

8749

No. \_\_\_\_\_

# Supreme Court of Illinois

Edward Kahill

---

vs.

Rowley Smith + Co

---

71641  7



Sept 15<sup>th</sup> day 1853

Edward Kahill

vs

Rousley Smith & Co

Demand 22.02

Justices fees sum 18<sup>3</sup>/<sub>4</sub>

docketing 12<sup>1</sup>/<sub>2</sub>

3 Subs & oath 25

Judgment 25

Bond & transcript 50

P. W. Nichols Const

fee service 25

7 miles 35

2 Subs service 25

7 miles 35

Const Recd

Service & Subp 12<sup>1</sup>/<sub>2</sub>

7 miles 35

Witness fees

Frank Smith 50

M. P. Waters 50

P. W. Nichols 50

Action of debt brought on account for labor done on the Rail Road in amount of \$23.02 Bill filed summons issued to P. W. Nichols Const returnable on the 22<sup>nd</sup> day of Sept 1853 at the hour of 3 O'clock P. M. Subs also for Frederick Smith M. P. Waters also at the same time for witness in said suit the Constable returned the papers all served in due time. The day and hour arrived for trial the Defendants not appearing the evidence was heard there upon it is considered that judgment go against the Defendants for \$23.02 cents and costs of suit which is taxed in the margin this 22 day of Sept 1853

James Smith *J.P.*

I hereby certify that the above Transcript contains a full and true copy of all the papers and documents in said suit

James Smith *J.P.*

Copy of summons

State of Illinois } sit The People of the State of Illinois to any  
Washington County } Constable of said County Greeting

You are hereby commanded to summon Rousley Smith & Co to be and appear before me at my office in my house on the 22 day of Sept at 3 O'clock P. M. to answer the complaint of Edward Kahill for a failure to pay him a certain demand not exceeding one hundred dollars and hereof make due return as the law directs-

Given under my hand and seal this 15<sup>th</sup> day of Sept 1853

James Smith *J.P.*

Servis except this 16<sup>th</sup> day of September 1853

P. W. Nichols Const



Know all men that we Rowley Smith & Co and C. C. Deew are held and firmly bound unto Edward Teahill in the penal sum of \$54.00 lawful money of the United States for the payment of which well and truly to be made we bind our heirs and administrators jointly severally and firmly by these presents Witness our hands and seals this 7th day of Oct 1853. Before James Smith a Justice of the Peace for the County of Washington recovered a judgment against the above bounden Rowley Smith & Co for the of \$22.00 and costs of suit from which judgment the said Rowley Smith & Co has taken an appeal to the Circuit Court of the County of Washington aforesaid and State of Illinois. Now if the said Rowley Smith & Co shall prosecute their appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force and effect

Approved by me at my office this 7th day of Oct - 1853

Rowley Smith & Co (Seal)  
C. C. Deew (Seal)

James Smith J.P.

Copy of summon

State of Illinois, set The People of the State of Illinois to the Washington County } Sheriff of Washington County Greeting

We command you to summon Edward Teahill if to be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court house in Nashville on the 3rd Monday in the Month of May next to answer Rowley Smith & Co on an appeal taken from the docket of James Smith a Justice of the Peace when in said Edward Teahill was Plaintiff & said Rowley Smith & Co were Defendants and have you then there this writ and make your return thereon in what manner you execute the same

Witness Harry H. Talbot Clerk of our said Circuit Court at Nashville this 8th day of December in the year of our Lord one thousand eight hundred and fifty three  
Harry H. Talbot Clerk

(Seal)

The within Plaintiff not found in my County this 13th day of May 1853. mileage 12 m 60 returning  $\frac{60}{74}$  John White Sheriff W.C.



Copy of Judgment  
Edward Truhill } October Term Washington Circuit  
vs } Court 1854  
Rowley Smith & Co } Appeal

And now on this day comes  
the said Plaintiff by Bond & Gray his attorneys  
and said Defendants by Hosmer their attorney  
and an issue being joined there comes a jury  
to wit John Thackson Albert G. Jackson John P.  
Gibson William Leeper Lewis T. Crain William  
Patterson George W. McElhanon Clark Gordon Andrew  
J. Laney, John M. Slade, Nicholas Walker and  
Bethel Hutchcock twelve good & lawful men of said  
County who first being duly sworn and after  
hearing the evidence & argument of counsel  
retired to consider of their verdict & the said jury  
returned in to Court the following Verdict We the  
Jury find for the Plaintiff 23.02 It is therefore  
considered by the Court that <sup>100</sup>the said Plaintiff  
have & recover of & from the said Defendants the  
said sum of 23.<sub>100</sub>02 as well as his costs & charges  
about his suit and execution is awarded there  
for &c Motion for appeal, Appeal granted on  
Defendants giving Bond & security within 30 days  
for the sum of \$50 and that Nos 20, 21, 22, 23, 24, 25, &  
26, abide by the same decision as this suit in the  
supreme Court

Copy of Plaintiff account  
Rowley Smith & Co to Edward Truhill for labor  
in amount of \$23.02 Sept 15<sup>th</sup> day 1853

Copy of two certificates, August 15<sup>th</sup> 1853  
Edward Cahill time for July is Eighteen days  
three quarters on 97 section 2 Division I, C, R, R.  
To Rowley Smith & Co

per M. P. Waters forman



August 18<sup>th</sup> 1853

Edward Cahill time to 15<sup>th</sup> August is Eight days  
one quarter on 97<sup>th</sup> section and 2<sup>nd</sup> Division I. S. R. R.  
at \$1.25 per day -

To Rowley Smith & Comy

per M. P. Waters Foreman

Copy of Bill of Exceptions

E. Cahill  
vs  
Rowley Smith & Co ) In Washington County Circuit Court  
October Term 1854  
Appeal

Plf sees for work & labor on section 97

I. S. R. R. It appears per evidence that said Plf &  
others had worked under one Waters foreman for J. M.  
Stites & Co sub contractor for said section under said  
defts. That about the middle of July 1853 said Plf &  
others were due from said Stites & Co pay for a months  
work & <sup>Stites & Co were not on hand to pay and said</sup> said Plf & others refused to go to work any  
more & then three witnesses state that defts told  
them to go to work & they would see them paid or  
pay them cannot positively say which, one witness  
that they said go to work for us open a new pit so  
we can measure your work & distinguish it from  
Stites & Co. It appeared from evidence that said Cahill  
and others refused to go to work without something in  
writing & that said defts <sup>gave</sup> an assurance in writing &  
then s<sup>d</sup> Plf & others went to work again, but Plf did not  
produce said writing nor account for its absence nor  
prove its contents. Plf offers in evidence two certificates  
of said Waters who signs himself foreman of said defts  
stating the time of said Plf (here insert said certificates) &  
proves the hand writing of said Waters & that in opinion &  
according to the understanding of witnesses he was the  
foreman of said defts to the admission of which  
certificates defts object but their objection is over-  
ruled & said certificates admitted as evidence to the



Jury to which ruling of the Court defts excepted at the time. It appears from evidence that work was worth \$1.25 per day, it also appeared that defts paid Plf amt due from Stites & Co at the time to wit about 15<sup>th</sup> July 1853, defts pleads the Statute of Francis & offered in evidence a certificate of same date of those above mentioned signed by said Waters formon of S. M. Stites & Co given to one Lerriel (here insert said certificate) to the admission of which said Plf objected and objection was sustained to which decision of the Court excluding said Certificate defts excepted at the time. This was all the evidence Jury found for Plf \$23.02 defts moved for a new trial which was overruled

Wm. Underwood (Seal)  
C. Judge

Copy of appeal Bond

Know all men by these Presents that we Rowley Smith & Co. E. C. Jew & Wm. M. Phillips of the County of Washington and State of Illinois are held and firmly bound unto Edward Kewhill also of the same County and State in the penal sum of fifty Dollars current money of the United States for the payment of which well and truly to be made we bind ourselves our heirs Executors & administrators jointly severally and firmly by these presents. The condition of the above obligation is such that whereas the said Edward Kewhill did on the 19<sup>th</sup> day of October AD 1854 in the Circuit Court in and for the County and State aforesaid recover a judgement against the above bounden Rowley Smith & Co for the sum of \$23.02 Debt and \$21.48 Cost from which said judgement of the said Circuit Court the said Rowley Smith & Co have prayed for and obtained an appeal to the



supreme court of said state Now if the  
said Rowley Smith & Co shall duly prosecute  
their said appeal with effect and shall  
moreover pay the amount of the judgement  
Cost Interest and Damages rendered and to be  
rendered against them in case the said judge-  
ment shall be affirmed in the said supreme  
Court then the above obligation to be void otherwise  
to remain in full force and virtue

Given under my hands and seals this the 18<sup>th</sup>  
day of November AD 1854

Taken and approved by  
me this 18<sup>th</sup> day of  
November 1854  
H. H. Talbot clk

Rowley Smith & Co Seal  
C. C. Dew Seal  
Wm. M. Phillips Seal

State of Illinois  
Washington County }

I Harry H. Talbot Clerk of the  
Circuit Court in and for said

County do certify that the foregoing is true and  
correct transcript from the Judgment as taken from the  
Records of the Circuit Court in the above entitled suit,  
also copies of the Plaintiffs account two certificates bill of  
and all the papers before the Justice of the Peace & Deacons & return in this Court  
Exception and Bond as on file in my office

I testimony whereof I have here unto  
set my name and affixed the Seal of  
the said Circuit Court at my office in  
Nashville this 23<sup>rd</sup> day of August 1855

Harry H. Talbot Clerk

1123

Witness my hand  
of August 1855

1123

Clerks Fee \$4.50



Afterward, to-wit: on Monday 1<sup>st</sup> day of November, at a Supreme Court then holden at Mt. Vernon, for the 1<sup>st</sup> Grand Division of the State of Illinois come the appellants by their attorneys and say that in the record & process aforesaid, and also in the giving of the judgment in the plaint aforesaid it is manifestly erred in this: to-wit: That the judgment aforesaid was given in form aforesaid for the said appellees against the aforesaid appellants, where, by the law of the Land, Judgment should have been given for the said appellants against the said appellees, - and this they are ready to verify.

And for assigning error especially, in the record & process aforesaid, and in the giving of the judgment in the plaint aforesaid the appellants say

1<sup>st</sup> That the court erred in refusing to grant a new trial to the defendants in the court below, because, 1<sup>st</sup> There was no evidence to support the judgment of the court, 2<sup>d</sup> Because the verdict



rendered by the jury who tried said  
cause was contrary to law & evidence.  
3<sup>rd</sup> Because said verdict is contrary  
to evidence, 4<sup>th</sup> Because the verdict of  
the jury who tried said cause is a nullity  
and no judgment could or ought to be  
rendered thereon, the point in which  
said verdict was given being for the  
recovery of money for work and labor  
done, and the said jury having found  
for the plaintiffs  $23.02$  without stating  
whether it was so many dollars, or what  
said figures were intended to mean.

2<sup>d</sup> That the said Judgment in the plaintiff  
aforesaid is erroneous in this, 1<sup>st</sup> That  
the said judgment is rendered without  
any verdict to support it;

3<sup>d</sup> That the said judgment is not rendered  
for any sum of money or dollars.  
but is simply rendered for  $23.02$   
and is in fact a nullity.

4<sup>th</sup> That the said judgment is <sup>too</sup> uncertain  
in this, that it does not show what it  
was rendered for, and so important  
a part of the judgment when omitted



cannot be supplied by intendment  
of law -

5th That there is error in the record, pro-  
cess and judgment, in this - That ~~the~~  
it nowhere appears in said record,  
process or judgment, who the said  
judgment was rendered against  
whether against one, two, or any def-  
inite number of persons - or what  
person ~~or persons in particular~~  
the said <sup>was based upon</sup> process, record & judgment  
referred to -

6th That it nowhere appears on the  
face of the said process, record  
or judgment aforesaid, the Rowley,  
Smith & Co were a ~~public~~ corporation -  
or were by <sup>public or</sup> ~~any~~ private law liable  
to plead or be impleaded by the  
name of Rowley, Smith & Co and the  
appellants for that reason and that  
in record, process and judgment  
aforesaid, and in the rendition  
of the said judgment there is man-  
ifest error -

7th That the Circuit Court of Washington



24  
Court erred in allowing oral evidence of a contract to go to the jury who tried said case, when there was a written contract upon the same subject matter between <sup>same</sup> the parties

8th The Court erred in allowing oral evidence to be given of the contract between the plaintiffs and defendants in the court below, because by the section of the Statute of Frauds of this State, some memorandum or instrument in writing signed by the defendants was indispensable, before they could be liable for the debt of Stiles & Co, or for work and labor done upon section 97 Ill. C. C. R.

9th That the said contract attempted to be proven by the plaintiffs in the court below, is within the Statute of Frauds, and not binding on appellants -

10th That from the appellees own showing three witnesses who testified on his behalf state the contract attempted



to be proved in the affirmative, and are not positive as to whether Rowley Smith & Co were to see the debt of Stiles & Co paid, or to pay a debt contracted by themselves. and the contract so attempted to be proven is so uncertain as to render it impossible for the court to determine whether the said undertaking was an original one of Rowley, Smith & Co, or a mere undertaking to pay in case of the default of Stiles & Co.

11<sup>th</sup> That the testimony of one witness is directly contrary to the testimony of the other three witnesses who deposed on the trial in the court below, but even if true, the appellee has not where shown that ~~they~~ he either expressly or impliedly conspired with the contract attempted to be proved by the testimony of said witness, or accepted said contract, and there is no mutuality between contracting parties.

12<sup>th</sup> That the court erred in not nonsuiting the plaintiff in the court below, or directing the jury to find as in case of a nonsuit.



13th The court erred in receiving the  
evidence of Watts, and allowing  
proof of his handwriting, and allow-  
ing some to go as evidence to  
the jury, and in excluding the certifi-  
cates of the same date, signed by  
the same individual from the con-  
sideration of the jury -

14th The court erred in excluding  
proper evidence from the jury  
who tried said cause on behalf  
of defendants in the court below -  
and in allowing improper evidence  
to go to the jury in favor of plaintiffs  
in the court below, and against the  
appellants -

And so the appellants in fact  
say that for these and divers other errors  
in the record and process of said court,  
the giving of the judgment of said court,  
~~and~~ Circuit Court manifestly erred  
there is an manifest error - and pray  
that the judgment of said court for the  
errors of said court, and divers others, therein  
apparent be annulled, reversed &c -

Nelson & Johnson  
for Appellants



Rowley, Smith & Co

v.s.

Edward Cahill

3 First Grand

3 ~~Southern~~ Division Supreme

3 Court Illinois Nov Term 1855

3 Appeal from Washington

3

Indenter in error in above entitled

cause

Bond & Gray Attys



31

Rowley Smith & Co.

by

Edmund H. Hill



Rowley, Smith & Co

Per

Edward Kahill

D. W. C. Rowley,  
J. Leonard Smith  
L. M. Post &  
Hall



5.50

9

6.05

4.50

10.55

Put up 20

\$16.75

4,48  $\frac{3}{4}$

1075

418

1523  $\frac{3}{4}$



STATE OF ILLINOIS  
SUPREME COURT,

{ SS:

THE PEOPLE OF THE STATE OF ILLINOIS;

WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of *Washington*

GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Washington* county, before the Judge thereof, between

*Edwin H. Hill*

plaintiff, and *Rowley Smith & Co*

defendant it is said manifest error hath intervened, to the injury of the aforesaid *defendants*

as we are informed by *this*

complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid. command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court, the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of Jefferson, on the *25th day of November*

next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

Witness, the Hon. WALTER B. SCATES Chief Justice of our said court, and the seal thereof, at Mount Vernon this

*25th* day of *October*

in the year of Our Lord One Thousand Eight Hundred

and Fifty *five* *W. B. Scates*

Clerk Supreme Court.



August 1

Order 11-1

June - 11

Bowley Smithell

my

E. Ketchell

Wm of error

95  
8  
760

July 23<sup>rd</sup> Oct. 1855

A. Johnston clk





No 31

Bowley, Smith & Co

no

Kahill

1 Brown

1 Green

1 in all

Reference

No 31

Affirmed

Bowley, Smith & Co

no

Kahill

87 + 9

Copy of final order  
sent to Col. Gen. Smith  
17 March 56 - by order  
of Mr. Gen. Smith - per  
\$1 - paid by him &  
note in copy -

sent to Mr. Smith  
by Mr. Smith &  
Receipt given