

No. 11860

Supreme Court of Illinois

Smith, et al.

vs.

Harris, et al.

71641  7

*Jos Davis Co.*  
*Orin Smith et al.*  
*Robert S. Harris et al.*

*20*

*1851*

*11860*

*Referred*



State of Illinois }  
In Damp County }

Please in the Circuit Court began and held  
within and for the County of In Damp, of said on the first Monday  
of October in the Year A D 1849 before the Hon. Benjamin P.  
Sheldon, then Judge of the Sixth Judicial Circuit in said State,

Benjamin P. Sheldon Judge  
Marshall P. Percin Sheriff  
William A. Bradley Clerk

Robert S. Harris and James M. Harris  
doing business as partners under the name  
& style of R. S. Harris & Co

Plaintiffs

vs  
Orin Smith, Henry Cornith, Benjamin  
H. Campbell, Milton W. Lodwick, Rufel  
Blakely, Hercules L. Dorseman, Henry M.  
Rice & Bondwin W. Bristis

Defendants

Be it remembered that heretofore, to wit  
on the 12th day of September A D 1849, the above named Plaintiffs,  
by their Attorneys, filed in the Office of the Circuit Court for said County,  
a paper in the name and figures following to wit,

Robert S. Harris & James M. Harris doing business  
as partners under the name and style of R. S.  
Harris & Co

vs  
Orin Smith, Henry Cornith, Benjamin H. Campbell  
Milton W. Lodwick, Rufel Blakely, Hercules L.  
Dorseman & Henry M. Rice

In Circuit Court  
In Damp County  
Illinois to October  
Term A D 1849  
True copy on the

Case upon promises - Damages  
then thousand dollars, to Wm. A. Bradley, clk - at a summons  
served to the above named defendants, returnable according to law  
in the above entitled case

Wm. A. Bradley



Douglas & Higgins  
Attys for Plff

marked

Filed 12th Sept 1849

W H Bradley

Clerk,

And on the same day to wit, the 12th day of September A.D. 1849  
a writ of Summons issued from said Clerk's Office to said defendants  
in said Entitled Cause in the words and figures following to wit:

State of Illinois  
In Damp County

The People of the State of Illinois -  
To the Sheriff of the County of In Damp - Greeting -

We Command You, to Summon Omin  
Smith, Henry Cornith, Benjamin H. Campbell, Milton W. Lodmick,  
Rufus Blakely, Hercules L. Douseman and Henry W. Rice, & appear  
before the Circuit Court of In Damp County, at the next term to be  
holden at Galena, on the 1st Monday of October next, to answer  
Robert S. Harris, and James W. Harris, doing business as partners under  
the name and style of R. S. Harris & Co. in a plea of trespass on  
the Case upon premises, Damages three thousand dollars, and here  
you them there this writ



Witness my H. Bradley Clerk of the Circuit  
Court of In Damp County, at Galena, Illinois  
This 12th day of September 1849,

Attest Wm H. Bradley

clerk

Return, Endorsed,

Executed the within writ by reading to the  
within named Henry Cornith the 13th day  
Omin Smith the 15th day, Milton W. Lodmick the 21st day, Benja-  
-min H. Campbell & Rufus Blakely, on the 24th day of September  
A.D. 1849, (all in the month of September) the within named Hercules  
L. Douseman & Henry W. Rice not found in my County

Mo. B. Pierce Sheriff



and afterwards, to wit, on the 21<sup>st</sup> day of September A.D. 1849 the said Plaintiff by their Attorney filed in the said Clerk's Office their Declaration, against the said Defendants, which said declaration is in the words and terms following, to wit, except the interlineation of the name of London M. Brisson, & after the plea in abatement of Cayahela & Blakely was filed, in said Court in said Cause - To wit

"State of Illinois } In Queen's Court, In Damp County,  
In Damp County } October Term A.D. 1849

Robert S. Harris

and James W. Harris doing business as partners under the name & style of R. S. Harris & Co. Plaintiffs in this said Complaint, of Orrin Smith, Benjamin H. Campbell, Henry Combs, Milton W. Loomis, Rufus Blakely, Henry W. Rice, (Bradford W. Brisson) and Hercules L. Doremus, Defendants, who were summoned to answer the said Plaintiffs in the plea of trespass on the case, upon promises for their wrongs the said Defendants, by and under the name, style and description of the Steam Boat Senator, and owned herebefore, to wit, on the first day of February A.D. 1849 at Galena to wit, at the County aforesaid, by Orrin Smith their then Agent, in that behalf made their certain instrument in writing bearing date a certain day and year to wit, the day and year aforesaid, whereby the said Defendants under the style and description of the Steam Boat Senator, and owned then and then promised to pay from month after <sup>the</sup> date thereof to the order of Orr S. Harris, the sum of two thousand dollars for value received, and then and then delivered the said instrument in writing to the said D. S. Harris, and afterwards to wit, on the same day and year aforesaid, the said D. S. Harris, by his written endorsement thereon duly and legally assigned, the said instrument in writing to the said plaintiffs by means whereof, and by force of the statute in such case made and provided, the said Defendants then & then became liable to pay to the said plaintiffs, the said sum of money in the said instrument in writing specified, according to the tenor and effect thereof of the said instrument in writing, and being so liable, the said Defendants in consideration thereof, afterwards to wit, on the day and year aforesaid, at the County aforesaid undertook, & then & then faithfully promised the said plaintiffs to pay them the said sum of money in the said instrument in writing specified, according to the tenor and effect thereof,

not found

their instrument



2nd Count

And also for that, whereas the said defendants, hereafter to be named, on the first day of February A.D. 1849 at the County aforesaid, by Orin Smith, their agent made, then certain instrument in writing, in the words & figures following viz

\$ 2000.

Galena Feb 1<sup>st</sup> 1849

Then months after date for value received the Steam Boat Senator and owners promise to pay to the order of D. S. Harris two thousand and dollars

Orin Smith Capt  
for Boat and Owners

3rd Count

And then and then delivers the same, to one D. S. Harris who after wards, to wit; on the day & year aforesaid assigned the same to the said Plaintiffs, by his written endorsement thereon, by means whereof, and by force of the Statute in such case made and provided the said defendants then & there became liable to pay to the said Plaintiff, the said sum of money in the said instrument in writing specified according to the tenor and effect thereof, and being so liable, the said defendants, in consideration thereof afterwards to wit, on the day and year aforesaid promised the said plaintiffs to pay them the said sum of money in the said instrument in writing specified according to the tenor and effect thereof,

And also, for that whereas the said defendants, hereafter to be named, on the <sup>first</sup> day of February A.D. 1849, at Galena to wit, at the County aforesaid, by the said Orin Smith Captain in behalf of himself and the Steam Boat Senator, and owners which said Owners then & there were the said defendants, made then certain instrument in writing whereby the said defendants under name & style of the Steam Boat Senator and owners promised to pay to the order of one D. S. Harris the sum of two thousand dollars for value received & then & there delivered said instrument in writing to the said D. S. Harris, and after wards to wit, on the day and year aforesaid, at the County aforesaid



The said D. S. Harris assigned the said Instrument in writing by  
his written Endorsement thereon to the said Plaintiffs, by means where-  
of said by force of the Statute in such Case made and printed the  
said Plaintiffs defendants then & there became liable to pay to the said  
Plaintiffs the said sum of money in the said instrument in writing & re-  
-aped according to the tenor and effect of the said instrument in  
writing, and being so liable the said defendants in consideration thereof  
agreed to wit on the day & year aforesaid at the County aforesaid  
undertook, & then & there faithfully promised, the said Plaintiffs  
to pay them the said sum of money in the said instrument in writing  
specified, according to the <sup>effect and</sup> tenor thereof, - nevertheless the said defendants  
not regarding their said promises, and undertakings have not as  
yet paid the said several sums of money, or any or either of them,  
or any part thereof to the said plaintiffs, although often requested  
to do, but the said defendants to pay them the same have heretofore  
wholly neglected and refused and still do neglect and refuse to the  
damages of the said Plaintiffs of three thousand dollars, therefore  
they sue

Higgins & Douglas  
Attys. for Plff

Copy of Instrument in writing sent on

\$2000.

Galena July 1<sup>st</sup> 1849

Five months after date for value received the Steam  
Boat Senator and owners promised to pay to the order of D. S. Harris  
two thousand dollars

Omin Smith Capt  
for Boat and owners

(Endorse)

Pay to the order of D. S. Harris & Co  
D. S. Harris

Marked)

Filed

21<sup>st</sup>. Sept 1849

Wm W. Bradley  
clerk



And afterwards, to wit, on the 5<sup>th</sup> day of October A.D. 1849 the said Defendants, Orin Smith, Henry Cornith & Milton W. Lodwick by their attorneys filed in open Court with the Clerk of said Court, their answer in the words and figures following, to wit,

State of Illinois Jo Daviess County

Orin Smith.

Et al

vs

R. S. Harris Et al

Circuit Court, Oct, Term 1849

And the said Defendants Orin Smith & Milton W. Lodwick & Henry Cornith. Come, and as to the <sup>1<sup>st</sup></sup> & <sup>2<sup>d</sup></sup> Counts of the said Declaration. Grant Oyer of the said supposed instrument in writing in the said <sup>1<sup>st</sup></sup> & <sup>2<sup>d</sup></sup> Courts mentioned, and it is read to them in these words to wit,

\$2000

Galena July 1<sup>st</sup> 1849

From month after date, for value received the Steam Boat Senator and Owner, promises to pay to the order of R. S. Harris two thousand dollars

Orin Smith Capt.  
for Boat and owner.

(Enclosed)

pay to the order of R. S. Harris & Co  
D. S. Harris

Which being read and heard, the said Orin Smith, Henry Cornith & Milton W. Lodwick, say that the said plaintiffs ought not to have or maintain their action aforesaid against them, as to the said <sup>1<sup>st</sup></sup> & <sup>2<sup>d</sup></sup> Counts aforesaid because they say that the said <sup>1<sup>st</sup></sup> & <sup>2<sup>d</sup></sup> Counts of said Declaration aforesaid and the matters therein contained, and the said instrument in writing and the matters ~~and~~ therein contained, are not sufficient in law to maintain the action aforesaid, and that they are not bound by law to answer the same. Wherefore they pray Judgement, and that the said plaintiffs may be barred of their said action against them

Dummond, Hoop & Wilson



for default  
Cornith, Smith & Lodwick

And the said Defendants Cornith, Smith & Lodwick come & say that the said Plaintiff ought not to have their action enforced against them as to the said second Count, because they say that the said second Count of the said declaration, and the matters therein contained are not sufficient in law to maintain the action aforesaid & that they are not bound by law to answer the same — Wherefore they pray Judgment & that the said Plaintiff may be barred of their action aforesaid against them

Document, Hoge & Wilson  
for  
Cornith, Smith & Lodwick

(Endorsed)

Filed, 8<sup>th</sup> Oct 1849

W. H. Bradley Clk

And afterwards to wit, on the 8<sup>th</sup> day of October A D 1849 the said Defendants O. Smith, H. Cornith, W. W. Lodwick, B. H. Campbell & R. Blakely by their attorney filed in Open Court, with the Clerk of said Court their motion in the words and figures following to wit,

R. J. Harris vco

as  
O. Smith, H. Cornith, W. W. Lodwick  
B. H. Campbell & R. Blakely vimpleaded with others

} Circuit Court  
October term  
A D 1849

And now at this day  
as well  
coming the said Defendants, O. Smith, H. Cornith & W. W. Lodwick who were served with process ten days before the return day of the writ issued in this Cause, as the said Defendants, B. H. Campbell & R. Blakely who were not served with process ten days before the return of the writ, and respectively and jointly move for a continuance of this Cause till the next term of this Court for the reason that two



of the <sup>said</sup> defendants men not denied with process two days before  
the return day of the writ

Hodge, & Wilson & Drummond  
for depts

(endues)

Filed 8th Oct 1849

Wm H. Bradley clk

and on the same day, to wit on the 8th day of Oct A D 1849  
in the end of the proceeding, said Court in said Cause in the  
following entry to wit,

Robert S. Harris & James M. Harris

vs  
Orin Smith, Henry Cornick Milton  
W. Lodmick, Rufus Blakely, Hercules  
L. Doremus and Henry W. Rice

Case

Orin Smith, Henry Cornick  
& Milton W. Lodmick then of the defendants, by their attorney Cornick  
and files their demurrer, and on this motion it is ordered by the  
Court that the case be continued until the next term of this  
Court."

And afterwards to wit on the 14th day of March A D 1850  
the said defendants, Benjamin H. Campbell & Rufus Blakely  
by their then attorney file in open Court with the Clerk thereof, their  
plea in abatement in the words and figures following, to wit,

State of Illinois

In Damp County Sec,

Benj. H. Campbell et al

vs

R. S. Harris et al

Circuit Court, March Term 1850-

And the said B. H. Campbell, and  
Rufus Blakely, by their attorney, come and defend re and pray  
judgement of the said writ and declaration, because they say that the  
said several supposed promises and undertakings, in the said  
declaration mentioned, if any such were made, were and each



of them was made jointly with one Bondoin, Pratoris, who is still  
living, and not by the said Orrin Smith, Henry Cornith, Benja-  
-min H. Campbell, Mutton, W. Ledwith, Russel Blakely H. L.  
Donsoman, and H. M. Rice, alone, and this the say the said  
Benjamin H. Campbell, and Russel Blakely are ready to  
swear. Wherefore in as much as the said Bondoin, W. Pratoris  
is not named in the declaration and writ together with the  
said Benjamin H. Campbell, and Russel Blakely, they the  
said Benjamin H. Campbell and Russel Blakely pray  
Judgement of the said writ and declaration and that the  
same may be quashed;

Hogge & Wilson  
attys for Campbell & Blakely

Henry Cornith, being duly sworn, on behalf of the above  
named Campbell & Blakely on his oath states that the above  
plea is true in substance and in fact.

Subscribed & sworn to before me  
this 14<sup>th</sup> day of March 1850  
Wm. H. Bradley Ck

Henry Cornith

(address)

Filed March 14<sup>th</sup> 1850  
Wm. H. Bradley Ck

and afterwards to wit on the 18<sup>th</sup> day of March AD 1850 in the  
record of the proceedings of said Court, in said cause in the following  
Entry to wit:

Robert S. Harris and James Mc Namis

vs  
Orrin Smith, Henry Cornith, Benjamin  
H. Campbell, Mutton, W. Ledwith, Russel  
Blakely, Hercules, S. Donsoman and  
Henry M. Rice

Case

Now came on to be heard the  
demurrer of the Defendants, Orrin Smith, Henry Cornith, and Mutton



W. Lodwick hereupon filed by their attorney, to the declaration of the Plaintiffs which after agreement, is taken under advisement, and afterwards, to wit, on the 19<sup>th</sup> day of March A.D. 1830, in the records of the proceedings of said Court in said Cause is the following Entry to wit,

Robert S. Harris and James M. Harris

vs  
Orin Smith, Henry Corwith, Benjamin H. Campbell, Milton W. Lodwick Russel Blakeley, Hercules S. Doremus & Henry M. Rice

Case

The Court having fully considered, and being fully advised upon the Demurs of the defendants Orin Smith, Henry Corwith, and Milton W. Lodwick hereupon filed by their attorney to the declaration of the Plaintiffs overrules the same, and the said defendants by their attorney say they will abide by their demurrer.

and afterwards to wit, on the 22<sup>nd</sup> day of March A.D. 1830 in March term A.D. 1830 of said Court in the record of the proceedings thereof in said Cause is the following Entry to wit,

Robert S. Harris and James M. Harris

vs  
Orin Smith, Henry Corwith Benjamin H. Campbell, Milton W. Lodwick Russel Blakeley, Hercules S. Doremus and Henry M. Rice

Case

On Motion of the Plaintiffs attorney It is ordered by the Court that a *scire facias* issue to Bondary, W. Brienis, returnable to the next term of this Court, to make him a party defendant in this suit.

and afterwards to wit on the 14<sup>th</sup> day of May A.D. 1830, a writ of *scire facias* issued out of the Clerk's



office of said Court to the said Bondain W. Priestor which said writ  
together with the return thereon is in the words and figures  
following: To wit,

State of Illinois }  
Jo Damp County } p

The People of the State of Illinois,  
Do the Sheriff of said Jo Damp County, Greeting,  
Whereas a certain writ of Summons, dated September 12th 1849  
issued out of the Clerk's office of the Circuit Court for said Jo  
Damp County, at the suit of Robert S. Harris, and James W. Harris  
doing business as partners, under the name & style of R. S. Harris  
& Co, and against Orrin Smith, Henry Cornick, Benjamin H. Campbell  
Matton W. Godwin, Russell Blakely, Hercules L. Doremus  
and Henry W. Rice, in a plea of Trespass on the case upon promise  
for the sum of three thousand dollars, damages, directed to the  
Sheriff of said County to execute, when upon such proceedings  
have been had in the said Court in the plea said aforesaid, that  
upon the suggestion of the said Plaintiffs by their attorney, it was  
ordered by said Court in March Term thereof A.D. 1850 that a writ  
of *scire facias* issue to Bondain W. Priestor, returnable to the  
next term of said Court, to make him a party defendant in said  
suit.

We therefore command you that you summon the said  
Bondain W. Priestor, if he shall be found in your County, person-  
ally to be and appear before the Judge of the said Circuit Court  
for Jo Damp County, on the first day of the next term thereof to  
be holden at the Court house in Galena on the third Monday in  
the month of May to make him a party defendant to  
said suit. Hence fail not, & have you there and there this writ



Witness My Hand, Bradley Clerk of the Circuit Court  
of Jo Damp County Illinois & the Seal thereof at  
Galena this first day of May A.D. 1850

Attest

Wm. C. Bradley Clerk



(Endorsed)

Returns this writ not executed, this 20th day of May 1850. The within named Priests not found in my County  
W. B. Rice Sheriff

And afterwards to wit on the 20th day of May A.D. 1850 the said defendant Henry W. Rice by his attorney files in open court his appearance and plea in the words and figures following, to wit,

State of Illinois, }  
In Adams County }  
Y<sup>e</sup>

Omni Smiths, et al }  
ads } In Circuit Court do  
W. J. Harris et al } May, T. 1850,

Henry W. Rice, one of the Defendants in said writ named, comes and files his appearance & for a plea to said Plaintiffs declaration says that the said Plaintiffs ought not to have, or maintain their aforesaid action, against them, because they did not appear & promise in manner & form as the said Plaintiff hath declared against them & of this he puts himself upon the Country

Hoag & Nelson

And the said plaintiffs  
do likewise

attys for Rice

Douglas

attys for P<sup>l</sup>ffs

(Endorsed)

Filed May 20th 1850

W. H. Bradley Sh

and on the same day to wit on the 20th day of May A.D. 1850 in May term of said Court A.D. 1850, in the record of the proceedings thereof, in said cause, is the following entry to wit,



Robert S. Harris and  
James W. Harris

vs  
Orin Smith, Henry Cornish  
Benjamin H. Campbell  
Milton W. Goddick, Russell  
Blakeley, Hercules S. Dorseman  
& Henry W. Rice

Case

The Defendant, Henry W. Rice  
comes by his attorney and files his plea - and the Plaintiff by  
their attorney suggests the name of Boudoin, W. Priebe's on the record  
as a party defendant in this suit,

And afterwards to wit on the 21<sup>st</sup> day of May  
in May term A.D. 1830 of said Court in the record of the proceedings  
thereof in said Cause is the following entry, to wit,

Robert S. Harris and James W. Harris

vs  
Orin Smith, Henry Cornish, Benjamin  
H. Campbell, Milton W. Goddick, Russell  
Blakeley, Hercules S. Dorseman, Henry  
W. Rice & Boudoin W. Priebe's

Case

Now at this day came  
the Plaintiff by their attorney, and the Plea in Abatement of the  
Defendant, Russell Blakeley, and Benjamin H. Campbell heretofore  
filed, having been confessed, and the Defendant Boudoin, W. Priebe's  
having been made a party by Scin facias, and the said Defendants  
Russell Blakeley, and Benjamin H. Campbell, having failed to answer  
further - It is therefore considered by the Court, on motion of the  
Plaintiffs by their attorney that, Judgment by default, be entered against  
the Defendants Russell Blakeley and Benjamin H. Campbell,

And afterwards to wit on the 25<sup>th</sup> day of May, in May  
Term of said Court A.D. 1830 in the record of the proceedings thereof  
in said Cause is the following entry to wit,



Robert S. Harris and James M. Harris

vs

Henry M. Rice Impleaded with Orin  
Smith, Henry Cornith, Benjamin H.  
Campbell, Milton W. Lodwick Russell  
Blakeley, Hercules S. Douseman & Brandon  
W. Bristol

Case

Now at this day came the  
Plaintiffs by their attorney, and the said Defendant Henry M. Rice  
by his attorney and upon Issue joined by agreement, they moved the  
Intimation of a jury and for trial ~~put~~ themselves upon the Court  
and after hearing the evidence, the Court takes the same under advis-  
ement.

and afterwards to sit on the 27th  
day of May, in May term A.D. 1830 of said Court, in the record of the  
proceedings being in said Cause is the following Entry to wit

Robert S. Harris  
& James M. Harris

vs

Henry M. Rice Impleaded with  
Orin Smith, Henry Cornith  
Benjamin H. Campbell Milton  
W. Lodwick, Russell, Blakeley,  
Hercules S. Douseman & Brandon  
W. Bristol

Case

The Court having fully considered  
and being fully advised upon the issue heretofore submitted in this  
Case between the Plaintiffs and the said Defendant, Henry M. Rice  
finds the issue for the Plaintiffs and, it appearing to the Court that this  
action was founded on a promissory note, for the payment of money only  
the Court assesses the Damages at the sum of twenty one Hundred Eighteen  
Dollars and Sixty eight Cents - to which decision of the Court the Def-  
endant's attorney excepts, and moves the Court for a new trial herein -  
and files his reasons therefor -



The motion and reasons for a new trial filed by the said defend-  
-ants Rice by his attorney as aforesaid on the 27th day of May  
AD 1830, are in the words and figures following to wit,

State of Illinois In Camp County ss

Henry M. Rice, Et al } Circuit Court May  
adv } Term 1830  
P. J. Harris vs }  
The said Defendant comes & moves

The Court for a new trial herein & for reasons shews  
1<sup>st</sup> Because ~~the~~ of the admission of the Court of  
the said Note as Evidence  
2<sup>nd</sup> Because the finding of the Court was contrary  
to Law the evidence  
3<sup>rd</sup> Because the finding of the Court was contrary  
to Law  
4<sup>th</sup> Because said Note taken in Connection with  
the testimony of the witnesses was inadmissi-  
ble  
5<sup>th</sup> And because of other Error appearing  
on the record, & for other reasons  
Henry & Wilson for dft  
Rice

(Endment)

Filed May 27th 1830

Wm. H. Bradley clk

And afterwards to wit on the 5th day of June as part of the  
May term AD 1830 of said Court in the record of the proceedings ther-  
-of in said Cause in the following entry to wit

Robert Harris and James W. Harris

vs

Henry M. Rice Impleaded with Ann Smith  
Henry Carmeth, Benjamin H. Campbell Milton W  
Lodwick, Russel Blakely, Hercules L. Dousman  
& Gordon W. Priskin

Case



Now at this day

Now come on to be heard the motion of the defendant Rice by his attorney for a new trial herein, which motion is overruled by the Court, to which the Defendant Rice by his attorney Excepts

And afterwards to wit on the same day, to wit on the 5th day of June as yet of the may term A.D. 1850 of said Court, in the record of the proceedings, there is in said Cause in the following Entry to wit,

Robert S. Harris and  
James M. Harris,

vs

Henry M. Rice, Orin Smith  
Henry Cornith, Benjamin H.  
Campbell, Milton W. Godnick  
and Russel Blakely impleaded with  
Hercules S. Douceman and Prudence W.  
Priestis.

Case

And now at this time come the said Plaintiffs by their counsel and move the Court for a judgment on the finding of the Court herein, upon the issue joined between the Plaintiffs and the said Defendant Henry M. Rice, and upon the finding of the Court of the amount of the damages assessed against the said Defendants - and it appearing to the Court that all of the Defendants in this case had not been served with process and that Henry Cornith, Henry M. Rice, Orin Smith, Benjamin H. Campbell, Russel Blakely, and Milton W. Godnick, were duly served with process and had entered their appearance in this case, and it appearing to the Court that this action was founded upon a promissory note for the payment of money only. It is therefore considered and adjudged by the Court, that the said Plaintiffs do have and recover of the said Defendants Henry Cornith, Henry M. Rice, Orin Smith, Benjamin H. Campbell, Russel Blakely, and Milton W. Godnick impleaded with, Hercules S. Douceman and Prudence W. Priestis the said sum of Twenty one thousand and Eighteen dollars and sixty eight cents







called  
Russell Jones to witness who being sworn, testified that the body of said  
note as originally drawn was in his handwriting, drawn by him at  
the request of the payee and some of the defendants, at the counting  
room of Campbell & Smith two of said defendants of which firm  
the witness was book-keeper & clerk, the said witness examined said  
note and stated after his inspection of the same, that the said marks  
across the letter "U S" seemed to be in different ink from the writing of  
the body of said note and of the signature, & that he believes it to  
be different ink, that all the ink in said counting room was of one  
kind & of it was the body & signature of said note, that the body of  
said note was written with a "steel" or gold pen, and that no quill  
pens were used in said counting room & he did not recollect of  
seeing any quill pen on the occasion of the drawing & executing of  
said note, that the signature & words "Erin Smith Capt for Boal  
& Brown" were in the handwriting of said Smith, that Smith usually  
wrote with a quill pen & usually did so when he had one, but the  
witness had no recollection of seeing one on that occasion, that said note  
was executed & delivered in said counting room when said payee D. S.  
Harris & several of said plaintiffs defendants were present, that witness  
had a very faint & indistinct recollection of something having been said  
by some one present that said Boat was not then the "U S Senator" but  
"Senator" only, but that his recollection was so faint & indistinct he can  
scarcely say any thing about it, but that he believed something of the  
kind was said at said counting room at that time, that the witness  
did not alter said note at the time & did not see any one alter the  
same & did not know whether said note was then & then altered or  
not, & had never seen the note since until produced on this  
trial - that said Erasure or marks appeared to be made & were  
in his opinion from an inspection of said note, made with  
a quill pen & with <sup>a</sup> different ink from that used in <sup>said</sup> counting  
room - & said witness further stated that said Boat when  
he first came into this trade bore the name of the "U S Senator"  
but that the said letter "U S" had been erased from said  
Boat & said witness believed they were so erased from said  
Boat before the execution of said note -



That said note was executed & delivered in full consideration of said Boat which said defendants purchased of said Payee D. S. Harris, that a controversy had arisen <sup>between</sup> the parties relative to said note & that the Defendants had refused to pay the same, but that Witness never heard it assigned as a reason for non-payment, that said allegation had been made, that said Boat was at the time of the execution of said note, & ever since called the Steam Boat Senator & that the payee, named in said note was the Vendor of said Boat, & former Master thereof & that said Orin Smith has been the master of said Boat since said note was given & that said Rice & said Orin Smith were present when said note was given and also the payee therein named, that they were acquainted with said Boat, that at the time when said note was given, something was said about said Boat, not being the "U. S. Senator" but "Senator", Witness thinks something was said but his recollection is indistinct at this time, but thinks that was mentioned when note was written, said Witness could not swear that Smith did not alter said note when he signed it.

The plaintiffs then produced J. P. Dezyou a Witness who testified, that he was a resident of Galena & knew the boat spoken of, that she was known as the "Senator", that she had no other name but that of Senator when she came into this trade, but <sup>that</sup> after the purchase by Capt Smith & since he commanded her she had the addition of the letters "W. S.", put on in connection with the name "Senator" & on examination, Witness states he could not say whether the letters "W. S." were ever on said Boat, did not remember.

The said plaintiffs thereupon offered said note in connection with the testimony of said Witnesses Jones & Dezyou, to the admissibility of which the defendants still objected, which objection was overruled by the Court & the said note admitted, to which overruling the defendant, by his counsel excepted, - this was all the testimony offered or admitted - upon which the Court found the issue for the plaintiffs, the defendant moved the Court for a new trial for the following reasons:

1<sup>st</sup> because of the admission of the Court of the said note



- as Evidence
- 1<sup>st</sup> Because the finding of the Court was contrary to  
the Evidence
- 2<sup>nd</sup> Because the finding of the Court was contrary to  
law
- 4<sup>th</sup> Because said note taken in connection with the  
testimony of the witnesses was inadmissible
- 5<sup>th</sup> and because of other errors appearing on the record  
& for other reasons

Hogan & Wilson, for Def<sup>ts</sup>  
Revs.

which was overruled by the Court, & the defendants consented  
then excepted to the said opinion & ruling of the Court in overruling  
the said motion for a new trial & prayed that his Bill of Exceptions  
might be signed sealed, & made a part of the record in this case  
which was done accordingly

Signed & Sealed this 5<sup>th</sup> day of June

A D 1830

It is further agreed by the parties that the original note  
shall be attached to the transcript in this cause & be  
sent to the Supreme Court for their own inspection &  
that no Exceptions shall be taken by either party because  
the opinion of the Circuit Judge concur on the inspection  
of said note, is not contained in this bill of Exceptions

Wm. B. R. Sheldon Seal

(Endued)

Filed June 5<sup>th</sup> 1830

Wm. H. Bradley, clk

The note referred to in the foregoing bill of Exceptions is  
hereto attached marked A

and afterwards to-wit, on the 5<sup>th</sup> day of July A D 1830  
the said Defendants filed in the office of the Clerk of said



Circuit Court their meeting obligatory commonly called an  
Appeal Bond, which is in the words and figures following to  
wit

I know all men by these presents that Mr. Russel Blakeley,  
Milton W. Lodwick, Henry Cornith, Benjamin H. Campbell  
Henry W. Rice & Orin Smith & Nathan Cornith, are held  
and firmly bound unto Robert S. Harris & James W. Harris ju-  
stices in business under the name & firm of R. S. Harris & Co of Jo-  
hnsburg County Illinois in the penal sum of three thousand  
dollar current money of the United States, for the payment of  
which well and truly, to be made we bind ourselves our heirs exor-  
tors and administrators, jointly severally and firmly by these presents  
Witness our hands and seals this fifth day of July A D 1830

The Condition of the above obligation is such  
that whereas the said R. S. Harris & Co did on the fifth day of June  
A D 1830 in the Circuit Court in and for the County and State  
of said, recover a judgement against the above bounden  
Russel Blakeley, Milton W. Lodwick, Henry Cornith, Benjamin  
H. Campbell, Henry W. Rice & Orin Smith impleaded with  
Narciso S. Dorseman & Rudain W. Briston for the sum of  
Twenty one hundred & Eighteen dollars and sixty eight cents  
damages and twelve dollars & fifteen cents costs from which said  
Judgement the said Circuit Court the said Russel Blakeley,  
Milton W. Lodwick, Henry Cornith, Benjamin H. Campbell  
Henry W. Rice & Orin Smith have prayed for and obtained  
an appeal to the Supreme Court of said State,

Now if the said Russel Blakeley Milton W.  
Lodwick, Henry Cornith, Benjamin H. Campbell Henry  
W. Rice & Orin Smith shall duly prosecute their said  
appeal with effect and shall moreover pay the amount  
of the Judgement, costs and interest and damages undid  
and to be undid, against them, in case the said shall be  
affirmed in the said Supreme Court then the above obligation  
to be void, otherwise to remain in full force and virtue.

Taken and entered into before



Me at my Office in Galena.  
This fifth day of July A.D. 1850

Wm H. Bradley  
clerk

W. W. Lodwick  
Russell Blakely  
Nathan Cornith  
Henry Cornith  
B. H. Campbell  
Henry M. Rice  
by B. H. Campbell his atty in fact  
Ann Smith

Seal  
Seal  
Seal  
Seal  
Seal  
Seal  
Seal  
Seal

(Endorse)

Filed July 5th 1850

Wm H. Bradley clerk

State of Illinois  
Jo Daviess County

I William H. Bradley Clerk  
of the Circuit Court in and for said County do  
hereby certify the foregoing transcript to be a true  
full and correct copy from the record of files in my  
Office of all the proceedings which have been had  
in said Court in said Cause of R. S. Harris Esq  
vs Ann Smith, Henry Cornith, Benjamin A. Camp-  
bell, Milton W. Lodwick, Russell Blakely, Henry  
M. Rice impleaded with Hercules S. Goussman & Cou-  
-sine W. Brisbois.

In testimony whereof I have here-  
unto set my hand and affixed the  
Seal of said Court at my Office in  
Galena in said Jo Daviess County this  
23<sup>rd</sup> day of May A.D. 1851  
Attest William H. Bradley Clerk

In witness Whereof  
Entered Seal  
\$6.27  
35  
\$6.42



Orrin Smith et al  
appellants

vs  
R. S. Harris et al  
appellees

Assignment of  
Errors

The appellants come and assign the following errors in the proceedings of the Circuit Court,

- 1<sup>st</sup> The Circuit Court erred in directing a writ of *scire facias* to issue before the plea in abatement had been confessed or an issue in law or fact formed thereon.
- 2<sup>nd</sup> And in entering final judgment against Smith, Lodwick & Corritt on the interlocutory judgment overruling the demurrers, when the plea in abatement was confessed after said interlocutory judgment.
- 3<sup>rd</sup> Because said Bristol was not made a party to said suit until after the demurrer was overruled and final judgment was entered on said interlocutory judgment overruling the demurrer.
- 4<sup>th</sup> The Court <sup>erred</sup> in rendering judgment against said Blakely and Campbell when said plea in abatement had neither been confessed nor found against them on issue joined.
- 5<sup>th</sup> And in rendering judgment by default against said Campbell and Blakely when they were not in default.
- 6<sup>th</sup> And in rendering judgment against said Campbell & Blakely without giving them time after said Bristol had been made a party to said suit and without calling them.
- 7<sup>th</sup> And in not ordering said Bristol to be made a party defendant to said suit.
- 8<sup>th</sup> And in rendering judgment against said Smith, Corritt & Lodwick without any assignment of damages or writ of inquiry as to them.



9<sup>th</sup> And because the name of said Bristol's was not inserted in the declaration by the order of the Court nor on leave of Court of damages or writ of inquiry as to them.

10<sup>th</sup> And in rendering judgment against said Campbell & Blakey without any assessment of damages or writ of inquiry as to them.

11<sup>th</sup> The Court erred in overruling the demurrers of said Smith Cornish & Lovick.

12<sup>th</sup> And in finding for the plaintiffs upon issue joined between said plaintiffs and said Rice.

13<sup>th</sup> The Court erred in admitting said note as evidence.

14<sup>th</sup> And in admitting said note in connection with the testimony of said witnesses.

15<sup>th</sup> And in overruling the motion for new trial.

16<sup>th</sup> And in rendering judgment for all the costs of each separate defence against all the defendants who were served or appeared.

17<sup>th</sup> And in assessing damages & rendering judgment for the excessive amount of \$2118.68 being more than appeared to be due on said note.

18<sup>th</sup> And the Court erred in rendering judgment for the plaintiffs below when by the law of the land judgment should have been rendered for the defendants below.

Stoge & Wilson attys  
for appellants.

And now comes the dist in error by Higgins & Seland & say there is no error in the said record or proceedings and say that said judgment may be affirmed.

Higgins & Seland



1186-13  
To David  
Supreme Court 3rd  
Grand Division  
June 2 1851

Orin Smith et al  
Appellants.

vs  
R. S. Harris et al  
appellees.

appeal from  
Jo David

Filed June 6<sup>th</sup> 1851.  
L. Seland Clk.

Wm. A. Mason  
for appellants.