

SMITH *v.* DAVIDSON.

*Circuit Court, D. Minnesota.*

December Term, 1889.

EVIDENCE—ADMISSIONS IN SUPERSEDED PLEADINGS.

Where an amended answer has been filed as a substitute for the original, the latter, though verified by defendant's attorney, is inadmissible in evidence as an admission by defendant of the facts therein stated.

At Law. On motion for new trial.

*Davis, Kellogg & Severance*, for plaintiff.

*Lusk & Bunn*, for defendant.

NELSON, J. I think the court erred in permitting the original answer, sworn to by one of the attorneys for the defendant, to be offered in evidence as an admission by the defendant of the facts therein stated. An amended answer having been filed to take the place of the original, it should have been excluded from the jury. The ruling of the court having been properly excepted to, the defendant is entitled to a new trial for such error. New trial granted. Costs to abide the event of the suit.