

12906


No. _____

Supreme Court of Illinois

Smith, Imp.

vs.

Williams

71641  7

United States of America
State of Illinois County of Cook¹²

Pleas before
the Honorable George Manierre Judge
of the seventh Judicial Circuit of the State
of Illinois. and sole presiding Judge of
the Circuit Court of Cook County in the
State aforesaid, at a special term thereof
begun and held at the Court House in
the City of Chicago in said County on the
fourth Monday (being the twenty eighth
day) of June in the year of our Lord one
thousand Eight hundred and fifty Eight
and of the Independence of the United
States the Eighty second, in pursuance of
an order made and entered of record at
a former term of said Court, which said
order is in the words and figures following
To wit: = Ordered that a special term of
this the said Circuit Court in and for
said County be and the same hereby is
appointed to be held at the Court House
in the City of Chicago on the fourth Mon-
day of June in the year One thousand
Eight hundred and fifty Eight for the
trial of civil and Criminal Causes, and
for the disposal of all business properly
cognizable at such term, whether of a civil
or Criminal nature, and that the Clerk of

this Court give notice of the appointment
of said term to the Supervisors of said
County with a request that the said super-
visors select and cause to be summoned
@ Grand and Petit Jury to attend the
term so appointed

Present Honorable George Manierre
Judge of the 7th Judicial Circuit Illinois
Charles Haven State Attorney
John S Wilson Sheriff of Cook County
Attest William S Church Clerk

Be it remembered that heretofore, to wit,
on the twenty sixth day of February in
the year aforesaid Nathaniel S Williams
by D P Childer his Attorney sued out of
the office of the Clerk of the Court afore-
said the Peoples writ of summons directed
to the sheriff of said County to execute
and clothed 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;

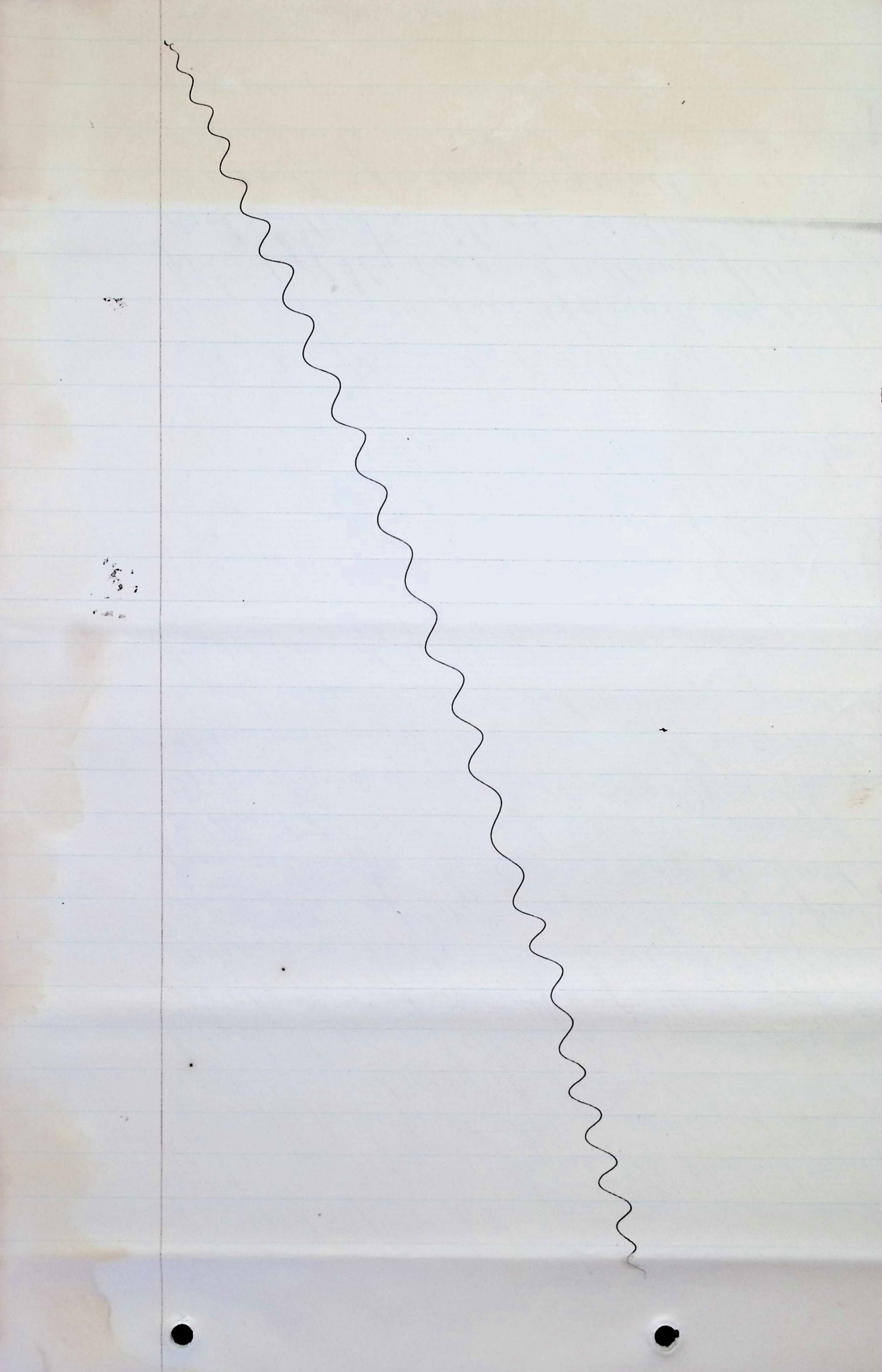
We command you that you sum-
mon Frank Schwick Richard W

Coram and George C. Smith if they shall be found in your County, personally to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House in Chicago, in said County on the Second Monday of April next to answer unto Nathaniel S. Williams in a plea of trespass on the case upon promises to the damage of the said plaintiff as is said, 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 William S. Church clerk
of our said Court and the seal
thereof, at Chicago aforesaid this
Twenty Sixth Day of February
A D 1858 Wm S Church clerk

1 And afterwards, to wit on the same day and year last aforesaid the said plaintiff by his said attorney filed his declaration in the office of the clerk of the Court aforesaid against the said defendants which is in the words and figures following, to wit:



Cook County Circuit
State of Illinois Court of the April Term
Cook County } ss. At D 1858

2

Nathaniel S Williams plain-
-tiff in this suit. by D P Wilder his attorney
complains of Frank Schwick Richard
W Cowen & George L Smith defendants
who were summoned &c in a plea of trespass
on the case on promises for that whereas
the said defendants under the name and
style of Frank Schwick & Co. heretofore, to
wit: on the thirtieth day of September in
the year of our Lord one thousand eight
hundred and fifty seven at Chicago, to
wit: in said county of Cook made their
certain promissory note in writing bearing
date the day and year aforesaid, and then
and there delivered the same to said plain-
-tiff which said promissory note was made
in the words and figures following, to wit:

Chicago Ills September 30 1857

4 " Received of N S Williams sixty dollars
" cash which was promise to pay on demand
" with interest at the rate of 5 1/2 per cent
" per month.

" \$60 -

Frank Schwick & Co.

By means whereof and by force of the
statute in such case made and provided

the said defendants became liable to pay
said plaintiff said sum of money mentioned
in said note, and being so liable in
consideration thereof, then and there und-
erstood and promised to pay the same
to the said plaintiff according to the
tenor and effect true intent and mean-
5 - ing of the said note. - Whereas also the
said defendants under the name and
style of Frank Swick & Co heretofore, to
wit: on the first day of October A D 1887
at Chicago, to wit: in said County, the
said defendants made their certain other
promissory note in writing, bearing date
the day and year last aforesaid and then
and there delivered the same to said pla-
-intiff which said last mentioned note was
in the words and figures following, to wit:
Chicago, October 1st 1887

6 Received of M S Williams One hundred
and Ninety dollars which we promise to
pay on demand with interest at the rate
of $3\frac{1}{2}$ per cent per month
\$190⁰⁰

Frank Swick & Co
By means whereof the said defendant
became liable to pay the said sum in
said last mentioned note and being so
liable in consideration thereof the said

defendants then and there undertook and
promised to pay the same to said plaintiff
according to the tenor and effect thereof
when thereunto afterwards they should be
7 requested - Whereas also the said defendants
under the name and style of Frank
Swick & Co heretofore to wit: on the thirtieth
day of October A D 1857 at Chicago to wit:
in said County made their certain other
promissory note in writing bearing date
the day and year last aforesaid then and
there delivered the same to said plaintiff
which said last mentioned note was in
the words and figures following. to wit:
Chicago Ills October 13th 1857

Received of A S Williams seventy dollars
& cash which we promise to pay on demand
with interest at the rate of 3 1/2 per cent
per month

\$70⁰⁰ Frank Swick & Co

By means whereof the said defendants
became liable to pay the said sum in said
last mentioned note and being so liable
in consideration thereof the said defendants
then and there undertook and promised
to pay the same to said plaintiff according
to the effect and tenor thereof when thereunto
afterwards requested. And whereas also
the defendants afterwards to wit: on the

1st day of February in the year of our Lord
one thousand eight hundred and fifty eight
to wit: at Chicago, in said County, became
and were indebted unto the plaintiff in
@ large sum of money. to wit: the sum
of five hundred dollars for money before
that time lent and advanced to, and paid
laid out and expended for said defendants
by said plaintiff at said defendant's request
and for money before that time had and
received by said defendants to and for the
use of said plaintiff. and also in like
sum for goods, wares and merchandize
before that time sold and delivered by
said plaintiff to said defendants at like
special instance and request, and also in
like sum for labor care and diligence of
said plaintiff before that time done and
performed by said plaintiff for said defen-
dants and at the like instance and request
of said defendants and also in like
sum then and there found due and owing
said plaintiff on an account stated between
them, and being so indebted said defendants
in consideration thereof, then and there
undertook and promised to pay said
plaintiff said last mentioned sum of
money when thereunto afterwards requested.
Yet the said defendants not regarding

their said promises and undertakings
But contriving &c although often requested
to do have not paid said plaintiff either
of said sums of money above mentioned
or any part thereof but so to do have hith-
erto wholly neglected and refused and still
do neglect and refuse to the damage of
said plaintiff of Five Hundred Dollars
and therefore he bring this suit &c
D. P. Childer Plffs atty

Copy of Instrument and account sued on

Chicago Ills September 30th 1857
Received of A S Williams sixty dollars
cash which we promise to pay on demand
with interest at the rate of 3 1/2 per cent per
month
\$60⁰⁰ Frank R Swick Rob

Chicago Illinois October 1st 1857
Received of A S Williams One hundred
and ninety dollars which we promise to
pay on demand with interest at the rate
of 3 1/2 per cent per month
\$190⁰⁰ Frank R Swick Rob

Chicago Ills October 13th 1857
Received of A S Williams seventy

dollars cash which we promise to pay
on demand with interest at the rate
of $3\frac{1}{2}$ per cent per month.
\$700

Frank R. Swift & Co.

Frank R. Swift

J. N. S. Williams Dr

Is money lent and advanced	\$ 500 ⁰⁰
Is money expended and paid out for	\$ 500 ⁰⁰
Is money received for use of	\$ 500 ⁰⁰
Is goods wares and merchandise	\$ 500 ⁰⁰
Is labor and services	\$ 500 ⁰⁰
Is balance on account stated	\$ 500 ⁰⁰

4
And afterwards, to wit: on the tenth day of April in the year last aforesaid, said writ was returned into the Court aforesaid by said Sheriff endorsed as follows. to wit:

9 Served by reading to the within named George C. Smith this tenth day of April 1858 the other defendants not found in my county the 10th day of April 1858
Hes 1 Service 50 1 mile 5. 1 Return 10 = 65
Pd by Plff atty John S Wilson Sheriff By
John J. Holt deputy.

And afterwards, to wit: on the twenty ninth day of June in the aforesaid said defendant George C. Smith impleaded &c by E. S. Chay his attorney filed in the Court aforesaid his certain plea and affidavit which are in the words and figures following to wit:

On the Cook County Circuit
Court of the June Special Term A.D. 1858
Nathaniel S. Williams

10 George C. Smith impleaded
with Frank Smith and
Richard W. Corvau

And the defendant
George C. Smith impleaded as aforesaid

comes and defends the wrong and injury when
so and says that he did not promise and
undertake in manner and form as the
plaintiff has above thereof complained against
him the said George C Smith impleaded
as aforesaid. and of this he puts himself
upon the country & E. J. Asay
State of Illinois } Atty for Gt Smith
Cook County } ss.

George C Smith the above
named defendant impleaded as aforesaid
being duly sworn deposes and saith
that he has read the above plea and that
the same is true.
Subscribed and sworn George C Smith
to before me this 29th
day of June A D 1858
J. M. L. Church

And thereupon afterwards. to wit on the
thirtieth day of June in the year last afore
said the said plaintiff by his said attorney
filed in the Court aforesaid his rejoinder
to the plea of the said defendant in the
words and figures following. to wit:
State of Illinois
Cook County }
In the Cook County Cir
Court of the June Special Term A D 1858

Nathaniel S Williams

Frank ^{vs} Shurck Etal

11 And the said plaintiff
by D P Wilder his attorney as to the plea of
the said defendant George C Smith by
him above pleaded and whereof he has
put himself upon the country doth the
like D. P. Wilder Plffs Atty

12 And afterwards. to wit: at the June Special
Term of said Court. to wit: on the thirtieth
day of June A D 1858 the following proceedings
in said cause. among others in said Court.
were had and entered of record therein. to wit:
Nathaniel S Williams

12695

Frank Shurck Richard
Mcowan & George C Smith

} Appraisit

This day comes the said
plaintiff by D P Wilder his attorney and
the said defendant George C Smith implea-
ded with Frank Shurck and Richard W
Lovan by E. S. May his attorney also comes
and issue being joined herein between the
said plaintiff and the said defendant impl-
eaded as aforesaid it is ordered that a jury
come. Whereupon come the jurors of a jury
of good and lawful men. to wit:

B Chase, J M Sambin, Jacob Boehl,
C C Newton O A Crary, S White,
C W Boardman, J C Huntington, J C Ross,
J S Wilson, S Pelbur, J Deiden,

Who being duly elected tried and sworn
well and truly to try the case joined herein
aforesaid, and after hearing a part of the
testimony and the hour of adjournment
having arrived, it is ordered that said jury
have leave to separate to meet the court on
tomorrow morning nine o'clock.

And afterwards to wit: at the same term and
on the first day of July the following pro-
ceedings were had and entered of record among
others in said Court, in said Cause, which
in the words and figures following, to wit:

Nathaniel S Williams

12695

Frank Schiner Richard

W Corward George C Smith

Assumpsit

This day came again
as well the said plaintiff by D P Wilder
his attorney, as the said defendant George
C Smith impleaded as aforesaid by E
S Asay his attorney, and the Jurors of
the jury aforesaid also came, and the tes-
timony ^{in this cause} having been closed, and the said
jury having heard the argument of counsel

5
as well on the part of the said plaintiff as
of the said defendant impleaded as aforesaid
and the instructions of the court, retire
to consider of their verdict, and afterwards
come into court and say, "We the jury
find the issues herein for the plaintiff, and
assess his damages at the sum of three hun-
-dred and thirty four dollars and forty two
cents."

Whereupon the said defendant George C.
Smith impleaded as aforesaid counsel moved
the court for a new trial of this cause, and
in arrest of Judgment.

And afterwards, to wit: at the same term of
said court and on the twenty sixth day of
July the following proceedings in said cause,
among others in said court, were had and
entered of record therein, to wit:

Nathaniel S. Williams

12695

From R. Shwicker Richard

Howan & George C. Smith

Assumpsit

This day come again
as well the said plaintiff by W. P. Widen
his attorney as the said defendant George
C. Smith impleaded as aforesaid by E. G.
Asay his attorney, and the court having

heard arguments of counsel as well on the part of the said plaintiff as of the said defendant on the motion of the said defendant impleaded as aforesaid on the motion of the said defendant heretofore submitted as aforesaid for a new trial of this cause and being well advised in the premises now orders that said motion be and the same hereby is overruled to which the said defendant impleaded as aforesaid now here excepts.

Therefore it is considered by the court that the said plaintiff do have and recover of the said defendant George C Smith impleaded as aforesaid his damages of Three hundred and thirty four dollars^{2d} and twenty two cents, in form as aforesaid by the jury aforesaid assessed together with his costs and charges by him about this suit in this behalf expended and have execution therefor.

Whereupon the said defendant George C Smith impleaded as aforesaid by this counsel excepts and prays an appeal to the Supreme court of the State of Illinois which is granted by the court on condition that the said defendant impleaded as aforesaid shall within fifteen days from this date execute and file with the clerk of this court his appeal Bond herein in

the penal sum of six hundred and sixty
Eight dollars, and forty four cents, condit-
-And according to law, with Gilbert Hubbard
and Charles Smith sureties thereto.

And afterwards, to wit: on the thirtieth day
of July in the year last aforesaid, the said defen-
dant George C. Smith impleaded, as aforesaid, by
E. G. Asby his attorney, filed his certain Bill
of exceptions in said court, in said cause
which are in the words and figures following
to wit:

heard arguments of counsel as well on the part of the said plaintiff as of the said defendant on the motion of the said defendant impleaded as aforesaid on the motion of the said defendant heretofore submitted as aforesaid for a new trial of this cause and being well advised in the premises now orders that said motion be and the same hereby is overruled to which the said defendant impleaded as aforesaid now here excepts.

Therefore it is considered by the court that the said plaintiff do have and recover of the said defendant George C Smith impleaded as aforesaid his damages \$334²² of three hundred and thirty four dollars and twenty two cents in form as aforesaid by the jury aforesaid assessed together with his costs and charges by him about this suit in this behalf expended and have execution therefor.

Whereupon the said defendant George C Smith impleaded as aforesaid by his counsel excepts and prays an appeal to the Supreme court of the State of Illinois which is granted by the court on condition that the said defendant impleaded as aforesaid shall within fifteen days from this date execute and file with the clerk of this court his appeal Bond herein in

State of Illinois } In the Cook County
Cook County } 1st Circuit Court of the 1st Judicial District
Special Term A D 1858

Nathaniel S. Williams

vs. } Excess on the case
Frank Sprick } on promises
George C. Smith and
Cowan

Afterwards. to wit: on the
thirtieth day of June A D 1858 at the circuit
court aforesaid held at the Court House in
the City of Chicago in said county Now
George Manierre Judge of said court presiding
the aforesaid cause came on to be heard
tried by a jury of said county for that pur-
pose duly empanelled, good and lawful men
of said county, at which day came as well
the said plaintiff as the said defendant
George C. Smith by their respective attorn-
eys aforesaid, and the jurors of the jury
aforesaid empanelled to try said cause
being called also came and were then and
there duly sworn and sworn to try said
cause, and thereupon the said counsel for
13 the plaintiff to maintain and prove the
said issue on his part called as a witness
in said cause on behalf of said plaintiff
14 S. D. Child who being ^{first} duly sworn testified

as follows. Know the defendants Swick
and Smith knew the firm of Frank
Swick & Co the firm was composed of Frank
Swick & George C. Smith sometime in the
latter part of May or June 1887 I sold Frank
Swick & Co the lease of some offices for a
bonus of one hundred dollars. Frank
Swick & Co were to give me a note for this
\$100. with a good endorser the note was
made by Frank Swick & Co. and Mr
George C. Smith offered to endorse it I
objected to Mr Smith endorsing the note
told him he was a member of the firm
of Frank Swick & Co. and that I had
already got his (Smith's) name on the
face of the note Mr Smith admitted that
he was a partner in the firm of Frank
Swick & Co. and endorsed the note with
the name of Bradner Smith & Co. or
Bradner & Co. of which firm Mr
Smith was also a member I was satisfied
with this note and took it Mr Smith
told me then that he was a member of
the firm of Frank Swick & Co.
Crop Examination.

15

Know the firm of Frank
Swick & Co it was composed of Frank
Swick and George C. Smith. Mr Smith
told me he belonged to the firm of Frank

Swick & Co did not know that Mr Cowen
belonged to that firm. And the said plain-
tiff further to maintain and prove the said
issue on his part called as a witness
16 D. H. Williams. who being first duly sworn
testified as follows. was engaged in the job
room of the Printing office of Frank Swick
& Co from sometime in June 1857 till the
first or second week in November of the
same year. always supposed George C Smith
was a member of that firm. Mr Swick
was the boss he engaged me. Mr Swick
told me Mr Smith was a member of that
firm (this that last questioned objected to)
Mr Smith came to the office frequently
during the time I was there and conversed
with Mr Swick. he (Mr Smith) came
there several times a month. three or
four times a month and talked with Mr
Swick. Mr Cowen became connected
with the firm of Frank Swick & Co
sometime in August or September 1857
Mr Smith came to the office several times
after Mr Cowen came into the firm
(Plaintiffs counsel then asked witness
whether the other workmen in the office
supposed Mr Smith was a partner in the
firm of Frank Swick & Co which question
was objected to & the objection sustained)

by the court) never heard heard that Mr Smith disclaimed being a member of the firm of Frank Swick & Co till a week or so before Mr Swick's assignment sometime in Nov 57 (The question of plaintiff's counsel, whether Mr Swick told the witness that Mr Smith belonged to the firm of Frank Swick & Co was objected to and the objection sustained by the Court)
Cross Examination.

17 I am a printer by trade
Mr Swick engaged and paid me do not know for certain that Mr Smith was a member of the firm of Frank Swick & Co

18 The said plaintiff further to prove and maintain the said issue on his part offered and introduced in evidence ~~then~~ then promissory notes sued upon in said cause which notes are in the words and figures following to wit;

Chicago, Ills Sept 30th 1857
Received of A S Williams sixty dollars cash which we promise to pay on demand and with interest at the rate of 3 1/2 per cent per month
\$60⁰⁰ (Signed) Frank Swick & Co.

Chicago ^{Ill} Oct 11th 1857
Received of N S Williams One hundred
and Ninety dollars which we promise to
pay on demand with interest at the rate
of 3 1/2 per cent per month
\$190⁰⁰ (Signed) Frank R. Smith & Co.

Chicago Ill Oct 13th 1857
Received of N S Williams seventy doll-
ars cash which we promise to pay on dem-
and with interest at the rate of 3 1/2 per cent
per month.

\$70⁰⁰ (Signed) Frank R. Smith & Co.
19 To the admission of which said notes
in evidence the said defendant Smith by
his counsel then and there objected which
20 said objection the Court overruled and admit-
-ed said notes in evidence in said cause
to which said ruling and decision of the
Court the said defendant Smith by his
21 counsel did then and there except. The
said counsel for the plaintiff thereupon
rested his case. The said defendant Smith
by his counsel thereupon called as a witness
the man named and prove the said issue on
22 his part. J P Elliott who being first duly
sworn testified as follows. to wit: I am
in the employ of Brodner Smith & Co
as their Book Keeper have been in their

employ years knew the firm of
Straw & Savick & Co. it consisted of Straw
Savick and Cowan knew N S
Williams the (plff) he used to reside in
Boston he resided there at one time
George C Smith was not a member of
the firm of Straw & Savick & Co in Septem-
ber and October 1857. he never was a mem-
ber of that firm he had dealings with that
firm - Savick & Co purchased paper of
Bradner Smith & Co Mrs Smith went
to the office of Straw & Savick & Co frequen-
tly to collect money which that firm owed
Mrs Smith. he afterwards took a chatte
Mortgage from Savick to secure him from
Endorsing some paper of Straw & Savick & Co.
the firm of Straw & Savick & Co owed Smith
about \$500 at its dissolution. these
notes the notes sued on by plff which
were shown to witness were not executed
by Mrs Smith. any of them the signatures
are not in his hand writing

23

Cross Examination

Mrs Smith might have
been a member of the firm of Straw
Savick & Co without my knowing it he
might have gone there when I did not
know it might have gone there for other
purposes besides to collect money knew

the plaintiff Mr Williams he came to see
Mr Smith several times about these notes
last spring Mr Williams was very deaf
She said defendant Smith further to main-
tain and prove ~~and prove~~ the said issue
on his part called as @ witness S. P
24 Roudy who being duly sworn testified
as follows. I was acquainted with Frank
& Co had dealings with them called on
Mr George C. Smith sometime in June
'57 for the purpose of securing @ claim
which I had ^{against} Frank & Co Mr Smith
told me then he was not @ member of
that firm
Cross Examination

I had supposed Mr
25 Smith was @ member of the firm of
Frank Swick & Co before I called on
him. The above is all the evidence ^{which} was
offered in the cause by either party.
Whereupon the Court instructed the jury
as follows. to wit: On behalf of the plaintiff
If the jury shall find from the evidence
that deft Smith was a member of the
firm of Frank Swick & Co before the execu-
-cution of the notes in question and that
the firm was dissolved before notes were
given yet if the jury shall also find
that no notice of the dissolution was

given by advertisement or otherwise and that the said Smith continued by repute among those dealing with the firm to be a member thereof - of whom the jury should find for the Plff.

If the jury believe from the evidence that the defendant Smith was a member of the firm of Grant & Sincer & Co at the times when the promissory notes offered in evidence by the plff were executed then said defendant is liable in this action.

On behalf of defendant Smith,

Any statement made by Sincer in the absence of Smith the defendant cannot be received in evidence against Smith unless Smith afterwards approved such statement.

Unless the jury believe from the evidence that on the days the different notes sued on were made there was such a firm as Grant & Sincer & Co and that Smith was a member of said firm the verdict should be for the defendant. On the issue now before the jury the burden of proof is upon the plaintiff to show that defendant Smith was a member of the firm.

Whereupon the jury retired to consider upon their verdict and under the direction

26 of the court brought in a sealed verdict
which was as follows "The jury find
27 Verdict for the plaintiff" Thereupon the
28 Court ordered the jury to retire again, and
assess the damages casting interest on
the amount of the notes at the rate of
six per cent per annum which was all
the plff claimed, and to amend their
verdict accordingly. To which said direc-
29 tions of the court the said defendant Smith
by his counsel did then and there except
And thereupon afterwards the said jury
30 returned their amended verdict as follows:
The jury find verdict for the plaintiff and
assess the damages at three hundred and
thirty four dollars and twenty two cents
(\$334²²) signed by all the jurors. And
thereupon the said defendant Smith by
31 his counsel moved the court for a new
trial and in arrest of judgment, and in
support of said motions filed the affid-
-avit of J. P. Elliott. Afterwards to wit:
on the 26th day of July A D 1858, the said
32 Court having considered upon said motions
overruled them; to which said ruling and
decision of the court the said defendant
Smith by his counsel did then and there
33 except and prayed an appeal. Thereupon
it was ordered by said court that said

The condition of the above obligation is such, that whereas the said Nathaniel S Williams did on the twenty sixth day of July A D 1858 in the circuit Court in and for the County and State aforesaid, and of the June Special Term thereof A D 1858 recover a judgment against the above bounden George C Smith impleaded with Frank Drick and Richard W Coran for the sum of three hundred and thirty four dollars and twenty two cents besides costs of suit from which said judgment of the said circuit court the said George C Smith has prayed for and obtained an appeal to the Supreme Court of said State.

Now therefore if the said George C Smith shall duly prosecute his said appeal with effect and moreover pay the amount of the judgment costs interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue.

Done and entered } Geo C Smith Seal
unto before me at } Gilbert Hubbard Seal
my office in Chicago } Chas M Smith Seal
this 5th day of Aug A D 1858. Accepted D P Wilder
W L Church clerk Ruffally

State of Illinois, }
COUNTY OF COOK. } s. s.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of Final Pleadings & proceedings entered of record. Bill of Exceptions & appeal books in a certain cause lately pending in said Court on the Common Law side thereof wherein Wm. Williams was Plaintiff and

George C. Smith was defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Sixteenth day of April A. D. 1859,

Dec 16, 1859

Wm L Church

Clerk.

And now Comes the said by Robert S. Maxwell & Edward G. Atter his attorneys and says that in the record of the proceedings aforesaid & in the rendition of the judgment aforesaid manifest error hath intervened to his prejudice in this Court.

1. The said Court erred in in giving the The instructions aforesaid for the appellee
2. The said Court erred in overruling the appellants & ~~for~~ motion for a new trial.
3. The said Court erred in overruling the appellants motion in arrest of judgment Whitcomb & C.

Robert S. Maxwell

Edward G. Atter

Supreme Court

Nathaniel S Williams
Deft in error

ad,

Pray to Smith impended &c

And the said deft in error by D P Wilder his
attorney comes & says that there is no record
entered in the record or proceedings aforesaid
in manner & form as above alleged where-
fore he prays ~~judgment~~ that the judgment
aforesaid may be in all things affirmed &c

D P Wilder

Deft. atty

overruled
decision of the Court the said defendant
said then and

~~George~~ ~~Edward~~ Smith implicated
284
10 3 Mend

Nathaniel J. Williams

Filed April 21 1859
L. Leland
Clerk

Robt. T. Blackwell
Edward G. May
attys for Applicant

SUPREME COURT
OF THE
STATE OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT
OF THE
COUNTY OF COOK.

GEORGE C. SMITH,
~~IM~~PLEADED WITH
FRANK SWICK, AND
RICHARD N. COWAN,
APPELLANT.
versus
NATHAIEL L. WILLIAMS,
APPELLEE.

This is an action of assumpsit brought by the appellee against the appellant,
1 impleaded, &c. Suit commenced by summons; service on George C. Smith, appel-
9 lant only, others not found.

2 The declaration contains three special counts and the common counts.

3 The first count is on a note as follows:

4 Received of N. L. Williams, sixty dollars, cash, which we promise to pay on
demand, with interest, at the rate of $3\frac{1}{2}$ per cent. per month.
\$60. FRANK SWICK & CO.

5 The second count is on a note as follows:

6 Received of N. L. Williams, one hundred and ninety dollars, which we promise
to pay on demand, with interest, at the rate of $3\frac{1}{2}$ per cent. per month.
\$190. FRANK SWICK & CO.

7 The third count is on a note as follows:

8 Received of N. L. Williams, seventy dollars, in cash, which we promise to pay
on demand, with interest, at the rate of $3\frac{1}{2}$ per cent. per month.
\$70. FRANK SWICK & CO.

10 The defendant George C. Smith, pleaded non-assumpsit, verified by affidavit.

11 Joinder by Plaintiff.

12 The cause came on for trial before Hon. George Manierre, Circuit Judge, and a
jury, on the 30th day of June, A. D., 1858.

13 The Plaintiff to prove the issues on his part, called the following witnesses, who
testified as follows:

14 S. D. Childs—Know the defendants Swick and Smith; knew the firm of Frank
Swick & Co.; the firm was composed of Frank Swick and George C. Smith; some
time in the latter part of May or June 1857, I sold Frank Swick & Co. the lease of
some offices for a bonus of one hundred dollars. Frank Swick & Co. were to give me
a note for this one hundred dollars, with a good endorser; the note was made by
Frank Swick & Co., and Mr. George C. Smith offered to endorse it; I objected to Mr.
Smith endorsing the note, told him he was a member of the firm of Frank Swick & Co.,
and that I had already got his name on the face of the note. Mr. Smith admitted he

was a partner, and endorsed the note Bradner, Smith & Co., of which firm he was also a member; Smith told me then that he was a member of the firm of Frank Swick & Co.

15 Cross Examination.—Know the firm of Frank Swick & Co.; it was composed of Frank Swick and George C. Smith; Smith told me he was one of the firm; did not know that Cowan belonged to the firm.

16 D. F. A. Williams testified.—Was engaged in office of Frank Swick & Co. from some time in June, 1857, till the first or second week in November, 1857; always supposed George C. Smith was a member of the firm; Swick was the boss; he engaged me; Smith came to the office several times a month, and talked with Swick. Cowan became connected with the firm in August or September, 1857. Smith came to the office several times after Cowan came into the firm; never heard that Smith disclaimed being a member of the firm, till a month or so before Swick's assignment in November, 1857.

17 Cross-examination.—I am a printer by trade; Swick engaged and paid me; do not know for certain that Smith was a member of the firm of Frank Swick & Co.

18 The Plaintiff here offered in evidence the notes sued on.

19 The defendant George C. Smith, by Edward G. Asay, his counsel, then and there objected to the admission of said notes.

20 Which said objection the Court overruled, and admitted said notes in evidence,
21 to which said ruling and decision of Court the said defendant Smith by his counsel, did then and there except.

Defendant then called the following witnesses, who testified as follows:

22 F. P. Elliott.—I am book-keeper of Bradner, Smith & Co.; Knew the firm of Frank Swick & Co.; it consisted of Frank Swick & Co., in September and October, 1857; he never was a member of that firm; he had dealings with that firm; Swick & Co. bought paper of Bradner, Smith & Co.; Smith went frequently to office of Frank Swick & Co. to collect money which that firm owed him. He afterwards took a chattel mortgage from Swick to secure him from endorsing paper of Frank Swick & Co.; they owed him when they dissolved about \$500. (The notes sued on by Plaintiff were here shown witness.) These notes were not executed by George C. Smith, neither of them; they are not in his hand-writing.

23 Cross-examination.—Smith might have been a member of firm of Frank Swick & Co. without my knowing it; he might have gone for other purposes than to collect money; know plaintiff; he is very deaf; he came to see Smith several times about these notes.

24 S. P. Rounds testified.—I was acquainted with Frank Swick & Co.; had dealings with them; called on George C. Smith in reference to a claim I had against them in June, 1857; Smith then told me he was not a member of the firm.

25 Cross-examination.—I had supposed Smith was a member of the firm before I called on him.

26 The cause was submitted to the jury, who, under the directions of the court brought in a sealed verdict the following morning, which was as follows:

27 We, the jury, find verdict for the Plaintiff.

28 Thereupon the Court ordered the jury to retire again, and assess the damages,
29 casting interest on the amount of notes at six per cent. per annum. To which said direction the said Defendant by his counsel did then and there except.

Afterwards the jury returned a verdict as follows:

30 We, the jury, find verdict for Plaintiff, and assess the damages at \$334 22.

31 Thereupon said Defendant by his counsel moved for a new trial and an arrest of judgment.

32 Afterwards the Court overruled said motions.

33 To which said overruling the Defendant by his counsel did then and there except, and prayed an appeal which was granted.

The following are the errors relied on by appellant.

- 1 The Court erred in admitting the notes in evidence.
- 2 The Court erred in overruling defendant's objection to the admission of the notes
sued on.
- 3 The Court erred in ordering the jury to bring in a sealed verdict without consent
of defendant or counsel.
- 4 The Court erred in allowing the jury to retire and consider their verdict again,
after it had been unsealed and delivered to the Court.
- 5 The Court erred in directing the jury to find damages in amount of notes and six
per cent. interest per annum.
- 6 That there is no evidence to support the verdict.
- 7 That the verdict is contrary to the law and evidence.
- 8 That the Court erred in overruling the motion for a new trial.
- 9 That the Court erred in entering judgment for Plaintiff below.

284-139
Smith

15

Williams

Abstract

Filed April 25, 1839
L. Leland
Clerk

Supreme Court of the State of Illinois,

Of the April Term, A. D. 1859.

GEO. C. SMITH, impleaded with FRANK SWICK
and RICHARD W. COWAN, *Pltff. in Error*,

vs.

NATHANIEL L. WILLIAMS, *Deft. in Error*.

Nine errors are assigned in the ruling of the Circuit Court.

The errors alleged in the third and fourth assignments are mere matters of practice, lie wholly within the discretion of the Circuit Court, and are not assignable for error, as the usual practice was followed. *Finn v Barlow* 16 Ill. 40.

The fifth assignment of error is also untenable. This direction of the Circuit Court resulted in a benefit to defendant below; and if he intended to set up the defense of usury, he should have pleaded it specially—as he did not, the plaintiff below might even have claimed the rate of interest specified in the notes. *Murry v. Crocker* 1 Scam. 212. *Partlow v. Williams* 19 Ill. 133.

The fact that George C. Smith was a member of the firm of Frank Swick & Co., in the summer of 1857, was clearly proved by the witness Childs; and his continuance in that firm was proved by witness Williams as fully as the nature of such a case admits.

The first, second, sixth, seventh, eighth and ninth assignments of error, are all substantially to the same effect, and simply raise the question whether the plaintiff below sufficiently proved his case—that is to say, whether he should have proved the execution of the notes sued on by one of the members of the firm of Frank Swick & Co.; and whether the fact that the statement of the evidence contained in the bill of exceptions does not show that this was done, is a sufficient cause for reversing the judgment.

We say, that under the circumstances, and considering the course pursued by the counsel for plaintiff in error in the trial below, he cannot now avail himself of this omission in the proof. He should have stated his objection *specifically* on the trial, so that plaintiff below could have remedied the defect; this he did not, ^{as} as the bill of exceptions shows; and it is now too late.

The case of *Swift et al., v. Whitney, et. al.* and same *v. Marsh*, 20 Ill. 144, are directly in point. Also, *Sargent v. Kellogg*, 5 Gil. 281; *Russell v. Whitesides*, 4 Scam. 11; *Gilham v. State Bank of Ill.*, 2 Scam. 250; *Jackson v. Davis*, 5 Cowan, 123; *Harman v. Thornton*, 2 Scam. 355.

284-139

Smith vs Williams

Depts Prints

Filed Apr 27, 1857

E. Leland
Clerk

Prepared

Supreme Court of the State of Illinois,

Of the April Term, A. D. 1859.

GEO. C. SMITH, impleaded with FRANK SWICK
and RICHARD W. COWAN, *Pltff. in Error*,

vs.

NATHANIEL L. WILLIAMS, *Deft. in Error*.

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The fifth assignment of error is also untenable. This direction of the Circuit Court resulted in a benefit to defendant below; and if he intended to set up the defense of usury, he should have pleaded it specially—as he did not, the plaintiff below might even have claimed the rate of interest specified in the notes. *Murry v. Crocker* 1 Scam. 212. *Partlow v. Williams* 19 Ill. 133.

The fact that George C. Smith was a member of the firm of Frank Swick & Co., in the summer of 1857, was clearly proved by the witness Childs; and his continuance in that firm was proved by witness Williams as fully as the nature of such a case admits.

The first, second, sixth, seventh, eighth and ninth assignments of error, are all substantially to the same effect, and simply raise the question whether the plaintiff below sufficiently proved his case—that is to say, whether he should have proved the execution of the notes sued on by one of the members of the firm of Frank Swick & Co.; and whether the fact that the statement of the evidence contained in the bill of exceptions does not show that this was done, is a sufficient cause for reversing the judgment.

We say, that under the circumstances, and considering the course pursued by the counsel for plaintiff in error in the trial below, he cannot now avail himself of this omission in the proof. He should have stated his objection *specifically* on the trial, so that plaintiff below could have remedied the defect; this he did not, as the bill of exceptions shows; and it is now too late.

The case of *Swift et al., v. Whitney, et. al.* and same *v. Marsh*, 20 Ill. 144, are directly in point. Also, *Sargent v. Kellogg*, 5 Gil. 281; *Russell v. Whitesides*, 4 Scam. 11; *Gilham v. State Bank of Ill.*, 2 Scam. 250; *Jackson v. Davis*, 5 Cowan, 123; *Harman v. Thornton*, 2 Scam. 355.

285-139
Supreme Court
Nathaniel S. Williams
vs. Dept
George C. Smith et al
Plff
Defts Points

D. P. Wilder
Atty for Dept

Filed April 27. 1839
Leland
Clerk

Supreme Court of the State of Illinois,

Of the April Term, A. D. 1859.

GEO. C. SMITH, impleaded with FRANK SWICK
and RICHARD W. COWAN, *Pltff. in Error*,

vs.

NATHANIEL L. WILLIAMS, *Deft. in Error*.

Nine errors are assigned in the ruling of the Circuit Court.

The errors alleged in the third and fourth assignments are mere matters of practice, lie wholly within the discretion of the Circuit Court, and are not assignable for error, as the usual practice was followed. *Finn v Barlow* 16 Ill. 40.

The fifth assignment of error is also untenable. This direction of the Circuit Court resulted in a benefit to defendant below; and if he intended to set up the defense of usury, he should have pleaded it specially—as he did not, the plaintiff below might even have claimed the rate of interest specified in the notes. *Murry v. Crocker* 1 Scam. 212. *Partlow v. Williams* 19 Ill. 133.

The fact that George C. Smith was a member of the firm of Frank Swick & Co., in the summer of 1857, was clearly proved by the witness Childs; and his continuance in that firm was proved by witness Williams as fully as the nature of such a case admits.

The first, second, sixth, seventh, eighth and ninth assignments of error, are all substantially to the same effect, and simply raise the question whether the plaintiff below sufficiently proved his case—that is to say, whether he should have proved the execution of the notes sued on by one of the members of the firm of Frank Swick & Co.; and whether the fact that the statement of the evidence contained in the bill of exceptions does not show that this was done, is a sufficient cause for reversing the judgment.

We say, that under the circumstances, and considering the course pursued by the counsel for plaintiff in error in the trial below, he cannot now avail himself of this omission in the proof. He should have stated his objection *specifically* on the trial, so that plaintiff below could have remedied the defect; this he did not, ^{as} as the bill of exceptions shows; and it is now too late.

The case of *Swift et al., v. Whitney, et. al.* and same *v. Marsh*, 20 Ill. 144, are directly in point. Also, *Sargent v. Kellogg*, 5 Gil. 281; *Russell v. Whitesides*, 4 Scam. 11; *Gilham v. State Bank of Ill.*, 2 Scam. 250; *Jackson v. Davis*, 5 Cowan, 123; *Harman v. Thornton*, 2 Scam. 355.

284-139

Smith vs Williams

245 Points

Filed April 27, 1859

L. L. Smith

Clerk

SUPREME COURT
OF THE
STATE OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT
OF THE
COUNTY OF COOK.

GEORGE C. SMITH,
~~IM~~PLEADED WITH
FRANK SWICK, AND
RICHARD N. COWAN,
APPELLANT.
versus
NATHANIEL L. WILLIAMS,
APPELLEE.

This is an action of assumpsit brought by the appellee against the appellant,
1 impleaded, &c. Suit commenced by summons; service on George C. Smith, appel-
9 lant only, others not found.

2 The declaration contains three special counts and the common counts.

3 The first count is on a note as follows:

Chicago, Ill., Sept. 30, 1857.

4 Received of N. L. Williams, sixty dollars, cash, which we promise to pay on
demand, with interest, at the rate of $3\frac{1}{2}$ per cent. per month,
\$60. FRANK SWICK & CO.

5 The second count is on a note as follows:

Chicago, Ill., Oct. 1, 1857.

6 Received of N. L. Williams, one hundred and ninety dollars, which we promise
to pay on demand, with interest, at the rate of $3\frac{1}{2}$ per cent. per month.
\$190. FRANK SWICK & CO.

7 The third count is on a note as follows:

Chicago, Ill., Oct. 13, 1857.

8 Received of N. L. Williams, seventy dollars, in cash, which we promise to pay
on demand, with interest, at the rate of $3\frac{1}{2}$ per cent. per month.
\$70. FRANK SWICK & CO.

10 The defendant George C. Smith, pleaded non-assumpsit, verified by affidavit.
11 Joinder by Plaintiff.

12 The cause came on for trial before Hon. George Manierre, Circuit Judge, and a
jury, on the 30th day of June, A. D., 1858.

13 The Plaintiff to prove the issues on his part, called the following witnesses, who
testified as follows:

14 S. D. Childs—Know the defendants Swick and Smith; knew the firm of Frank
Swick & Co.; the firm was composed of Frank Swick and George C. Smith; some
time in the latter part of May or June 1857, I sold Frank Swick & Co. the lease of
some offices for a bonus of one hundred dollars. Frank Swick & Co. were to give me
a note for this one hundred dollars, with a good endorser; the note was made by
Frank Swick & Co., and Mr. George C. Smith offered to endorse it; I objected to Mr.
Smith endorsing the note, told him he was a member of the firm of Frank Swick & Co.,
and that I had already got his name on the face of the note. Mr. Smith admitted he

was a partner, and endorsed the note Bradner, Smith & Co., of which firm he was also a member; Smith told me then that he was a member of the firm of Frank Swick & Co.

15 Cross Examination.—Know the firm of Frank Swick & Co.; it was composed of Frank Swick and George C. Smith; Smith told me he was one of the firm; did not know that Cowan belonged to the firm.

16 D. F. A. Williams testified.—Was engaged in office of Frank Swick & Co. from some time in June, 1857, till the first or second week in November, 1857; always supposed George C. Smith was a member of the firm; Swick was the boss; he engaged me; Smith came to the office several times a month, and talked with Swick. Cowan became connected with the firm in August or September, 1857. Smith came to the office several times after Cowan came into the firm; never heard that Smith disclaimed being a member of the firm, till a month or so before Swick's assignment in November, 1857.

17 Cross-examination.—I am a printer by trade; Swick engaged and paid me; do not know for certain that Smith was a member of the firm of Frank Swick & Co.

18 The Plaintiff here offered in evidence the notes sued on.

19 The defendant George C. Smith, by Edward G. Asay, his counsel, then and there objected to the admission of said notes.

20 Which said objection the Court overruled, and admitted said notes in evidence,
21 to which said ruling and decision of Court the said defendant Smith by his counsel, did then and there except.

Defendant then called the following witnesses, who testified as follows:

22 F. P. Elliott.—I am book-keeper of Bradner, Smith & Co.; Knew the firm of Frank Swick & Co.; it consisted of Frank Swick and one Cowan. George C. Smith was not a member of the firm of Frank Swick & Co., in September and October, 1857; he never was a member of that firm; he had dealings with that firm; Swick & Co. bought paper of Bradner, Smith & Co.; Smith went frequently to office of Frank Swick & Co. to collect money which that firm owed him. He afterwards took a chattel mortgage from Swick to secure him from endorsing paper of Frank Swick & Co.; they owed him when they dissolved about \$500. (The notes sued on by Plaintiff were here shown witness.) These notes were not executed by George C. Smith, neither of them; they are not in his hand-writing.

23 Cross-examination.—Smith might have been a member of firm of Frank Swick & Co. without my knowing it; he might have gone for other purposes than to collect money; know plaintiff; he is very deaf; he came to see Smith several times about these notes.

24 S. P. Rounds testified.—I was acquainted with Frank Swick & Co.; had dealings with them; called on George C. Smith in reference to a claim I had against them in June, 1857; Smith then told me he was not a member of the firm.

25 Cross-examination.—I had supposed Smith was a member of the firm before I called on him.

26 The cause was submitted to the jury, who, under the directions of the count brought in a sealed verdict the following morning, which was as follows:

27 We, the jury, find verdict for the Plaintiff.

28 Thereupon the Court ordered the jury to retire again, and assess the damages,
29 casting interest on the amount of notes at six per cent. per annum. To which said direction the said Defendant by his counsel did then and there except.

Afterwards the jury returned a verdict as follows:

30 We, the jury, find verdict for Plaintiff, and assess the damages at \$334 22.

31 Thereupon said Defendant by his counsel moved for a new trial and an arrest of judgment.

32 Afterwards the Court overruled said motions.

33 To which said overruling the Defendant by his counsel did then and there except, and prayed an appeal which was granted.

The following are the errors relied on by appellant.

- 1 The Court erred in admitting the notes in evidence.
- 2 The Court erred in overruling defendant's objection to the admission of the notes
sued on.
- 3 The Court erred in ordering the jury to bring in a sealed verdict without consent
of defendant or counsel.
- 4 The Court erred in allowing the jury to retire and consider their verdict again,
after it had been unsealed and delivered to the Court.
- 5 The Court erred in directing the jury to find damages in amount of notes and six
per cent. interest per annum.
- 6 That there is no evidence to support the verdict.
- 7 That the verdict is contrary to the law and evidence.
- 8 That the Court erred in overruling the motion for a new trial.
- 9 That the Court erred in entering judgment for Plaintiff below.

284-139
Smith

vs

William

Abstract

Filed Apr 25, 1859

Leland

Clerk