

No. 12365

Supreme Court of Illinois

Walker

vs.

Goodrich

78
Martin C. Walker
Grant Goodrich

78

1855

12365

Costs taxed

Martin D. Walker } Supreme Court of Illinois
 ad vs }
 Grant Goddick } ~~Common Pleas~~

And now comes the
 said defendant by Sudd. Frank Winston
 his attorneys and alleges that there is a
 manifest error in said record and
 proceedings in this to wit

First That said Court erred in admitting
 the whole ~~or any~~ and every part of the
 testimony offered on the part of said plaintiff

Second That said Court erred in giving
 the first instruction asked for by said plaintiff

Third That said Court erred in giving the
 second instruction asked for by said plaintiff

Fourth That said Court erred in refusing the
 second instruction asked for by said
 defendant.

Fifth That the verdict and judgment
 is not sustained by the pleadings in the
 case.

Sixth That the Court erred in overruling
 the motion for a new trial made in the
 case.

Seventh That the verdict and judgment are
 contrary to the law and evidence of the case.

Sudd. Frank Winston
 Wft. Atty.

Another defr. says there are no such errors in the
 said record as is above supposed, she prays
 the said judge may be apprized

G. Goddick
 for App. Plea

Supreme Court of Ill
"

Martin O. Walker

Grant Goodrich

Assignment of Cases
"

State of Illinois }
County of Cook } S. S.

Pleas before the Honorable John M. Wilson
Judge of the Cook County Court of Common Pleas within
and for the County of Cook and State of Illinois at a
regular Term of said Cook County Court of Common Pleas
begun and held at the Court House in the City of Chicago
in said County and State on the first Monday being the
Fifth day of February in the year of our Lord One thousand
eight hundred and fifty five and of the Independence of
the United States the seventy ninth.

Present the Hon: John M. Wilson Judge
Daniel Mc. Gray Prosecuting Attorney
James Andrew Sheriff
Attest. Walter Kimball Clerk.

Be it Remembered that heretofore to wit on
the fifteenth day of January in the year of our Lord one
thousand eight hundred and fifty five came Grant
Goodrich, surviving partner of Giles Spring deceased, Plaintiff
in this suit by Scoville & Seelye his Attorneys and filed
in the Office of the Clerk of the Cook County Court of
Common Pleas a precept for summons against John
Frank and Martin C. Walker defendants, which said
precept is in words and figures as follows to wit
Grant Goodrich surviving Partner of
Giles Spring deceased } Cook County Court of
at } Common Pleas,
John Frank & Martin C. Walker in } Clerk issue

Summons to Cook Co.

In Debt \$3000.

Dam \$500.

Leoville Lechly

his Attys.

And thereupon Summons issued out of the Office of the Clerk of said Court in words and figures as follows to wit.

State of Illinois

County of Cook S.S.

The People of the State of Illinois to the Sheriff of said County Greeting.

We command you that you summon John Trunk and Martin O Walker if they shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said County on the first Monday of the next Term thereof to be holden at the Court House in the City of Chicago in said County on the first Monday of February next to answer unto Grant Goodrich surviving partner of Giles Spring deceased in a plea of that they render unto the said Plaintiff the sum of Three thousand dollars debt which they owe and unjustly detain from said Plaintiff to the damage of the said Plaintiff as he says in the sum of Five hundred dollars

And have you then and there this Writ, with an endorsement thereon, in what manner you shall have executed the same

Witness Walter Kimball Clerk of our said Court and the Seal thereof in the City of Chicago in said County this 15th day of January A. D. 1855.

Seal

Walter Kimball Clerk

Served as to the within named Martin O. Walker by
reading to him this 16th day of Jan'y 1855 The within
named John Frink is not to be found in my County
James Andrew Sheriff
By F. S. Bulkeley Deputy.

And afterwards to wit on the twenty sixth day of January
in the year aforesaid said Plaintiff filed in the Office
of the Clerk of said Court his Declaration in said cause
in words and figures as follows to wit,

State of Illinois	In the book bounty Court of
County of Cook &c.	Common Pleas
	Of the February Term 1855.

Grant Goodrich surviving partner of Giles Spring
deceased, Plaintiff in this suit by Scoville & Seelye his
Attorneys, complains of John Frink and Martin O. Walker
defendants in this suit, of a Plea that they tender to the
said Plaintiff the sum of Three thousand dollars, which they
owe to and unjustly detain from him.

For that whereas the said Defendants in the lifetime of
one Giles Spring since deceased to wit, on the first day of
April 1851 to wit, at the said County of Cook, were indebted
to the Plaintiff and the said Giles Spring in the sum of Two
thousand five hundred dollars for the work and labor care
diligence and attendance of the said Plaintiff and the said
Giles Spring by the said Plaintiff and the said Giles Spring
before that time done performed & bestowed as the Attorneys and
Solicitors of and for the said Defendants in and about the
prosecuting defending and soliciting of divers causes suits and
business for the said Defendants and for fees due and of right
payable to the said Plaintiff and the said Giles Spring in
respect thereof And also for divers journeys and other attendances
by the said Plaintiff and the said Giles Spring before then

made performed and given in and about the said business
together the business of the said Defendants, & for the said
Defendants and at their special instance and request And
to be paid by the said Defendants to the said Plaintiff
and the said Giles Spring when the said Defendants should
be thereunto afterwards requested - Yet, though requested so to
do, the said Defendants did not in the lifetime of the said
Giles Spring, pay to the said Plaintiff and the said Giles
Spring, or either of them, nor since his death, to the said
Plaintiff the said sum of Twenty five hundred dollars or
any part thereof, but to do this have hitherto wholly refused
& still do refuse.

Whereby and by reason of the said last mentioned sum
of money being and remaining wholly unpaid, an action
hath accrued to the said Plaintiff, surviving partner as afore
said, to demand and have of and from the said Defendants
the said last mentioned sum of Twenty five hundred dollars
paid of the said sum above demanded.

And also for that whereas the said Defendants afterwards
to wit on the 12th day of January 1855 at the said County
of Cork were indebted to the said Plaintiff in the sum of
Two thousand dollars for the work and labor, care and
diligence & attendance of the said Plaintiff, by the said Plaintiff
before that time done performed and bestowed as the Attorney
& Solicitor of and for the said Defendants in and about the
prosecuting defending & soliciting of divers causes, suits and
business for the said Defendants & for fees due & of right
payable to the said Plaintiff in respect thereof And also for
divers journeys & other attendances by the said Plaintiff
before then made performed and given in & about the
said business, & other the business of the said Defendants & at
their special instance & request, Which moneys were to be
paid to the Plaintiff upon request. Whereby and by reason
of the nonpayment thereof an action hath accrued to the

Plaintiff to demand & have from the said Defendants the said last mentioned sum of Two thousand dollars residue of the said sum above demanded.

Yet the said Defendants although often requested so to do have not as yet paid the said sum of Three thousand dollars, ^{above demanded} or any part thereof, but so to do hitherto wholly have refused and still do refuse to the damage of the said Plaintiff of Five hundred dollars and therefore he brings suit &c.

Seoville & Seelye
Pliffs Attys.

Copy of ac sued on

John Frink & Martin W. Walker
To Grant Goodrich survivor &c. Dr.

For services in case William Fowler	
vs. you in book Circuit Court	\$2000 ⁰⁰
For retainer in suit Don Carlos Bingham vs	
Frink et al in book Circuit Court	10 ⁰⁰
" services in same suit	20 ⁰⁰
For retainer in suit of Hayes Oakes vs John	
Frink et al in book Circuit Court	10 ⁰⁰
" services in same suit	20 ⁰⁰
For retainer in suit of Benjamin North vs	
John Frink et al as Garnishees of Shingby	
in book Circuit Court	10 ⁰⁰
" services in same case	25 ⁰⁰
For retainer in suit of Chas. H. Chapman vs	
You et al in book Circuit Court	10 ⁰⁰
" services in same suit	25 ⁰⁰
For retainer in suit of Thomas Fisher vs John	
Frink et al in book Cir. Ct	5 ⁰⁰

For services in same suit \$ 15 " 00

John Frink & Martin O. Walker

To Grant Goodrich Dr.

For retainer in suit of Jas. C. Howels in
suit of vs John Frink et al in Cook Co. Ct. 20 " 00

" services in same suit 25 " 00

For retainer in suit of Mary McMahon vs
John Frink et al in Cook Co. Ct. 10 " 00

" services in same suit 20 " 00

For retainer in suit of J. D. Gossick vs John
Frink et al in Cook Co. Court 20 " 00

" Trial fee in same suit 25 " 00

For retainer in suit of Jas. D. Throger vs
John Frink et al in Cook Co. Court 20 " 00

John Frink & Martin O. Walker

To Grant Goodrich suror &c Dr.

For retainer in suit of E. V. Hungerford vs John
Frink et al in Cook Co. Court 20 " 00

" services in same suit 30 " 00

For retainer in suit of you et al vs Sidney
Abell in Cook Co. Court 20 " 00

" services in same suit 20 " 00

For retainer in suit of John Frink et al vs
George Brady in Cook Co. Court 5 " 00

" services in same suit 20 " 00

For retainer in suit of John Frink et al vs
Elihu Granger in Cook County Circuit Ct. 10 " 00

" services in same suit 30 " 00

For retainer in suit of John Frink et al vs
Elihu Granger in Cook County Court 10 " 00

" services in same suit 30 " 00

John Frink & Martin O. Walker

To Grant Goodrich Dr.

For retainer in suit of John Frink et al vs

Bisell Humphrey et al in Cook County
Court of Common Pleas \$20.00

John Frink & Martin O. Walker

To Grant Goodrich survivor of Dr.
For services in suit of Frink & Walker at
James Clawville in Cook County Court
of Common Pleas \$25.00

Same To Grant Goodrich Dr.
For services in suit of John Bolton vs you
in Cook County Court of Common Pleas \$200.00

For retainer in suit of M. H. Mack vs you
in Cook Co. Court of Common Pleas 20.00

For retainer in suit of Harrison Bristol vs you
in Cook Co. Court of Common Pleas 25.00

Same To Grant Goodrich, survivor of Dr.
For retainer in suit of Frink Walker et al
vs John Beach in Cook County Court 10.00
" Services in same suit 25.00

For retainer in suit of Frink Walker et al
vs A. B. Hadsorath & A. L. Kincaid 10.00
" Services in same suit 25.00

For retainer in suit of Frink Walker et al
vs Amos H. Butler in Cook Co. Court
of Common Pleas \$10.00
" Services in same suit 20.00

For retainer in suit of James D. Reese vs
you et al before justice of Cook Co. Court 5.00
" Services in same suit 10.00

John Frink & Martin O. Walker to Grant Goodrich Dr.
For retainer in suit of Frink Walker et al vs
Benjⁿ. F. Haddock 25.00

Same to Grant Goodrich survivor of Dr.
For retainer in suit of George Almarodi vs
Steamboat Frontier in Florida Civ. Court 10.00

For services in same suit	\$ 50.00
" Services in same suit in the Supreme Court, under Title of John Frink et al owners of the Steamboat Frontier vs Charles P. King Administrator of George Almarode deceased	100.00
For counsel at different times	200.00

And afterwards on the seventh day of February in the year aforesaid the said Martin O. Walker by Judd Frink and Winston his Attorneys filed in the Office of the Clerk of said Court, his Plea, which is in words and figures as follows to wit

John Frink & Martin O. Walker } Cook County Court of
 als } Common Pleas of the
 Grant Goodrich survivor &c } February Term A.D. 1855

And the said Defendant Martin O. Walker impleaded with John Frink by Judd Frink & Winston his Attorneys comes and defends the wrong and injury &c, and says that he does not owe the said sums of money above demanded or any part thereof, in manner and form as the said Plaintiff hath above thereof complained against him and of this they the said Defendant puts himself upon the Country &c

And the said Plaintiffs Judd Frink & Winston doth the like &c Defts Attys

Scoville & Seelye. Pltffs Attys

State of Illinois

Cook County } S.S. Martin O. Walker being duly sworn
 deposes and says that he is one of the above named Defendants, and that the said Defendants in the above entitled cause have a good and substantial defense upon

the Merits in said cause as he is advised by counsel & verily believes.

Subscribed & sworn to before
me this 7th day of Feby. } Martin C. Walker.
A. D. 1855 W. Kimball Clerk }

And for a further Plea in this behalf the said Defendant says actio non because he says that the said several supposed causes of action in the said Declaration mentioned (if any such there were and still are) did not, nor did any or either of them, accrue to the said Plaintiff at any time within five years next before the commencement of this suit in manner and form as the said Plaintiff hath above thereof complained against him the said Defendant And this he the said Defendant is ready to verify wherefore he prays judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him.

Pudd, Frink & Winston
Defts Attys.

And for a further Plea in this behalf the said Defendant says actio non because he says that the said Plaintiff before and at the time of the commencement of this suit was and still is indebted to the said Defendants in a large sum of money to wit the sum of Five thousand dollars lawful money of the United States For the work and labor care diligence and attendance of the said Defendants by the said defendants and his servants before that time done performed and bestowed in and about the business of the said Plaintiff and for the said Plaintiff and at his request and for divers materials and other necessary things by the said Defendants before that time found and provided and used and applied in and about the said work and labor of the said Plaintiff and in the like sum for goods wares and

merchandise before that time sold and delivered by said Defendant to said Plaintiff at like special instance and request which said sums of money exceed the damages and debt of the said Plaintiff by reason of the non-performance by the said Defendants of the said several & supposed promises and undertakings in the said declaration mentioned and out of which said sums of money so due and owing from the said Plaintiff to said Defendants the said Defendant is ready and willing and hereby offers to set off and allow to the said Plaintiff the full amount of the said debt and damages according to the form of the Statute in such case made and provided

Judd Trunk Winston

Defts Attys.

And thereafter to wit on the twenty eighth day of February A. D. Eighteen hundred and fifty five the said Plaintiff filed in the Office of the Clerk of said Court, his Replication in words and figures as follows to wit.

Giant Goodrich Survivor & }
us
Martin O. Walter impleaded with }
John Trunk }

And the said Plaintiff as to the said Plea of the said Defendant secondly above pleaded says precludi non because he says that the said several causes of action in said Declaration mentioned and each and every of them did accrue to said Plaintiff within five years next before the commencement of this suit in manner and form as the said Plaintiff hath above complained against said Defendant to wit at the County aforesaid. And this the said Plaintiff prays may be enquired of by the Country. for
Gerrille Selby for Plff

And the said Plaintiff as to the said Plea of the said Defendant thirdly above pleaded says precludi non because he says that the said several supposed debts and causes of set off in said third Plea mentioned did not nor did either of them arise or accrue to the said Defendants at any time within five years next before the commencement of this suit in manner and form as the said Defendant hath above in his said third Plea in that behalf alleged and this he is ready to verify wherefore he prays Judgment &c

Seoville & Seelye
for Plff

And thereafter to wit on the day of
A. D. Eighteen hundred and fifty five the said Defendant filed in the Office of the Clerk of said Court his Rejoinder herein in words and figures as follows to wit,

And the said Defendant as to the said Replication of the said Plaintiff to the said third Plea of the said Defendant says that the said Plaintiff ought to be barred because he says that the said several debts and causes of action did accrue to the said Defendant within five years before the commencement of this suit. And this he prays may be Enquired of by the Country.

Dodd, Frank Winston
Defts Attys

And the Plff doth the like &c
Seoville & Seoville

Plffs Attys

And the said Defendant as to the said Replication of the said Plaintiff to the said Plea of the said Defendant and which the said Plaintiffs hath prayed may be Enquired of by the Country doth the like. Dodd Frank Winston

Defendants' Atty's.

And the Plff doth the like &c
Seoville & Seelye

Plffs Atty's

And thereupon to wit on the sixteenth day of March
being one of the days of the February Term of said Court
At. D. Eighteen hundred and fifty five the following
proceedings were had and taken in said cause, and
Entered of Record to wit,

Grant Goodrich surviving
partner of Giles Spring ..

John Frink and Martin } Debt
O. Walker }

And now comes the said
Plaintiff by Seoville & Seelye his Attorneys and the said
Defendant Martin O. Walker by Judd, Frink & Winston his
Attorneys and issue being joined herein It is Ordered that
a Jury come and thereupon come the Jurors by a Jury
of good and lawful men to wit,

J. E. Bradley - Daniel Martin - J. T. Noble. William Sawyer
William Higgins - L. W. Wells - G. A. Johnson - B. B. Barnes
D. H. Howard - J. Hubbard - R. G. Cook & Ira Reynolds
who being duly elected tried and sworn well and truly
to try the issue joined as aforesaid after hearing the evidence
adduced, argument of Counsel, and instructions of the Court
retire under charge of an officer of the Court to consider of
their Verdict and the hour of adjournment having
thereupon arrived by agreement of said parties It is
Ordered that when the Jury shall have agreed on a
Verdict they may reduce the same to writing sign and
seal the same and afterwards be permitted to separate

and to meet the Court tomorrow morning

And afterwards on the seventeenth day of March being another of the days of the said February Term of said Court in the year aforesaid the following further proceedings were had in said cause and entered of Record to wit,

Grant Goodrich surviving
partner of Giles Spring

(vs)

Debt.

John Frink & Martin O. Walker

And now again come the parties aforesaid by their said Attorneys and the Jury empannelled in this cause also come into Court and say we the Jury find the issue for the Plaintiff, and we find the Defendant Martin O. Walker impleaded with John Frink indebted to the said Plaintiff in the sum of Two thousand nine hundred and seventy dollars and thirty cents and we assess the said Plaintiff damages by reason of the detention thereof to the sum of Twenty nine dollars and seventy cents And thereupon said Defendant enters his Motion herein for a New Trial in this Cause which Motion after being heard is overruled by the Court to which decision of the Court the said Defendant excepts

Therefore it is considered that the said Plaintiff do have and recover of the said Martin O. Walker impleaded as aforesaid his debt of Two thousand nine hundred and seventy dollars and thirty cents and also his damages of Twenty nine dollars and seventy cents in form aforesaid by the Jury here assessed amounting in the whole to the sum of Three thousand dollars and also his Costs by him about his suit in this behalf expended and have execution therefor And thereupon the said Defendant prays an Appeal to the Supreme Court of the State of Illinois which is allowed by

the Court on his filing Bond to be approved by the Judge of this Court during the present Term.

And thereafter to wit on the Twenty fourth day of March A.D. Eighteen hundred & fifty five the said Defendant Martin O. Walker filed in the Office of the Clerk of said Court, his Bill of Exceptions herein in words and figures as follows to wit.

Grant Goodrich surviving partner of Giles Spring deceased	} Cook County Court of Common Pleas. as yet of the February Term A.D. 1855
Martin O. Walker impleaded with John Sprink	

Afterwards to wit at the day and place within contained before The Honorable John M. Wilson Judge of the Cook County Court of Common Pleas comes as well the said Grant Goodrich by Scoville and Seeley his Attorneys as the said Martin O. Walker by Ludd Sprink & Winston his Attorneys and the Jurors of the Jury whereof mention is within made, being called likewise come, and after being elected tried and sworn to try the several issues within joined the counsel for the Plaintiff learned in the law offered in evidence the files of the Cook County Circuit Court containing the Bill, Answers, depositions, exhibits and other papers in the case of William Fowler against John Sprink and Martin O. Walker and introduced Lewis D. Hoard Clerk of said Court, who testified in substance that said case was commenced on the third day of December in the year of our Lord one thousand eight hundred and forty, and that ever since Witness knew anything about the case Spring & Goodrich have alone been connected with it, that witness first knew of the case in 1843 remembers an argument of Goodrich & Mr. Ryan in 1847 or 1848 in

in the case - Since 1848. Spring & Goodrich were alone employed and their names appeared on the Record as Attorneys, the cause is still pending & Mr Goodrich now still appears as Attorney for defendant in the case Giles Spring died in July 1851. It was then admitted by the Plaintiff that the law firm of Spring & Goodrich was dissolved in the Spring of 1849. The counsel for the Plaintiff then introduced William B Brown who testified that he was the Commissioner appointed by the Court in the case of William Fowler ~~and~~ vs John Frink and Martin O. Walker and worked upon the report filed in the case in the year 1849 - that he worked upon said report through 1849 and up to the Spring of 1850. That it was a complicated matter and that Mr. Goodrich was frequently present attending to said case. On cross Examination the witness stated that the last he knew of Mr Goodrich being engaged in the case was in the fall of 1849 or winter of 1850, that most of the labor of making the report was done by the Witness - on re-examination witness stated that defendant Walker came with Mr. Goodrich to witness' Office in 1851 to examine the report and to prepare exceptions to the report - Lewis D. Heard being recalled by Plaintiffs counsel testified that Mr. Goodrich was the only one who had appeared in the case to his knowledge except Mr. Collins. Mr. E. J. Williams was then called by the Plaintiffs counsel, and testified that he knew something about this Fowler suit - that having been a Law Student in Mr. Collins Office who was employed in the suit he had been informed of its progress from time to time and of the various steps taken therein - that on the final argument of said suit Mr. Ryan assisted Mr. Goodrich - that Ryan left the City in 1843. Witness estimated the value of the

services performed by Spring and Goodrich at one thousand five hundred dollars. Mr. George Maniero was then called by the Plaintiffs Counsel and testified that he knew something about this Fowler case - that the case created much excitement, Remembers the case having been called up for argument two or three times - in the intermediate times I knew nothing of it - Remember Mr. Ryan having been sent for from Racine for the argument of the case. It required great labor to prepare the case for argument, on account of the mass of papers & depositions. I was present before Mr. Brown the Commissioner I saw Mr. Goodrich there. I should say that Two thousand five hundred dollars was a fair value of the services of Spring & Goodrich in the case. Mr. Isaac N. Arnold was then called by the Plaintiffs Counsel and testified that he had been an Attorney at Law in this City since 1838. Remember the case of Fowler vs. Frink and Walker as a suit involving large amounts and of great importance have known of its prosecution that making exceptions to the reports of Commissioner Brown must have involved a great deal of labor. I should think Five thousand dollars not too much as compensation to Spring & Goodrich for services in that suit. The case involved all the Stage Business of Defendants in North West. I heard the argument of Mr. Spring on Motion to dissolve the Injunction granted in the case. Involved the question whether Mails could be stopped by injunction. He made one of the ablest arguments I ever heard. Mr. Thomas Hoynes was then called by the Plaintiffs Counsel and testified that he has known the case in point. It involved a great deal of labor. Says taking 20 of the depositions on file would have been worth \$600.

The depositions are very numerous - that he considers the services of Spring and Goodrich in the Fowler suit worth three thousand dollars - Mr. D. Ballingall was then called by the Plaintiffs counsel and testified that he has known of the cause - was with Spring & Goodrich - left in 1839 & came back to Chicago in 1843 - Remembers there was a great deal of labor - Fowler came to me to employ me to go down along the River, and as far as Peoria to take depositions - We could not agree upon the price and I did not go - that the services of Spring & Goodrich in the Fowler case were worth in the opinion of the Witnesses three thousand dollars - Mr. H. L. Rucker was then called by the Plaintiffs counsel and testified that he took the deposition of witnesses in the Fowler case and that Mr. Goodrich attended to the taking of the same and that there was not less than two months consumed in taking the depositions before him one deposition contains 264 Cross Interrogatories - that it was very laborious work, To all of which said evidence offered by the said Plaintiff in support of his said action the said Defendant by his said Counsel did then and there object and insisted that the same or any part thereof did not support the action brought in this case and was not admissible under the pleadings herein - And the said Judge of the Cook County Court of Common Pleas did then and there overrule the said objection of the said Defendant and decided that the whole of said evidence was admissible and supported the action of debt brought in this case and to which said opinion and decision of the said Judge the said Defendant by his said counsel did then and there except - No further evidence was offered on behalf of the said Plaintiff, and the cause was here rested

The said Plaintiff by his said counsel did then and there ask of the Court the following instructions.

1st "If the Jury believe from the evidence that Giles Spring and Grant Goodrich as Copartners were retained by the Defendants to prosecute the suit of Fowler against the Defendants & that the said Spring & Goodrich prosecuted said suit and were the Attorneys of the Defendants in said suit & the suit was pending within five years before the commencement of this suit, then the Plaintiff is entitled to recover in this action such amount as the Jury shall believe from the evidence the services in conducting said suit were reasonably worth, even though you should further believe from the evidence that the firm of Spring & Goodrich was dissolved more than five years before the commencement of this suit." And thereupon the said Defendant by his said counsel did then and there object to said instruction and insisted that the same was not law.

2nd "If the Jury should believe from the evidence that Spring & Goodrich as partners were employed and acted as Attorneys of the Defendants in the case of William Fowler against the Defendants down to the death of Giles Spring in July 1851 though Spring and Goodrich may have dissolved their Partnership as to all future business in March 1849 and that subsequently said Plaintiff performed services in said Cause or continued as such Attorney on the record with the knowledge and consent of said Defendants then the claim for such services is not barred by the Statute of Limitations and the Plaintiff is entitled to recover for all such services ~~which~~^{what} the Jury shall believe from the evidence such services are worth." And thereupon the said

Defendant by his said counsel did object to said instruction and insisted that the same was not Law. And the said Judge did then and there overrule the said objections to said instructions and gave the same to the Jury as asked for by said Plaintiff - and to which instructions as given the said Defendant by his said counsel did then and there except. And the said defendant by his said counsel did ask the Court to give the Jury the following Instructions, to wit:

1st " That unless you believe from the Evidence that the services rendered by Spring & Goodrich were in part and to some extent rendered within five years from and immediately preceding the time when this suit was commenced the Plaintiff cannot recover for any such services as surviving partner " which said instruction was then and there given to the said Jury.

2nd " If you believe from the Evidence that Spring and Goodrich dissolved Partnership and ceased to do business for the said Defendant as a firm or as Partners more than five years prior to the commencement of this suit, then the Plaintiff is not entitled to recover for such services of said firm of Spring & Goodrich as a surviving Partner " which said instruction the said Judge did then and there refuse to give to said Jury - and decided that the same was not law - to which said refusal and decision of said Jury said Defendant by his counsel did except.

3rd " Even if you believe from the Evidence that the Plaintiff individually performed services for the Defendants within five

years from the time when this suit was commenced
such services will not entitle the Plaintiff to recover for
the value of services performed by Spring & Goodrich"
which said instruction was then and there given to the
said Jury - 11th " If the Plaintiff has failed to prove
the value of the services performed by him individually
after the dissolution of the Partnership between him & Spring
then the Plaintiff is not entitled to recover for services
rendered by him individually." which said instruction was
then and there given to the said Jury - Thereupon a
Verdict was rendered by said Jury in favor of said
Plaintiff for the sum of \$2970 ²⁰/₁₀₀ dollars debt and
\$297 ⁷⁰/₁₀₀ dollars damages - A Motion for a New Trial
was thereupon made by said Defendant through his said
counsel - which said Motion was then and there overruled
by said Judge. And the decision of said Judge in over-
ruling said Motion was then and there excepted to. And
because none of the said exceptions so offered and made
to the opinions and decisions of the said Judge and to the
instructions herein excepted to, do appear upon the record
of the said Trial therefore on the prayer of the said
Defendant by his said Counsel the said Judge hath to
this Bill of Exceptions set his Seal according to the
Statute in such case made and provided this twenty
fourth day of March One thousand eight hundred
and fifty five.

John M. Wilson

Seal.

And thereafter to wit on the twenty seventh day of March A. D. Eighteen hundred and fifty five the said Defendant Martin. C. Walker by his said Attorneys filed in the Office of the Clerk of said Court his Appeal Bond in words and figures as follows to wit.

Know all Men by these Presents That we Martin C. Walker of Chicago Illinois and Samuel B. Walker of the same place are held and firmly bound unto Grant Goodrich of the place aforesaid in the penal sum of Six thousand dollars lawful money of the United States to be paid to the said Grant Goodrich his executors or administrators or assigns To which payment well and truly to be made we bind ourselves our heirs executors or administrators firmly by these presents Witness our hands and seals this 22nd day of March A. D. 1855.

The condition of this obligation is such that whereas the said Grant Goodrich survivor of Giles Spring deceased did on the 17th day of March A. D. 1855 before the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas during the February Term of said Court recover a Judgment against the above bounden Martin. C. Walker for the sum of Twenty nine hundred and seventy ³⁰/₁₀₀ dollars debt and Twenty nine ⁷⁰/₁₀₀ dollars damages and Dollars costs from which said Judgment of the said Court the said Martin C. Walker has taken an Appeal to the Supreme Court of the State of Illinois. Now if the said Martin C. Walker shall

prosecute his said Appeal with effect and shall pay the said Judgment together with costs interest and damages in case the said Judgment shall be affirmed, then the above obligation to be void, otherwise to remain in full force and virtue.

Approved this 29th day
of March 1855

John M. Wilson

Martin O. Walker

(Seal)

Samuel B. Walker

(Seal)

State of Illinois }
County of Cook } S. S.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for said County and State Do hereby Certify That the foregoing is a full true and correct Transcript of the Original papers and also of the Orders entered of Record of said Court now on file in my Office in the case of Grant Goodrich surviving partner of Giles Spring deceased against Martin O. Walker impleaded with John Trunk.

In testimony whereof I have hereunto subscribed my name and affixed the Seal of said Court at Chicago in said County this eighth day of June A. D. 1855.

Walter Kimball, Clerk



78

Martin W. Walker

(v. 4.)

Grant Goodrich

Appeal

Filed June 12. 1855.

L. Leland Clk.

Trans. 461. 66 8.

1855-1856

Grant Goodrich } a special from
and } Cook
Martin O. Walker in person }

The proof in this case
establishes, that the suit of Green vs Frank
Walker in 1840 - that there was an injunction
issued prohibiting the mining of this stage or in
involving the title to a part of all this stage
property; that Spring Goodrich was
employed by them as their attorney in
the case - that the case was severely contested
on both sides - that an immense number
of depositions were taken & they or Mr.
Goodrich on their behalf attended to taking
them - that in 1848 the case was agreed
to & drawn for an account rendered
which required an examination into
all their landings for a long period of years
that Wm. A. Brown was appointed
a special commission to take the ac-
count - that it required from 9 months
to a year to make up the account ^{from a part of 1849 up to Spring 1852}
that in July the Spring of 1849 the firm
of Spring Goodrich dissolved -
but their names still appeared on the record
as the attys. of Green vs Walker - that
Goodrich appeared before the commission

from time to time giving his attention to the
case - In 1837 Goodrich was at Brown's
of New York with Walker for payment & a return
to the report -

Spring died in 1837 -

As to the amount of the verdict there is ample
evidence to sustain it -

The witnesses range in their estimate of
the services of Spring Goodrich from
\$2500 to \$5000 -

If there was any error in the amount of damages,
as this is an action of Debt, other Debt is found
or the damages are paid -

If the damages for any reason were
not recoverable the power of the court
to correct the jury in such a case is
clear - if the error is ought to be exercised
in a case where the recovery is just

Revised Statutes 421 - sec 52

§ 405 - also do. 415 Do. 507

Did the Law Court respond
to the Jury by the Court?

II It is also well settled that when a firm
^{engage} contract to perform any contract, or services
for a person or persons, that the dissolution
of the firm does not dissolve the contract
that he engaged the services of all the partners.
The contract was with all, & without the
consent of all the contracting parties, all
are bound to see it performed.

All outstanding engagements must be
fulfilled.

Story on Partnership Sec 325. Now on part. pag. 224. 326

" " " 327 17 Vt. 399

" " " 332, 334 19 Vt. 213 Note

a. Thus upon the dissolution of the firm of Spring
& Wadick in the Spring of 1849, the ^{joint} obligation
of both remained to continue & close up the
suit; and if so, Frink & Wadick were bound
to them jointly to pay for the services rendered
after the dissolution, by which ever partner
rendered.

Spring died in July 1851 less than five
years before the commencement of
the suit.

b. Did the Court then lay down the law correctly?

3 To determine the correctness of the first instruction for, pleff. by breach seclusion. let us see what an distance it was?

It in effect declares, that if Spring Woodcock were employed to defend the Suit for Defts. below & they did so defend the same as their attorneys, & the Suit continued pending & within five years of the commencement of this Suit, the pleff. for Contract continued to exist, since made at all events after the dissolution of the firm, & the dissolution did not ipso facto dissolve the joint contract & as the Statute of Limitations would run against joint services performed before the dissolution, if the Suit ~~the~~ continued pending down to ~~five~~ five years within five years of the commencement of this Suit—

Then can Charly be so informed in this instruction

a If a or A or B, an employee by A. to conduct a Suit, or they enter upon the performance, ~~the~~ obligat it is a continuing contract, obligatory on both parties, until dissolved by mutual consent—And as long as it exists—is inchoate—unperfected.

the Statute of Limitations cannot run
- the Contract is entire - the performance
entire - & it cannot be cut up into
fragments, & any one or more of the
fragments brought within the action
of the Statute

But the record does not show that the 1st instruction was given

3 In regard to the 3^d Instruction for Plaintiff below,
~~it is accurately~~ it accurately states the
law -

It declares what the obligations of partners
after a dissolution are as to existing con-
tracts -

As to such contracts, subsisting & un-
finished - there can be no dissolution.
- the Partnership remains undissolved
as to such contracts, & the law will
not allow a dissolution in regard
to existing, unfinished contracts, without
the consent of all the parties

Story on part. - Sec. 332

344

19 May 373. Note

Now on partnership, page 224-226 17 May 299

4 The action therefore to recover for such services must
be joint if both are living -

In fact one partner can drive no separate compen-
sation for any such services

Story on part. Sec 331

And if after a dissolution one partner alone
finishes up a partnership Contract, the
other partner would be entitled to his share, if
there was no arrangement between the
partners to the contrary.

II

I need not state that on death of one partner
the ~~surviving~~ Chadwin actions of
the firm become the property of the
survivor, the claim can be
strong on part. See 346

III Did the Court below err in refusing any instruction for the defendants below?

- a. The first instruction asked for by the defendants was given, & laid down the law correctly, & all that was requisite to present the law to the jury.
- b. The 2^d instruction refused, was not the law -
For it affirmed that both the Spring & Goodrich must have rendered services for the depts. below after the dissolution; Whereas if either of them did render services under a contract or engagement entered into ~~at~~ before the dissolution, though in conjunction and still subsisting, though in conjunction with the other partner or not, it would be the benefit of both, & a joint action alone could have been maintained for such services.
If there was a contract subsisting before the dissolution, and ~~such~~ the firm had not been discharged from its performance, any thing done in furtherance of such contract ~~whether~~ by either partner, whether the other did anything or not, ~~could~~ ~~only~~ would survive the statute from being

c Besides the instruction is inconsistent with itself & contradictory

It asks that the Jury may be told the law is, that if there was a deputation, a Sping & Goodrich as partners ceased to do business for the debt as a firm partners within five years, they sh^d. cannot recover for such services of the firm of Sping & Goodrich -

1st If a firm sh^d. cannot recover, if services were not done by Sping & Goodrich as a firm, & then further declares, the plaintiff is not entitled to recover for such services of Sping & Goodrich, as surviving partner -

That is services of the firm of Sping & Goodrich - which would be contradictory & calculated to mislead the Jury -

There was no evidence to ~~test~~ such an instruction upon

The Court gave all the instructions necessary to bring before the law as applicable to the case fairly before the Jury -

The instruction is confined to one debt. - When as though one only was owed there were two debts. No services performed for the debt in 5 years, would be ~~the~~ bar to a recovery for services rendered for both debts.

IV There was ~~no evidence~~ of ample evidence to justify the verdict of the Jury -

a Besides the defense of the debt, was inquired into -

6. The Court will see that a very large amount
of the services rendered, were demanded by
the Statute, as understood by the Court -
and no injustice has been done him by the
verdict - but to the plaintiff if he wishes

Grant Goodrich
for himself

Limitations does not run until
end of suit

4 Watts 334

Whithead v Lord 11 Com. 587

Harris v Osburn 2 Cramp. Murr. 629

Chitty on Com. 488

1 Parsons do 539

2 Johns 296

Grant Goodrich
and

Mr. D. Mathewson

Bring & arguments

1 McCord 156

Evidence

There was proof at all events tending to show a
partnership between Chisholm & Walker at the time
of the mortgage of the Florida land & at its com-
mencement, & that they were jointly interested
in the suit.

Mr. Arnold testified, that the suit involved
all the stage business of F. & M. in the North
West. This is a lending of evidence on lay two
which necessarily involves partnership.

Mr. Arnold further says that Spring made an
argument on a motion to dissolve an
injunction granted in the case, in which
the right to enjoy the running of the United
States Mails was involved -

Now there was evidence showing:
1st A joint interest in the suit
2 A partnership in the stage business between
Chisholm & Walker, which was the subject
matter of the suit.

3 An injunction against the Defen-
dants F. & M. restraining them from carrying
the U. S. Mails.

4 The appearance, & conduct of the suit
by F. & M. & no other atty. in the suit
for 12 or 14 years.

Was not this testimony from which a jury
might infer a joint interest, if true
in fact, when there is a joint interest
in the suit.

Again all the witnesses testify, it is as the
 most notorious, important & severely
 contested suit, in the Courts at that
 time. It involved the right of carrying
 on a leasehold extending throughout
 the North West. Was not a very
 much such circumstances justified
 in inferring knowledge on the part
 of Smith, that S. M. was acting for
 him as well as Walker, thus leaving
 no other doubt? Could it be
 otherwise?

9th Nov. 1842 And I suppose if a party knows
 142 that attorney is acting on his
 behalf in a suit, & allow him
 to go on, when there are no other
 attorneys, the law and the services
 for his ~~land~~ himself, the law will imply
 that the labor was done at his request.

& At the time this suit was commenced, no answer
 was made to the law request.

3 The bill of exceptions shows that the papers,
 the bill answers, depositions, ^{exhibits} & in the suit
 of Fowler vs S. M. were introduced in evidence
 in this suit.

They showed, as we have a right
 to assume, the partnership of Smith & Walker.
 The bill was filed against them as parties
 the answers admitted it, & among the

McLoud

186.

exhibits up frame the actual evidence
of their co-partnership - as to the fact, we
have the right to affirm -

1st Because they were proof in the case - And the
defendants whose business it was
to bring up all the evidence by embody-
ing it in the bill of exceptions, having
failed to do so, it is to be presumed by the
Court, that it established all that was
necessary to sustain the judgment -

Every inference is to be made against
the plaintiff - in error

3 S. C. 6

4 Munroe 126

4 do 34 do 460

2 Little 182

2 J. J. Marsh 135

3 Greer 107

1 Dana 14

4 Our Courts hold that when no objection is
made below for want of proof, which might
have been supplied if objection had been
made, or the question arises in the Court
below, no objection will be allowed
in the Court above

2 S. C. 245-248

" " 354. 355

No question on this point was made below -
The proof was considered as made, or
so notorious was the fact that

was so decided
No instructions were asked of the Court on this
point, and no question of the trial submitted
to the jury -

4. Whether it appears from a direct statement
in the bill of exceptions, or in any
other way, that, all the testimony
given in the Court below is not
contained in the bill of exceptions,
makes no difference -

1 Will 420 do 475 -

Though the bill of exceptions say it
contains all the evidence, yet if
on its face it shows other testimony
was given, the Court will presume
that testimony established what
was necessary to be made out.

5. But we contend that, where there is
a suit pending against two defendants,
where the proof, as in this case, shows
a joint interest in the conduct of
the suit, that prima facie, the rule
Moy v. T. of Counsel lay on is,
an employment for both. That
they are partners as to the defense. If
the defense must be joint, then

the relation of the parties, of ne-
cessity; empowers either to employ coun-
sel to defend their joint rights

- 5 This decided that the filing of
an answer by Counsel for a party,
is sufficient evidence of retain-
ment
1 McCord 136

The proof in this case shows the filing
of answers, & that S. G. were the only
solicitors for the defendants.

- 6 If the Court is satisfied justice has
been done, they will never grant a
writ of habeas corpus though there may
be error of law, & the testimony may
be defective

3 Scam. 18

3 Hill 315 &c

In this case there is no pretence of a de-
fence upon the merits. The statute
of limitations alone is a bar, &
& excludes the recovery of some
\$1500. It is an effort to deprive
the plaintiff of 12 years of hard
labor. This is a defense which no hon-
orable man would make. And
which no court will aid him to make

The Court will not reverse the verdict, if it can be affirmed without a palpable violation of law

6 If plaintiff was not entitled to damages for interest, this being an action of debt, & the debt being found separately from the damages, the Court can correct the judgment & render in this Court such judgment as the law allows

Revised Laws page 4121. Sec 52

1 St Ann 405 - 1 Ann 415

507 Primmers vs Bailey

1 The debt in error is that no evidence in the record shows that the plaintiff in error, ~~has~~ did in the Court below, comply with the provisions of the 24 Sec. of the practice, & only on compliance of which can his motion for a new trial be considered.

1st The record does not show that either the Court or counsel for or party plaintiff below were furnished with the points in writing, ~~the~~ specifying the grounds on which the new trial is as claimed.

The record does not show that this was

done, or that even any motion with
the points was ever filed in the case.

The Statute requires this to be done
before any motion for a new
trial is entitled to the consideration
of the Court.

There is no evidence of argument or
even appearance of pleff. above
or that he had any notice of
the ~~disposition~~ motion or its disposition

The Statute provides how a party may en-
title himself to have his motion for a new
trial heard - He has not shown he has as-
entitled himself, he can therefore claim
no benefit of any more by the Court in
overruling the same

Goodrich
and
Walker