

STATE OF NEW JERSEY.

Court of Errors and Appeals.

Merritt Pinkney and Samuel Crane, }
vs. } Error to the Su-
Ellis F. Ayars and Nehemiah Tunis. } preme Court.

STATE OF THE CASE.

Ellis F. Ayars and }
Nehemiah Tunis. } June 20th, 1844, issued a summons
vs. } in debt for one hundred dollars, re-
Merritt Pinkney } turnable before me on the 27th in- 10
and Samuel Crane. } stant, at 2 o'clock, P. M.

June 20th, 1844. The summons was returned, served by reading it to the second named defendant, no copy required; the first named defendant not to be found, or his residence, in my county.
M. B. MARTIN, Const.

June 27th, 1844. John R. Weeks, Esq., appeared as attorney for the plaintiffs, and filed their state of demand; the defendants did not appear, nor any person in their behalf. Pierson Hurd and Elias Freeman, Esquire, were sworn and examined as witnesses for the plaintiffs, and their books of original entries were admitted in evidence. After hearing the evidence and investigating the case, I gave judgment against the defendants for one hundred dollars debt, and two dollars and ninety-nine cents costs, including one dollar and sixty-six cents allowed as a fee for a witness from the state of New York.

Essex County, ss:

I certify the foregoing to be a true transcript from docket of the proceedings had before me in the above stated cause.

Witness my hand and seal, this twenty-ninth day of August, 30
eighteen hundred and forty-four.

C. H. ANDRUSS, Justice of the Peace. [L. s.]

COPY OF SUMMONS.

[L. s.] State of New Jersey, Essex County, ss:

To any Constable of said county: Summon Merritt Pinkney and Samuel Crane to appear before me, at my office in the city of Newark, on the twenty-seventh day of June inst., at two

o'clock in the afternoon, to answer Ellis F. Ayars and Nehemiah Tunis in a plea of debt for one hundred dollars. Hereof fail not.

Given under my hand and seal, this twentieth day of June, one thousand eight hundred and forty-four.

C. H. ANDRUSS,
Justice of the Peace.

(Endorsed,)

10	Ellis F. Ayars and Nehemiah Tunis, v. Merrit Pinkney and Samuel Crane.	}	Demand, Costs, Pierson Hurd, Book of Act., Esq. Freeman, Judg't,	\$100 0.87 1.71 0.55 0.06 <hr/> 2.99
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Judgment, \$100.

I served this summons June 20th, 1844, by reading it to the second named defendant, no copy required; the first named defendant not to be found, or his residence, in my county.

20 M. B. MARTIN,
Constable.

NEW YORK, 20th April, 1841.

Messrs. Merritt Pinkney and Samuel
Crane, partners under the firm of
Pinkney & Crane,

To Ellis F. Ayars and Nehemiah

Tunis, partners under the firm of Ayars and Tunis:

	1 bbl. sugar, 237.19.218 lb. bbl. 2	8.17.69
	1 " " 254.22.232 lb. " 2	6½.15.33
30	1 Bag Coffee, 164 lb.	11½.18.86
	1 Bag Coffee, 137 lb.	10½.14.39
	½ Ct. Y. H. Tea, 72.12.60 lb.	71.52.50
	1 Keg Sala., 69.6½.62½. Kg. 2	6½.04.31
	42 lb. Allspice, Bag ½	8.03.49
	1 Bag Pepper, 113 lb.	8½.09.61
	2 lb. Indigo,	13.03.25
	2 Boxes Soap, 74.74.148 lb.	5½.08.14
	5 " Glass,	22.13.75
	4 lb. Nutmegs,	9.04.50
40	3 Bags Shot,	16.06.00
	3 Loaves Sugar, 25 lb.	14.03.50
	2 Lumps, 22 lb.	13.02.86
		<hr/> \$178.18

28 April, 1841.		
1 hhd. Molasses, 136.10.126 gals., a		28.35.28
½ Keg Tobacco, 128.15.113 lb. a		15.16.95
1 Box Chocolate, 24 lb.		3.00
2 Boxes Md. Candles, 39.39.78 lb. a		13.10.14
Cartage, 4,		0.50
		<hr/>
		65.87
		<hr/>
		\$244.05
	CR.	
By draft accepted and paid by Harrison and		10
Sayre, 17 Nov. 30 Ds., paid 20 Dec.	\$150	
Deduct postage,	0.13	
	<hr/>	
		149.87
		<hr/>
		\$94.18
Interest account to 23 June, 1844,		27.85
		<hr/>
		\$122.03
Deduct S. Crane's note,		22.03 20
		<hr/>
23 June, 1844—Balance due,		\$100.00

New Jersey Supreme Court.

REASONS FOR REVERSAL.

Merritt Pinkney and Samuel Crane, } On Certiorari to Jus-
 vs. } tice C. H. Andruss,
 Ellis F. Ayars and Nehemiah Tunis. } esquire.

And the plaintiffs, by Robert Hamilton, their attorney, pray that the judgment of the said justice may be reversed, for the 30 reasons following :

First. Because the summons issued in the said cause before the said justice, and the service thereof, and return thereto, are informal, insufficient, and contrary to law.

Second. Because there was no statement of demand filed before the said justice in the said suit.

Third. Because the debt and demand of the plaintiffs below in the said cause, exceeded the jurisdiction of the said justice.

Fourth. Because the said justice had no jurisdiction in the said case.

Fifth. Because there was no legal or sufficient statement of demand filed in the said cause.

Sixth. Because the said judgment was rendered without sufficient legal evidence.

Seventh. Because the said judgment is in divers other respects illegal, erroneous, and ought to be reversed.

ROBT. HAMILTON, Att'y of the plt'ffs in certiorari.
Sussex County, ss :

Merritt Pinkney and Samuel Crane put in their place Robert Hamilton, their attorney, against Ellis F. Ayars and Nehemiah Tunis, to prosecute a certiorari, &c.

MINUTES, NOVEMBER TERM, 1844.

Merritt Pinkney, who is impleaded with Samuel Crane, v. Ellis F. Ayars and Nehemiah Tunis.	}	On Certiorari to Justice Andruss, of Essex County.
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On allegation of diminution in the record in this case, it is ordered that the said justice do certify to this court, on or before the first day of the next term,

20 1. Whether there was any evidence, and if any, what it was, to show that the said Merritt Pinkney and Samuel Crane were partners in trade at the time the demand or debt sued for was contracted.

2. Whether a certain draft credited to the defendants in the state of demand as accepted and paid by Harrison and Sayre for \$150, was either produced or proved by the said plaintiffs.

3. Whether the credit of \$22.03 for S. Crane's note, as set forth in the statement of demand, was proved in any way, either by the production of said note, or otherwise, and how proved.

30 4. Whether the books of the said plaintiffs below were proved on the trial, and by whom.

On motion for

ROBT. HAMILTON,
Att'y of Plt'ff in Certiorari.

In obedience to the annexed order of the court of the term of November last, I do hereby certify and make known to the judges of the said Supreme Court of the state of New Jersey : That Pierson Hurd, who was sworn as a witness before me, in a certain action of debt between Ellis F. Ayars and Nehemiah Tunis, plaintiffs, and Merritt Pinkney and Samuel Crane, defendants, did give evidence in support of the said Plaintiff's
40 state of demand; and to prove that Merritt Pinkney and Samuel Crane were partners in trade; and testified that he had been in the store kept by Samuel Crane, and had seen boxes and packages of goods in said store labelled and directed to Messrs.

Pinkney and Crane; and that the store house of Samuel Crane was near the residence of the said Merritt Pinkney.

And I do further certify, that a certain draft credited to the defendants in the state of demand as accepted and paid by Harrison & Sayre for \$150, and the further credit of \$22.03 for S. Crane's note, as set forth in the state of demand, were credits given to the defendants in the books of accounts of the plaintiffs, which were produced, proved and admitted in evidence on the trial before me.

Also, I do further certify, that Elias Freeman, esquire, was 10 sworn and examined as a witness before me, on the part of the plaintiffs, and did prove that the books of accounts offered in evidence were those of plaintiffs; and which was the only evidence in the said suit before me.

All which is submitted to the said court, as witnesseth my hand and seal, this 27th day of December, eighteen hundred and forty-four.

[L. s.] C. H. ANDRUSS, Justice of the Peace.

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New Jersey Supreme Court.

MINUTES, FEBRUARY TERM, 1845. 20

Ellis F. Ayars and Nehemiah Tunis,	}	On Certiorari to
ads.		C.H. Andruss, esq.,
Merritt Pinkney and Samuel Crane.	}	Justice, &c.

Diminution in the record of the Justice in this case having been alleged at the last term, and a rule taken on the Justice to certify to the court at this term, whether any and what facts were proved on the trial in reference to the matters specified in said rule; and the Justice having at this term made a return to the court of said facts proved before him on the trial, and it having been alleged on the part of the defendants, in certiorari, that the 30 return is incomplete as regards some of said facts proved. It is now ordered by the court, that the said Justice certify and return under his hand and seal to this court at the next term thereof, whether any further testimony was given before him by any of the witnesses sworn in the cause, of the partnership of the defendants, than is contained in the return made by him to the court at this term, and if so, what were the facts sworn to in reference to the said partnership, and whether on the books of account of the plaintiffs, the articles mentioned in the state of demand were charged to the defendants, and by what name. 40

On motion of Lewis C. Grover, Attorney of Defendants, in Certiorari:

In obedience to the order of the court of the term of February last, I do hereby certify and make known to the Judges of the said court, that Pierson Hurd, who was sworn before me as a witness, in a certain action of debt, between Ellis F. Ayars and Nehemiah Tunis, plaintiffs, and Merritt Pinkney and Samuel Crane, defendants, did give in evidence in support of the said plaintiff's state of demand, and did swear that he knew Merritt Pinkney and Samuel Crane, the defendants, that he knew by public reputation, in the neighborhood of where they were doing
10 business, that they were in partnership under the name of Pinkney and Crane, that they did business at Pinkneyville, Sussex county; that Pinkney owned the storehouse in which the business was done, and was in the storehouse nearly every day, as it was but a few rods from his (Pinkney's) house; that boxes of goods were in and about the storehouse in exposed situations, so that Pinkney must have seen them marked Pinkney and Crane. The witness stated that he lived at Sparta, about three miles from Pinkneyville.

I further certify, that the books of accounts of Ayars and
20 Tunis were admitted in evidence on the trial before me, upon the proof of Elias Freeman, Esq.; and that the articles mentioned in the state of demand were charged in said books of accounts to the defendants, by the name of Pinkney and Crane.

All which is submitted to the said court.

Witness my hand and seal this 10th day of May,
eighteen hundred and forty-five.

[L. s.] C. H. ANDRUSS, Justice of the Peace.

Supreme Court of New Jersey.

MINUTES, MAY TERM, 1845.

30 Merritt Pinkney and Samuel Crane, } On Certiorari to
vs. } C. H. Andruss, esq.,
Ellis F. Ayars, and Nehemiah Tunis, } Justice.

The said Justice having made return to the rule taken upon him at the last term, and the plaintiff in certiorari alleging that the said Justice has not correctly stated the evidence given by Pierson Hurd, one of the witnesses sworn on the trial of the cause, and that the same differs materially from the return first made by the said justice, to a rule taken upon him by the plaintiff in certiorari. It is now ordered that the said plaintiffs in certiorari be at liberty to examine the said Pierson Hurd, the
40 witness, as to the evidence given by him on the trial before the said Justice, to show that the said Merritt Pinkney and Samuel

Crane were partners in trade at the time the demand or debt sued for was contracted.

On motion for Robert Hamilton, Attorney for Plaintiff in Certiorari.

On the twenty-fourth day of June, 1845, the plaintiffs in certiorari, by their counsel, Peter Bentley, and the defendants in certiorari, by L. C. Grover, their counsel, appeared before me, one of the commissioners, to take bail and affidavits in the Supreme Court, pursuant to notice given on the part of the plaintiffs in certiorari, the service of which was acknowledged to have 10 been duly made by the counsel of the defendants.

Pierson Hurd, a witness on the part of the plaintiffs, also appeared. The plaintiffs in certiorari not being ready to proceed with their examination for want of the papers in the cause, as they allege, it is thereupon adjourned, on the application of said plaintiffs, and with the consent of the defendants' counsel, to Thursday, the 26th instant, at four and a half o'clock, P. M., at my office in Jersey City.

J. D. MILLER, Supreme Court Commissioner.

June the twenty-sixth, eighteen hundred and forty-five, the 20 parties in the above stated cause, by their respective counsel aforesaid, appeared before me at half-past four o'clock, P. M., pursuant to adjournment. The plaintiffs in certiorari produced before me a duly certified copy of the rule entered in this cause, for the examination of Pierson Hurd, which is marked Exhibit No. 1, in the above entitled cause, and is annexed hereto.

The plaintiffs in certiorari then called Pierson Hurd, who being by me duly sworn according to law, on his oath deposeth and saith to question—Were you the witness on the trial of the cause, between the parties in this cause, before Justice Andrus in 30 the court below?

ANSWER—I was, and testified in the cause on the trial before said Justice.

QUESTION—Can you now state the evidence which you gave before the Justice in that cause?

ANSWER—I do not know that I can state the whole of it, word for word, but can state the substance of it, I think.

QUESTION—Please state to the best of your recollection, what that testimony was?

ANSWER—I was called upon to prove the partnership between 40 Pinkney and Crane; and I stated that Mr. Crane had informed me that there was a partnership existing between them, (Pinkney and Crane.) I have no distinct recollection of stating any thing else upon this point; except I did say I believed there

was a partnership existing between Messrs. Pinkney and Crane, from what Mr. Crane had told me. The Mr. Crane I now allude to is one of the parties to the suit.

Being cross-examined, witness says to the question:

QUESTION.—Did you not state on the trial before the Justice, that it was commonly reported in the neighborhood, that Pinkney and Crane were partners?

ANSWER.—I did state on that trial, that it was supposed by many, and believed by some, that they were partners.

10 QUESTION.—Did you not state that you had heard it said in the neighborhood that they were partners?

ANSWER.—I have a recollection of stating something of the kind, but how it was worded I cannot now say.

QUESTION.—Have you any doubt, from what you know of the fact of the reputed partnership, that you stated on the trial, that they were reputed to be partners?

(This question objected to on part of plaintiffs.)

ANSWER.—I have no doubt that I stated on the trial that I believed them to be partners from what Mr. Crane told me.

20 QUESTION REPEATED.—My memory does not serve me on that point.

QUESTION.—Did you not state that you were frequently in the store which Crane occupied?

ANSWER.—I do not recollect stating that fact.

QUESTION.—Did you not state that you had frequently seen boxes there, marked to "Pinkney and Crane?"

ANSWER.—I do not recollect that I did.

QUESTION.—Did you not state that you had frequently seen Mr. Pinkney in the store?

30 ANSWER.—I do not recollect.

QUESTION.—Did you or not state on that trial, that Mr. Pinkney lived close to the store?

ANSWER.—I do not remember whether I did or not.

QUESTION.—Did you state your own belief whether they were partners or not?

ANSWER.—I think I did.

QUESTION.—What did you say?

ANSWER.—I stated that I believed there was a partnership between Messrs. Pinkney and Crane.

40 QUESTION.—Did you state any other reason for that belief than the fact that Mr. Crane had told you so?

ANSWER.—I do not remember whether I did or not?

QUESTION.—Had you other reasons at the time, for believing they were partners, and did you then state those reasons?

(This question objected to on part of plaintiffs.)

ANSWER.—I had another reason at that time, but I do not remember whether I stated it or not.

QUESTION.—Was it reported in the neighborhood, that they were partners, and did you so state on the trial?

(This question objected to on part of plaintiffs.)

ANSWER.—It was talked of in the neighborhood, that they were partners, but I never heard any one say they were partners from their own knowledge, except Mr. Crane. I do not remember what I stated on the trial about it.

QUESTION.—What do you mean by being talked of? 10

(This question withdrawn upon objection being made on the part of the plaintiff in certiorari.)

(This question objected to on part of plaintiffs.)

QUESTION.—Did you not state on the trial, that you saw goods go by, marked to "Pinkney and Crane?"

ANSWER.—I think it likely I did, from the fact that I did see goods marked that way, pass by.

QUESTION.—Did you not state that you saw goods in the store marked that way, when Mr. Pinkney was there present?

ANSWER.—I do not remember what I said about that. 20

QUESTION.—Do you not recollect stating that Mr. Crane boarded with Mr. Pinkney?

ANSWER.—I do not.

QUESTION.—Was you not asked particularly at the trial about the reputed partnership in the neighborhood? about your being in the store frequently, and seeing boxes there marked to Pinkney and Crane? that Mr. Pinkney lived within a few yards of, and was frequently in the store?

(This question objected to on part of plaintiffs.)

ANSWER.—I think questions in substance like these were asked me at that time. 30

QUESTION.—Can you recollect what your answer to them was?

ANSWER.—I cannot. I recollect the facts of the case, but I cannot recollect what answers I gave on the trial. I could state the facts of the case now.

QUESTION.—Did you answer those questions according to your knowledge at the time?

(Objected to by plaintiffs.)

ANSWER.—I did, according to the best of my understanding.

QUESTION.—What was your understanding of those facts at that time? 40

(Objected to by plaintiffs.)

ANSWER.—I saw Mr. Pinkney frequently at the store. I think I saw boxes there, marked Pinkney and Crane. I speak of seeing them there at one time. Mr. Pinkney lived about fifty yards

from the store. I was frequently in the store. In my own neighborhood it was talked of that they were partners. I do not remember now whether it was talked of any where else or not. I did at that time believe them to be partners. I do not remember seeing Mr. Pinkney selling any thing in the store at that time.

(This part of the examination objected to by the plaintiffs.)

QUESTION.—Who asked you the questions on the trial?

(Objected to.)

ANSWER.—Mr. Weeks asked me the questions.

10 QUESTION.—What was the reason referred to by you, and which you did not state, for your believing that they were partners.

(Objected to.)

ANSWER.—The purchasing of goods in New York, by Mr. Crane, in the name of Pinkney and Crane.

(The whole of the cross-examination objected to on the part of the plaintiffs.)

Re-Examined in Chief.

QUESTION.—How far did you live from the store?

20 ANSWER.—About four miles.

QUESTION.—In speaking of the reputed partnership, do you mean to give any other answer on that subject than the one you gave to the first question put to you on cross-examination on the part of the defendants?

ANSWER.—The answer to that question is the answer I intended to give.

QUESTION.—If upon the trial you stated anything in reference to the partnership, as to any positive information, was it any other than that you had from Mr. Crane?

30 ANSWER.—I had no other positive information.

QUESTION.—Was what you heard said about the partnership anything other than rumors and suggestions of persons in the neighborhood?

ANSWER.—Nothing more.

Again Cross-Examined.

QUESTION.—What do you mean by rumors and suggestions?

ANSWER.—I mean common-place observations by persons in my own neighborhood; persons of all classes met in my store.

40 QUESTION.—Was it the general understanding of those persons that they were considered as partners?

ANSWER.—Some gave it as their opinion that they were partners, others did not know, and had doubts.

QUESTION.—What was your opinion?

(Objected to.)

ANSWER.—I have given my opinion, formed from what Mr. Crane told me. I formed no opinion from those rumors, and never do found my opinion on rumors.

QUESTION.—Did you not hear Mr. Easton say they were partners?

(Objected to.)

ANSWER.—I do not recollect hearing him say so.

QUESTION.—Did you mean to say that *all* you had heard in reference to the partnership, aside from what you heard from Mr. Crane, was derived from rumors and suggestions in the 10 neighborhood?

(The plaintiffs objected to the question, and to the further examination of the witness, under this re-cross-examination, unless by way of rebutting the examination in chief.)

ANSWER.—I did not; I had conversed with business men in the city of New York in reference to this partnership; one firm who had sold them goods believed them to be partners; this firm had sold them goods on the credit of Pinkney and Crane.

Re-Examined in chief.—I heard no one in the city of New York say they knew them to be partners; they believed them 20 to be partners.

PIERSON HURD.

Subscribed and sworn before me at Jersey City, June 26th, 1845.

J. D. MILLER,

Supreme Court Commissioner.

At the term of October, 1846, the case was heard before the Supreme Court, and after argument and advisement the judgment of the justice below was affirmed, with twenty-three-dollars and thirty-seven cents costs.

ROBERT HAMILTON,

Attorney of Plaintiff in Error. 30

Court of Errors and Appeals.

Merritt Pinkney and Samuel Crane,	} In Error.
v.	
Ellis F. Ayars and Nehemiah Tunis.	} Assignment of Errors.

And the said Merritt Pinkney and Samuel Crane, by Robert Hamilton, their attorney, comes and says, that the said Supreme Court, for the reasons assigned in said court, ought to have reversed the judgment of the said justice; and because the said Supreme Court affirmed the judgment of the said justice, and 40.

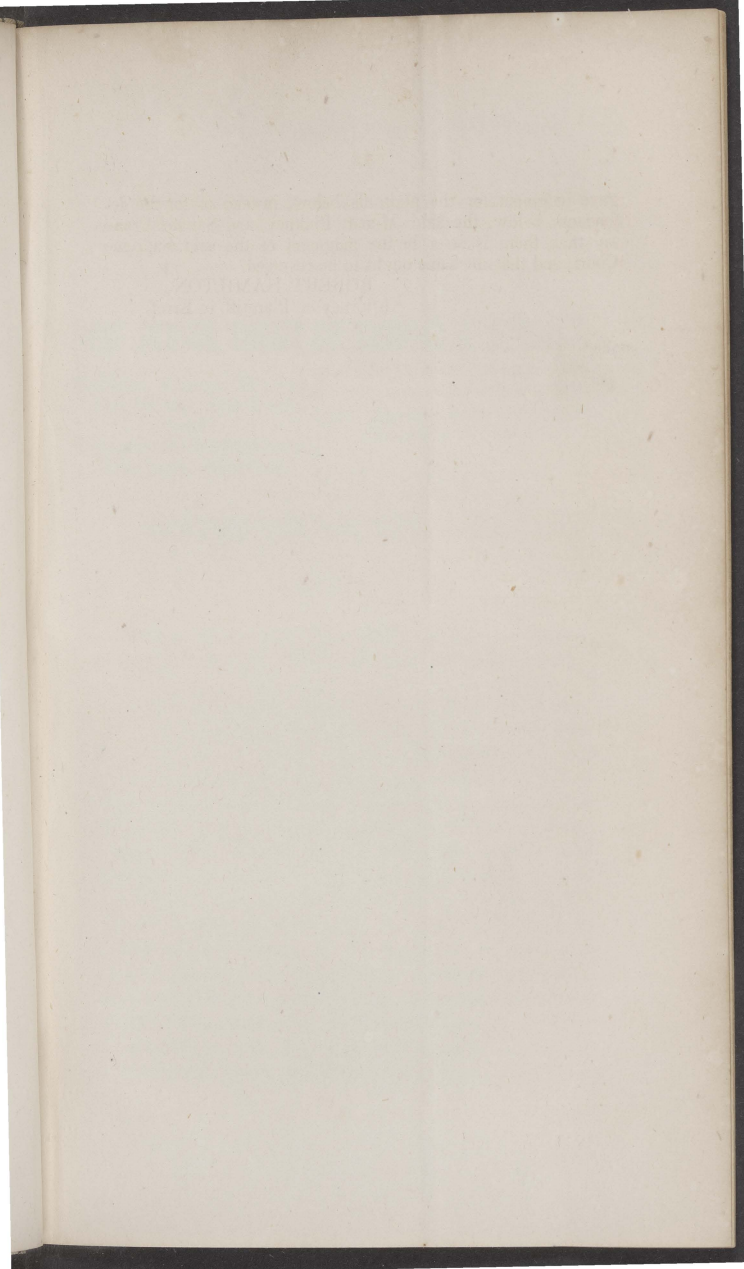
gave judgment for the plaintiffs below, instead of for the defendants below, the said Merritt Pinkney and Samuel Crane say that there is error in the judgment of the said Supreme Court, and that the same ought to be reversed.

ROBERT HAMILTON,
Attorney of Plaintiff in Error.

At the term of October, 1848, the case was heard before the Supreme Court, and after argument and admission the judgment of the justice below was affirmed, with twenty-three dollars and thirty-seven cents costs. The case was argued by the plaintiff in error, and the defendant in error, and the judgment was affirmed. The plaintiff in error, Robert Hamilton, and the defendant in error, Merritt Pinkney and Samuel Crane, were present at the trial. The plaintiff in error, Robert Hamilton, was represented by the attorney, Robert Hamilton. The defendant in error, Merritt Pinkney and Samuel Crane, were represented by the attorney, Robert Hamilton. The judgment was affirmed by the Supreme Court. The plaintiff in error, Robert Hamilton, and the defendant in error, Merritt Pinkney and Samuel Crane, say that there is error in the judgment of the said Supreme Court, and that the same ought to be reversed.

At the term of October, 1848, the case was heard before the Supreme Court, and after argument and admission the judgment of the justice below was affirmed, with twenty-three dollars and thirty-seven cents costs. The case was argued by the plaintiff in error, and the defendant in error, and the judgment was affirmed. The plaintiff in error, Robert Hamilton, and the defendant in error, Merritt Pinkney and Samuel Crane, were present at the trial. The plaintiff in error, Robert Hamilton, was represented by the attorney, Robert Hamilton. The defendant in error, Merritt Pinkney and Samuel Crane, were represented by the attorney, Robert Hamilton. The judgment was affirmed by the Supreme Court. The plaintiff in error, Robert Hamilton, and the defendant in error, Merritt Pinkney and Samuel Crane, say that there is error in the judgment of the said Supreme Court, and that the same ought to be reversed.

And the said Merritt Pinkney and Samuel Crane, by Robert Hamilton, their attorney, comes and says, that the said Supreme Court, for the reasons assigned in said court, ought to have reversed the judgment of the said justice; and because the said Supreme Court affirmed the judgment of the said justice, and the said Merritt Pinkney and Samuel Crane, say that there is error in the judgment of the said Supreme Court, and that the same ought to be reversed.



and judgment of the said Justice, master of the
said Court, and the said Justice, and Samuel A. ...
in the judgment of the said Justice
and the said Justice to be returned.

ROBERT HAMILTON,
Attorney at Law in Erie.

