

13140

No. 13140

Supreme Court of Illinois

Walcott

vs.

Holcomb

58
15
STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 66 $\frac{1}{2}$.

1860

Walcott
vs
Halcorn

Supreme Court in and for the Third Grand Division

OF THE STATE OF ILLINOIS. April Term, A. D. 1860.

LEANDER P. HOLCOMB,
Defendant in Error,

ADS.

JABEZ E. WALCOTT, IMPEADED
WITH OTIS C. BUZZELL,
Plaintiff in Error.

AND hereupon, afterwards, to wit, on the first Tuesday after the third Monday of April, in the year of our Lord one thousand eight hundred and sixty, the said LEANDER P. HOLCOMB, by C. S. CAMERON, his Attorney, freely comes here into Court, and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the said Court may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error; and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

C. S. CAMERON,
Attorney for Defendant in Error.

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Leander R. Holcomb
at the suit of
Jabez E. Wolcott

founder in error

Filed May 26 1860
L. Leland
Clerk

State of Illinois. Third Grand Division, S.S.

Supreme Court in and for the Third Grand Division
of the State of Illinois. April term A.D. 1856.

Jacob E. Walcott
impeached with
Otto C. Buggell
Plaintiffs in error

vs.
Leander P. Holcomb
Defendant in error

} Error to Circuit Court Cook County.

Not the Clerk of said Supreme Court.

The said Jacob E. Walcott
prays a writ of error to be directed to the Clerk of said Circuit
Court to reverse a judgment therein rendered at the
January Special Term, January 29th 1856, in
favor of the said Leander P. Holcomb and
against the said Jacob E. Walcott and Otto
C. Buggell, for the sum of three hundred
and twenty dollars and forty cents. Damages
and costs of suit. And also a writ
facias to be directed to the Sheriff of
Whiteland County Illinois, commanding
him to summon the said Leander
P. Holcomb to appear etc.
By his Attorneys

Persons & Goodwin

State of Illinois. Third Grand Division, S.S.

Supreme Court in and for the Third Grand Division
of the State of Illinois. April term A.D. 1856.

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favor of the said Leander P. Holcomb and
against the said Jacob E. Walcott and Otto
C. Buggell, for the sum of three hundred
and twenty dollars and forty cents. Damages
and costs of suit. And also a writ
facias to be directed to the Sheriff of
Whiteside County Illinois, commanding
him to summon the said Leander
P. Holcomb to appear etc.
By his Attorneys

Persons & Goodwin

66²

Supreme Court.
Joby E. Whitcott
impl'd etc
Leander P. Holcomb

Principo

Filed August 27, 1837
L. Leland
clerk

Pursons & Goodwin
Attys for Plff

Supreme Court in and for the Third Grand Division
of Illinois. April Term A.D. 1860.

Jabez E. Walcott
Imp't: with Chas. C. Buzzell } Plff. in Error
vs.
Leander P. Holcomb } Def't in error

Plffs Brief

This was an action of Assumpsit commenced by writ
of Attachment. Plea in Abatement & Affidavit.
Issue joined thereon. Verdict for Plaintiff below &
assessment of damages consequent thereon.
Damages as laid in the ad damnum of the
declaration at four dollars. Jury found a
verdict and Court rendered judgment for
three hundred and twenty dollars and forty
cents. The first three errors assigned relate to the
sufficiency of the affidavit and attachment
bond. It is not desired to review them further.
The other errors are all based on the assess-
ment of damages & the rendition of judgment
thereon.

I. In all civil actions and especially in those
soundings in damages, the amount which the
plaintiff is entitled to recover is to be governed, not
by allegations of indebtedness in the body, but by
the sum laid in the ad damnum of the

declaration, beyond which his damages cannot be assessed.

2 Greenleaf on Ev. Sec. 260. — 1 Chitty on Plead. 339.
Grosvenor v. Danforth 16 Mass. 174. — Hummurray v. Hicks
4 Pick. 497. — Danforth v. Bradley 4 Conn. 309.
Tuttle v. Aborn 1 John. Cas. 25. — Cahill v. Dolph
1 John. Cas. 333. — Putnam v. Shelop 12 John.
R. 435. — 2 Freeman's Dig. Little Pleading — 45.
and authorities there cited. Russell v. City of
Chicago 22 Ill. 283.

II. On error or appeal the appellate court will
neither authorize an amendment of the
record nor a remittitur of the excess of
damages. but will reverse and remand
the cause. Hutchinson v. Crossen 10 Mass.
251. — Powell v. Bruce 5 N. H. R. 381. —
Chenot v. Lefevre 3 Gil. 637. — Dowling v.
Stewart 3 Seann. 195. — Pickering v.
Pulrifer 4 Gil. 79. — Stephens v. Sweeney
2 Gil. 377. — Russell v. city of Chicago 22 Ill. 283.
see also 2 Freeman's Dig. Little Plead. — 45 &
authorities there cited.

III. The appellate court will not affirm a
judgment which exceeds the ad damnum laid
in the declaration, nor permit an amendment
of the record to sustain it, even though it be

probable that the word "hundred", was omitted to be inserted before the word "dollars", in the ad damnum by mistake.

Varnum v. Bissell 14 Pick. ~~170~~ 190.

IV. A remittitur of damages to be effectual, must be entered at the same term in which judgment is rendered. Rowan et al v. The People 18 Ell. 159. Howble v. Bayberg 4 Ham. 45— Green v. Dodge 3 Ham. 486— Botkin v. Cornu. 1 Ham. 375— Hall v. Williams 1 Fairf. 278— Heuland v. ~~Field~~ 6 Call 12— State v. Calhoun 1 Dev. & B. 374.—

V. The case of Burst v. Loayne 13 Ell. 599, decides merely that where the declaration omits the ad damnum altogether, but does contain a statement of damages in the body of it. The omission of the ad damnum is cured by verdict. Of course this can be no authority for the proposition that a verdict can cure a bad ad damnum, or rather be in direct contravention of it.

All which is respectfully submitted this 19th day of April 1860.

By Myron C. Parsons
Counsel for Plff. in Error.

James E. Walcott
Impr'd with Otis C. Bizzell

vs.

Leander P. Holcombe

Plff's Brief.

Filed Apr 19, 1860
Leander
Clerk

Myron C. Parsons
Entered for Plff.
in error.

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of

Whiteside

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Cook* County, before the Judge thereof, between *Leander P. Holcomb*

plaintiff, and *Jabez E. Walcott & Otis C. Buzzell*

defendants, it is said that manifest error hath intervened, to the injury of the said

Jabez E. Walcott

as we are informed by *his* complaint, _____ the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same; in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Leander P. Holcomb

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Leander P. Holcomb*

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *27th* day of *August* - in the Year of Our Lord One Thousand Eight Hundred and Fifty-*nine*

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

66 ²/₁
Jabez E. Watcott
vs
Whitehead &c

Leander P. Holcomb

Sein facias

Where within named
Leander P. Holcomb
not found in my
County this 15th day
of April A.D. 1860
John E. Spill
Sheriff of Whitehead Co. N.C.

Filed Apr 19, 1860

L. Leavitt
Clerk

Supreme Court of Illinois. Third Grand Division. S.S.

Know all men by these presents that we Jabez E. Walcott and Samuel Underhill, are held and firmly bound unto Alexander P. Holcomb, in the sum of Four hundred and fifty dollars, to be paid to the said Alexander P. Holcomb, his executors and administrators. To which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors and administrators, firmly, by these presents.

Witness our hands and seals this 25th day of August A.D. 1859.

The condition of this obligation is such that whereas the said Alexander P. Holcomb has recovered a judgment in the Circuit Court in and for the County of Cook in the State of Illinois, against the said Jabez E. Walcott and one Otis C. Beggell, for the sum of Three hundred and twenty dollars and forty cents, damages, and eighty two dollars and fifty five cents, costs of suit, which said judgment was rendered at the January Special Term of said Circuit Court, doct. on the twenty ninth day of January A.D. 1858. and whereas the said Jabez E. Walcott, in order to obtain a reversal of the same, hath sued out a writ of error to the said Supreme Court. Now therefore, if the above named Jabez E. Walcott shall prosecute his said writ of error to effect, and shall answer all

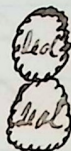
Damages and costs, and pay the said judgment, if he shall fail to make good his plea. then this obligation shall be void, otherwise the same shall remain in full force and effect.

Signed, sealed and delivered

in presence of

Myron C. Parsons

J. E. Walcott
J. E. Underhill



State of Illinois LaSalle County. Ill.
~~State of Illinois Cook County. Ill.~~

Personally appears Myron C. Parsons and being first duly sworn deposes and says that the foregoing bond was signed and sealed by the said Samuel Underhill, the party therein mentioned, in presence of this officer: That said Underhill resides in Chicago, Cook County, Illinois, and owns an unincumbered chattel interest, or leasehold property, situated in said Chicago, of the cash value of Five thousand dollars: That said Underhill is engaged in business at Chicago aforesaid and has invested therein a cash capital of at least Two thousand dollars, and

that he is worth over and above all
his liabilities. Five thousand dollars.

Subscribed & sworn before me Myron C. Parsons
the 29th day of August A.D. 1839

L. Leland Clerk of the Supr. Court.
by J. B. Rice Deputy

66²

Supreme Court.
Jabez E. Woolcott
impld. the
Alexander P. Holcomb

Bond for Support & al.

Filed August 22. 1854
L. Leland
CLM

Frederick Goodwin
Att'y for Plff

STATE OF ILLINOIS,
SUPREME COURT,

} ss. The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of Cook 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 Cook County, before the Judge thereof, between Leander P. Holcomb

plaintiff, and Jabez E. Walcott & Otis C. Buzzell

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Jabez E. Walcott

as we are informed by his 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 Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 27th day of August — in the Year of Our Lord one thousand eight hundred and fifty-nine

Clerk of the Supreme Court.

J. M. Rice Deputy

Levy E. Walcott
impende &c. 66

vs
Leander P. Holcomb

Writ of Error

Filed August 29. 1889
L. Leland Clerk.

This writ of error is made
a supersedeas & as such
is to be obeyed by all
concerned

L. Leland Clerk
by J. B. Rice & J. W. J.

United States of North America
State of Illinois
County of Cook ^{Ill.}

Pleas before the Hon George
Manierre Judge of the Seventh Judicial circuit of
the State of Illinois and sole presiding Judge of the
Circuit Court in and for the County of Cook in said
State, at a special term thereof begun and held at
the Court House in the City of Chicago in said cou-
nty on the Second Monday (being the Eleventh day)
of January in the year of our Lord one thousand eight
hundred and fifty Eight: and of the Independence
of the said United States the Eighty Second, in
pursuance of the order of the said Judge heretofore made
and entered of record.

Present,

Hon George Manierre Judge of 7th Judicial Circuit,
Charles Haven States Attorney

John S Wilson Sheriff of Cook County.

Attest, William S Church clerk.

Be it remembered that heretofore, to wit: on the
Thirteenth day of February A D 1857 Leander P
Holcomb plaintiff by C. S. Cameron his Attorney
filed in the office of the clerk of the court aforesaid
his affidavit. Precipe and attachment bond, in
the words and figures following, to wit:
State of Illinois.
County of Cook ^{Ill.}

Seander P Holcomb being first duly sworn doth depose and say that J. E. Wolcott and Otis C. Buzzell copartners doing business under the name firm and style of Buzzell and Wolcott are justly and truly indebted unto this affiant in the sum of three hundred dollars on two certain promissory notes Dated November 4th 1856 respectively and that the same are now due and unpaid. this affiant further says that said Buzzell and Wolcott are about to remove their property from this State to the injury of this affiant

Subscribed and Sworn to Seander P Holcomb before me this 13th day of February A D 1857.

Wm L Church, Clerk

State of Illinois Cook County Circuit Court
Cook County ss March Term A D 1857
Seander P Holcomb

J. E. Wolcott ^{and} Ed
Otis C. Buzzell

Attachment

Dam \$400.00

The clerk will please issue process of summons in the above entitled cause returnable to the next term of this court.

Wm L Church Esq.

Clerk.

C. S. Cameron

Atty for Plff

Know all men by these presents that we Seander P Holcomb are held and firmly bound unto J. E. Wolcott and Otis C. Buzzell in the penal sum of

Seander P Holcomb being first duly sworn doth depose and say that J. E. Wolcott and Otis L. Buzzell copartners doing business under the name firm and style of Buzzell & Holcott are justly and truly indebted unto this affiant in the sum of three hundred dollars on two certain promissory notes Dated November 4th 1856 respectively and that the same are now due and unpaid. this affiant further says that said Buzzell and Holcott are about to remove their property from this State to the injury of this affiant

Subscribed and Sworn to Seander P Holcomb before me this 13th day of February A D 1857

Wm Church, Clerk

State of Illinois Cook County Circuit Court
Cook County ss March Term A D 1857
Seander P Holcomb

J. E. Wolcott &
Otis L. Buzzell

Attachment
Darn \$400. #

The clerk will please issue process of summons in the above entitled cause returnable to the next term of this court.

Wm Church Esq.

Clerk.

C. S. Cameron

Atty for Plff.

Know all men by these presents that we Seander P Holcomb are held and firmly bound unto J. E. Wolcott and Otis L. Buzzell in the penal sum of

six hundred dollars lawful money of the United States, for the payment of which said sum, well and truly to be made, we bind ourselves our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 13th day of February A D 1857.

The condition of the above obligation is such, that whereas the above bonded Leander P Holcomb has on the day of the date hereof, prayed an attachment out of the circuit court of Cook county, at the suit of Leander P Holcomb against the estate of the above named J. E. Holcott and Otis C. Buzzell for the sum of three hundred dollars, and the same being about to be sued out of said court returnable on the first Monday of March next to the term of the said court then to be holden, Now if the said Leander P Holcomb shall prosecute his said suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said J. E. Holcott and Otis C. Buzzell all such costs in said suit, and such damages as shall be awarded against the said Leander P Holcomb or his heirs, executors or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect, Approved by me at my office this thirteenth day of March A D 1857. L. P. Holcomb Seal
J. E. O. Post Seal
W. L. Church clk

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And thereupon afterwards, to wit on the same day & 2d
year last aforesaid there was issued out of the office & 2d
under the seal of said court a Peoples writ of Attachment
directed to the Sheriff of Cook County to execute and
clothed in the words and figures following, to wit:
State of Illinois,
Cook County } S.S.

The People of the State of Illinois
To the Sheriff of said County, Greeting: Whereas
Seander P. Holcomb hath complained on oath to
Wm L. Church clerk of the circuit court of Cook County
that D. E. Wolcott and Otis C. Buzzell defendants
justly indebted to the said Seander P. Holcomb plain-
tiff in the sum of three hundred dollars and —
cents, and oath having also been made that the
said defendants are about to remove their property
from this State to the injury of the said plaintiff.
And the said plaintiff having given bond and secu-
rity according to the act in such cases made and
provided; We therefore command you, that you attach
so much of the estate, real and personal of the said
defendants, to be found in your county, as shall be
of value sufficient to satisfy the said debt and costs,
according to the said complaint, and such estate,
so attached, in your hands to secure, or so to provide
that the same may be liable to further proceedings
thereupon according to law, at a term of the circuit
court, to be holden at Chicago within and for the county

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of cook on the first Monday of March next so as to compel the said defendants to appear and answer the complaint of the said plaintiff, when and where you shall make known to the said court how you have executed this writ. And have you then and there this writ.

Seal

Witness, Wm L Church clerk of our said court and the seal thereof, at Chicago this Thirteenth day of February, in the year of our Lord one thousand Eight hundred and fifty seven Wm L Church, clerk

And afterwards, to wit: on the fourteenth day of February in the year last aforesaid said writ with a forthcoming bond attached thereto was returned into the court aforesaid by said Sheriff, which return of the Sheriff endorsed, and Bond are in the words and figures following, to wit:

By virtue of the within writ I did on the 14th February 1857, levy upon all the right title and interest of J. C. Wolcott and Otis C. Buzzell in and to one Brown mare with a white strip in her face, one Ice Chest, 2 Tables, 1 Stove, 1 hat chest, 1 Steel, 1 Beef mutton, 2 Large Knives, 1 Fork, 1 Rolling Pin, 8 Stone jars, 1 Salt jar, 4 Gall jug, 2 Large frying pans, 4 Small 2 large Kettles 2 Sauce Pans, 2 Matt Irons, 10 Gall. Lard, 1 Coffee, 1 Tea Pot, 1 Cherry Table, 17 Table cloths 4 Napkins, 10 Gall coffee Boiler, 1 Gall Tea Boiler 31 Dinner Plates, 22 Small

Plates 20 Soup Plates. 12 Coffee cups 15 Sauces, 16 Potato
 Dishes 13 Platters. 4 Soup Saucers 5 Pint Bowles 1 Wash
 Basin 1 axe 1 Shovel 1 Pail 1 Tin Pail 1 Milk Cann
 1 Mettle Soup Saucers 1 Corn Rice 2 Large Wash Tubbs
 1 Wash board 1 1/2 Hoam 2 Large Dish Pans 1 Steep Sadder
 6 Rollers 1 Wood Saw 1 Mopp 1 Cyter Bar 1 Looking Glass
 1 Bar 5 Bent Glass Decanters. 8 Sirup Decanters. 21 Smaller
 6. Stoughton Bottles 9 Wine Glasses 6 Poney Glasses 5
 muggs. Grater & Knife 6 vases 2 1/2 Bottle Peaches, 1/2 Bottle
 Cherry 1 Bottle Sirup 1/2 Box Segars 2 Pewter Pitchers 8
 Bottles Wine 7 Bottles claret 1 Cub 1 Segar Lighter 1 Clock
 1 Gall Stoughton, 5 1/2 Galls cherry Brandy 3 Demijohns 1 Box
 Sardines 7 Lithographs 1 Pair Deer Horns 1 Soda Bar 1/2
 Gall Scotch Whiskey 4 Gall Bourbon Whiskey 1/2 Gall
 cheap Brandy 1 Gall Gin 6. 3 Galls Kegs 2 Demijohns
 3 1/2 Box Sea 1 Server 1 Stool 1 Bed Stead. & clothes. 1 Black
 Beaver hat 9 bastons 7 Sirup cups 1/2 Bbl crackers
 8 Bottles Pickles one Soup Bowl 10 Sugar Bowls 11
 Pickle Dishes 11 Butter Plates 1 Sugar Box 1. 4 Gall jar
 13 Small Dables 1 Large one 8 Salts 10 Stools 3 Drays 15. Chairs
 1 keran Brush 17 Sea Spoons 13 Dables. 14 Forks. 15 Knives
 6 Milk Pitchers 1 Stove 1 Dust Pan. and the defendants
 in whose possession the property was found (Excepting
 the Brown Mare) being desirous of retaining the custody
 thereof were permitted to do so on giving Bond as hereto
 annexed the 16th February 1857. Served by reading to the
 within named defendants the fourteenth day of Februar
 1857 1 Serv 30. 2 Services 11th - 30 miles 15th Id by Deft's
 John S. Wilson Sheriff. By Ira Snow Deputy

Know all men by these presents that we J. E. Walcott Otis C. Buzzell, C. S. Buckley & B. W. Knustead are held and firmly bound unto John S. Wilson Sheriff of Cook County, in the State of Illinois, and to his successors in office, executors, administrators, and assigns, in the penal sum of six hundred dollars lawful money of the United States for the payment of which sum we hereby jointly and severally bind ourselves our heirs, executors and administrators,

Witness our hands and Seals this Sixteenth day of February, Eighteen hundred and fifty seven, The condition of this obligation is such, that whereas on the thirteenth day of February Eighteen hundred and fifty seven a certain writ of attachment issued out of the Circuit Court of Cook County of the said County of Cook at the suit of Seander P. Holcomb plaintiff against the estate of J. E. Walcott and Otis C. Buzzell Defendant directed to the Sheriff of Cook County to execute; by virtue of which said writ the said Sheriff John S. Wilson has attached the following described property, to wit: 1 Sea chest 2 Tables, 1 Form, 1 Watch, 1 ~~Form~~, 1 Steel, 1 Beef Mallet 2 Large Knives 1 Fork 1 Rolling Pin & Stone Jars, 1 Saltgar, 1 4 Gall Jug, 2 Large frying Pans, 4 Small 2 Large Kettles 2 Sauce Pans, 2 Flat Irons 1 10 Gall Green, 1 Coffee 1 Sea Pot, 1 Cherry Table, 17 Table cloths 4 Napkins 1 10 Gall Coffee Boiler, 1 Gall Sea Boiler, 31 Dinner Plates, 22 Small plates 20 Soup Plates, 12 Coffee cups 15 Sauces, 16 Potatoe dishes 13 Platters, 4 Soup Spooners

5. Pint Bowls 1 Wash Basin 1 axe 1 Shovel 1 Pail 1
 Tin Pail 1 Milk Can 1 Mettle Soup Durene 1 Can of
 Rice 2 Large Wash Tubbs 1 Wash board 1 1/2 ham 2
 Large Dish Pans 1 Stepp Ladder 6 Rollers 1 Wood Saw
 1 Mopp 1 Bar Room 9 leasters 7 Simp cups 1/2 Bbl
 crackers 8 Bottles Pickles 1 Soup Bowl 10 Sugar
 Bowls 11 Pickle Dishes 11 Butter Plates 1 Sugar Box 1 4
 Gall Jarb 13 Small Tables 1 Large one 8 Saddle 10 Stools
 3 Drays 15 Chairs 1 Crum Brush 17 Tea Spoons 13
 Sable 14 Forks 15 Knives 26 Milk Pitchers 1 Store Dust
 Pan 1 Oyster Bar 1 Looking Glass 1 Bar 5 cut Glass
 Decanters 8 Simp Decanters 21 Tumblers 6 Stoughton
 Bottles 9 Wine Glasses 6 Poney Glasses 5 Mugs
 Grater and Knife 6 Vases 2 1/2 Bottles Peaches 1/2 Bottle
 Cherry 1 Bottle Syrup 1/2 Box Segars 2 Pewter Pitchers
 8 Bottles Wine 7 Bottles Clark 1 Sub 1 Cigar Sigher
 1 Clock 1 Gall Stoughton 3 1/2 Gall Cherry Brandy 3
 Demijohns 1 Box Sardines 7 Lithographs 1 Pair
 Deer Horns 1 Soda Bar 1/2 Gall Scotch Whiskey
 4 Gall Boobton Whiskey 1 1/2 Gall Cheap Brandy
 1 Gall Lin 6 5 Gall Keggs 2 Demijohns 3/4 Box Tea
 1 Screen 1 Stool 1 Bed Stead and clothes 1 Black
 Beaver Hat. And the said Walcott and Buzzell
 in whose possession the said property was found being
 desirous of retaining the custody thereof according to the
 provisions of the Statute. Now if the said estate and
 property shall be forthcoming to answer the judgment
 of the Court in said suit then this obligation to be void

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promissory note specified to be paid to the said plaintiff and then and there delivered the said promissory note so endorsed as aforesaid to the said plaintiff by means whereof and by the force of the Statute in such case made and provided, the said defendants then and there became liable to pay to the said plaintiff the said sum of money in said promissory note specified according to the tenor and effect thereof and being so liable, they the said defendants in consideration thereof afterwards, to wit, on the day and year aforesaid at the County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in said promissory note specified according to the tenor and effect thereof.

And whereas also the said defendants afterwards to wit, on the day and year aforesaid at the County aforesaid was indebted unto the said plaintiff in the sum of Four hundred dollars for money before that time lent and advanced by the said plaintiff to the said defendants and at the special instance and request and for money by the said plaintiff before that time paid laid out and expended for the said defendants at their like request and for money had and received to and for the use of said plaintiffs.

Yet the said defendants have not yet paid said several sums of money or any or either of them or any part thereof but to pay the same have hitherto wholly neglected and

refused and still doth neglect and refuse to the damage
 of the said plaintiff of ^{four} Dollars therefore he
 sues
 C. S. Cameron
 Pliffs Atty

\$150.⁰⁰

Ninety days after date ^{for value received} we jointly and severally
 promise to pay J. P. Holcomb or bearer one hundred
 and fifty dollars
 J. E. Wolcott
 Chicago Nov 4th 1856. O. C. Buzzell

\$150.⁰⁰

Ninety days after date for value received we
 jointly and severally promise to pay J. P. Holcomb
 or bearer one hundred and fifty dollars,
 J. E. Wolcott.
 Chicago Nov 4th 1857. O. C. Buzzell

And afterwards to wit on the 21st day of
 March A.D. 1857 said defendants by Geo^d Fuller
 their Attorney filed in said court their certain Plea
 in abatement to said plaintiffs Declaration which
 is in the words and figures following to wit:

Jabez E. Wolcott^{ad}

Otis C. Buzzell

and
 Seander P. Holcomb

Circuit Court Cook County,
 April Term A.D. 1857.

And now comes the defendants
 in their own proper person and defend the wrong and

13.

injury when &c and pray judgment of the said writ of attachment because the said ^{defendants} they did not and were not at the time said writ was issued against them about to remove their property from this State to the injury of the said plaintiff. nor did they ever before that time or since that time remove or attempt to remove their property or any part thereof from this State to the injury of the said plaintiff.

But the defendants say that before and at the time of the issuing of the said writ of Attachment and for more than a month since that time said defendants were and have been engaged in business at N^o 214 Randolph Street in the City of Chicago in Cook County and State of Illinois. And that said defendants are ready to verify. wherefore in as much as the said defendants were not about to remove their property from this State as charged in said writ of Attachment they pray that the same may be quashed Jabez E. Wolcott
Otis C. Buzzell

State of Illinois
Cook County }

Jabez E. Wolcott 2d
Otis C. Buzzell
ads
Seander P. Wolcott

} Circuit Court, Cook
County April Term 1837

Personally comes Jabez
E. Wolcott and on oath declares and says that
he is one of the defendants in the above entitled

13.

of this the said plaintiff puts himself upon the
Country &c

C. S. Cameron

Atty for Plff

And thereupon come the defendants by their attorn-
eys and file their Demurrer which is in the words
and figures following, to wit:

And the said defendants
as to the replication of the said plaintiff wherein
the same prays that the same may ---
doth the like

Gilbert W. Keamey
for Defs

And afterwards, to wit: at the November term of
said court, to wit: on the twenty third day of Decem-
ber AD 1837 the following among other proceedings
in said court, were had and entered of record in
said cause, to wit:

Seander P. Holcomb

436
J. E. Walcott and
Oliver C. Buzzell

Attachment

Thursday came the said parties
by their Attorneys, and issue being joined herein, it
is ordered that a jury come the jurors of a jury of
good and lawful men to wit:

W. Slemming, E. H. Kaddock, A. Thompson
A. J. Colby, M. D. Gilman, E. Senegim
A. D. Sturtevant, J. G. Osborne, M. Saffin
G. R. Holt, W. M. Horton, C. Allen,

Who being duly elected tried and sworn well and truly to try the issue joined aforesaid, after hearing hearing the evidence adduced arguments of counsel. All instructions of the Court, retire to consider of their verdict and afterwards come into court and say "We the jury find for the plaintiff and assess his damages herein to the sum of Three hundred and twenty dollars and forty cents."

Whereupon the said defendants move the court for a new trial of this cause.

And afterwards, to wit: at the January Special Term of said Court, to wit: on the twenty ninth day of January, A.D. 1858, the following among other proceedings in said Court were had and entered of record in said cause, to wit:

Seander P. Wolcomb

J. E. Wolcott ^{and}
Otis C. Buzzell

} Attachment

Thus day come the said parties and the court being well advised on said defendants motion for a new trial of this cause overrules said motion.

Therefore it is considered that said plaintiff do have and recover of said defendants his damages of Three hundred and twenty Dollars and forty cents in form as aforesaid assessed together with

17 their costs and charges by them in this behalf
Expended and have execution therefor,

State of Illinois, }
COUNTY OF COOK. } s. s.

I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of Pleadings papers & proceedings
in a certain cause laity pending in said Court on the
Common law side thereof, wherein Samuel P
Walcomb was Plaintiff — and

J. E. Wolcott & Otis C. Buzzell were defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this twenty third day of August A. D. 1857

Dec 4. 35

Wm L Church
Clerk.

State of Illinois. Third Grand Division. SS.

Supreme Court, in and for the Third Grand Division
Of the State of Illinois. April term A.D. 1860.

Afterwards, to wit: on the twenty fifth day of August in the year one thousand eight hundred and fifty nine, into said Supreme Court, came the said Jacob E. Walcott impleaded with the said Otis C. Buzzell, by Parsons & Goodwin, his Attorneys, and says that in the record and proceedings aforesaid, and also in rendering the judgment aforesaid, there is manifest error in this, to wit: That the affidavit herein filed, praying said writ of Attachment, does not set out, with common certainty, nor as near as conveniently may be, the nature of the indebtedness, in respect whereof said suit was prosecuted: That said writ of Attachment was sued out without there having been first filed, any sufficient or valid bond and security, conditioned to satisfy such costs and damages as should be recovered for wrongfully suing out said writ: That said writ of Attachment was sued out without any such bond and security having been first filed and approved by the Clerk issuing said writ: That the said assessment of damages by the jury aforesaid, is irregular, excessive and void:

That said Court erred in overruling said motion for a new trial, and in not granting the same:

That said Court erred in entering judgment according to said verdict and assessment of damages, and in not setting aside the same:

^{66 1/2}
Jabez E. Walcott
impeached with Otto
L. Buzzell. —

vs
Leander P. Holcomb
Record & Assgt,
of Errors.

Filed August 29. 1839

L. Holcomb
Clerk

