the next objection, that evidence offered by defendant was improperly excluded, it is sufficient to reply that the Bill of Exceptions does not show that any evidence whatever, which was offered by the defendant was excluded -

To the next objection that a new trial should have been granted and judgment arrested it may be replied that no motion for an arrest of judgment was made in the court below, and if there had been, there is no foundation for it in the record -

The record does not purport to contain all the evidence this court will not therefore consider the refusal of the circuit court to grant a new trial - *Hammer vs Thornton* 2 Scam. 357, *Rowan vs Dosh* 4 Scam. 460, *Buckmaster vs Cool* 12 Ills. 44, *Clark vs Willis* 16 Ills. 61

The next objection that the issues are not disposed of by the verdict, is not well taken - The Court could have sent out the jury again to find a verdict in form or it could have directed the clerk to enter the verdict in form - State Bank of Illinois vs Batty 4 Scamman 200 - But this objection was not made in the court below nor the point reserved, and this court has expressly decided that in such case the point cannot be taken in the appellate court - See the above case 4 Scamman 200 -

No judgment can be reversed for any default or lack of form ^{in the verdict} - See sec. 9 Statutes of Amendments & Repeals - Scotts compilation page 251 - It is the right of this court to correct here the lack of form - See the closing portion of Section 9 above referred to -

That a judgment will not be reversed because they ^{do} not formally respond to the issues they are sworn to try and especially when the objection is first taken in the appellate court is decided in Roach vs Hurling 16 Peters 321 3 Scamman 487 -

But if this were an open question still the objection is not good, because "we the jury find for the plaintiff" is equivalent to finding the defendant guilty and the defendant could never again be put on trial for the offence charged therein - The substance of the verdict being good the defendant may rely on the verdict and judgment as a bar to a further prosecution - This is the proper test of the sufficiency of a verdict -

Wildeman vs Sanders by 15 Clls. 60 -

The last assignment of error is "the verdict is against the law and the evidence" - It has been already shown the last objection is not tenable, the record not affirmatively showing that it contains all the evidence - That the verdict is against law is not more tenable - The declaration avers that the suit was malicious, without probable cause and ~~terminated~~ ^{terminated} before the commencement of this suit in favor of the appellee who was the plaintiff below - These averments are all that are necessary to maintain

The action in law, and these are supported by the proof that is given in the Bill of Exceptions. But if the averments were not proven by the evidence in the record, this court will presume that there was sufficient evidence before the jury to warrant their finding; the Bill of Exceptions not containing it all -

There is no important question raised upon this record that this court have not already decided in favor of the appellee; a further argument is therefore entirely unnecessary -

Chas. H. Wood

for Appellee

8-41
Alexander Whitehall
vs

Cluel R. Smith

Argument for
Appellee, Smith -

Filed April 27, 1880
L. Leland
Clerk

Supreme Court - 2d. Division - April Term 1859

Alexander Whitehall appellant

vs. John R.

Appeal from Proquois Circuit Court

~~William~~ Smith appellee

The appellee herein moves the Court to set aside the order of Continuance made at the present Term of this Court, & that the appeal herein be dismissed for the following reasons -

1st. The record herein was filed with the Clerk of this Court November 2d. 1857, & no error have been assigned & no abstract made in compliance with the rules of the Court - See Rule X.

2d. The appeal bond taken in the Case is not in compliance with the order of the Circuit Court granting the appeal, in amount of penalty, & is approved by the Clerk -

The order of Court was that the appellant file bond in 70 days from 1st. May 1857, with James R. Smith or Henry Alexander for security, or such as the Clerk may approve - in the penalty of \$500.00. Unless the bond filed is in conformity with this order, the responsibility of taking & approving the bond is with the Clerk -

The Clerk on the 1st. June 1857 took from appellant a bond in the penalty of \$550.00 with James R. Smith & Henry Alexander as securities being an entire different bond from that prescribed by the Court. If the Court allow a departure in this Case from the rules & decisions, they may in other Cases & great confusion will be the result -

Wm. Osgood atty in
for appellee

(Over)

25 8

Supreme Court

John R. Smith

ass.

Henry Whitehall

Suggestions re, on mo. to
sit and continuance &

Dismiss appeal

Wm. Osgood atty in

for appellee
Wm. Osgood
Filed May 5, 1883

L. Leland
Clerk

The appellant objects to the
motion of appellee, and
refers the court to the suggestions
made in the next case.

The order of continuance was entered
when the cause was reached on
the regular call of the docket. No
objections were then made & no reason
is shown for not making the objection
then. To grant the motion would reverse
the whole practice of the court in such cases.

The appeal bond is a substantiated
compliance with the order of the court
& surely the clerk's approval cannot
invalidate a valid bond.

W. H. Wallace
counsel for appellant.

STATE OF ILLINOIS; SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

ALEXANDER WHITEHALL, }
 vs. } *Appeal from Iroquois.*
JOEL R. SMITH.

ABSTRACT OF THE RECORD.

Page of Rec.

THIS was an action on the case for a malicious prosecution, commenced by appellee against appellant at the April term, A. D. 1856, of the Iroquois Circuit Court.

3 The declaration in the first count alleges, in substance, that the
defendant, about Feb. 27, 1856, went before one Samuel M.
4 Ayres, a Justice of the Peace, of said County, and maliciously,
5 and without probable cause, on oath, charged the plaintiff, with
one William Smith, with having feloniously stolen seven head of
steers, (oxen,) wagon and one prairie plow, and four yokes—
the property of defendant, worth \$400; and thereby procured
Ayres to issue his warrant for apprehending the plaintiff and
6 bringing him before said Ayres, Justice, &c., and maliciously
and without probable cause, procured plaintiff to be arrested on
said warrant and imprisoned and detained, &c., and caused plain-
tiff to be taken before said Justice, who examined and dis-
charged the plaintiff, acquitted of said charge.

The second count alleges that the defendant, &c., maliciously
and without probable cause, charged plaintiff upon his corporal
oath, with having committed certain offences punishable by law,
to wit: felonies; and procured plaintiff to be arrested by his
8 body, &c., and imprisoned, &c., when plaintiff was discharged
and acquitted of said offence.

Damages \$5,000.

11 At the November term, 1856, the defendant pleaded not
guilty.

12 At the April term, 1857, a trial was had before a jury. The
jury returned the following verdict: "We, the jury, find for the
"plaintiff, and assess his damages at two hundred and fifty
"dollars."

13 The Court rendered judgment on the verdict and for costs.—
Defendant moved for a new trial, which was overruled, and de-
fendant prayed an appeal which was allowed, and bond given.

Page of Rec.

14 The Bill of Exceptions states that on the trial the plaintiff called one *H. C. Bryant*, who testified that he was a Justice of the Peace of said County, and that when Sam'l. W. Ayres went away to Virginia, he left his books and a box of papers, saying to him that there was the book and papers belonging to his office; defendant objected and the Court overruled the objection, and allowed the witness to make the statement. Witness then stated that he never made any examination till the commencement of this trial, for the affidavit and warrant stated in the declaration, and that he had only examined the box which had been kept open on his desk since said Ayres had left, and he couldn't find them there, and he had then examined every place in his office where the papers might have been placed, and he couldn't find them; that Ayres generally pinned his papers to the docket, and he had examined the docket, as Ayres called it, and he couldn't find them; that Ayres had left other papers with G. B. Joiner, but what they were, he didn't know. Witness gave further testimony tending to identify the docket as being the docket of said Ayres; that Ayres gave it to the witness saying it was his docket; and he (witness) believed it to be his docket; that he knew Ayres' signature, and he believed that to be his signature; to all which defendant objected—objections overruled. Plaintiff then offered the docket in evidence—objected to by defendant; objection overruled by the Court.

16 The plaintiff then called *S. A. Washington*, to prove the contents of the affidavit and warrant. Defendant objected; the Court overruled the objection, and allowed the witness to testify what he believed those two papers contained.

The plaintiff then offered in evidence a memorandum signed by S. M. Ayres, J. P., as follows:

PEOPLE OF THE STATE OF ILLINOIS, }
 vs.
 JOEL R. SMITH AND WM. SMITH. }

Affidavit filed and sworn to Feb'y. 27, 1856. Warrant issued 27 day of February, A. D. 1856, returnable forthwith, and subpœna in behalf of the plaintiff, Feb. 28, 1856. Two subpœnas issued in behalf of defendants, and one in behalf of plaintiff, Feb. 29, one subpœna issued in behalf of defendant. The body of the above prisoners were delivered in Court, and this suit dismissed for want of jurisdiction.

S. M. AYRES, J. P.

To the reading of which defendant objected; objection overruled, and memorandum read. The witness, Washington, then stated that the affidavit and warrant contained the property named in the declaration, except the wagon, which he couldn't

Page of Rec. 17 remember; that he moved to dismiss the proceeding for want of jurisdiction, which the justice did, and the plaintiff and his son were discharged: that record was made upon that affidavit and warrant. To all which defendant objected; objection overruled and evidence admitted.

The plaintiff then introduced further evidence tending to show that he took the property, which he was charged with stealing, with the consent of defendant's agent, who had the property in his possession; and defendant introduced evidence tending to show that after the commencement of this suit, the parties had settled the matter in controversy.

- 19 The jury found a verdict for the plaintiff, and defendant moved for a new trial, which was denied by the Court, and to this, and the ruling of the Court in admitting secondary evidence of the contents of affidavit and warrant, and admitting the docket of Ayres and his declarations, the defendant objected, which
20 were overruled by the Court, and to all which the defendant excepted.

Errors Assigned.

- 23 1st. The Court erred in admitting improper evidence.
2d. The Court erred in admitting secondary evidence of the contents of written papers.
3d. The Court erred in excluding proper proof.
4th. The Court erred in overruling motion for new trial.
5th. The issues are not disposed of by the verdict.
6th. The Court erred in rendering judgment on the verdict.
7th. Verdict against law.
8th. Verdict against evidence.

8
Whitthall vs Smith

Abstract

Filed Apr. 28, 1860
L. Selmon
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

ALEXANDER WHITEHALL, }
vs. } *Appeal from Iroquois.*
JOEL R. SMITH.

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defendant, about Feb. 27, 1856, went before one Samuel M.
4 Ayres, a Justice of the Peace, of said County, and maliciously,
5 and without probable cause, on oath, charged the plaintiff, with
one William Smith, with having feloniously stolen seven head of
steers, (oxen,) wagon and one prairie plow, and four yokes—
the property of defendant, worth \$400; and thereby procured
Ayres to issue his warrant for apprehending the plaintiff and
6 bringing him before said Ayres, Justice, &c., and maliciously
and without probable cause, procured plaintiff to be arrested on
said warrant and imprisoned and detained, &c., and caused plain-
tiff to be taken before said Justice, who examined and dis-
charged the plaintiff, acquitted of said charge.

The second count alleges that the defendant, &c., maliciously
and without probable cause, charged plaintiff upon his corporal
oath, with having committed certain offences punishable by law,
to wit: felonies; and procured plaintiff to be arrested by his
8 body, &c., and imprisoned, &c., when plaintiff was discharged
and acquitted of said offence.

Damages \$5,000.

11 At the November term, 1856, the defendant pleaded not
guilty.

12 At the April term, 1857, a trial was had before a jury. The
jury returned the following verdict: "We, the jury, find for the
"plaintiff, and assess his damages at two hundred and fifty
"dollars."

13 The Court rendered judgment on the verdict and for costs.—
Defendant moved for a new trial, which was overruled, and de-
fendant prayed an appeal which was allowed, and bond given.

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19 The jury found a verdict for the plaintiff, and defendant moved for a new trial, which was denied by the Court, and to this, and the ruling of the Court in admitting secondary evidence of the contents of affidavit and warrant, and admitting the docket of Ayres and his declarations, the defendant objected, which 20 were overruled by the Court, and to all which the defendant excepted.

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- 7th. Verdict against law.
- 8th. Verdict against evidence.

8-41
11
Whitall vs Smith

Abstract

Filed April 23. 1860

L. Loomer
Clerk

Supreme Court.

Whitchall } No. 8.

vs.

Smith. }

Points of Appellant.

1. The secondary evidence of the contents of the affidavit and writ was improperly admitted. There is no proof in the case that these papers were ever delivered to Bryant by Ayres, and without Ayres' testimony the loss could not be proved. Ayres did not remove to Virginia, but appears to have gone there temporarily.
2. The declaration of Ayres that the papers delivered to Bryant were all the papers belonging to his office, was incompetent to prove that fact. Declarations accompanying an act are sometimes competent to prove the nature and purpose of the act, but this is not within that rule.

~~Dickey & Wallace~~
for appellant

- 3^d - The verdict is not responsive to the issue - Before judgment could be

entered - a verdict of "Guilty" was necessary
- The verdict was - the jury "find for the
plaintiff" - Find what? -

Dickey & Wallace
for appellant

8
Whitehall

vs

Smith -

Argument - & points
of Dickey for
appellant -

State of Illinois }
County of Olognois } p

Olognois Circuit Court
September term AD 1856,

Pleas held at the court house
in the town of Middleport in said
county, began on Wednesday the seventeenth
th day of September AD 1856 Before the
Honorable Sylvester W. Randall Judge of the
eleventh Judicial Circuit of said State
aforesaid,

Present Hon. S. W. Randall Judge
of the Eleventh Judicial Circuit
S. W. Bowen States Attorney
Jesse Bennett, Clerk
A. B. Roff. Sheriff

It is remembered that heretofore to-wit,
on the — day of — there was
filed in the office of the Clerk of said
court a Precepe, which reads in the
words and figures following to-wit,
(The Precepe in this case is mislaid or
lost, Clerk)

And afterwards to-wit, on the 29th
day February AD. 1856, a summons was
issued by the Clerk of said court in

(2.)

words and figures following to wit:
State of Illinois }
Rockford County } To The People of the
State of Illinois, to the
Sheriff of said county, Greeting;

We command you that you summon
mons Alexander Whitehall if to be found,
in your county, personally to be and 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 the town of
Middleport, on the 29th day of April next
to answer Joel R. Smith in an action
on the case to the damage of him the
said Plaintiff in the five thousand
dollars. and have you then and there this
writ.

Witness Jesse Bennett clerk of
our said court, and the seal
thereof, at Middleport, this 29th
day of February A.D. 1856
J. Bennett clerk

On the back of said summons is
the following encasement.

"J. R. Smith vs A. Whitehall, Summ.
mons in case. Served by reading to the
within named A. Whitehall this 29th Feb
A.D. 1856

Service 50
 20 ms Travel 1,00
 Return 10
\$1,60

Attest Roff Shf
 By W.B. White
 Deput

Apr 1856

And afterwards to-wit:
 on the 14th day of April 1856 there was
 filed in the office of our Clerk of Circuit
 Court of the county aforesaid a Narration
 which reads in the words and figures
 following to-wit:

State of Illinois } ss
 County of Croquois } Croquois Circuit Court
 of the April Term AD 1856

Joel R. Smith }
 vs } Action on the case
 Alexander Whitehall }
 Damages \$5000.00

Croquois Lo-wit.

Joel R. Smith
 complains of Alexander Whitehall, being
 in custody &c, of a plea of "trespass on the
 case". For that whereas, the said plain-
 tiff is now a good, true, honest, just, and
 faithful citizen, of the commonwealth, of
 the State of Illinois, and as such, hath
 always behaved and conducted himself,
 and hath not, ever been guilty, or until
 the time of committing of the several grievances
 by the said defendant, as hereinafter men-

(4)

⁴
-tioned been suspected to have been guilty
of felony or of any other such crime, by
means whereof the said plaintiff, before the
committing of the said several grievances,
by the said defendant as hereinafter men-
tioned, had deservedly obtained and acquired
the good opinion and credit of all his neigh-
-bors, and other good and worthy citizens
of the aforesaid commonwealth, of the State
of Illinois, To-wit, &c at the county of Droquois
and State aforesaid, yet the said defen-
-dent, well knowing the premises, but con-
-triving and maliciously intending to injure
the said plaintiff, in his aforesaid good
name, fame and credit, and to bring
him into public scandal, infamy and
disgrace, and to cause the said plain-
-tiff to be imprisoned for a long space of
time, and thereby to impoverish oppress
and wholly ruin him heretofore, To-wit,
on &c on or about the twenty seventh day
of February AD 1856 at &c to-wit, at the
county of Droquois and State of Illinois,
went and appeared before one Samuel
M. Ayres Esquire then and there being one
of the county Justices of the Peace, in and
for said County and State aforesaid
assigned to keep the peace of the said County,
and in and for the said county of Droquois
aforesaid and also to hear and deter-

aforsaid, and also to hear and determine
divers felonies, trespasses, and other mis-
-demeanors, committed in the said county, and
then and there, before the said Samuel
M Ayres, so being justice as aforsaid, to wit
at the county of Droquois aforsaid, wil-
-fully & maliciously and without any reason-
-able or probable cause whatsoever upon his
corporal oath - charged the said plaintiff
together with one William Smith, with hav-
-ing feloniously stolen seven head of Steers
(Oxen) Waggon and one Prairie Plow, and
four of yokes and three chains, the
property of said Whitehall of the value
of four hundred dollars - and that he
the said Joel R Smith, and William
Smith are guilty of the facts, charged;
and further upon his corporal oath sworn
as aforsaid, that he the said Joel R
Smith & William Smith, are common
cheats and swindlers and upon such
charge so made upon his aforsaid corpo-
-ral oath, the said Defendants, falsely
maliciously, and without any reasonable
or probable cause whatever, caused
and procured, the said Samuel M Ayres
so being justice as aforsaid, to make and
grant, his certain warrant, under his
hand and Seal, for the apprehending and

taking of the said plaintiff, and for
 bringing the said plaintiff before
 him the said Samuel M Ayres, Justice
 as aforesaid, to be dealt with according
 to the law, for the said supposed offen-
 ces, And the said defendants under &
 by virtue of the said warrant, afterwards
 to-wit; at the county of Droghda aforesaid
 on the day and year aforesaid, wrongfully
 and unjustly, and without any reason-
 able cause, whatsoever caused and
 procured the said plaintiff to be arres-
 ted, by his body, and to be imprisoned
 and kept and detained in prison for
 a long time space of time, to-wit; for
 three days, then next following, and until
 he the said defendant afterwards to-wit;
 on & to-wit; at & at the county of Droghda
 aforesaid falsely and maliciously, and
 without any reasonable or probable
 cause, whatsoever, caused & procured the
 said plaintiff to be carried and conveyed
 in custody before the said Samuel M Ayres
 to Henry Luck Justice aforesaid, which
 said Justice having heard and consid-
 ered all that the said defendant could
 say, or allege against the said plain-
 tiff touching and concerning the said sup-

passed offences, then and there "to wit,"
on the day and year last aforesaid at
the county of Droghua, aforesaid,
adjudged and determined, the said
plaintiff to be discharged out of custody
fully acquitted and discharged, of the said
supposed offences, and the said defendant
hath not further prosecuted his said
complaint, but hath deserted and aban-
doned the same; and the said complaint
and prosecution is wholly determined
and ended "to wit," at the county of Droghua,
aforesaid, and whereas also the said
defendant, further contriving and ma-
liciously and wickedly intending as
aforesaid, heretofore "to wit," on the
at the county of Droghua, aforesaid
falsely and maliciously, and without
any reasonable or probable cause,
whatsoever, charged the said plaintiff
upon his corporal oath with having com-
mitted certain offences punishable by
Law to wit; felonies, - and upon said
last mentioned charge, he the said de-
fendant then and there, to wit, on the
same day and year last aforesaid, at
the county of Droghua aforesaid
falsely & maliciously caused, and
procured the said plaintiff to be arre-

(8.)
ted by his body, and to be imprisoned
and to be kept and detained in prison
for a long space of time, to wit, for
the space of three days, then next follow-
ing, and at the expiration of which said
time, he the said plaintiff was duly dis-
charged, and fully acquitted of the said
last mentioned offense, "to wit," at &c
at the County of Oroquois aforesaid.
By means of which said several prem-
ises, he the said plaintiff hath been
and is greatly injured in his said end-
it and reputation and brought into
public scandal, infamy, and dis-
grace, with and amongst all his
neighbors, and other good and worthy
citizens of this commonwealth, and di-
vers of those neighbors and citizens, to
whom his innocence in the premises was
unknown, have, on occasion of the
premises, suspected and believed, and
still do suspect and believe, that
the said plaintiff hath been, and
is guilty of felony; and also the said
plaintiff hath, by means of the prem-
ises, suffered great anxiety and pain
of body and mind, and hath been
forced and obliged to lay out and
expend and hath laid out and ex-

expended divers large sums of money, in
the whole amounting to a large sum
of money to wit, the sum of one hundred
dollars in and about the procuring
his discharge, from the said imprison-
ment and defending of himself in the
premises, and the manifestation of his
innocence in that behalf, and hath
been greatly hindered and prevented
by reason of the premises, from following
and transacting his lawful and neces-
sary affairs, and business for a long
time, to wit; for the space of three
days, and also by reason & by means of
the said premises the said plaintiff hath
been, and is otherwise greatly injured
in his credit and circumstances, to wit;
at & at the county of Droghua afore-
said, to the damage of the said plain-
tiff of five thousand dollars, and there-
for he brings his suit &c

Joel R Smith
By S. A. Washington
his Attorney

And afterwards to wit, on the
18th day of September AD 1856, it being
one of the regular days of said court
for the said county of Droghua ~~and~~

(10)
in the year aforesaid. certain proce-
-dings were had and entered of Record of
said court in words and figures fol-
-lowing to wit,

Joel R. Smith

vs

Alexander Whitehall

} Action on the
case

And now comes
the defendant by Whiteman his Attorney,
and he having failed to plead, he
moves the court to extend the rule to
plead by 20th November 1856, and for
continuance. It is ordered that
the rule be extended to defendant to
plead by 20th November and that this
said cause be and is continued to
next term,

And afterwards to wit: on the 19th
day of November AD 1856 the following
plea was filed in the office of our
circuit Clerk, which reads in the
words and figures following to wit:-

Alexander L. Whitehall
vs
Joel R. Smith

} And the said

defendant by

defendant by J. A. Whiteman his Attorney
concess & defends the wrongs & injury and for
plea says that he is not guilty in man-
ner and form as the plaintiff hath above
thereof complained against him and
of this he puts himself upon the country
J. A. Whiteman Atty
for defendant

And the said plaintiff doth the
like
S. A. Washington
PP

And afterwards to wit: on the
27th day of April AD 1857 The following
Pleas were held at the Court house in
the town of Middleport in said County
before the Hon Charles R Starr Judge
of the 20th Judicial Circuit of said State
of Illinois, it being ~~on~~ one of the days
of the April Term of said Court for
the year 1857.

Presid Hon Charles R Starr.

Judge of the 20th Judicial Circuit
Simon De Witt, States Atty
Thomas Aennum Clerk
J. H. Karr Sheriff

Joel R Smith

Alexander Whitehall } Action on the case

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And now comes the parties, Plaintiff in person and by Washington, Fletcher & Paddock his Attorney, and Defendant by Whiteman and Pearson his Attorneys, Ordered that a jury be called, When Levi Harris, James Crozier, James Bowen Isaac Caldwell, Paul Reese, James, E. Stanley, William Campbell, Richard Lallier, George Smith, W. P. Clark, Orrin Clark, William Anderson, Twelve good and lawful men of Croquis County, who were sworn to well and truly try the issue joined, and after hearing the evidence, and argument of counsel retire in charge of proper officer

And afterwards to read the following order was entered of Record to-wit:

Joel R Smith	}	Action on the lease
vs Alexander Whitehall		

And now comes the jury in this case into Court, and delivered their verdict, as follows, "We the jury find for the Plaintiff, and assess his damages at two hundred and fifty dollars. It is therefore

considered that Plaintiff have and re-
cover of and from defendant the said
sum of two hundred and fifty dollars
damages, and costs of prosecution by
him laid out and expended, and
that he have execution thereon.

Counsel for Defendant enters
his motion for new trial.

And afterwards to wit on the
1st day of May, of. is being the 9th
day of the said regular for the year
1857. the following order was entered
of Record to-wit:

Joel R Smith

vs

Alexander Whitehall

}
}
} Action on the Case

And now at
this time the motion for new trial coming
up for hearing. Ordered that the motion
for new trial be overruled. Defendant
prays for an appeal. Ordered that the
appeal be granted on defendant's filing
bond in the sum of five hundred
dollars. in seventy days from this
date, with James R Smith or Henry
Alexander for security, or such as the
Clerk may approve.

And afterwards the Defendant made out the following bill of exception in words and figures following to-wit:

Alexander Whitehall }

Ads }

Joel R Smith }

In the Circuit

Court of Croquis

Co Illinois at April

Term 1857

Action for malicious prosecution

Be it remembered that during the progress of this trial of this cause H. B. Bryant a justice of the peace of said county was called as a witness on Pltffs part to prove that when Saml. M. Ayres went away to Virginia he left his books & a box of papers. Saying to him there was the book and papers belonging to his office - to which the Deft objected the objection was overruled by the court & the witness was allowed to make the statement - witness then stated he never made any examination till the commencement of this trial for the affidavit and warrant stated in the ~~doct~~ declaration and that he had only examined the box which had been kept open on his desk since the said

ayres had left and he could not find them there & he had then examined every place in his office where the papers might have been placed & he could not find them - & ayres generally pinned ~~them~~ his papers to the docket & he had examined the docket as ayres called it. and he could not find them - That ayres had left other papers with G.B. Jones but what they were he did not know - to which evidence the deff objected - but overruled by the court - the witness then stated away two or three months and on his return issued executions from that docket and shortly left & moved to Virginia & has not been back since - that he put this book calling it his docket into his hands as the nearest justice and he believed it was his docket - that he knew the signature of S.M. Ayres & he believed that his signature, to which statement or question and evidence the deff objected - but overruled by court - The Plff then offered the docket in evidence which objected to - but overruled by the court - The Plff then called S.A. Washington an Atty who had appeared for Plff before S.M. Ayres on the day named in the docket to prove the contents of the affidavit &

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warrant to which the Dept objected but
was overruled by the court & the witness
was allowed to prove what he believed
the two contained - The docket as pro-
duced contained the following memor-
andum signed by S. M. Ayres J. P. - to wit
People of the State of Illinois }

^{vs}
Joel R Smith & William Smith }

Affidavit

filed and sworn to Feb 27th AD 1856
Warrant issued 27 day of February 1856
returnable forthwith and Subpoena in
behalf of the Plaintiffs Feb 28, 1856 -
two Subpoenas issued in behalf of Def-
endants and one in behalf of Plaintiff
Feb 29 one Subpoena issued in behalf
of Defendant - The body of the above
prisoners were delivered in court &
this Court dismissed for want of
jurisdiction S. M. Ayres J. P.

To which reading the Dept objected -
but objection overruled by the court
and P^{ty} read the above memoran-
-dum - witness Washington stated that
the affidavit & warrant contained the
property named in the declaration
except the wagon & he could not

remember, that he moved that the Justice
should dismiss the proceedings for want
of jurisdiction which the Justice did &
the Pltff & his Son Wm were discharged—
that record was made upon that affi-
davit and warrant to which Deft ob-
jected— but overruled by the court &
evidence admitted— The Pltff then
called Joseph Starrett and stated he
went to one Keeble who lived on the
place of Deft in Illinois but
went to Pltff house first and he
sent his Son Wm along to Deft place
but the Deft lived in Indiana—
that Keeble the agent of Whitehall
was there & he showed him a paper
which he called a Chattel Mortgage
but neither he or Keeble could read it—
which Mortgage Pltff had given him
before he sold the cattle to the Deft—
and Keeble then yoked them up &
turned them out & he took them home
with the wagon which was given to
him in ^{the} place of one that had been
mortgaged by Deft to him and he
took them all home on Spring Creek
Wm Smith was then called by Pltff and
stated his father requested him to go
along with Starrett and he did so

and helped drive up the cattle and Kibbel yoked them & turned them out to Starrett - To which evidence the Deft then called James Parker who was present before John Wilson J Peace some 9 miles from Middleport where Pltff & Deft had some matter in litigation and Pltff & Deft - Joseph Starrett & Mr Smith all went out behind the crib and after being gone some time they came back it was understood they had settled (their difficulties) then Washington was doing some writing at the table in the house but he did not know what that writing was. then Deft called him Esq Smith & Holstead out doors where they saw Pltff, & Deft said to Pltff does this settle all and the Pltff replied yes - & he came in & the suit was then dismissed for want of prosecution - James R Smith called by Deft who stated the same in substance only Deft he says asked Pltff if this settled all and Pltff replied yes - ~~they~~ then he Deft said at Middleport too and the Pltff replied yes - & they came in & the before J. Wilson J.P. was dismissed for want of prosecution Ebenezer Holstead he stated in substance

as J. R. Smith & distinctly remembered
remarked the word middle part was used
by Deft when he asked if all was settled
J. Wilson Justice said he asked the
parties when they came back from the
crib if they had settled all & Pltff re=
plied yes - he again asked if all was
settled & Pltff again replied yes - & as there
was no prosecution he dismissed the
proceeding before him - The Deft then gave
in evidence the summons in this suit
showing that it had been commenced the
29th Feb 1856 and the suit before Wilson
was on the 10th March when this last con=
versation about the discharging took
place. Wilson further stated, that Wash=
ington after parties came back from
the crib - began to draw up some
papers what they were he did not know
- Washington recalled by Pltff and
said he was writing notes between Pltff &
Deft & Barrett.

The jury brought in a verdict
for Pltff of \$250 - on which the deft
moved the court for a new trial which
was denied by the court - and this and
the ruling of the court in the admitting
of the secondary evidence of the contents
of affidavit & warrant & the admitting

of the docket and declaration of S. M. Ayres
the Dept objected - which were overruled
by the court & to all of which the Dept
excepted & prayed the court to sign
this bill of exceptions which was done
in open court

C. R. Starr *Rec'd 3*
Judge of the 20th Judicial Circuit
of the State of Illinois,

And afterwards to-wit: on the first
day of June AD 1857 There was filed in
the office of our Circuit Clerk an Ap=
=peal bond which reads in the words
and figures following to-wit:

Know all men by these
presents that we Alexander Whitehall
James R Smith and Keeney Alexan=
=der of Croguois County are held and
firmly bound unto Joel R Smith in
the penal sum of five hundred and
fifty dollars for the payment of
which well and truly to be made
and done we bind ourselves our
heirs executors and administrators
jointly and severally by these presents
Signed with our hands and sealed
with our seals this 29th day of May
AD 1857

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The condition of the above obligation is such that whereas the said Alexander L Whitehall has appealed from a judgment of the Oroquois circuit court at the April Term AD 1857 to the Supreme court of the State of Illinois which is in favour of said Joel R Smith for two hundred and fifty dollars and costs of suit. Now if the said Alexander Whitehall shall without delay prosecute his said appeal to effect & pay whatever judgment may be awarded against him in said Supreme court then the above obligation to be void otherwise to remain in full force and effect Taken and } A. L Whitehall *Seal*
approved by me } James R. Smith *Seal*
this 1st day of June } Henry Alexander *Seal*
AD 1857 }
Thomas Kemmum
Clerk

State of Illinois }
Oroquois County } P. O Thomas Kemmum
Clerk of the Circuit
Court in and for the county of Oroquois
and State of Illinois, Do hereby certify
that the above and foregoing is a

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true & complete & full Transcript of the
Record and of the papers on file in
said Court, in the above entitled
cause of Joel R Smith vs Alexander
Whitehall, as the same now appears on
the Records & on file in said Court

In testimony whereof I hereunto
subscribe and affix the
Seal of said Court at Middle-
port this seventh day of Septem-
ber AD 1837

Thomas Bennett Clerk
By Bryant Lacey

State of Illinois - Supreme court. 3rd Grand division

Alexander Whitehall

vs

Job R. Smith

} Appeal from Rogues -
}

And now comes the said
appellant by W. H. Wallard his counsel
and shows to the court here that in the
record of the proceedings aforesaid there
is manifest error in this, to wit-

1st The court erred in admitting improper
testimony in behalf of appellee -

2nd The court erred in admitting secondary
evidence of the contents of written
papers, with proper proof of the loss
of the originals

3rd The court erred in excluding
proper testimony offered by appellant.

4th The court erred in overruling
appellants motion for new trial -

5- The issues joined in the pleadings
are not disposed of by the verdict
of the jury -

6th The court erred in rendering judge-
ment for the appellee, when by the law of
the land the judgment should have been for
the appellant.

7th The verdict was against the law -

8th The verdict was against the ~~Ordinance~~
Wherefore for these and other errors
apparent on the face of the record
appellant prays that said judgment
may be set aside, reversed & wholly for-
waiglet held &c

W. H. Wallace
for appellant.

Forinder in error

Mi Cogood

pro Appellee

Alexander W. Nichol
8. 15
Jas. R. Smith

Transcript

Filed November 2, 1857

W. H. Wallace
Clerk.

Errors filed Oct. 17, 1860
J. Leland
Clerk.