

8573

No. _____

Supreme Court of Illinois

Abbott et al

vs.

James Semple

71641  7

State of Illinois } Monroe County Circuit
Monroe County } Court, Special October
Terms A. D. 1859.

Be it remembered that on the 5th day of August
A. D. 1859 the following summons was issued, to wit:

Summons.

" State of Illinois } ss. The People of the State
Monroe County } of Illinois to the Sheriff
of said County Greeting:

We command you that you summon George
Abbott & John S. Lemon if they may be found
in your County, that they do and appear person-
ally in the Circuit Court next, to be holden at the
Court house in Waterloo within and for said County
on the 4th Monday of September next, on the first
day of said term, then and there in our said Court
to answer James Suple, in an action of
assumpsit, to his damages of \$1500.00, and
hereof make due return,

Wm. Erb, Clerk of said
Circuit Court and the seal thereof hereto
affixed at the office in Waterloo, the
fifth day of August A. D. 1859.

William Erb

Which said summons was returned by the Sheriff of
said County, with the following endorsement, to wit:

return

" Executed the within writ by reading the same to George
Abbott, on the 13th day of August A. D. 1859, John

I Lemon cannot be found in my County.

Chs Frick Shff of the Co for Gov,
And afterwards, to wit on the 5th day of August
A. D. 1859 the following declaration was filed to wit:

Declaration

" State of Illinois) Circuit Court of Monroe
Monroe County) County of September
Term A. D. 1859,

James Scripps by Wm R Morrison his Attorney
Companions of George Abbott and John S Lemon
who were summoned to answer the said James
Scripps of a plea of trespass on the case on promises

Or that whereas the defendants on the fourth
teenth day of November A. D. eighteen hundred
and fifty seven at Monroe County aforesaid made
their promisory note in writing and delivered the
same to the plaintiff and thereby, then and there
promised the plaintiff to pay him, or to his order
one thousand and one hundred dollars with six
per cent interest per annum, twelve months after
the date thereof, which period has now elapsed
and whereas the defendants on the first day of
August A. D. 1859 at Monroe County aforesaid
were indebted to the plaintiff in the sum of \$1500 -
for the price and value of a tract of lands then
and there bargained & sold by the plaintiff to
the defendants at their request.

And in the sum of \$1500 - for money found to
be due from the defendants to the plaintiff on

account then and there stated between them,
 And whereas the defendants afterwards to wit on
 the said first day of August A. D. 1859 at the
 County of Monroe aforesaid in consideration of
 the premises ~~respectively~~ respectively then and
 there promised to pay the said last mentioned
 several monies respectively to the plaintiff on
 request yet they have disregarded their promises
 and have not paid any of the said monies or
 any part thereof to the plaintiffs damage of
 \$1500, and thereupon he brings his suit to

Wm R. Morrison p[er]ffs atty

Copy of promissory note such as.

note

" Twelve months after date two or either of us
 promise to pay James Sample, or order, one
 thousand one hundred dollars with six per cent
 interest from date until paid for value recd, this
 14th Novem 1857
 \$1100.00 in liquid
 George Abbott
 J. L. Lemon

Acct such on

" 1859
 Aug 1 To land sold \$1500.
 " " To money due on settlement 1500.

order

And afterwards to wit on the 26th day of
 October A. D. 1859, it being the third day

of said special October term, (Wednesday 26th)
1859 The following order was made by the Court
and entry of records, to wit:

" James Scruple

vs
George Abbott &

John S. Lewis

Applicant

Now come the parties
plaintiff and defendants by their attys and the
defendants motion to quash the writ having been
overruled by the Court, and the said defendants
having failed to plead and being called failed
to answer, upon motion of the plaintiffs atty
Judgment for default of plea is entered against
them for the plaintiffs damages to be ascertained by
the Clerk of this Court, thereupon the defendants
moved for a new trial which motion is overruled
by the Court, and the Clerk having reported the
damages to amount to \$1228.70. The Court orders
that said plaintiff have and recover from said
defendants the said sum of \$1228.70 damages
together with the costs by him expended in
this suit and that execution be issued, thereupon
the defendants pray an appeal to the supreme
Court, which is granted by the Court, upon said
defendants entering into bond of \$1400.00 within
thirty days and with security to be approved by
the Clerk of this Court and file their bill of
exceptions during the term,

And afterwards to wit on the 31st day of October
A. D. 1859 (it being the second Monday of said
Special October Term A. D. 1859, To wit:

Bill of
Exemption

"State of Illinois
Monroe County

In the Monroe Circuit
Court Special October
Term A. D. 1859

James Semples

^{vs}
George Abbott &
John S. Linn

Defendant

It is remembered, that
on the 2nd day of the term the defendants made
a motion to quash the writ in the above entitled
cause, because said writ is not made returnable in
conformity with an order duly entered of record
at the May Term A. D. 1859 of this Court,

Copy of the order.

"Ordered that a special term of the Monroe County
Circuit Court be held at Waterloo, in and for the
County of Monroe on the 4th Monday of October A. D.
1859, the same being on the 24th day of said
month of October & that all writs and processes be
made returnable to that term and that the Clerk
certify a copy of this order to the County Court so
done this 16th May 1859 by the judge of said
Court in open Court.

H. K. S. C. C. C. C.

Judge

And afterwards to wit on the 4th day of August

At D. 1859 The Judge directed to the Clerk of this Court the following order, to wit: order not entered of record by the defendants ~~resisted~~ ^{not filed} of it at the time, ~~but ordered to file~~ Carlyle vs August 4/59

Now End O. D. Infr.

It is thought to be the safest course to issue process to the regular term in Sept as by law if no special term had been called until after that time, then after that time issue to the special term, and on all cases, on which you may have issued it will be necessary for you to receive returns to the Sept regular term, put them in the hands of the Sheriff to be preserved, this will ~~create~~ create a little trouble and expense but for greater certainty it ought to be done.

Yours truly W. K. S. O'Connell Judge

And afterwards to wit on the 24th day of October A. D. 1859, it being the first day of the special October term A. D. 1859, the Court ordered that the above order be filed ~~now~~ ^{pro} term and entered of record. Motion overruled by this Court to which ~~returning~~ ^{returning} the defendants at the time of capture, defendants now moved to dismiss the case for want of jurisdiction of the persons of the defendants, they never having been summoned to appear at a called October term, motion overruled by the Court to which said ~~returning~~ ^{returning} the defendants at the time of capture and prays this bill of exceptions may be signed sealed and made a part

of this record which is done.

H. R. of Ordway
Judge &c





Dec 1859



And afterwards to wit on the 18th day of November A. D. 1859 the following appeal bond was filed in said Court, to wit:

Know all men by these presents that we George Abbott John L. Lemmon Nelson Moody & Clark W. Bricker of the County of Monroe State of Illinois are held and firmly bound unto James Scruple of Jersey County same state, in the penal sum of fourteen hundred dollars current money of the United States for the payment of which said bond to be made we bind ourselves our heirs executors and administrators jointly severally and finally by these presents, Witness our hands and seals this 18th day of November A. D. 1859

The conditions of the above obligation is made that whereas the said James Scruple did on the 26th day of October A. D. 1859 in the Circuit Court, in and for the County of Monroe State of Illinois recover a judgment against the above bounden George Abbott & John L. Lemmon for the sum of Twelve hundred and twenty eight dollars & 7/100 dollars and costs of suit from which said judgment of the said Circuit Court the said George Abbott & John L. Lemmon has prayed for and obtained an appeal to the Supreme

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Court of said state, Now if the said George Abbott
 & John S. Lemon shall duly prosecute his suit
 with effect & shall moreover pay the amount of
 the judgment, costs interest & damages in case the
 said judgment shall be affirmed in the said
 Supreme Court then the above obligation to be
 paid otherwise to remain in full force & virtue
 Approved by me  George Abbott (Seal)
 this 18th day of  John S. Lemon (Seal)
 November A.D. 1859  Nelson Moody (Seal)
 Wm. Est.  Clark W. Bricker (Seal)

State of Illinois  I the undersigned
 County of Monroe  Clerk of the Circuit
 Court within and for said Monroe County, in the
 State of Illinois, hereby certify the foregoing to be
 true and correct copies of the first summons, and the
 return of the Sheriff thereon, declaration, order of
 Court, Bill of exceptions and appeal bond as
 appears on file, and of record in my office, in the
 foregoing entitled cause.



Witness William Est. Clerk of the
 said Circuit Court and the seal
 thereof hereunto affixed, at office in
 Waterloo, this 7th day of September
 A. D. 1866

William Est. 

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~~James Scruph~~

~~vs~~

George Abbott &

John S. Simon

Appellants

vs

James Scruph

Appellee

Filed Nov. 13. 1860-

N. Schuster Clk

Paid by Abbott \$5.00

\$3.50

1860-61

APPELLANTS ABSTRACT.
George Abbott & John L. Lemon, app'ls.

VS.

James Semple, appellee.

State of Illinois, } Monroe County Circuit Court, Special October Term A. D. 1859.

Monroe County, }

Be it remembered that on the 5th day of August A. D. 1859 the following summons was issued, to-wit:

State of Illinois }

Monroe County, } ss:

The People of the State of Illinois to the Sheriff of said County Greeting:

We command you that you summon George Abbott and John L. Lemon if they may be found in your county, that they be and appear personally in the Circuit Court next, to be holden at the Courthouse in Waterloo within and for said county on the 4th Monday of September next, on the first day of said term, then and there in our said court to answer James Semple, in an action of assumpsit, to his damages of \$1500,00, and hereof make due return.



Witness William Erd, Clerk of said Circuit Court and the seal hereto affixed at the Office in Waterloo, the fifth day of August A. D. 1859.

William Erd, Clerk.

Which said summons was returned by the Sheriff of said county, with the following endorsement, to wit: Executed the within writ by reading the same to George Abbott, on the 15th day of August A. D. 1859. John L. Lemon cannot be found in my county.

Chs Frick Shff of Mo Co.

State of Illinois

Monroe County, }

ss:

Circuit Court of Monroe county, of September Term, A. D. 1859.

James Semple by Wm. R. Morrison his attorney complains of George Abbott and John L. Lemon, &c., [Here comes declaration.]

And afterwards to wit on the 26th day of October A. D. 1859, it being the third day of said special October term, [Wednesday 26th] 1859 the following order was made by the court and entered of record, to-wit:

James Semple

vs

George Albott and

John L. Lemon

Assumpsit.

Now came the parties plaintiff and defendants by their attys and the defendants motion to quash the writ having been overruled by the court, and the said defendant having failed to plead and having called failed to answer, upon motion of the plaintiffs atty Judgment for default of plea is entered against them for the plaintiffs damages to be assessed by the Clerk of this Court, thereupon the defendants move for a new trial which motion is overruled by the Court; and the Clerk having reported the damages to amount to \$1228,70, the court orders that said plaintiff have and recover from said defendants the said sum of \$1228,70, damages together with the costs by him expended in this suit and that execution be issued. Thereupon the defendants pray and appeal to the supreme court, which is granted by the court, upon said defendants entering into bond of \$1400,00, within thirty days and with security to be approved by the clerk of this court and file their bill of exceptions during the term.

And afterwards to-wit on the 31st day of October A. D. 1859, it being the second Monday of said special October term A. D. 1859, to-wit:

State of Illinois

Monroe County, }

ss

In the Monroe Circuit Court special October term A. D. 1859.

James Semple

vs

George Abbott &

John L. Lemon

Assumpsit.

Be it remembered, that on the 2nd day of the term the defendants made a motion to quash the writ in the above entitled cause, because said writ is not made returnable in conformity with an order duly entered of record at the May term A. D. 1859 of this Court.

Copy of the order.

Ordered that a special term of the Monroe County Circuit Court be held at Waterloo, in and for the County of Monroe on the 4th Monday of October A. D. 1859, the same being on the 24th day of said month of October and that all writs and processes be made returnable to that term and that the Clerk certify a copy of this order to the County Court &c.

Done this 16th day of May 1859 by the Judge of said Court in open Court. H. K. S. Omelveny.

Judge &c.

And afterwards, to-wit: on the 4th day of August A. D. 1859 the Judge directed to the Clerk of this Court, the following order to-wit: order not entered of record or the defendants notified of it at the time, (but ordered it filed).

Calyle Ills. August 4th 1859.

Wm Erd Clk, Dr Sir

It is thought to be the safest course to issue process to the regular term in September, as by law if no special term had been called until after that term, then after that time issue to the special term and on all cases, on which you may have issued it will be necessary for you to reissue returnable to the September regular term, put them in the hands of the Sheriff to be reserved, this will create a little trouble and expense but of greater certainty it ought to be done.

Yours Truly, H. K. S. Omelveny. Judge &c.

And afterwards to-wit on the 24th day of October A. D. 1859, it being the first day of the special October term A. D. 1859, the Court ordered that the above order be filed *nunc pro tunc* and entered of record. Motion overuled by this Court to which ruling the defendants at the time excepted. Defendants then moved to dismiss the case for want of jurisdiction of the persons of the defendants they never having been summoned to appear at a called October term, motion overruled by the Court to which said ruling the defendants at the time excepted and prays this bill of exceptions may be signed sealed and made a part of this record which, is done.

H. K. S. Omelveny.

Judge &c



And afterwards to-wit on the 18th day of November A. D. 1859 the following appeal bond was filed in said Court, to-wit:

Here follows the appeal Bond.

On the foregoing record the appellants assign the following errors:

- 1st. In overruling motion to quash the writ.
- 2nd. In assuming jurisdiction of the case.
- 3rd. In assuming jurisdiction of the persons of Abbott and Lemon, when not summoned to appear at the October term. Of Lemon when not summoned at all.
- 4th. In rendering the verdict.
- 5th. In overruling motion for new trial.
- 6th. In the order and appointment, and in holding the term at which the cause was tried.

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Pages 7th & 8th

20073-67

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Abbott et al
vs
Semple

Abstract

Filed Nov. 13/1860
W. L. Schuster Clerk

On the 12th day of October 1859, the following case was docketed in the Circuit Court of the State of Illinois, in and for the County of Madison, to-wit: *Abbott vs Semple*, in which case the plaintiff is *George Abbott* and the defendant is *John F. Semple*. The case is docketed in the name of *George Abbott vs John F. Semple*. On the 15th day of October 1859, the following order was entered in said Court, to-wit: *That the case of George Abbott vs John F. Semple, docketed in the name of George Abbott vs John F. Semple, be set for trial on the 21st day of October 1859, at 10 o'clock in the forenoon, at the Court House in the City of St. Louis, Missouri.*

H. K. S. O'Connell

And it is further ordered that the said case be set for trial on the 21st day of October 1859, at 10 o'clock in the forenoon, at the Court House in the City of St. Louis, Missouri.

In the Circuit Court of the State of Illinois, in and for the County of Madison, to-wit: *Abbott vs Semple*, in which case the plaintiff is *George Abbott* and the defendant is *John F. Semple*. The case is docketed in the name of *George Abbott vs John F. Semple*. On the 15th day of October 1859, the following order was entered in said Court, to-wit: *That the case of George Abbott vs John F. Semple, docketed in the name of George Abbott vs John F. Semple, be set for trial on the 21st day of October 1859, at 10 o'clock in the forenoon, at the Court House in the City of St. Louis, Missouri.*

And it is further ordered that the said case be set for trial on the 21st day of October 1859, at 10 o'clock in the forenoon, at the Court House in the City of St. Louis, Missouri.

[This cause discontinued.]

In the Circuit Court of the State of Illinois, in and for the County of Madison, to-wit: *Abbott vs Semple*, in which case the plaintiff is *George Abbott* and the defendant is *John F. Semple*. The case is docketed in the name of *George Abbott vs John F. Semple*. On the 15th day of October 1859, the following order was entered in said Court, to-wit: *That the case of George Abbott vs John F. Semple, docketed in the name of George Abbott vs John F. Semple, be set for trial on the 21st day of October 1859, at 10 o'clock in the forenoon, at the Court House in the City of St. Louis, Missouri.*

THE FIRST SHIRT OF MO CO.



Office in Madison, the 15th day of August A. D. 1859. *William Edel Clerk*. I certify that the within copy of the order of said Court, in the case of *George Abbott vs John F. Semple*, docketed in the name of *George Abbott vs John F. Semple*, is a true and correct copy of the original on file in my office.

James Semple Appellee.

George Abbott & John F. Penner Appellants.

APPRECIANTS ABSTRACT.

Abbott & Lemen Appellants }
vs
James Lemple Appellee }

This was an action of Assumpsit commenced in the Circuit Court of Monroe County at the September Term thereof A.D. 1859. and writ made returnable thence.

Motion by app'ts to quash said writ because not made returnable in conformity with order duly entered of record at (May term A.D. 1859.

(Order page 5 of record)

This order either abolished or postponed the September term, or the order & appointment therein was a nullity.

If it ~~rather abolished~~ or postponed said term, then ~~the~~ the next succeeding term was October. ~~In~~ In the case of Leoby vs McConnell 13 Ills 357 the judgment opinion of this court was that the proper construction of the first section of our practice act requires that all process issued out of the Circuit Court must be made returnable at the first day of the next succeeding term.

Appellee may contend that the order and appointment is not a sufficient warrant for the holding of a special term - that it is a nullity.

(Organization & Jurisdiction of the Circuit Courts, 50th Sec)

Very well - concede it to be a nullity; then appellants were regularly summoned. They appear to contest the claim of appellee. The Judge failed to appear

by 4 o'clock of second day. ^{and the Court} The case under our statute then stands continued until the next succeeding term. This order - if a nullity, ~~or~~ it will not be seriously contended, gave the court jurisdiction in October.

If said order & appointment abolished said September term, then appellants insist that being summoned to appear at such term, is equivalent to being summoned to appear at any other default place - and consequently no summons. That they are not bound to appear at some other time to answer said demand - particularly ~~out~~ side of a regular term. That is to say, being summoned to appear at the September term, ~~if they~~ ^{defendants} appear & find no plaintiff - no court - under our statute there is no court until next regular term provided by law. What right has plaintiff to go the ensuing October & demand a judgment against depts after notifying them that he would ~~make~~ such judgment at another time at a regular term of Court, or ~~at~~ another time at no court.

If said order and appointment is valid then appellants insist that they should have been summoned in conformity with said order, because of its validity - and because said order made the next succeeding term the October term. If such special term had preceded the regular

September term, it would be beyond
all doubt the next succeeding term. Nor
would there have been any question about its
regularity. But if this court held the
order & appointment regular, and that it
postpones or abolishes the September term, then
it must follow that ~~it~~ is the next succeeding
term is October, and process should have been
made returnable ^{there}. The Statute gives the court the power
^{to order process so returned.}

If however, it is insisted that the next succeeding
term is the September term, then appellants
insist that "a time appointed by law for the
holding of a court is just as much a term
as if it were actually held." (13 Ills 671) and
appellants being summoned to appear there at
such term, the plain language of the statute
free from all ambiguity, informs them that
no judge appearing before 4 o'clock of the second
day, the court shall stand adjourned until
the next succeeding term. If a special
term is not the succeeding term in the ^{meaning} language
of the Statute at one time it is not at another
and therefore the cause stood continued until
succeeding May term in course.

If our Statute (law of 1849 page 49) fixing the
terms of the Circuit Court in Second Judicial
district" together with Sect. 8 of article 5 of
our Constitution, which provides that ^{any} there shall

Organization & Jurisdiction
of Circuit Courts.
Sect 43.

be two or more terms of the Circuit Court (held, annually, in each county of this State at such times as shall be provided by law." are not sufficient to hold our judges to a strict observance of this legislative authority, the 6th error assigned will have to be abandoned. The interpretation I have always given to the 50 Section will have to be ignored, & latitude conceded which may not make us pray to be delivered from the dangers of judicial legislation.

1st Com 555-
2 do 227
2 do 303.

But there is ~~one~~ error assigned, that is, in assuming jurisdiction of the persons which must dispose of the whole case, and reverse the decision of the Court below. That judgment is entered against Lemen when not served at all.

This point is too plain a one to need argument. Nor is it necessary to address argument that this error as to entering judgment against Lemen, without being served, reverses the case as to both appellants.

The first part of the argument is hastily written amid the buzz of the court room and in ~~its~~ a disjointed and imperfect style treats the ~~motion~~ to quash the writ because not made returnable in conformity with order. This has been thus hastily passed over, because appellants rely upon a reversal of this case because the court below erred in assuming jurisdiction of the persons.

Geo Abbott, in person

APPELLANTS ABSTRACT.

George Abbott & John L. Lemen, app'ls.

vs.

James Semple, appellee.

State of Illinois, } Monroe County Circuit Court, Special October Term A. D. 1859.

Monroe County, }

Be it remembered that on the 5th day of August A. D. 1859 the following summons was issued, to-wit:

State of Illinois }
 Monroe County, } ss: The People of the State of Illinois to the Sheriff of said County Greeting:
 We command you that you summon George Abbott and John L. Lemen if they may be found in your county, that they be and appear personally in the Circuit Court next, to be holden at the Courthouse in Waterloo within and for said county on the 4th Monday of September next, on the first day of said term, then and there in our said court to answer James Semple, in an action of assumpsit, to his damages of \$1500.00, and hereof make due return.



Witness William Erd, Clerk of said Circuit Court and the seal hereto affixed at the Office in Waterloo, the fifth day of August A. D. 1859.

William Erd, Clerk.

Which said summons was returned by the Sheriff of said county, with the following endorsement, to wit: Executed the within writ by reading the same to George Abbott, on the 15th day of August A. D. 1859. John L. Lemen cannot be found in my county.

Chs Frick Shff of Mo Co.

State of Illinois }
 Monroe County, }

ss:

Circuit Court of Monroe county, of September Term, A. D. 1859.

James Semple by Wm. R. Morrison his attorney complains of George Abbott and John L. Lemen, &c., [Here comes declaration.]

And afterwards to wit on the 26th day of October A. D. 1859. it being the third day of said special October term, [Wednesday 26th] 1859 the following order was made by the court and entered of record, to-wit:

James Semple }
 vs } Assumpsit.
 George Abbott and }
 John L. Lemen }
 Now came the parties plaintiff and defendants by their attys and the defendants having failed to plead and having called failed to answer, upon motion of the plaintiffs atty Judgment for default of plea is entered against them for the plaintiffs damages to be assessed by the Clerk of this Court, thereupon the defendants move for a new trial which motion is overruled by the Court; and the Clerk having reported the damages to amount to \$1228.70, the court orders that said plaintiff have and recover from said defendants the said sum of \$1228.70, damages together with the costs by him expended in this suit and that execution be issued. Thereupon the defendants pray and appeal to the supreme court, which is granted by the court, upon said defendants entering into bond of \$1400.00, within thirty days and with security to be approved by the clerk of this court and file their bill of exceptions during the term.

And afterwards to-wit on the 31st day of October A. D. 1859, it being the second Monday of said special October term A. D. 1859, to-wit:

State of Illinois }
 Monroe County, } ss In the Monroe Circuit Court special October term A. D. 1859.

James Semple }
 vs } Assump.it.
 George Abbott & }
 John L. Lemen }

Be it remembered, that on the 2nd day of the term the defendants made a motion to quash the writ in the above entitled cause, because said writ is not made returnable in conformity with an order duly entered of record at the May term A. D. 1859 of this Court.

Copy of the order.

Ordered that a special term of the Monroe County Circuit Court be held at Waterloo, in and for the County of Monroe on the 4th Monday of October A. D. 1859, the same being on the 24th day of said month of October and that all writs and processes be made returnable to that term and that the Clerk certify a copy of this order to the County Court &c.

Done this 16th day of May 1859 by the Judge of said Court in open Court. H. K. S. Omelveny.

Judge &c.

And afterwards, to-wit: on the 4th day of August A. D. 1859 the Judge directed to the Clerk of this Court, the following order to-wit: order not entered of record or the defendants notified of it at the time, (but ordered it filed).

Calyle Ills. August 4th 1859.

Wm Erd Clk, D: Sir

It is thought to be the safest course to issue process to the regular term in September, as by law if no special term had been called until after that term, then after that time issue to the special term and on all cases, on which you may have issued it will be necessary for you to reissue returnable to the September regular term, put them in the hands of the Sheriff to be reserved, this will create a little trouble and expense but for greater certainty it ought to be done.

Yours Truly, H. K. S. Omelveny. Judge &c.

And afterwards to-wit on the 24th day of October A. D. 1859, it being the first day of the special October term A. D. 1859, the Court ordered that the above order be filed *nunc pro tunc* and entered of record. Motion overuled by this Court to which ruling the defendants at the time excepted. Defendants then moved to dismiss the case for want of jurisdiction of the persons of the defendants they never having been summoned to appear at a called October term, motion overuled by the Court to which said ruling the defendants at the time excepted and prays this bill of exceptions may be signed sealed and made a part of this record which is done.

H. K. S. Omelveny.

Judge &c



And afterwards to-wit on the 18th day of November A. D. 1859 the following appeal bond was filed in said Court, to-wit:

Here follows the appeal Bond.

On the foregoing record the appellants assign the following errors:

- 1st. In overruling motion to quash the writ.
- 2nd. In assuming jurisdiction of the case.
- 3rd. In assuming jurisdiction of the persons of Abbott and Lemen, when not summoned to appear at the October term. Of Lemen when not summoned at all.
- 4th. In rendering the verdict.
- 5th. In overruling motion for new trial.
- 6th. In the order and appointment, and in holding the term at which the cause was tried.

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No 32

Nov. Term 1866

Abbott et al

vs

Sample

Appl. from Monroe

Affirming

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