

11845

No.

Supreme Court of Illinois

Hitt.

vs.

Allen.

71641  7

*Minnesota*

*Samuel Hitt &c.*

*Hardy E. Allen*

*[Handwritten signature]*

1857

11845

*Prepared*

In the Wennebago County Circuit Court  
Of the December Special Term AD 1850

Aaron D. Allen

vs  
Samuel M. Holt <sup>Plaintiff</sup>  
vs  
Nathaniel Swingley <sup>Defendant</sup>

Be it remembered that on the  
day of December AD 1850 this cause came  
on to be heard tried before the Hon. August Anderson  
Judge of said Court and a jury.

That the said  
Plaintiff introduced as a witness Philip Spraker,  
who swore that he was acquainted with the  
parties to this suit, that the Defendants Holt  
and Swingley used to reside in Maryland,  
that they lived 14 or 15 miles apart there,  
That in 1838 he heard Swingley state in  
Maryland that they had employed the  
Plaintiff to come to Ogle County to teach a  
School at \$400, per Year. That Witness  
brought the Plaintiff out from Maryland,  
and he brought with him a Trunk full of  
Books; that he knows that the Plaintiff taught  
School, commenced on the 8<sup>th</sup> June 1838, and  
continued until August 1839.

Witness once heard

2  
Hitt says that he was glad they had got  
so good a Teacher.

The Defendant objected to  
the witness stating what Swingley said about  
the hiring of the Plaintiff, which objection was  
overruled by the Court, to which decision the  
Defendant then and there excepted.

Thomas Hitt was then called,  
sworn and examined on the part of the Plaintiff,  
Says that the Plaintiff taught the school at  
Pine Creek in Ogle County from June 1838, till  
August 1839. That in the month of December  
1838 he was one of a Committee appointed by the  
Methodist Conference to select a location for a  
Seminary of learning in northern Illinois,  
That the Committee met at Fox River, and  
that Hitt and Swingley (the Defendants) met  
the Committee there. That in answer to a  
question put to the Defendant Hitt, by Elder  
Clark, which question was, what they paid  
their Teacher, the Defendant Hitt answered  
in the presence of Swingley "Captain Swingley  
and I have hired a young man at \$400, per  
Year, and he is an excellent Teacher in all  
English branches." Witness supposes that the  
object of the inquiry was to ascertain what  
Salary a good Teacher would cost at Mount  
Morris, others at that Meeting had stated  
the Salaries of Teachers at White and at other  
points, About 20 Scholars attended the

School taught by the Plaintiff. The School was taught in a house which was erected on the claim of Mr. Worden, and the Witness and Worden & other neighbors subscribed for the School and sent their children to the same.

After the ~~Witness~~<sup>Plaintiff</sup> returned to Maryland Witness & defendant Witt settled up their accounts, and witness then paid Witt the amount of his School Bill for the School taught by the Plaintiff, it amounted to about \$30. Defendant Witt told witness that he was authorized to receive the money, same, and said he had the bill made out by Mr. Allen at his (Witt's) house.

Witness thinks the Books brought by Plaintiff were worth \$12. or \$15. Witness signed 2. Schollars to the School, and others in the neighborhood signed, Witness supposed that the persons who employed Plaintiff would pay him, and that those who patronized the School would pay their proportions,

Elias Parker sworn on the part of the Plaintiff, In the fall of 1838 Witness was at defendant Witt's house in Ogle County, and heard Defendant Witt remark as follows. "We have a good Teacher, We pay him \$4.00 per Year and board him", Plaintiff taught about 14 Months

The Plaintiff then read in evidence the deposition of Mary Simgley which is made part of this Bill of Exceptions and hereto attached and marked A

Samuel Mitchel was then sworn as witness on the part of the Plaintiff. He stated that he had been at work for Drft Witt, that when the school house was building, he heard Witt say that he and Simgley had hired the Plaintiff in Maryland to teach the school at \$400, per Year & board. The Plaintiff boarded at Simgleys, the statement made by Abner Witt was before Allen came on, Witness dont know how the Plaintiff learned that he had heard Witt make the statement in relation to the hiring.

Philip Spraker recalled by Plff. stated that when he moved into Cyle County in 1839, he brought to the Plff a bundle of books, thinks about half a bushel, dont know the value of them,

Once during the time the school was being taught by Plff Witness & others were riding with the defendant Witt, when Witt stated that he was glad they had got so good a teacher. Witness was asked by Plff, who defendant meant when he said "they" to which defendant objected - Objection overruled

by the Court, to which Defendant excepted,  
and the witness answered that he meant  
himself and Swingley,

Plaintiff here rested his case

The Defendant Witt in defence, read in  
evidence the depositions of Mary Swingley which  
is herewith attached marked B. which is  
made part of this Bill

He also read in evidence the Statement of John  
B. Cheerey, with the stipulation on the back  
thereof, which is herewith attached marked  
C, which is made part of this Bill,

He then introduced as a witness Dr. Beattie  
who being sworn stated, that he was well  
acquainted with all the parties. Witt &  
Swingley were the head of the Maryland  
Settlement at Mount Morris, that what  
was done, was done by Witt & Swingley, those  
names were always connected with in all  
improvements going on, and any thing of  
a public nature done, From the connection,  
persons might and probably would have  
supposed that they were partners, but

witness knows they were not, and knows that  
 Hill was connected with a company in  
 Maryland which precluded him from  
 having any partnership connection with  
 any body else, witness was intimately acquainted  
 with the business arrangements of each of  
 them, had settlements with each of them  
 individually, and knows that no partnership  
 existed between them. On the common speech  
 of the people they were mentioned as the representatives  
 of the Maryland Settlement, which in fact  
 they were. Swingley was rich when he came  
 into the country and remained good & solvent  
 up to 1842 or 1843 and perhaps later.

J. B. McCoy was the sword on the part  
 of the defendant - knows the defendant's Hill  
 & Swingley will, knows their business arrangements  
 came into the country in 1839. & has lived in  
 their neighborhood ever since. There was  
 no partnership between the defendants.  
 They were regarded & always spoken of as  
 the leading men of the Maryland Settlement  
 and their names always spoken together  
 in connection with the affairs of said  
 Settlement. Captain Swingley was a wealthy  
 man until 1843 or 1844, and was prompt. He  
 was rich when he came in 1838

In the cross examination he stated

about between 1842. & ~~1843~~ 1846, he had paid  
to Captain Swingley his wife's brother, about  
\$50. for the schooling of his wife's children at  
the school taught by Plaintiff in 1838 & 1839.  
The school closed after winter came there in  
July or August 1839.

Defendant then introduced  
and read in evidence the Disposition of S. N.  
Sample which is hereto attached and  
marked D, and made a part of this Bill

Defendant then called Dr. Bentley  
and proved that the three Bills or accounts  
hereto annexed marked E. F. S. were in  
the proper hand writing of the Plaintiff in whose  
favor they were made out. Said Bills  
or accounts are made part of this Bill of  
Expositions.

Defendants here rested,

Plff then recalled Philip Spaker, who stated  
that a Year ago last May he heard Capt  
Swingley ~~say~~ state that the School Bills  
were so made out by the Plff. in his name, for  
the accommodation of the Defendants, that the  
Bills were high & the Plff was going back to Maryland,  
and by having the Bills so made out in Allen's  
name, the Defendants would not be blamed by  
their neighbors.

The Defendant Hill by his Counsel



objected to the witness stating what was said by  
 Swingle as above, which objections the Court  
 overruled, and allowed the same to be given,  
 to which decision of the Court the Defendant Wits  
 then and there excepted,

This was all the evidence given in  
 said case.

The Plaintiff then asked the  
 Court to give the instructions numbered  
 1. 2. 3. 4. & 5, hereto attached and  
 marked "Plffs Instructions" to the giving of  
 which the Defendant objected, which objection  
 was overruled by the Court, and said instructions  
 given to which decision of the Court, and the  
 giving of said instructions the Defendant  
 then and there excepted.

The Defendant then and there  
 asked the Court to give to the Jury the  
 instructions hereto attached, numbered  
 1. 2. 3. 4. 5. 6. & 7. Marked "Defendants  
 Instructions" which said instructions  
 numbered 1. 2. 3. 4 & 7. were given by the  
 Court to the giving of which the Plaintiff  
 excepted, those numbered 5 & 6, the Court  
 refused to give, to which decision of the  
 Court in refusing to give said instructions  
 5 & 6, the Defendant then and there Excepted,

The foregoing were all the instructions offered by either party, or given or refused by the Court,

The cause was <sup>then</sup> submitted to the Jury who after an ~~of~~ <sup>of</sup> 23 hours on the 11<sup>th</sup> day of December 1850 came into Court and by their Foreman delivered a verdict in writing of which the following is a true copy

"We the Jury find  
for the Plaintiff a judgment amounting  
to Two hundred Dollars \$ 200.00  
and assess the damages at the  
amount of one hundred and thirty six  
Dollars and twenty three and one third cents.  
136.23 1/3  
\$ 336.23 1/3

"Rendered Decr 11<sup>th</sup> 1850"

"W. H. Foster Foreman"  
which verdict by the Order of Court was put in  
form and is as follows,

We the Jury find for the  
Plaintiff the sum of Two hundred dollars debt,  
and assess his damages at the sum of one  
hundred and thirty six dollars and twenty  
three and one third cents

Whereupon the said Defendant  
moved the Court for a new Trial in said cause  
which motion the Court overruled, to which  
decision of the Court in overruling the said  
motion for a new Trial the said Defendant  
then and there excepted.

Whereupon the said Defendant moved the said Court in arrest of judgement in said cause, which said Motion the said Court overruled and rendered judgement upon the said verdict which is as follows

Arrow & Allen

vs  
Samuel M. Hitt } Change of venue  
Nathaniel Sumner } from Oyle

And now moved at this day come the Plaintiffs by Breckenridge & Warner his Attornies and the Defendant Hitt by Cook his Attorney also come. and the Court being fully advised on the Motion in arrest of Judgement and for a new Trial being overruled the same. It is therefore ordered and considered by the Court that the said Plaintiff have and receive of the said Defendants as aforesaid the said sum of Two hundred <sup>dollars</sup> and the sum of One hundred and thirty six dollars and twenty three and one third Cents his damages for the detention thereof, amounting in the whole to the sum of Three hundred and thirty six dollars and twenty three and one third Cents debt and damages as also his costs and charges herein Expended, and that he have Execution therefor,

To which Decisions

of the Court in overruling said Motion  
in arrest of Judgment, and rendering  
judgment thereupon the said Verdict  
the said Defendant then and there excepted,  
and prays that his Bill of Exceptions be  
allowed signed & sealed by the Judge, and  
it is done accordingly

Hugh Henderson J. C.  
Judge of the 11<sup>th</sup> Judicial Circuit  
State of Illinois.

(A)

The Deposition of Mary Surrency  
taken to be read and used in Evidence  
in the trial and hearing of a certain cause  
now pending by Charge of Venue from  
Ogle County in the Circuit Court of Winnebago  
County Illinois wherein Aaron P. Allen is  
Plaintiff and Samuel M. Hill and  
Nathaniel Surrency are defendants,

And the said Mary Surrency  
being produced and sworn deposed as  
follows in response to the following interrogatories

Interrogatory 1<sup>st</sup>. Are you or are you not acquainted  
with the parties to the above suit, if so,  
when, where, and how long have you known them,

Answer. I am acquainted with the parties to the above  
suit. I have known Samuel M. Hill for  
the last thirty years I have had an  
intimate acquaintance with him for the  
last ten years or twelve years, I Captain  
Nathaniel Surrency I raised, and A. P.  
Allen (the Plaintiff) I have known for the last ten  
or twelve years. I have known them all the last few years in Ogle County Illinois.

Interrogatory 2<sup>d</sup>. Do You or not know of the said Plaintiff's being in the employ of the said Defendants, if so, when, where, and what was his occupation or business when employed by them?

Answer 2. I do know of said Plaintiff's being employed by said Defendants, He was hired by them in the years of 1838 & 1839. To teach their children, in Ogle County Illinois.

Interrogatory 3<sup>d</sup>. Had You or not conversation with said Defendants relative to said Plaintiff's being in their employ, if so please state fully all that was said on such occasions & the time & place?

Answer 3<sup>d</sup>. I have heard the Defendant Swingle frequently say that he & Samuel M. Witt had hired the said Plaintiff to teach school for them & that they were to pay him four hundred dollars per Annum & to board him. These conversations took place at my own residence in Maryland & that the said Swingle's residence in Ogle County Illinois, but the exact times I do not recollect, I recollect a long conversation I had with Samuel M. Witt at my residence in Maryland, Saturday previous to Harrison's inauguration, said Witt spoke in the highest terms of said Allen, and said

that he And the Captain had intended  
to hire a Teacher to teach for them from  
Merewsbury or some such place, but the  
Captain having recommended Mr Allen  
the plaintiff in such high terms that we  
concluded to hire him, that he was highly  
pleas'd with ~~some~~ Mr Allen when he saw  
him, and we at once hired him to go out  
west and teach for us, & that we agreed  
to pay him four hundred dollars a Year  
& board him, and found him to be the best  
Teacher we had ever employed.

Interrogatory 4. Please state who Samuel M. Hill  
meant, by the Term Captain & the persons  
we & us,

Answer 4.

By Capt. in he meant Nathaniel  
Swingley one of the above defendants, and  
by the pronouns "we, & us," he meant  
himself and (Samuel M. Witt) & Nathaniel  
Swingley the Defendants to the above entitled  
Suit,

Mary Swingley

State of Illinois }  
Ogle County }

I, James M. Webb a  
Justice of the Peace in and  
for said County & State aforesaid do hereby certify  
that the above named Witness (Mary Swingley  
personally appeared before me and being  
first duly sworn in the above entitled suit,  
to testify the truth in relation to the matter  
in controversy, so far as she may be interrogated,  
and thereupon deposed in answer to the  
foregoing interrogatories in answer, as  
they are above written & reduced to writing  
by me, and the deposition having been  
carefully read over by me to said Witness  
it was sworn to and signed by said Witness  
at the house of Elias Baker in the  
Village of Mount Morris in the County of  
Ogle & State of Illinois, on this seventeenth  
day of November A.D. 1849. between the hours  
of Eight (8) A.M. & Eleven (11) P.M. of said  
day, which deposition is taken pursuant  
to notice, & to be used in the trial & hearing of



that he And the Captain had intended  
to hire a Teacher to teach for them from  
Merriwbury or some such place, but the  
Captain having recommended Mr Allen  
the plaintiff in such high terms that we  
concluded to hire him, that he was highly  
pleased with having Mr Allen when he saw  
him, and we at once bid him to go out  
west and teach for us, & that we agreed  
to pay him four hundred dollars a Year  
& bound him, and found him to be the best  
Teacher we had ever employed.

Interrogatory 4. Please state who Samuel M Bell  
meant, by the Term Captain & the pronoun  
we & us;

Answer 4.

By Captain he meant Nathaniel  
Swingle one of the above Defendants, and  
by the pronouns "we, & us," he meant  
himself and (Samuel M. Witt) & Nathaniel  
Swingle the Defendants to the above entitled  
Suit,

Mary Swingle

State of Illinois,  
Ogle County }

I, James M. Webb a  
Justice of the Peace in and  
for said County & State aforesaid do hereby certify

that the above named Witness (Mary Swingle)  
personally appeared before me and being  
first duly sworn in the above entitled suit,  
to testify the truth in relation to the matter  
in controversy, so far as she may be interrogated,  
and thereupon deposed in answer to the  
foregoing interrogatories in manner, as  
they are above written & reduced to writing  
by me, and the deposition having been  
carefully read over by me to said Witness  
it was sworn to and signed by said Witness  
at the house of Elias Baker in the  
Village of Mount Morris in the County of  
Ogle & State of Illinois, on this seventeenth  
day of November A.D. 1849. between the hours  
of Eight (8) A.M. & Eleven (11) P.M. of said  
day, which deposition is taken pursuant  
to notice, & to be used in the trial & hearing of

a certain Suit now pending in the Circuit  
Court of Winnebago County Illinois wherein  
Ann D. Allen is Plaintiff & Samuel W  
Webb & Nathaniel Simms are defendants  
Witness my hand & Seal this 17<sup>th</sup> day  
of November A.D. 1849.

James M Webb Seal  
Justice of the peace

State of Illinois,  
Ogle County } ss

I John M Hewitt Clerk  
of the County Court of said County, do hereby  
certify that James M Webb whose name  
appears signed to the above Depositions, was on  
the 1<sup>st</sup> day of November 1849, and until the 30<sup>th</sup>  
day of November 1849, an acting Justice of the  
peace in & for said County, duly commissioned  
Sworn and qualified as appears to me from  
the Records of my Office, and as such Justice  
full faith and credit is due and of right  
should be given to all his official acts,

In Witness whereof I have hereunto set  
my hand and affixed the Seal of said  
County at Oregon this Tenth day of  
December A.D. 1849.

Seal

John M Hewitt  
County Clerk

(B)

State of Illinois }  
Ogle County }

Circuit Court of Wmmebuco  
County, December Term A.D. 1859  
by change of Venue from Ogle County

Anna D. Allen

vs

Samuel M. Witt }  
Washington Swingley }

The Deposition of Mary Swingley aged about fifty four Years a resident of Ogle County and a witness in the above entitled Suit, taken by Isaac L. Woolley Esq. a Justice of the Peace in & for said County of Ogle & State of Illinois on the fourth day of December A.D. 1859 at the Office of said Isaac L. Woolley Esq. in Ogle in said County of Ogle in the presence of said Plaintiff & said Samuel M. Witt one of said Defendants, on behalf of said Defendant Witt.

Mary Swingley being duly sworn deposes & says as follows to wit,

Interrogatory 1<sup>st</sup>

Do You know the parties to this Suit & how long have You known them?

Answer I have known Washington Swingley for a period of about thirty five Years, Samuel M. Witt for about thirty years, & the Plaintiff Anna D. Allen from the

Page 11

the middle of August 1839, as near as I can recollect  
up to this time.

Inter<sup>o</sup> Q. Did You ~~know~~ have a conversation with Samuel  
M Witt at your house in Washington County  
in the State of Maryland in the Spring of the  
Year AD 1841, in reference to a contract between  
Said Plaintiff and Said Defendant,? if so  
State particularly the purport of Said Conversation  
& what was said between You & him?

Answer

I had a conversation with Samuel M Witt  
at my residence in Washington County Maryland,  
in the Spring of 1841 in relation to a contract  
between said Plaintiff and Samuel M Witt  
Defendants. Samuel M Witt came to my  
house in the evening, I invited him to the wedding,  
he told me he could not attend, he had to be  
at Washington at the inauguration. I  
told him that I had rather my daughter  
had waited a while. She was Younger. He then  
spoke of Mr Allens Talents. he told me  
that they (that is) him and the Captain, had  
partly agreed with a Young Man in Meersburg  
but the Captain sent for him and sent for Mr Allen  
and he found the talents of Mr Allen much  
superior to the other one, so we hired him  
as our Teacher, and I do declare that we never had  
a Teacher that gave us much satisfaction for the same  
amount of money. } Mary Swingley

(B)

Ogle County ss. I the Subscriber Justice of  
The peace of the said County  
do certify that the above Deposition was taken  
by me at the time and place mentioned in the  
caption thereof between the hours of 9. o'clock Am  
and 9. o'clock P.M. That the said Witness was  
first duly sworn and that the said Deposition  
was carefully read to the witness and signed  
and sworn to by her.

Dated at Oregon December 4. 1850

Isaac Woolley

Justice of the peace

Mr James D. Allen

Sir

You are hereby  
notified that on the 4<sup>th</sup> day of December A.D. 1850  
between the hours of nine o'clock in the morning  
and nine o'clock P.M. at the Office of Justice  
J. Woolley by a Justice of the peace in & for the  
County of Ogle and State of Illinois in Oregon I  
shall cause to be taken the Deposition of Mary  
Swingley John Smith, James B. McCoy and  
James S. Beatty to be read and read no evidence  
on the trial of a certain Cause now pending in the  
Circuit Court of Warrick County in said State  
by change of venue from said Ogle County, wherein  
you are plaintiff and J. and Nathaniel Swingley  
are Defendants, Oregon Nov 20 1850. J. M. Hill

A

(C)

A. P. Allen

vs

S. M. Witt }  
Northwell Swingley }

Pending in the Circuit  
Court of Annapolis  
County by Change of  
Venue from Ogle County

John B. Chesney a witness in  
the above Suit being duly sworn deposes and says,  
that some time ~~like~~ <sup>like</sup> ~~two~~ a Year since he  
was present at a conversation between the said  
Amos P. Allen & the said Samuel M. Witt,  
& that Allen then said that in the Summer of  
1839, when he was about starting for Maryland  
after having taught the school for one Year  
& 1/2 quarter, he told Witt, that if Witt would  
advance him two hundred Dollars, he would ~~take~~ <sup>take</sup>  
off the 1/2 quarter, & that Swingley went over to Witt's  
house & returned with ~~the~~ \$165.00 in money, & an  
order drawn by Mr Reynolds, on P. B. Crist, and  
paid the \$165.00 over to Allen, and that  
he Allen also got the money on Mr Reynolds  
order immediately, making in all \$200.00 & that  
it was his understanding then, & he yet believes  
that the money came from Witt.

And that Swingley had agreed to  
pay a certain note made by Allen, Swingley  
being security = to one C. Burr Artz for the

Sum of \$100.00. I cannot be clearly positive as to the exact language used, but this was the impression made upon me at the time as to the City note. I have been counsel for Hill in this suit and went with Hill to see Allen and got from him a receipt for the \$200, which Allen declined giving, but said he would admit the payment as above stated.

On the trial of this suit in Ogle County Circuit Court of Ogle County Illinois, I made a statement of the above facts, as near as I remember, to which Allen assented, but I do not clearly remember to have stated any thing about the City note at that time, though it is possible I did,  
Sworn to & Examined } John B. Cheney  
Subscribed before me this }  
19<sup>th</sup> day of June 1849.

We, hereby agree that the within statement of us made by J. B. Cheney shall be read in evidence before the Jury, or, court, & have like force and effect as if he appeared in person and testified as a witness or made a deposition in the case

A. D. Allen Plaintiff  
J. M. Hill Defendant



(D)

State of Illinois }  
Ogle County } ps

The People of the State of  
Illinois To W. T. Ward  
in and for the County of  
Dodge and State of Wisconsin  
Greeting;

Know Ye that We in Confidence of  
Your prudence and fidelity have appointed You,  
and by these presents do give unto You full power  
and Authority and do hereby authorize and  
require You that at a certain time and place,  
to be designated and appointed by You for said  
purpose, You do cause the Witness whose name  
is mentioned in the Caption of the enclosed  
interrogatories, as well on the part of the said A. J.  
Allen Plaintiff, & S. M. Hill & Nathaniel Semple  
Defendants, to come before You and there and  
there diligently & faithfully examine him upon  
the said interrogatories on his Corporal oath,  
first taken before You, both on the part of the said  
Plaintiff & Defendants and more others, And  
and You do take such his Examination and  
cause the said interrogatories as they are proposed  
together with the answers of the said Witness thereto  
to be reduced to writing, in the order in which  
they shall be proposed and answered? and  
when You shall have so taken these, You shall cause  
the said Witness to sign his name to the same in its  
proper place in Your presence, and thereupon You will

comes at the foot thereof a certificate subscribed  
by You self in which You will must state  
that they are sworn to, and signed by the  
Deponent, and the time and place when & where  
the same were taken, after which You are to send  
the said Depositions together with the Commission  
and the enclosed interrogatories. Carefully enclosed  
and sealed up, to Clerk of the Circuit Court  
in & for the County of Wmirebugo and State of Illinois  
with the names of the said parties litigant endorsed  
thereon,

And this You shall in no wise omit.  
Witness R B Light Clerk of our Circuit  
Court of said County and the Seal  
thereof at Oregon this 14<sup>th</sup> day of  
May A.D. 1849.

Seal

R B Light Clerk

(D)

State of Wisconsin,  
Dodge County } Do J. S. Sample  
do solemnly sworn  
and truly declare and affirm that the  
answers which I have made to the following  
interrogatories contain the truth, the whole  
truth, and nothing but the truth, so  
far as I have been interrogated therein.  
J. S. Sample  
W. S. Wood Commissioner

State of Wisconsin  
Dodge County } Do J. W. William T. Wood  
Commissioner named  
on the foregoing Commission, caused to come  
before me J. S. Sample the witness whose  
testimony is sought; and he was in  
the witness named trial, on the 16<sup>th</sup> day  
of May A. D. 1849, and caused him to be  
sworn according to the Laws of the State,  
and taken down the following answers  
to the interrogatories propounded,  
J. S. Sample  
W. S. Wood Commissioner

Interrogatories propounded to J. S. Sample  
on behalf of the defendant,

Sept 15  
Interrogatory 1<sup>st</sup> Are You acquainted with the parties  
to this suit?

Inter 9 2<sup>nd</sup> Do You know anything of a settlement  
made between Nathaniel Sewing &  
Benjamin Sewing during the fall  
of the year 1843. either in person or by  
their agents, if Yes state the  
particulars of it.

Inter 9 3<sup>d</sup> How was said settlement made and  
the payment of the money secured,

Inter 9 4<sup>th</sup> What instruments of writing were passed  
between said parties or their agents at  
said settlement?

Inter 9 5<sup>th</sup> What items of indebtedness were included  
in said settlement, and in said mortgage

Inter 9 6<sup>th</sup> Is there any circumstance that  
gives the impression on Your mind, that  
said Allen's Claim was included  
in the amount secured to be paid by  
said Mortgage? if Yes state the  
circumstances particularly.

Grasp Interrogatories propounded on behalf of  
the Plaintiff.

Interrogatory 1<sup>st</sup> Are You positive that <sup>in</sup> said Settlement  
or Mortgage given, there was any  
claim whatever due said Plaintiff Allen  
from either or both of the Defendants Hitt  
& Swingle, included in either, if so of what  
and said claim consist; was it of one or  
more items and what were the items,

Interrogatory 2<sup>d</sup> Are You the person employed by Nathaniel  
Swingle one of the said Defendants, at that  
time to execute the Settlement and Mortgage  
if Yes, was there any note presented to you for the purpose of having it included in said Settlement  
in which the said Allen was principal and  
the said Nathaniel Swingle Security?  
if Yes, describe the said note,

Interrogatory 3<sup>d</sup> Did or had not the said Nathaniel  
Swingle a balance in his hands, of funds  
left with him by the said Nathaniel Benjamin  
Swingle to the credit of said Allen, for the  
purpose of entering said Allen's name, after  
the said land was entered, and at the time  
the said Mortgage was given? if Yes, state  
the amount, and whether it was included  
in said Mortgage or not,

Answer to part }  
about entries }

I am acquainted with the party's  
to this suit.

Answer 2<sup>d</sup> I know that there was a settlement  
or an adjustment of accounts between N.  
Swingley and Benjamin Swingley by his  
agent Samuel Swingley, and I believe it  
was in the fall of the year 1843, at which time  
N. Swingley executed a mortgage to said  
B. Swingley to secure to him the payment  
of the money therein mentioned. The  
settlement or adjustment was made in my  
Office, in my presence, and I believe that  
I made all the computations for them and  
drew the mortgage.

Answer 3 I know assured this, the settlement  
was made by adding together the several  
amounts, which together made the  
sum mentioned in the mortgage.

Answer 4. I cannot remember all the items, one  
was for money loaned to N. Swingley by  
Benjamin Swingley, and my impression  
is that there was one item consisting of  
a debt of one hundred <sup>and fifty</sup> or two hundred  
dollars which said <sup>N</sup> Swingley owed to A  
J. Allen.

Answer C. The Circumstance that fixes the impression  
on my mind is this, that I asked  
David N. Scrimby at the time why  
he included this debt of Allens in the  
debt to Benjamin Scrimby. He replied  
that it was all in the family.

Answer to Crof interrogatories

Answer put I am not positive. I only state it  
as my best impression, if there was any  
such claim, it was for one hundred or  
~~one hundred and fifty~~ or two hundred  
dollars, and there was but one item I think.

Answer D, I am the person who was so employed, but  
have no recollection of any such note, or of  
any note having been presented at such  
settlement.

Answer B I have no knowledge or recollection of  
the matters inquired of in this interrogatory  
whatsoever.

Subscribed and sworn to } S. N. Sample  
before me this 16<sup>th</sup> day of May 1819. }  
W. T. Wood Commissioner

I, William T. Wood  
the Commissioner named in the foregoing  
Commission do certify that S. N. Sample was

do hereby swear to make true answers to the  
interrogatories above propounded, and that  
after having been so sworn, and after the  
answers were written, he was sworn as to the  
truth of his said answers, and I  
certify that the same was sworn to and  
subscribed before me this 16 day of May 1849

W. J. Ward

Commissioner of



(C)

Samuel M Witt To A D Allen Dr  
To one Years tuition by subscription for four  
at \$22, <sup>cts</sup> 64 each

\$ 175. 20

" One half yrs tuition for four at 5. <sup>cts</sup> 66 per yr

11. 32

124. 52

To four copies Spelling Books at 15 cts each

" 60

" three Park Aul yards at 44 cts each

1. 32

" One popular Lessons at 44 cts

" 44

" 2 Slates at 18 <sup>cts</sup> 4 each

" 3 <sup>7</sup>/<sub>2</sub>

" 8 copy Books at 6 <sup>cts</sup> 4

" 50

" 1/2 yd of letter paper

" 18 <sup>3</sup>/<sub>4</sub>

July 10 1839. To 4 copies Spelling Books at 18 <sup>cts</sup> 2 each

" 75

\$ 128. 69 <sup>1</sup>/<sub>4</sub>

By amount paid D. M. Witt

6. 00

" pair of Socks

2. 50

" bush

1. 00

9. 50

Balance due

July 11 To two Spelling Books

\$ 119. 19 <sup>1</sup>/<sub>4</sub>

3 <sup>7</sup>/<sub>2</sub>

\$ 119. 56 <sup>3</sup>/<sub>4</sub>

August 10 1839.

N. B. Boarding included in the above

C. C.

(F)

Thomas S. Nett to A D Allen DP  
To one Years tuition for 1 $\frac{3}{4}$  scholars at 22.64 each <sup>lb. cts</sup> 39. 62  
" one half yrs tuition for two at 5.66 pr yr <sup>lb. cts</sup> 5.66  
145. 28  
Only 10<sup>th</sup> 1839. To one Spelling Book 184  
145. 46 $\frac{3}{4}$

Aug 10<sup>th</sup> 1839

N.B. Boarding included in the above  
C. C.

(B)

Merrett Warner & A. D. Allen Dr

To one Year's tuition by subscription for two at \$22.64 each	\$ 45.28
" one half yr tuition for two at 5.66 cts per yr	5.66
x Fee	50.94
To two Campbells Spelling Books at 15 cts	.30
" two Slates at 18 3/4 cts	.37 1/2
" two popular Lessons at 44 cts each	.88
One Dutch Alphabet	44
	<hr/>
	\$ 52.93 1/2

August 10<sup>th</sup> 1839.

N.B. Boarding included in the above  
E. C.

Plaintiff's instructions

The P<sup>l</sup>ff. asks the Court to instruct the Jury

1. If the Jury believe from the evidence that the Defendants had both agreed to employ the P<sup>l</sup>ff. upon the terms as claimed by the P<sup>l</sup>ff. in his declaration, then they are jointly liable to pay the sum agreed upon, & the Jury will find for the P<sup>l</sup>ff. such sum as the P<sup>l</sup>ff. has proved to have been due to him for such employment,

sum

2. If the Jury believe from the evidence that the Defendants jointly employed the P<sup>l</sup>ff. then the several declarations of the Defendants in relation to such employment are evidence binding upon both,

sum

3. If the Jury believe from the evidence as established by the declarations or admissions of the Defendant that the P<sup>l</sup>ff. rendered services for the Defendant as claimed in his declaration, then the Jury will find a verdict for the P<sup>l</sup>ff. for the balance due him for such services

sum

(Page 2)

Sum.

4. If the Jury find from the evidence that the P<sup>ff</sup> has proved a joint Liability of the Def<sup>s</sup> Hitt & Sunnily to him, then no separate arrangement between the P<sup>ff</sup> and either of the Def<sup>s</sup>, will discharge such joint liability unless the same was expressly accepted by the P<sup>ff</sup> in payment, satisfaction, or release of such joint liability and so actual payment or satisfaction is only available so far as proved, it is proved.

Sum.

5. If the Jury believe from the evidence that there was a particular sum due from the Def<sup>s</sup> to the P<sup>ff</sup> by the Terms of a contract between them, on the 4<sup>th</sup> day of June 1839, then the P<sup>ff</sup> is intitled to interest on such sum from that time or, on whatever balance the Jury shall find after deducting payments,

Wpts Instructions

1. That if the Jury believe from the Evidence that the Defendant Witt. before the commencement of this suit paid to the Plaintiff the Claims which he had against him for tuition and Stationary, for which he claims in this suit, they will find for the Defendant,

2. That if they believe that before the commencement of this suit the Plaintiff & Defendant Witt Settled for the Services & Stationary Claims, and that that the Defendant paid the Plaintiff in full, then they will find for the Defendant,

3. That if they believe from the Evidence that the Plaintiff taught the School by the Scholars, and not by the Term, for the two Defendants, and that the persons patronizing said School had signed an Agreement with the Plaintiff to pay him for the tuition, and that the Defendants are not jointly liable for any of the Services performed, they will find for the Defendants,

4. That if the Jury believe that the Defendant Witt has fully paid and performed his Contract or agreement with the Plaintiff

34

Witt

3

28

34

Witt

3

34

Witt

for teaching said School & for Stationery —  
they will find for the Defendant

5. That if the Jury believe from the Evidence  
that the Plaintiff received of the Defendant  
Hitt his account up to the 10 day of  
August 1839. and that the said Plaintiff  
and the said Hitt made a full settlement  
of all demands in pursuance of the  
said account so received, and the  
Defendant paid the amount claimed,  
such settlement & payment is conclusive  
upon the Plaintiff unless he shows some  
mistake made in the settlement, and  
the Jury must find for the Defendant,

6. That if the Jury believe that the Defendant  
Hitt has paid to the Plaintiff the  
amount claimed by the Defendant  
Plaintiff against him, they must find for  
the Defendant. Although they may  
believe that Swingley is indebted to the  
Plaintiff.

7. That if the Jury believe from the evidence that the  
Plaintiff was hired by Hitt & Swingley jointly, and also  
believe that Hitt has paid to the Plaintiff his proportion  
of the salary in full discharge of his obligation, and  
it was so received by the Plaintiff they must find

Page 22

Ex  
Hitt

Refused

Refused

Ex  
Hitt

*Sum*  
for the Defendant although they may believe  
that Sempley has not paid his proportion of  
such Salary

State of Illinois  
Winnebago County P. J. O. Spafford  
Clerk of the Circuit Court within and for  
said County and State of aforesaid, do hereby  
certify the foregoing to be a true copy of  
a Bill of Exceptions filed in the Clerk's Office  
of said Winnebago County Circuit Court, on  
the 19<sup>th</sup> day of June A.D. 1851, in a certain  
Cause lately depending in said Circuit Court  
wherein Harris D. Meadows Plaintiff and  
Samuel M. Pitt and Nathaniel Sempley  
were Defendants.

In Witness whereof I have  
Subscribed my name and affixed the  
Seal of said Court at Rockford  
in said County this 21<sup>st</sup> day of  
June A.D. 1851.

P. J. O. Spafford  
Clerk

[1184528]

Dec 10, 30



Winchard  
Hill vs Allen  
Certified copy of  
Bill of exceptions

Filed June 27. 1884.  
S. Seland Clk.

United States of America  
State of Illinois  
Winnebago County

Plas begun  
and held on the ninth day of December  
AD 1850 at the Court House in Rockford  
in said County of Winnebago, the same  
being a Special Term of the Circuit Court  
in said County, called by an order filed  
in said Court on the 9<sup>th</sup> day of October AD  
1850, made by the Hon Hugh Henderson,  
Presiding Judge of the Eleventh Judicial  
Circuit of said State, which said Order  
is in the words and figures following to wit

To the Clerk of the Winnebago  
County Circuit Court of the State of Illinois  
Be it remembered that I  
Hugh Henderson, Judge of the Eleventh  
Judicial Circuit in the State of Illinois,  
deeming it necessary for the prompt and  
efficient administration of Justice that a  
Special Term of the <sup>said</sup> Circuit Court be held  
in the County of Winnebago, in said State,  
do hereby order and appoint a Special  
Term of Court to be held in and for the  
County of Winnebago at the Court House  
in Rockford in said County on the 9<sup>th</sup> day of  
December AD 1850.

And the notice required  
by Law having been given by the Clerk of this  
Court to the Sheriff of said County, and the

Sheriff aforesaid having given the notice thereof required by the Statute in such cases made and provided,

Present the Hon Hugh Henderson  
Judge

A. B. Haymond  
Sheriff

P. W. Platts States Attorney

Attest  
O. N. Spufford Clerk

Be it remembered that heretofore  
to wit on the 12<sup>th</sup> day of June A.D. 1847  
the following Precept was filed in the Office  
of the Clerk of the Circuit Court of the County  
of Ogle in the State of Illinois, which is in  
the words and figures following to wit:

State of Illinois } Circuit Court of said  
Ogle County } County Sep. 5. 1847

Amos P. Allen

vs  
Samuel M. Hett }  
Nathaniel Swingley }

To H. Roberts, Secy

Will You please issue process  
in the above entitled suit in a plea of  
Debt returnable to said Term of Court.

Debt \$ 470 - 00

Damages \$ 450 - 00

A. A. King atty for Plff

Which said Precept has endorsed thereon  
the words and figures following to wit:

Filed June 12<sup>th</sup> 1847.

Henry Roberts Clk

And afterwards to wit on the 12<sup>th</sup> day of June A.D. 1847  
the following Summons was issued out of the Clerk's  
Office of said Circuit Court of Ogle County aforesaid  
which is in the words and figures following to wit:

State of Illinois,  
Ogle County, I ss

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

We command You, that You  
Summon Samuel M. Pitt & Nathaniel  
Swingley if they shall 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 Oregon in said County  
on the twentieth day of September next, to answer  
unto Aaron P. Allen in a plea of Debt for  
four hundred and seventy dollars, to the damage  
of the said Plaintiff as he says, in the sum of  
four hundred & fifty dollars.

And have You show and there this writ, with  
an endorsement thereon, in what manner You  
executed the same

Witness Henry Roberts Clerk  
of said Court and the Seal thereof  
at Oregon in said County  
this 12<sup>th</sup> day of June in the year  
of our Lord, one thousand Eight  
hundred and forty seven

Henry Roberts Clerk

Which said summons has endorsed thereon  
the words and figures following to wit;

Debt

Record the within Summons on Samuel M. Hitt  
& Nathaniel Swingley this August 9<sup>th</sup> 1847  
by reading the same in their presence and  
hearing

E. M. Dutcher Sheriff

Fees

Deputy 1.00  
12 miles .75  
Retaining .12<sup>00</sup> p 1.87<sup>1/2</sup>

And afterwards to wit  
on the 9<sup>th</sup> day of September A.D. 1847. the  
Plaintiff filed in the Office of the Clerk of the  
Circuit Court of said County of Ogle  
the following Declaration which is in words  
and figures following to wit

State of Illinois } Circuit Court of said  
Ogle County } County September  
Term A.D. 1847.

Aaron D. Allen

vs  
Samuel M. Hitt &  
Nathaniel Swingley

Aaron D. Allen  
complainant of Samuel M. Hitt and Nathaniel  
Swingley in a plea that they render to the  
Plaintiff the sum of Eight hundred dollars  
which they owe him, but unjustly detain  
from him, For that the said Hitt & Swingley

heretofore writt, one the first day of January  
 in the year of our Lord One thousand Eight  
 hundred and forty two, at the County of  
 Ogle and State of Illinois aforesaid, were  
 indebted to the said Plaintiff in the sum of  
 Four hundred and Twenty Dollars for the  
 work and Labor, care diligence and  
 attendance of the said Plaintiff by him the  
 said Plaintiff and his \_\_\_\_\_ and teachers  
 before then done and performed and bestowed  
 for the said Defendants as a School Master  
 in and about the teaching and instructing  
 of diverse infants and persons in Readings  
 writing, arithmetic and in diverse Lan-  
 =ages, and in other necessary and useful  
 accomplishments, and qualifications,  
 and at the special instance and Request  
 of said Defendants, and for divers books  
 pens & paper, & Chattels and other useful  
 and necessary things, before that time  
 found and provided, used and enjoyed  
 employed in and about that work and  
 Labor for said Defendants, and at thier like  
 Special instances and request

And also for that the said  
 Webb and Swingley at said County on this  
 first day of January A.D. 1842. were justly  
 indebted to the said Plaintiff in the sum of  
 Eight hundred Dollars, for that the said  
 Plaintiff had before that time done performed

and bestowed other work and labor care  
and diligence, and attendance for the said  
dependants as a School Master in and about  
the teaching and instructing of divers other  
infants and persons in reading, writing  
arithmetic, and in divers Languages and  
other useful and necessary accomplishments  
and qualifications, and had also at  
that time, and at the like Special instance  
and request of said dependants before  
that time found and provided divers  
other Books, pens, shuttles and other  
necessary things, and used and employed  
the same in and about the said last mentioned  
work and Labor of said dependants,

And also for that the said Depen-  
dants at the termity aforesaid, and on the  
day and Year aforesaid were justly  
indebted to the Plaintiff in the further sum  
of Eight hundred Dollars for work Labor  
care and diligence of the said Plaintiff  
before then done and performed for the  
dependants, and for divers Materials and  
other necessary things used and provided  
in and about the work of the said dependants  
by said Plaintiff at their request, and also  
in the further sum of Eight hundred dollars  
for so much money before then paid out and  
expended by said Plaintiff to and for the use  
of the said dependants, For money lent and  
advanced to the said dependants by the said Plaintiff



at their request, and for money before then  
lent and received to and for the use of the  
Plaintiff by the Defendants

And the said  
Defendants being so indebted to the said  
Plaintiff, then and there agreed to pay  
the said Plaintiff the said several Sums

on request, Yet the oftero  
requested has not paid the same or any  
part thereof to the damage of the Plaintiff  
as he says the sum of four hundred and  
fifty dollars, wherefore he brings suit,

by A A Allen his atty  
Copy of Acc

Hett & Sampley

To A A Allen Dr

To Wages & Labor	\$ 800.00
" Money lent & received	\$ 800.00
" Money paid out & expended	\$ 800.00
" Money lent and advanced	\$ 800.00

Which said Declaration  
has endorsed therein the words and Figures  
following to wit

Filed September 9<sup>th</sup> 1847  
Henry Roberts clerk

And afterwards do ut on the 20<sup>th</sup> day of  
September A.D. 1847. at the September Term  
A.D. 1847 of the Circuit Court of said County  
of Ogle in the Record of the proceedings  
thereof in the above entitled cause is the  
following entry to wit

A. Q. Allen  
vs  
J. M. Hill &  
Nathaniel Swingley }

And now on this day  
came the Plaintiff by his Attorney and in  
motion of the Plaintiff by his Attorney It is  
Ordered by the Court that the said Defendant  
plead or to move onning.

And afterwards do ut on the  
21<sup>st</sup> day of September 1847. the following pleas  
were filed in this cause to wit,

State of Illinois }  
Ogle County } Ogle County Circuit Court  
Sep<sup>r</sup> Term A.D. 1847

A. Q. Allen  
vs  
Samuel M. Hill &  
Nathaniel Swingley }

Plea No 1.

(page 6)

Samuel M. Witt one of the Defendants above named by Fuller and Cheeney his attorneys, comes and defends the wrong and injury &c whereof, and says, he the said Witt does not jointly with the said Sivmley nor the said Allen in manner and form as the said Allen in his said declaration has set forth and alleged and of this he the said Witt puts himself on the country

By Fuller & Cheeney his attys  
And the Plaintiff likewise By

H. A. Vire his atty

Plea No 2.

And for a second plea, in this behalf the said Witt says actio, non &c because he says that the said several causes of action in the Plaintiffs declaration mentioned and set forth, did not accrue (if at all), at any time within five years next before the commencement of this suit, to wit, at said county, and that he the said Witt is ready to verify, wherefore he prays judgement if the said Allen shall move to maintain his said actio &c.

By Fuller & Cheeney his atty

Plea No 3.

And for a further plea in this behalf said Hill says action non se because he says that the said several supposed indebtedness in Plaintiffs declaration mentioned did not accrue if at all at any time within five years next before the commencement of this suit and that the said Hill is ready to verify, wherefore the said Hill prays judgement if said Allen shall favor & maintain his said action & for costs.

By Fuller Cheney his atty

No 3

And for a further plea in this behalf said Hill <sup>says</sup> action non se, because he says that the several supposed causes of action in the Plaintiffs declaration mentioned did not accrue if at all at any time within five years next before the commencement of this suit. And the said Hill further says that the said action is not brought to recover any rent or a mesage of <sup>rent</sup> furnished upon any lease under seal, nor upon any simple or penal Bill, promissory note, or writing obligatory for the direct payment of money, or the delivery of property, or the performance of covenants, nor upon any account under the hands and seals of Arbitrators for the payment of money only,

all which the said Hill is ready to verify,  
wherefore the said Hill prays judgement  
if the said Allen shall have and maintain  
his said action, and for costs

By Fuller & Cheaney his attys

No 4.

And for a further plea in this behalf  
the said Hill says action now &c because  
he says that the the said Hill at said County  
before the commencement of said suit, & suit  
on the first day of January 1847, fully paid  
& satisfied such and all the said several  
supposed debts or causes of action in said  
Piffs declaration mentioned, and that the  
said Hill is ready to verify, wherefore he  
prays judgement if said Allen shall  
have or maintain his said action & for costs

By Fuller & Cheaney his attys

Which said Pleas have indorsed thereon  
the words & figures following

Filed September 21. A.D. 1847

Henry Roberts, Clerk.

And afterwards do wit on 22<sup>d</sup> day of  
September A.D. 1847 of the said September  
Term of said Ogle County Circuit  
Court, is the following in the Records of  
said Court is the following entry do wit

Amos D. Allen

<sup>vs</sup>  
Samuel M. Hill }  
N. Sumpley }

And now at  
this day cause the parties and by their  
agreement it is ordered by the Court that  
this cause be continued to the next Term  
of this Court, at the costs of the Defendants

And afterwards do wit on the  
23<sup>d</sup> day of September A.D. 1847. the following  
Replication was filed in this cause do wit

State of Illinois Circuit Court (May  
Ogle County } Term 1848

Amos D. Allen

<sup>vs</sup>  
S. M. Hill }  
N. Sumpley }

and the  
said Plaintiff with as to the fifth & sixth  
plea of the Defendant Hill above pleaded

precludi' now because he says that  
 an account was not had & stated by  
 and returns the said Plaintiff and the  
 said Defendants, and the several sums  
 in said pleas mentioned found due, nor  
 did the said Hill or Sevingley then & there  
 or at any time pay and satisfy to the  
 Plaintiff the sums of money in said  
 pleas mentioned as the said Hill hints  
 in his said several pleas above alleged  
 and of this he puts himself on the Country  
 Peters & Mix for Petts

Which said Replication <sup>has endorsed thereon the</sup> ~~is in the~~ word said  
 figures following to wit:

Filed Sept 23, 1847  
 H. Roberts Clk

and on the same day to wit the 23<sup>d</sup> day  
 of September Ad 1847, the following ~~xxxxx~~  
 Replication and Demurrer were filed in this cause  
 to wit

State of Illinois } Circuit Court of said  
 Ogle County } County May Term 1848

A. D. Allen

J. M. Hill & Nath. Sevingley

And the said Allen by his Attornies  
come and demure to the pleas of the said  
Hitt above pleaded, to wit, to plea Number  
two, to plea Number three, to plea Number  
three, and that he has no necessity,  
nor is he bound to answer by the law of  
the Land bound to answer said pleas, in  
number and form as they are above  
pleaded and this he is ready to verify  
wherefore &c

And the said Plaintiff as  
to the said Defendants fourth plea above  
pleaded, says that the said Hitt did  
not nor has paid the said Plaintiff in  
number & form as he has in his said fourth  
plea alleged and of this he puts himself  
upon the Country \*

& Resp<sup>n</sup> to 4 Allen) And the said Plaintiff  
as to the fifth and sixth pleas of the said Hitt  
above pleaded says preclude, now because he  
says that at the time of the accounting had  
by and between the said Plaintiff and the  
said Defendants, the indebtedness of the  
said Defendants to the said Plaintiff was  
not the sum of One hundred and Eighty five  
dollars, nor the sum of one hundred and  
sixty five dollars as is in the pleas of the said  
Hitt above pleaded alleged, but other  
and much larger sums, neither of which  
sums in the said pleas mentioned or any  
part thereof has ever been paid by said Hitt



\*

And the said the said Plaintiff as to the said  
Defendants fourth plea above pleaded says that he said  
Witt did not nor has paid the said Plaintiff in  
Money and form as he has in his said fourth plea  
alleged, and of this he puts himself upon the Country

nor has the said Plaintiff nor received the said sum or sums in said pleas mentioned in satisfaction of the unpaid balance of said defendants due the plaintiff, and of this he puts himself upon the country;

H. A. Mix, for Pff

And the said Plaintiff as to the fifth plea of the said Hill by him above pleaded said Pff says that the same is insufficient in Law to bar the pff from having his action aforesaid against the said Defs, and that Pff is not required by Law to reply thereto and this he is ready to verify, wherefore &c

And said Pff for cause of demurrer to said 5<sup>th</sup> plea assigns the following

1<sup>st</sup> That said plea is double in this, that it sets up an award and satisfaction & a payment, whereas it ought not to unite the same in one plea

2<sup>d</sup>. The plea does not profess to answer the whole declaration but only part thereof whereas the said plea ought to traverse the whole declaration or to confess & avoid the whole declaration, or confess and avoid a part of it and traverse the remainder which it does has not done, and as to the sixth plea of said Hill above pleaded Pff says precludi non because said plea shows no defence to

Said Pffs Declaration and the same  
is bad and insufficient in Law, & Pff  
need not nor is he required by the Law  
of the said to reply thereto and this he is  
ready to verify wherefore &c

And for cause  
of demurrer Pffs assigns the following  
Point,

1. The said Sixth Plea is double  
in as much as it alleges a settlement  
& adjustment of accounts between the  
parties & also a payment, but it ought  
not to unite facts therein alleged  
in one and the same plea

2. The said Sixth plea does not answer  
nor purport to answer the whole of the Pff  
Declaration, <sup>or traverse said declaration or</sup> whereas the said plea ought  
to traverse said Declaration or to confess  
& avoid the whole declaration, or confess  
& avoid it in part & traverse the remainder  
thereof, which it doth not do,

Peters & Mire for Pff

which said Replicatures and Demurrer  
have endorsed therein the words and figures  
following Point,

Filed September 23. 1847  
H Roberts, Clk

and afterwards to wit on the 24<sup>th</sup> day of  
September A.D. 1847, the following pleas  
were filed in this Court.

Ogle County Circuit Court Sep 5. 1847

Amos D. Allen

Samuel M. Hill }  
Nathaniel Swayley }

Plea No 3.

And the said Samuel Hill  
for a further plea in this behalf as to the  
several sums and courses of action in  
said declaration mentioned, says  
acts now because he says that after  
the receiving of said supposed courses  
of action, and before the commencement  
of the aforesaid suit viz. on the 15<sup>th</sup> day  
of August A.D. 1839, at the County of Ogle  
aforesaid an account was had and  
stated by and between the said Plaintiff  
and said Defendants of and concerning  
the said several sums of money, and of  
and concerning certain payments  
and credits and discounts which were  
to be deducted from said sums, and  
upon that accounting the said Defendants  
were then and there found in arrears and

indebted to the said Plaintiff, and that  
in the sum of One hundred and Eighty five  
dollars which said sum of one hundred and  
Eighty five dollars said Defendant Witt  
then and there fully paid to the said Plaintiff,  
and the said Plaintiff then and there accep-  
ted and received the said sum of one  
hundred and Eighty five dollars in  
full satisfaction of the unpaid balance  
of said sums first mentioned in this plea  
and that he is ready to satisfy &c wherefore  
he prays judgment &c

Cheaney & Fuller  
for said P<sup>l</sup>. D<sup>f</sup>

Plea No 6.

And for a further plea, as to  
the said several sums first above mentioned  
in the last aforesaid Plea - said Defendant  
Witt says acts now, because he says  
that after the issuing of said supposed  
process of action do not at the County aforesaid  
on the 15 day of August A<sup>d</sup> 1839, an  
account was stated by and between the  
said Plaintiff and the said Defendants  
of and concerning <sup>of and concerning the several sums of money paid</sup> certain Credits &  
discounts which were to be deducted from  
said sums, and upon that accounting  
the said Defendants were then and there found  
in arrears & indebted to the said Plaintiff

in the sum of One hundred and  
 Sixty five Dollars, which said sum of  
 one hundred and sixty five Dollars, the  
 said Defendant Hitt then and there fully  
 paid to the said Plaintiff, and the said  
 Plaintiff then and there accepted the  
 same in full satisfaction of the unpaid &  
 unsatisfied balance of said Several sums  
 mentioned in the first part of said Cart  
 above seen, all which is hereby certified  
 &c. Wherefore he prays Judgment &c  
 Fuller & Chesney  
 for D<sup>ct</sup> Hitt

Which said Pleas have endorsed  
 therein the words and figures following  
 to wit:

Filed September 24<sup>th</sup> 1847  
 Henry Roberts

CLC

And afterwards to wit on the 9<sup>th</sup> day  
 of May A<sup>d</sup> 1848 at the May Term of  
 said Circuit Court of said Ogle County  
 on the Records of said Court is the following  
 entry, to wit

A. D. Allen

<sup>vs</sup>  
Samuel M. Hitt &  
Nathaniel Swingle

And now comes  
at this day comes on to be heard the  
Demurrer of the said Plaintiff to all of the  
Pleas of the Statute of Limitations filed  
herin by said Hitt, and the Court  
being fully advised therein, sustains  
the ~~same~~ said Demurrer,  
And said Swingle  
makes default, herin,

And afterwards doth  
on the 12<sup>th</sup> day of May at the said May  
Term A.D. 1848 of said Court in the record  
of the proceedings thereof is the following  
entry doth.

Aaron D. Allen

<sup>vs</sup>  
Samuel M. Hitt &  
Nathaniel Swingle

And now at  
this day again come the said Parties by  
their Attornies and issue being joined  
thereupon come a Jury of good and lawful  
Men a doth - A. D. Detwiler B. W. Hibberd  
Gesse Post A. O. Cromptell Osborn Chaney

William R. Hovey Henry Curtis  
 Isaac Prindle Samuel Abner Franklin  
 Thomas Joseph Long and James Rendell  
 who being duly elected tried and sworn  
 well and truly to try the issue joined,  
 After hearing the evidence and arguments  
 of counsel and being fully advised by  
 the Court retire to consider of their verdict  
 and of course returned into Court  
 and presented the following verdict to wit  
 "We the Jury find the issue in favor of the  
 Plaintiff and assess his debt at the sum  
 of one hundred and eighty two dollars  
 and damages at the sum of ninety eight  
 dollars and forty four cents. Therefore  
 the said Defendant by his Attorney seeks  
 his motions for a new trial, which after  
 being duly considered by the Court it is  
 ordered that a new trial be granted and  
 that this cause be continued to the next Term  
 of this Court, at the Defendants costs, and that  
 said Plaintiff have and receive of the said  
 Defendants his costs and charges in this  
 behalf expended and that he have execution  
 therefor.

A

And afterwards to wit on the 25<sup>th</sup>  
 day of September A.D. 1848 at the September  
 Term of said Court on the Record of said Court  
 is the following entry to wit



A. Q. Allen

vs

Samuel N. Hill et al

It is ordered by the Court that this cause be continued at the next of the said Defendants,

And afterwards Court on the 7<sup>th</sup> day of May A.D. 1849 the following agreement was filed in this cause which is in words and figures following to wit

A. Q. Allen

vs

Samuel N. Hill

State of Illinois  
Circuit Court

In Circuit Court of said County  
May Term A.D. 1849.

A. Q. Allen

It is agreed by the parties to this cause that a change of venue in the above cause may be awarded to venue by County Des. and at the costs of said Hill, and that the trial of said cause should be had on Thursday of the first week of said Court so to be holden in Winnebago County in the present Term, and that no application

shall be made for a continuance on  
part of said writ, owing to the absence  
of ~~ex~~ J. N. Sample or his deposition

Witness our hands and seals  
this 7th day of May A.D. 1849.

A. Q. Allen

S. M. Hill

Which said Agreement  
has endorsed thereon the words and  
figures following to wit

Filed May 7 1849

R. B. Light C. C.

And afterwards do wit on  
the Seventh day of May A.D. 1849. at  
the May Term of said Court. In the  
the Record of said Court in the above  
intituled Cause, is the following entry.  
to wit.

Samuel Q. Allen

vs.

Samuel M. Hill

Nathaniel Swingle

And was at this  
day curia ~~ex~~ & the said parties by

by their Attornies and by agreement  
of parties it is ordered that the venue  
in this cause be changed to the County  
of Wmmsbuge. It is therefore ordered by  
by the Court that the Clerk transmit the  
papers and a transcript in this case to  
the Clerk of the Circuit Court of Wmmsbuge  
County. And it is also considered  
by the Court that the Plaintiff have and  
recover of the said Defendants the costs of  
this Term in that behalf expended and  
that the Defendants pay the costs of the  
change of Venue

And afterwards to  
wit on the 2<sup>d</sup> last day of March A.D. 1850  
at the March Term A.D. 1850 of the Wmmsbuge  
County Circuit Court, in the Records of  
the proceedings thereof the following entry was  
made in the cause *to wit*

A. P. Allen

vs  
Samuel M. Hitt and  
Nathaniel Seungley } Change of Venue  
from Ogle

And now come the  
Plaintiff by Hill and Marsh his attorneys  
and the Defendant Hitt by Miller & Cook his  
attorneys also come. and therefore issue  
being joined, it is ordered that a Jury come

and thereupon came a jury of good and lawful men to wit H. O. Brown, N. W. Field, R. R. Foster, J. W. F. Wilboughby, B. Robbins, S. Sturges, J. Montross, J. Williams, W. Carey, Moses Maher, M. Pratt & S. Bronlunger, who being duly empanelled tried and found well and truly to try the issue joined herein and having heard the evidence and arguments of counsel they retire to consider of their verdict, and thereafter they returned into Court with the following verdict to wit and say they cannot agree upon a verdict, and thereupon by agreement of the parties it is ordered that the said Jury be discharged and that this cause be continued,

And afterwards to wit on the 10<sup>th</sup> day of December A. D. 1850. at the December Term A. D. 1850 of the said Chesapeake County Circuit Court the following entry was made of Record in this cause to wit

Aamir P. Allen

vs  
 Samuel M. Hill &  
 Nathaniel Seingley

and now

the Plaintiff by Breckinridge and Turner  
his attorneys and the Defendant Hill by  
Miller and Loop his attorneys also came  
and issue being joined it is ordered  
that a jury come and thereupon come  
a jury of good and lawful men to wit  
Aduro, S. Luke, W. W. Foster, Howell,  
P. M. Waller, W. A. Foster, James Scott  
Elisha Sackett, J. H. Clark, R. Aaron, T. L.  
John Penney, Charles Rutherford, A. Gates  
and John Fisher who being duly examined  
tried and sworn will and truly try the  
issue joined herein and after hearing  
heard the evidence and arguments of  
counsel, they retired to consider of their verdict  
and thereafter they returned into court with  
the following verdict to wit, We the jury  
find for the Plaintiff the sum of Two hundred  
dollars debt and assess his damages at  
the sum of One hundred and thirty six  
dollars, and twenty three and one third  
cents and therefore the said Defendant  
Hill by his attorneys move the court in  
arrest of Judgment and for a new trial  
herein,

And afterwards do it on the 21<sup>st</sup> day  
any of December A.D. 1830 at the 2<sup>d</sup> of said December  
Term of said court the following among other proceedings  
were had in the case to wit

Aaron D Allen

vs  
 Samuel M Hill and  
 Nathaniel Swingley } Change of Venue  
 from Ogle County

And now at this  
 day come the Plaintiff by Breckinridge &  
 Warner his attorneys and the Defendant Hill by  
 Miller & Voss his attorneys also come, and  
 the Court being fully advise ~~xxx~~ in the motion  
 in arrest of Judgment and for a new Trial  
 herein overules the same. It is therefore  
 ordered and considered by the Court that  
 the said Plaintiff have and recover of the said  
 Defendants the said sum of Two hundred  
 dollars debt and the sum of Two one hundred and  
 thirty six dollars and twenty three and one third  
 cents his damages for the detentions thereof  
 amounting in the whole to the sum of Three  
 hundred and thirty six dollars and twenty  
 three and one third cents debt and damages  
 as also his Costs and Charges herein expended  
 and that he have execution therefor.

And therefore the said Defendant  
 Hill does and prays an appeal in this  
 cause to the Supreme Court, and it is  
 therefore ordered by the Court that the  
 said appeal be allowed upon condition  
 that the said Defendant Samuel M Hill  
 shall within thirty days from the rising of

This Court enter into an appeal bond  
in this behalf in the sum of One thousand  
dollars, conditioned according to the Statute  
in such case made and provided with Anson  
S. Miller and D. J. Puckney as sureties,  
and file such Bond with the Clerk of this  
Court,

And afterwards do wit on the 20<sup>th</sup>  
day of January A.D. 1831. the said Plaintiff  
filed in the Clerks Office of said Circuit Court  
his appeal Bond which is in the words  
and figures following to wit

Know all men by these presents,  
That we Samuel M. Witt of the County  
of Ogle and State of Illinois and D. J. Puckney  
of the same County and State, and Anson S. Miller  
of Winnebago County and State aforesaid are  
held and firmly bound unto Aaron Allen  
of the County of Ogle and State of Illinois in  
the Penal sum of One thousand dollars  
for the payment of which well and truly to be  
made we bind ourselves and our and each  
of our heirs Executors and Administrators  
jointly, firmly by these presents,  
Sealed with our Seals and dated this 3<sup>rd</sup> day  
of January. A.D. 1831.

Whereas in the Circuit

Page 16

Court for the Appraisal County of Winnebago  
in the State of Illinois at the December  
Special Term A.D. 1850 the said A. J. Allen  
returned a judgment against the said  
S. M. Witt and Nathaniel Sengley for  
the sum of three hundred and thirty six  
dollars and twenty three and one third cents  
and whereas the said S. M. Witt at the  
time of the rendering of said judgment  
prayed an appeal <sup>to the Supreme Court of the State of Illinois</sup> from the same, which  
appeal was granted upon condition that  
the said Witt enter into an appeal bond  
with W. J. Pritchney and Anson S. Miller as  
Securities within thirty days from the rising  
of said Court in the penal sum of One  
thousand dollars

Now therefore the con-  
dition of the above obligation is such, that  
if the said S. M. Witt shall prosecute said  
Appeal and shall pay the judgment  
costs interest and damages in case the  
judgment aforesaid shall be affirmed,  
then this obligation to be void, otherwise of  
force

Sammuel M. Witt Seal  
Wm. J. Pritchney Seal  
Anson S. Miller Seal

Which said Bond has endorsed thereon the  
words and figures following to wit,



Filed January 20<sup>th</sup> 1857

O. N. Spafford Clerk

James C. ...  
...  
...

State of Illinois  
Winnemago County } ss

I, O. N. Spafford Clerk  
of the Circuit Court within & for said County  
do hereby certify the foregoing to be a true copy  
of the record and the proceedings and in  
the therein in a certain cause which was  
pending in said Circuit Court, wherein  
James D. Allen was Plaintiff and  
Samuel M. Witt and Nathaniel  
Sungler are defendants; as appears of  
Record and on file in my Office.

lately

In witness whereof I have  
subscribed my name and affix  
the seal of said Circuit Court  
at Rockford in said County  
this 2<sup>nd</sup> day of June A.D. 1857

Attest O. N. Spafford  
Clerk

Fees \$ 9.25  
[11845-37]

Woodford  
Saml. M. Witt  
by  
Aaron C. Allen  
Record

Filed June 16. 1854  
Leland Ck.

State of Illinois <sup>2</sup>  
Sallale County <sup>3</sup> 55

Thomas J. Justice being  
first duly sworn on his oath saith that  
he is the attorney for A. D. Allen the appellee  
in this suit that he assisted at the trial  
of the suit in Winchago county and was  
employed by the appellee to attend to the  
collection of the judgement and to attend  
to the suit in the supreme court in case  
of its being appealed. This officiant  
further saith that after the trial in  
Winchago County and after the appeal  
herein had been prayed for and  
granted this officiant had a conver-  
sation with J. B. Hill the appellant  
herein in which conversation the said  
Hill stated distinctly that he would  
not take his appeal. This officiant  
further says that he had not ~~no~~  
suit to attend to in the supreme  
court at the present term unless  
the appeal herein was perfected that  
to avoid an unnecessary trip to obtain  
this officiant wrote his associate counsellor  
at Rockford a few days previous  
to the commencement of the present term  
of this court enquiring if the appellant  
herein had perfected his appeal  
that after the third day of the present  
term of this court when the rule for  
filing records had expired J. B. Beckwith  
the associate counsellor of this officiant in this  
suit informed this officiant that the  
record had not been sent up

This affiant further saith that a few  
days subsequently to his receiving his  
information that the record had  
not been sent up this affiant received  
a letter from A. D. Allen inquiring him  
that Hitt had given to Otter to attend  
to his suit this affiant at once wrote  
to C. H. Spafford Clerk of Wincbys County  
Circuit Court inquiring if the record had  
been sent up that he received an answer  
from Mr. Spafford that a record had  
been sent up that the bill of exceptions  
was lost and could not be found  
that it was supposed Mr. Loof of Belvidere  
had it and that he had gone for  
home this affiant at once got ready  
and came down to court when he found  
that the rule for filing the record  
had been extended that  
on the 16<sup>th</sup> day of June a  
record without the bill of exceptions  
had been filed that on the 21<sup>st</sup>  
day of June a rule had been taken  
that appellee give in error on the  
23<sup>rd</sup> day of June that on the  
23<sup>rd</sup> day of June the ~~affiant~~  
~~was~~ judgment ~~was~~ but ~~was~~ reversed  
and the case remanded at the  
cost of appellee this affiant further  
saith that he Hitt assumed this  
affiant that he would not take his  
appeal and it not being for the facts  
above stated in regard to sending up  
the record this affiant would have

been in attendance at this court in  
due time to defend this appeal that  
this appellant did not wish to incur the  
trouble and expense of a trip here  
unless it became necessary and ~~that~~ the  
fact <sup>that</sup> the record here was not made  
out and sent up till after the third  
day of the present term in connection with  
the declaration ~~that~~ of Mr Pitt that he  
would not take his appeal induced  
this appellant to believe that Mr Pitt meant  
what he said and that the appeal  
would not be taken This appellant  
therefore prays that this court may  
be assisted in its proper place in  
the docket

Subscribed and  
Sworn to this 27<sup>th</sup> day of  
June 1837  
L. Ireland C.R.

Thos J. Furber

In the superior Court of the State  
of Illinois of the June Term  
1837

Samuel M. Pitt Appellant

A. J. Allen Appellee Thos J. Furber  
attorney for appellee

in this suit prays the court to set aside  
the order requiring the plaintiff herein and  
that the suit be repleaded on the docket of  
this court be resumed set out in this paper  
Thos J. Furber  
attorney for appellee

Saml. A. Pitt in presence

Aaron C. Allen

apt. of Dept.

Filed June 27. 1854.  
L. Kellogg Clk.

Samuel M. Witt implor'd &

John J. Allen

B. L. Cook being sworn saith that he is of counsel for the defendant in error in this cause, Affiant saith that the record in this cause is imperfect in this to wit said record does not show that the pleadings in this cause were ever certified to the Circuit Court of Wm. Wayne County by the Clerk of the Circuit Court of Edge County nor does it show the filing of said pleadings in the Circuit Court of Wm. Wayne County when said cause was tried, That he is advised & believes it to be true that all the pleadings in this cause as they appear in the record herein filed were certified to the Circuit Court of Wm. Wayne County by the Clerk of the Circuit Court of Edge County and were on file in said Circuit Court of Wm. Wayne County when said cause was tried and he prays for a writ of Certiorari to the Clerk of the Circuit Court of Wm. Wayne County to send up a complete record.

B. L. Cook

Subscribed & sworn to before  
me July 14, 1852.  
Shelton C. R.

One copy Edge Co  
Two copies Wm Wayne  
One copy Edge

Wett simpl. &c.

vs.

Allen

Affidavit

Filed July 14<sup>th</sup> 1852.

L. Seland Clerk,

By P. Rodeland Jpy.



Samuel M. Hitt - impleaded with  
Nathl Swingley  
vs  
Asa & Quincy Allen  
Winnebago County — appeal from

Samuel M. Hitt being duly sworn  
says - that at the ~~fall~~ <sup>last</sup> Term of the Circuit  
Court of Winnebago County, in the year  
1850 - A. & Q. Allen recovered a  
judgment against affiant and one Nath-  
aniel Swingley for about \$336. +  
costs - from which this affiant  
appealed to this Court - and in due  
time perfected said appeal by executing  
and causing to be filed an appeal  
bond in compliance with the  
order of said Circuit Court in  
that behalf -

That some ~~time~~ month or more  
ago affiant visited the Clerk of the Cir-  
cuit Court of said County and made an arrange-  
ment with him to make out and  
forward the record in said Cause  
to be filed in this Court - That  
about two weeks ago affiant wrote  
from Mt Morris in Ogle County a  
letter to Anson S. Miller Esq. affiant's  
att'y - who resides at the County seat  
of Winnebago County - requesting him  
to see that said record was forwarded

in due time - That on yesterday  
morning affiant arrived at the  
Clerks office of this Court - and  
found that the <sup>said record</sup> papers had not arrived  
and on enquiry does not find them  
3000 in the P.O. -

That affiant sent  
on yesterday a telegraphic despatch  
on the subject addressed to said  
Clark & said Wheeler - to which  
he has as yet rec<sup>d</sup> no answer

That fearing some failure in  
the telegraph - he wrote again last  
night by mail to said Clerk -  
for said Record -

He now fears that said  
record may not arrive until  
after the 3<sup>rd</sup> day of this term - That  
he knows of no cause for this delay and  
disappointed - unless it may be the  
present bad state of the roads -

S. M. Hart

Subscribed & sworn  
to in my presence -

June 10<sup>th</sup> 1857 J. L. Dickey  
Clerk Judge

7-18-54

Winnipeg  
H. Allen  
affd.

Filed June 10. 1857.  
L. Island Clk.

Samuel M. Hitt impleaded with  
Nathaniel Swingley  
vs  
Aaron I. Allen } appeal from  
Winnchaps -

This day the motion of said A  
I. Allen - to set aside the default  
and judgment of reversal herein  
came on to be heard - and  
the court being fully advised it  
is ordered that said judgment  
be ~~set~~<sup>set</sup> aside - and said cause  
be reinstated upon the docket  
and said Allen permitted to  
join in error - all this at the  
costs of said Allen -

And thereupon by the agree-  
ment of said Hitt by J. L. Dickey  
his attorney and A. I. Allen  
by J. J. Turner his attorney  
it is ordered that the certified  
copy of the bill of exceptions  
on file and marked "it" be  
taken upon hearing of this cause  
as part of the record therein, in the  
same manner as if it had  
been originally incorporated  
in the certified copy of the record  
and it is further ordered that this  
cause be continued until the  
next term of this court -

State of Illinois - Supreme Court -  
3<sup>rd</sup> Grand Division June Term 1851

Saml M. Hitt  
impleaded &c  
vs  
Aaron D. Allen } Appeal from Winnebago

And now comes the said Samuel  
M. Hitt by Dickey & Wallace his attorneys  
and says there is error in said record  
Judgment and proceedings - and that  
said judgment ought to be reversed

And for special points of error he  
assigns the following viz -

1<sup>st</sup> The Court erred in giving judgment  
for plaintiff below and against the  
defendants below -

2<sup>nd</sup> The Winnebago Circuit Court erred  
in proceeding to judgment - without pleading  
either written or otherwise in that Court

3<sup>rd</sup> It was error to render judgment  
~~in a case~~ for the plaintiff in a case where  
he had filed no declaration

4<sup>th</sup> The whole record prior to judgment  
does not warrant the judgment rendered

5. The Court admitted illegal evidence  
& incompetent evidence against defend-  
ant Hitt -

6<sup>th</sup> - The Court erred in excluding com-  
petent evidence offered by Hitt

7<sup>th</sup> The Court erred in giving instructions asked  
by the pl<sup>ff</sup> below

8<sup>th</sup> The Court erred in refusing instructions

asked for by Hitt -  
9<sup>th</sup> The court erred in overruling the mo-  
tion for new trial -

Dickey & Wallace  
attys for appellant

In the supreme Court

Samuel M. Hitt vs. Plaintiff  
vs. D. Swartz, Appellant

A. D. Allen vs. Appellant

And hereupon the said  
Sam D. Allen by Tho<sup>s</sup> J. Turner comes and  
says there is no error either in the records &  
proceedings of aforesaid or in rendering the judgment  
aforesaid or in giving the instructions aforesaid  
and he prays that the court herein may  
proceed and examine as well the  
records and proceedings ~~of~~ aforesaid  
as the matters of aforesaid alleged for  
error and that the judgment aforesaid  
remain and give aforesaid may in  
all things be affirmed

Tho<sup>s</sup> J. Turner  
Atty for Appellee

Sup. Court

H. H. impleaded

+c vs

Allen

Assignment of  
errors

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Filed June 21. 1854.  
S. Leland Clk.

Found in error filed  
June 27. 1854.  
S. Leland Clk.