

12061

No.

Supreme Court of Illinois

Walker

vs.

Welch, et al

71641  7

⁷⁴
D. J. Ch. Walker
Osce Welch et al.

74

12061

Prepared

1853

State of Illinois
Fourteenth Judicial Circuit
St Davie County

Pleas in the Circuit Court
begun and held within and for the County of St Davie
aforesaid on the fourth Monday of August in the year
AD 1852 before the Judge of said Fourteenth Judicial Cir-
cuit to wit Hon. Benjamin R. Sheldon

Cas Welch & George McCully
Partners under the name and
Style of Welch and McCully
vs
Daniel J M Walker
Seth Partridge

Be it remembered that
heretofore to wit on the 5th day of August AD 1852 the
Plaintiffs Welch & McCully aforesaid by their Attorneys
filed in the Clerk's office of Circuit Court for said St Da-
vie County their precept & thereon sued out of said
Court a writ of summons to the said defendants wh-
ich said precept and summons together with the
return of the Sheriff on the latter are in the words
and figures following to wit

Cas Welch
George McCully
Partners under the name
& Style of Welch & McCully
vs
In St Davie
Circuit Court
August Term
AD 1852

Daniel I M Walker }
Seth Partridge }

Issue summons to defendant
in an action of debt. debt Six hundred dollars damages
Six hundred dollars Higgins & Strother
Galena Aug 5th 1852 Atty

Endorsed
Filed August 8th 1852

Wm H Bradley Clerk

State of Illinois } ss
Jo Daviess County }

The people of the State of Illinois to the Sheriff
of Jo Daviess County Greeting

We command you to summon Daniel I M Walker
and Seth Partridge, to appear before the Circuit Court
of Jo Daviess County to be holden at Galena on the 4th Monday
of August Inst to answer Ose Welch & George Mc-
Cully partners under the name and style of Welch &
McCully in a plea of Debt for Six hundred dollars da-
mages Six hundred dollars and have you then and
there this writ



Witness William H Bradley Clerk of
the Circuit Court of Jo Daviess County
Illinois at Galena this 5th day of
August A D 1852

(Endorsed)
Served this writ this 6th day of August A D 1852 by reading
the same to the within named D. I. M. Walker

C E Saunders Sheriff

And served the within writ on Seth Partridge by reading
this the 18th day of August 1852

C. E. Saunders Sheriff

By John Allison Deput

And afterwards to wit on the 11th day of August A.D.
1852 the said Plaintiff, by their attorneys filed
in the Clerks office of said Court their declaration
against the said defendants which said declaration
is in the words and figures following to wit

State of Illinois In Davis County ss

In Circuit Court

August term 1852

Cass Welch and George McCully partners in trade
under the name and style of Welch and McCully
complain of Daniel S. M. Walker & Seth Partridge in a plea
of debt for that whereas the said Daniel S. M. Walker
and Seth Partridge on the twenty third day of Decem-
ber A.D. 1851 at Galena to wit at the County aforesaid
made their certain writing obligatory sealed with
their seals and were to the Court here shown and
then delivered the same to the said Welch and
McCully whereby the said Daniel S. M. Walker
and Seth Partridge acknowledged themselves
to be bound to the said Cass Welch and George
McCully in the sum of Six hundred dollars lawful
money of the United States to be paid to the said
Cass Welch and George McCully on demand which
said writing obligatory was and is subject to

a certain condition thereunder written whereby it is provided that whereas the above named Oseu Welch and George McCully partners under the name and style of Welch & McCully did on the 20th day ~~20th day~~ of December AD 1851 in the Circuit Court in and for the County of Jo Daviess aforesaid recover a judgment against the above bounden Daniel J. M. Walker for the sum of two hundred and ninety three dollars and forty seven cents damages & also for the sum of One hundred and forty five dollars and sixty cents costs from which said judgment of the said Circuit Court the said Daniel J. M. Walker has prayed for and obtained an appeal to the Supreme Court of said State Now if the said Daniel J. M. Walker shall duly prosecute his said appeal with effect and shall moreover pay the amount of the Judgment, cost, interest and damages rendered and to be rendered against him in case the said Judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue And the said plaintiff avers that at a regular term of the said Supreme Court of the State of Illinois begun and held at Ottawa on Monday the 14th day of June AD 1852 came on to be heard the said appeal of the said Daniel J. M. Walker against the said Oseu Welch and George McCully partners as aforesaid, and on the 19th day of July AD 1852 the

following judgment was rendered by said Supreme
Court in said Cause to wit
Monday July 19th 1852

Daniel S. M. Walker

vs

Osce Wilek et al

Appeal from Judge's

On this day came again the same parties^{and} the court
having diligently examined and inspected as well
the record and proceedings aforesaid as the matters
and things therein assigned for error and being now
sufficiently advised of and concerning the prem-
ises. for that it appearing to the Court now here
that neither in the records and proceedings afo-
resaid nor in the rendition of the judgment afo-
said is there any thing erroneous vicious or defective
and that that record is no error therefore it is
considered by the court that the judgment afore-
said be affirmed in all things and stand in
full force and effect notwithstanding the said mat-
ters and things therein assigned for error and it is
further considered by the Court that the said ap-
pellus recover from the said appellant their costs
by them in this behalf expended and that they
have execution therefor

And the said plaintiffs aver that the said ju-
dgment so rendered in their favour in said

Jo Daviess Circuit Court - was upon said appeal affirmed in the said Supreme Court at said term as aforesaid

And the said plaintiff, for assigning a breach in said condition according to the Statute in such case made and provided say that the said Daniel, J. M. Walker did not prosecute his said appeal with effect and has not paid the amount of the judgment cost interest and damages rendered against him in said Supreme Court nor any part thereof nor hath he paid the sum in said bond mentioned nor any part thereof but he to do this hath hitherto wholly refused. Nor hath the said Daniel, J. M. Walker paid any part of said judgment and cost, so rendered in said Circuit Court as aforesaid wherefore the plaintiff say that an action hath accrued to them upon said Bond to their damage six hundred dollars and therefore they sue

Higgins & Strother

Plaintiffs Attys

Copy of Bond sued on
Know all men by these presents that we Daniel J. M. Walker and Seth Partridge of the County of Jo Daviess and State of Illinois are held and firmly bound unto Osee Welch and George McCully partners under the name and firm

of Welch and McCully also of the same County and State in the penal Sum of six hundred Dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents, sealed with our seals and dated at Galena this twenty third day of December AD 1851

The condition of the above obligation is such that whereas the above named Osee Welch and George McCully partners under the name and firm of Welch and McCully did on the 20th day of December AD 1851 in the Circuit Court in & for the County of Jo Daviess aforesaid receive a judgment ^{against} the above bounden Daniel J. M. Walker for the sum of two hundred and ninety three Dollars and forty seven Cents Damages and also for the sum of One hundred and forty five Dollars and sixty cents Costs from which said judgment of the said Circuit Court the said Daniel J. M. Walker has prayed for and obtained an appeal to the Supreme Court of said State Now if the said Daniel J. M. Walker shall duly prosecute his said appeal with effect and shall moreover pay the amount of the judgment cost interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to

to be void otherwise to remain in full force and
virtue

D. J. M. Walker Seal

Taken and entered into before

Seth Partridge Seal

me at my office in Galena

this 23^d day of December

A D 1851, Wm A Bradley Clerk

Endorsed, Filed August 11th 1852

W. H. Bradley clk

And afterwards to wit on the 24th day of Nov-
ember in November term A D 1852 of said Circuit
in the record of the proceedings thereof in said
cause is the following ^{entry} to wit

Case Welch

George McCully

vs

Debt

Daniel J. M. Walker

Seth Partridge

The defendants by their attor-
ney came and file their demurrer to the declaration
of the plaintiff, and now come on to be heard said
demurrer which after argument on the part of the
defendants by their attorney is further postponed
until morning with leave to the plaintiff's atty
to produce authorities

The demurrer referred to in
said last recited entry is in the words and
figures following to wit

D. J. M. Walker & Seth Partridge

vs

Ose Welch & George McCully Partners

In Civ. Court of
J. Davie's County to

the November term 1852 And the said defend-
ants by J. P. Stevens their attorney come and
defend the wrong and injury when &c
And says that the said declaration and the
matters and things as therein alleged are not
sufficient in law &c And the said depts
are not bound by law to answer the same &c
Wherefore he prays judgment &c —

And for special cause of disclaimer states and
shows to the court here 1st There is a variance be-
tween the writ in this cause and the said
declaration in this, that the said writ de-
mands Six hundred Dollars debt & also the like
sum of \$600, or damages and said Declaration
only demands the sum of \$600, damages. 2nd Said
declaration does not pursue said writ in oth-
er substantial & material parts. Second, said
declaration is informal insufficient and
contradictory - 1st Because said declaration
first alleges the said supposed promises of
the said depts to be payable on demand and then
alleges the promise to be upon certain conditions
therein stated

3^d The conclusion of said declaration is in-
formal insufficient defective and bad

4th The general Bench alleged in said declaration is vague indefinite uncertain & informal & insufficient. And 5th for other good and sufficient reasons appearing upon the face of the papers & record &c

J. P. Stevens Atty for depts

Endorsed Filed Nov 24th 1852

Wm B Brady Clerk

And afterwards, to wit on the 27th day of November in said November term A D 1852 of said Court in the record of the proceedings thereof in said Cause is the following entry to wit

Cree Welch
George McCully
vs
Daniel J. M. Walker
Beth Partridge } The Plaintiffs by their attorney having produced their authorities now came on again to be heard the demurrers of the defendants heretofore filed to the plaintiffs declarations and after further argument by Council the Court takes the same under advisement

And afterwards to wit on the 2nd day of December as yet of the November term A D 1852

of said Court in the record of the proceedings
thereof in said Cause is the following entry to wit
Case Welch & George McCully

vs

Debt

David S. M. Walker & Seth Partridge The court ha-
ving fully consi-
dered and being fully advised upon the demur-
rer of the defendants heretofore filed to the pla-
intiffs declaration overrules the same

And afterwards to wit on the 6th day of Decem-
ber as yet in said November term A.D. 1852 of
said Court in the record of the proceedings
thereof in said Cause is the following entry to wit
Case Welch & George McCully

David S. M. Walker & Seth Partridge

Debt

By leave of the
Court the defendants by their attorney withdraw
their demurr and take leave to plead by tomorrow
morning

And afterwards to wit on the 7th day
of December as yet of the said November term
A.D. 1852 the said defendant Walker by his at-
torney filed in open Court with the clerk thereof
his plea in abatement which is in the words
and figures following to wit

David J. M. Walker & al

vs

Osee Welch and George McCully } In Circuit Court
of Jo Daviess County

November term 1852 And the said D. J. M. Walker comes, comes by Stevens & Johnson his Attys and defends the wrong and injury when &c And prays judgment of the said writ and declaration of said Plaintiffs in this cause and craves oyer of the said writ and the same is read to him in the words and figures following to wit.

State of Illinois } ss

Jo Daviess County } The People of the State
of Illinois to the Sheriff of Jo Daviess County, Greeting
We Command you to Summon Daniel J. M.
Walker and Seth Partridge to appear before the
Circuit Court of Jo Daviess County at the next
term to be holden at Galena on the 4th Monday
of August Inst to answer Osee Welch & George
McCully partners under the name and style
of Welch and McCully in a plea of Debt for six
hundred Dollars Damages six hundred dollars &
have you then there this writ

Esse

Witness William A. Bradley Clerk
of the Circuit Court of Jo Daviess
County Illinois at Galena
this 5th day of August AD 1852.
Attest Wm A. Bradley Clerk

Which being read and heard the said defendant
says ^{that} there is great and manifest variance between
said writ and said declaration in this that
said writ demands six hundred dollars debt
and six hundred dollars damages and said
declaration only demands six hundred dollars da-
mages and this the said defendant is ready
to verify Wherefore for this variance between sa-
id writ and declaration he prays judgment
of said writ and declaration and that the
same may be quashed &c

J P Stevens & M G Johnson

Attys for deft.

Endorsed Filed Dec 7th 1852

Wm B Bradley Clerk

And afterwards to wit on the 5th day of Dec-
ember as yet of said November term A D 1852
of said Court the said Plaintiffs by their at-
torney filed in open Court with the clerk the-
ref. their motion in the words and figures fo-
llowing to wit

Osce Welch & George
McLully Partners vs

Daniel S. M Walker & al

In J P Davis Circuit
Court November
term A D 1852

And the said pla-
intiffs by their Attorneys move the Court to strike
the plea in abatement of said defendant Walker
filed in this cause from the files of this Court because

the same was improperly filed after the defend-
ants had demurred and was not filed in the
order as required by law

Higgins & Strother
Attorneys

Filed Decr 8th 1852, W. B. Bradley
Clerk

And on the same day to wit the 8th day of De-
cember the following entry appears in said cause
on the record of said Court to wit

Osce Welch & George McCully }
vs } Debt

Daniel J. M. Walker & Seth Partridge }

Now at this day
came on to be heard the motion of the plaintiffs
heretofore filed by their attorney to strike from the
files the plea in abatement of the defendant Walker
which after argument by Council is sustained
by the Court a demurr having been previously
filed to the plaintiffs declaration

And afterwards to
wit on the 9th day of December as yet of said
November term A. D. 1852 of said Court in the
record of the proceedings thereof in said cause
is the following entry to wit

Osce Welch and George McCully }
vs } Debt

Daniel J. M. Walker & Seth Partridge } The defend-
ant - Walker by his

Attorney comes and elects to abide by his demurrer
heretofore filed and on motion of the defendant
Seth Partridge by his attorney he has leave to w-
ithdraw his demurrer and to plead to the grant-
ing of which leave the Plaintiff, by their attorney
except - When he comes by his attorney and files
his plea of Nonest factum and issue being joined
by the plaintiff on said plea and the said defend-
ant Walker by his attorney failing to make further
answer to the Plaintiffs declaration and electing
to abide by his demurrer as aforesaid thereupon
the court directs a jury to be impaneled as well
to report the debt and damages of the plaintiff as
against said defendant Walker, as to try the is-
sue jointly ^{or} between the said plaintiff and the
defendant Partridge whereupon comes a jury of
good and lawful men, to wit, William Town-
send, George M. Mitchell, Malen Coleman, William
Smith, Zephaniah Bell, Martin Gray, William S.
Kope, Elijah Ferguson, Thomas Wilford, Thom-
as Bond, Jacob Brand and Thomas Simpson
who were duly elected tried and sworn well and
truly to enquire and true report make of
the debt and damages of the plaintiffs as ag-
ainst the defendant Walker and also well
and truly to try the issue joined herein betw-
een the said Plaintiff and the defendant Partridge
And after hearing a part of the evidence the
further consideration of the cause is postponed

until to Morrow Morning

The said plea of the said defendant Partridge referred to in the said last recited order is in the words and figures following to wit—

Walker & Partridge }
vs

Welch & McCully } In Circuit Court of Jo
Davis County to the November term 1852. And

then said defendant Partridge for himself comes and defends the wrong and injury when &c. And says that the said Writing obligatory declared on, is not his deed, and of this he puts himself upon the Country &c

Stevens & Johnson

And plst likewise

For said debt

Endorsed Filed Dec^r 9th 1852

Wmth Bradley Clerk

And afterwards to wit on the 10th day of December as yet of the said November term AD 1852 of said Court in the record of the proceedings thereof in said Cause is the following entry to wit

Csu Welch & George McCully } Debt
vs

Daniel J M Walker & Seth Partridge } The jury yesterday ^{came} empaneled in this
this day returned into Court and after hearing

further evidence and receiving instructions from the Court they retired to consider of their verdict, and after a short absence they returned into Court with the following verdict to wit

We the jury sworn to try the issue joined in this cause on the plea of Non est factum filed by the defendant Partridge, as well as to assess the damages as against the defendant Walker do find the issue in favour of the Plaintiffs and do also find the amount of the debt at the sum of Six hundred dollars and assess the damages against the defendants at the sum of three hundred and Sixty seven Dollars and Seventy five Cents and the defendant Partridge by his Attorney moves the Court for a new trial and files his reasons therefor

The said motion of the Defendant Partridge for a new trial is in the words and figures following to wit

Welch & McCully

vs

In Circuit Court

Walker & Partridge November Term 1853

And the defendant Partridge moves the Court for a new trial in this cause for the following reasons

1st The Court allowed improper testimony to go to the jury on the part of the Plaintiffs

2^d The Court refused proper evidence offered on the part of said Deft^s

3^d The Court gave improper or instructions for Plff^s

4 And for other reasons

Stevens for Deft-

Partridge

Endorsed, Filed Dec 10th 1852

Wm A Bradley Clerk

And afterwards to wit on the same day, to wit on the 10th day of December as yet of said November term A D 1852 in the record of the proceedings thereof in said cause is the following entry, to wit,

Osee Welch & George McClellly

vs

Debt-

Daniel, J. M. Walker & Seth Partridge

Now came on to be heard the motion of the Defendant Partridge heretofore filed for a new trial of this cause by his Attorney which after argument by Council is overruled by the Court to which ruling and decision of the Court the said Defendant Partridge by his Attorney excepts and thereupon the Plaintiff, by their Attorney move the Court for judgment upon the verdict of the jury heretofore found and returned It is thereupon considered by the Court that the plaintiff have and recover of the Defendants the sum of Six hundred dollars the Debt found by the jury together with their costs by them about their suit in this behalf exp-

ended and that they have execution therefor to be returned by the Sheriff satisfied upon his making on the same the sum of three hundred and Sixty seven dollars and Seventy five Cents the damages as aforesaid assessed by the jury together with the said cost and interest on said damages if any shall be due thereon and the Defendants by their Attorney pray an appeal to the Supreme Court

And afterwards to wit on the 17th day of December as yet of said November term Ad 1852 of said court in the Record of the proceedings thereof in said cause is the following entry to wit-

(Case Welch & George McCully

vs

Deb.

Daniel S. M. Walker Seth Partridge } The defendants
having heretofore prayed an appeal to the Supreme Court, It is ordered by the Court that the said prayer for an appeal be granted, the said Defendants upon their entering into an appeal bond with James W. White or William F. Hinkley as their security in the sum of Six hundred Dollars within forty days from this date

On the trial of said cause the following exceptions were made and allowed to wit

Csee Welch & George McCully

vs

3

D. J. M. Walker & Seth Partridge

In Circuit Court

of St. Davie County November

term 1852. Be it remembered that on this ninth day of December 1852. this cause came on to be tried before the Hon B. R. Sheldon Judge & a jury. The Plaintiffs to support their cause of action first called and swore Wm. H. Bradley, who testified that he was Clerk of said Circuit Court, that the Bond sued on in this case was the Bond taken and filed in his office on the day of the date and filing said Bond.

On cross examination said Witness further stated that said Bond had been in his office as such Clerk ever since the taking and filing of the same by his deputy Clerk, George M. Mitchell and was & is part of the Records of said Clerks office. Plaintiffs then offered to read to the jury as evidence in said cause said ~~said~~ Bond, to which the defendants objected. the Court overruled the objection & defendants then and there excepted. The plaintiffs then read as evidence to the jury said Bond and judgment of the Court in the case of Wm. H. Bradley vs. Walker which said Bond and judgment are as follows, to wit:

Know all men by these presents that we Daniel J. M. Walker and Seth Partridge of the County of St. Davie and State of Illinois are held and firmly bound unto Csee Welch and

George McCully partners under the ^{name of} firm of Welch
& McCully also of the same County and State. in
the Penal sum of Six hundred Dollars lawful money
of the United States for the payment of which well
and truly to be made we bind ourselves our heirs
executors and administrators jointly severally
and firmly by these presents. Sealed with our seals
and dated at Galena this twenty third day of Dec-
ember A. D. 1851

The condition of the above obligation
is such that whereas the above named Osee Mc-
lech and George, McCully partners under the name
and firm of Welch & McCully did on the 20th Day
of December A. D. 1851 in the Circuit Court in and
for the County of Jo Daviess aforesaid recover a judg-
ment against the above bounden Daniel J. M. Walker
for the sum of two hundred and Ninety three Do-
llars and forty seven Cents damages and also for the
sum of One hundred and forty five Dollars and Sixty
cents Cost from which said judgment of the said
Circuit Court the said Daniel J. M. Walker has prayed
for and obtained an appeal to the Supreme Court
of said State Now if the said Daniel J. M. Walker s-
hall duly prosecute this said appeal with effect
and shall moreover pay the amount of the judgm-
ents Costs interest and damages rendered and to
be rendered against him in case the said judg-
ment shall be affirmed in the said Supreme Court
or then the above obligation to be void otherwise

to remain in full force and virtue

Taken and entered into before me at
my office in Galena this 23rd day of
December A D 1851

D. J. M. Walker

Seth Partridge

Seal

Seal

Wm. H. Bradley, Clerk

Endorsed, Filed 23rd Dec^r 1851

Wm. H. Bradley, Clerk

Judgment of 20th of Dec^r 1851 as follows, to wit
Case Welch & George McCully

vs

Attachment

Daniel, J. M. Walker

Now at this day comes
the parties by their Attorneys and the Defendant by
his Attorney failing to make further answer herein
and electing to abide by his demurrer. & it appearing
to the Court that this action is founded upon a promiss-
ory note for the payment of money only. Whereupon
all and singular the premises being seen heard and
by the Court here fully understood. And mature
deliberation being thereupon had, and because it
is suggested and proved and manifestly appears
to the Court here that the said Plaintiff hath su-
stained damages on occasion of the not perform-
ing the premises and undertakings on the part
of the Defendant in this behalf to the amount of
two hundred and ninety three dollars and forty
seven cents besides his costs and charges herein.
It is thereupon considered by the Court that the pla-
intiffs have and recover of the Defendant the said

Sum of two hundred and Ninety three Dollars & forty seven Cents so as aforesaid found to be due by the Court together with their cost by them about their suit in this behalf expended and that a special execution issue therefor against the property attached And the Defendant by his attorney prays an appeal to the Supreme Court - which is granted by the Court conditioned that - the said Defendant enter into Bond in the sum of Six hundred dollars with Seth Partridge as Security within ten days from the rising of the Court -

Plaintiffs then offered in evidence a certain paper as the opinion of the Supreme Court of Illinois in the case of Welch & McCully vs D. J. M Walker. to the reading of which in evidence to the jury the defendant objected the Court overruled said objection & defendant then and there excepted said paper was then read to the jury by plaintiffs as evidence in said case; as follows to wit -

At a Supreme Court begun and held at Ottawa on Monday the 14th day of June in the year of our Lord one thousand eight hundred and fifty two within and for the Third Grand Division of The State of Illinois

Present the Honorable Samuel McTear, Chief Justice
" John D. Caton Associate Justice
" Lyman Trumbull " "
Monday July 19th 1852

Daniel J. M. Walker
vs
Que Welch et al

Appeal from J. Davies

On this day came again the said Parties and the Court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error and being now sufficiently advised of and concerning the premises for that it appears to the Court now here that neither in the record and Proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous vicious or defective and that that record is no error Therefore it is considered by the Court that the judgment aforesaid be affirmed in all things and stand in full force and effect notwithstanding the said matters and things therein assigned for error And it is further considered by the Court that the said Appellus recover of and from the said appellant their cost by them in this behalf expended and that they have execution therefor

I Lorenzo Geland Clerk of Supreme Court of the State of Illinois do hereby certify that the foregoing is a true copy of the final order of said Supreme Court in the above entitled cause of record in my office. In testimony whereof I hereunto set my hand and affixed the Seal of the ^{said} Supreme Court at Ottawa this 22nd day of

(Cordoned) Filed July 3, 1892
Clerk of Court

July in the year of our Lord one thousand eight hundred and fifty two



L. Seland, Clerk of the Supreme Court
By J. H. Seland Deputy Clerk

The Plaintiff further^{to} maintain the issue on their part then offered in evidence the Fee book from the office of the Clerk of the Circuit Court, after proving said book by W. H. Bradley the clerk of said Court that it was the Fee book of said Court and a Record in his office

The Plaintiff then asked leave of the Court for the Clerk of this Court to tax the costs of the Sheriff of this Court, so as to correspond with the amended return of the Sheriff heretofore made. The Court after the Clerk had taxed the said costs as against the parties to said attachment suit - so as to cover all the cost as taxed by the Sheriff and after^{the} said Clerk had inserted in his Fee Book said cost as contained in the return of the said Sheriff so as to cover all the costs of parties as well the sum of 35^{35} dollars originally taxed as the sum of 23^{33} Dollars for cost taxed by the Sheriff in his amended return and allowed by the clerk and by him taxed and inserted in the Fee book of Costs in this Court which the said Sheriff claimed he was entitled to for money paid out by him for rent or storage for the property by him attached on the original

the property over four months that at the time
the appeal was taken to the Supreme Court - witness
had the property still in his custody and that he
delivered said property to the defendants on the
order of the Circuit Court after the appeal was taken
and that the appeal bond was signed before he had
paid the rent & that he paid the rent on a day
or time afterwards and that he taxed the costs af-
terwards on the writ - But the clerk did not insert
the same in his Fee Book until a few minutes
since That the money was necessarily and un-
avoidably paid to secure said property, The court
refused to disallow said item of 23.³³/₁₀₀ Dollars or to
stay the same and allowed said fee Book to be
read in evidence to the jury

To the adding of
which said item of rent by the clerk to the Record
as costs the depts then and there objected When
said clerk then taxed said additional item
as costs of said plaintiffs in said Fee Bill Book
at the foot of said Plffs last Bill and the same
was allowed by the Court and the Plffs offered
and read as evidence said Fee Bill Book as un-
amended To the jury To the amendment so made &
to the admission of the same as evidence by the
Court the depts then and there objected which ob-
jections were overruled by the Court & the evidence
read to the jury & depts excepted to the ruling
of the Court and the admission of said evidence

On cross examination of W. H. Bradley the witness stated the Bond given in evidence by Plaintiff was taken by his deputy and filed in his office as clerk of the Circuit Court of St. Davids County on the day of the date thereof and has ever since remained in his office as a part of the Records of the same.

This being all the evidence in the case both on the part of the Plaintiffs and defendants the jury found and returned the following verdict, to wit-

That the jury sworn to try the issue joined in this case on the plea of Non Est factum filed by the defendant Partridge as well as to assess the damages as against the defendant Walker, do find the issue in favour of the Plaintiff and do also find the amount of the debt at the sum of Six hundred dollars and assess the damages against the defendants at the sum of Three hundred sixty seven dollars and seventy five cents.

Geo. W. Mitchell

M. Coleman

Thos Simpson

Jacob Brandt

Thos A Bond

William Scarpe

Wm Townsend

J. Bell

Thomas Welford

J. M. Smith

Elijah Ferguson

Martin Gray

And the said Partridge comes and moves for
a new trial and files his reasons therefor
as follows to wit -

Welch & McEnelly

vs

Walker & Partridge

In Circuit Court

November term 1852

And the defendant Partridge moves the court for a new trial in this case for the following reasons 1st The court allowed improper testimony to go to the jury on the part of Plaintiffs 2nd The court refused proper evidence offered on the part of said defendant 3rd the court gave improper instruction for the jury

4th And for other reasons

Stevens for
Def^t Partridge

Endorsed Filed Dec 10th 1852

Wm H. Bradley Clerk

Which motion for a new trial is overruled by the court and the def^t then and there excepts and prays this his bill of exceptions may be signed and sealed in pursuance to law which is accordingly done

Benj R Sheldon Sec^y

Endorsed Filed Dec 20 / 52

Wm H. Bradley Clerk

And afterwards to wit on the 24th day of January
A D 1853 the said defendants filed with the Clerk
of said Court a certain writing obligatory com-
monly called an appeal bond which is in the words
and figures following to wit

Know all men by these presents that We Daniel
J. M. Walker. Seth Partridge and William T.
Hinkley _____ of the County of St Davids
and State of Illinois are held and firmly bound
unto Osee Welch & George McCully also of the same
County and State in the penal sum of Six hundred
Dollars Current Money of the United States for the paym-
ent of which well and truly to be made we bind our-
selves our heirs executors and Administrators joint-
ly severally and firmly by these presents witness our
hands and seals this _____ day of January A D 1853

The condition of the above obligation is such that
whereas the said Osee Welch & George McCully did
on the tenth day of December A D 1852 in the Circuit
Court in and for the County and State aforesaid
recover a judgment against the above bounden
Daniel J. M. Walker & Seth Partridge for the sum
of Six hundred Dollars Debt (that being the amount
of the penalty in the Bond upon which the suit was
instituted) And the sum of Three hundred & Sixty
seven ⁷/₁₀₀ Dollars damages and Ten ⁵/₁₀₀ Dollars costs from
which said judgment of the said Circuit Court
the said Daniel J M Walker and Seth Partridge

have prayed for and obtained an appeal to the
Supreme Court of said State, Now if the said
Daniel & M Walker and Seth Partridge shall duly
prosecute their said appeal with effect - and
shall moreover pay the amount of the judgment
costs interest - and damages rendered and to be rendered
against them in case the said judgment
shall be affirmed in the said Supreme Court
then the above obligation to be void otherwise to re-
main in full force and virtue

Taken and entered into before me *D. M. Walker Seal*
this 24th day of January A.D. 1853 *Seth Partridge Seal*
Wm Hinkley Seal
Wm Hinkley Seal
Orville Bradley Clerk
Endorsed

Filed January 24th 1853

Orville Bradley Clerk

State of Illinois
Jackson County

I William H Bradley Clerk
of the Circuit Court in and for said County do hereby
certify that the foregoing transcript contains a
true full and correct copy from the record & files
of my Office of all the proceedings which were had
in said Circuit Court in said Cause of Alce Welch
& George McCully against Daniel & M Walker Seth
Partridge.

In testimony whereof I have here-
unto set my hand and affixed the
Seal of said Court at my Office in
Galena in said County this 1st day of
June A.D. 1853
Attest William H Bradley Clerk

Fee for this Record \$7. 57

And now comes the said appellant, ^{maker} and
says that in the record & proceedings aforesaid
and in the rendition of the Judgment aforesaid
there is manifest error in this to wit

1st The Court erred in overruling the demurrer to
Plaintiff declaration

2^d The Court erred in striking the plea in
abatement from the files

The above errors

And now comes the said appellant Partridge
and says that in the record & proceedings
aforesaid there is manifest error in this to
wit

1st The Court erred in striking plea in
abatement from the files

2^d The Court erred in admitting in evidence the
bond recited in the bill of exceptions

3^d The Court erred in admitting in evidence the
paper purporting to be the record of the
Loe Seaviss Co Circuit Court

4th The Court erred in admitting, ^{in evidence} the paper
offered as the opinion & record of the Supreme
Court

5th The Court erred in admitting the Fee Book
in evidence ~~was~~ stated in bill of exceptions

6th The Court erred in admitting in evidence the amendments and additions to the fee book mentioned in bill of exceptions

7th The Court erred in overruling apts motion to strike out & disallow the item of twenty three dollars & thirty three cents as stated in bill of exceptions

8th The Court erred in admitting improper evidence on behalf of Plaintiff

9th The Court erred in overruling motion for a new trial

10th The Court erred in rendering the Judgment aforesaid in manner & form aforesaid

Stevens & Co
attys for apts

And said Appelles say there is no ~~error~~ in the said record & proceedings & pray that said Judgment may be affirmed with damages -

Riggins & Shoben
for Appelles -

71

Saml. J. M. Walker et al.

Over Welch et al.

Receipt

71

Paid June 18. 1853.
L. Keland Clerk.

Deposited

7853

State of Illinois
Fourteenth Judicial Circuit
In Daviess County

Pleas in the Circuit
Court begun and held within
and for the County of Daviess aforesaid on
the fourth Monday of August in the year AD
1851 before the Judge of said fourteenth Judicial
Circuit to wit: Hon Benjamin R. Sheldon
Osee Welch & George McCully
Partners under the name and
style of Welch & McCully

vs
Daniel J. M. Walker Be it remembered
that heretofore to wit on
the 15th day of August AD 1851. The plaintiffs
Welch and McCully aforesaid by their Attorneys
filed in the Clerks Office of the Circuit Court
for said Daviess County their Affidavit &
precipe & thereon sued out of said Court a
writ of Capias to the said defendants which
said Affidavit precipe and Capias together
with the return of the Sheriff on the latter are
in the words and figures following to wit.

State of Illinois }
for Daviess County } This day personally
appeared before the
undersigned Clerk of the Circuit Court in
and for the County and State aforesaid Jos-
eph Price, who being first duly sworn, deposes
and says that he is the Clerk and Book Keeper
and agent of the firm of Welch & McCully in
the City of Galena, County & State aforesaid, who
are about to commence suit against Daniel
J. Mc. Walker, and that the said Daniel J. Mc.
Walker is justly indebted to Oseo Welch and Geo-
rge McCully partners in trade under the name
and style of Welch & McCully in the sum of
Three hundred and fifty four Dollars ⁷⁹/₁₀₀ for goods
sold and delivered by said Welch & McCully to
said Daniel J. Mc. Walker, and for money loaned
to said and advanced for said Daniel J. Mc
Walker by said Welch & McCully at said Walkers
special instance and request, and also on account
stated as follows:

Daniel J. Mc. Walker

For Welch & McCully Dr

To account rendered

\$448.79

1857. Aug 16 Cash paid N. Corwith & Co

for you

200
648.79

Contra Per

July 28 merchandise as per credit 289.30
\$ 354.41

leaving a balance due per account dated this day, of Three Hundred and fifty four Dollars ⁴²/₁₀₀ due from said Daniel J. M. Walker to the said Osee Welch & George McCully partners as aforesaid, and that the said debt and the benefit of whatever judgment may be obtained by the said Osee Welch and George McCully against the said Daniel J. M. Walker in the said Circuit Court for said indebtedness will be in danger of being lost unless the said Daniel J. M. Walker be held to bail agreeably to the law of the State of Illinois.

Subscribed & sworn to Joseph Price
before me this 16th day of
August A. D. 1851.

Wm H. Bradley clk
By C. C. Ripley Depy

Endorsed

Filed August 16th 1851
Wm H. Bradley clk
By C. C. Ripley Depy

State of Illinois }
Do Daviess County } Set

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

We command you that you take Daniel F.
Mc Walker, and him safely keep, so that you
have his body before the Circuit Court of Do Daviess
County, at the next term, to be holden at Galena
on the fourth Monday of August 1851, to answer
Osee Welch & George McCully, trading as partners
under the name and firm of Welch & McCully
in a plea of Trespass on the Case on promises.

Damages. Three hundred & fifty four Dollars & forty
nine cents.

And have you then there this writ
Witness. William H. Bradley, Clerk
of the Circuit Court of Do Daviess
County, Illinois, at Galena, this
16th day of August. A. D. 1851.

Attest: William H. Bradley Clerk

The Sheriff is directed to hold the Defendants
to bail in the sum of \$208.98

Wm H. Bradley Clerk
By Enos C. Ripley Depy

Endorsed, is the following return.

Executed this writ this 16th day of August
A. D. 1851, by arresting the within named Daniel
F. Mc Walker, after which the said Daniel F. Mc
Walker was discharged from my custody by giving
Bond.

C. C. Saunders Sheriff.

And afterwards to wit: at the August Term of
said Court A.D 1851 to wit: on the 25th day of
August A.D 1851 in the Records of said Court in
said Cause is the following entry to wit:

Isue Welch and George McCally }
vs } Case
Danl J. Mc Walker }
The Defendant
by his Attorney comes and moves the Court to
quash the Capias & cancel the bail bond herein
& direct the Capias to stand as a summons
for reasons filed.

Which motion is in the words & figures
following. To wit:

D. J. Mc Walker } Affumpart
vs } In Circuit Court of for
Welch & McCally } Davis County. Aug Term
thereof 1851.

The said Defendant by Stevens his
Att'y comes and moves the Court to quash
the Capias & cancel the Bail Bond herein, and
order the Capias to stand as a summons, for
the following reasons. 1st The Affidavit does
not state in what Court, or when, or at what

term the Plff are about to come first
2^d The affidavit does not state when the
supposed indebtedness accrued, or whether the
same was due & payable at the time of suit
brought. 3^d The affidavit does not point
out with certainty either the judgment
which will be in danger of being lost, the
Court in which the same is to be rendered,
or the account upon which judgment is ex-
pected to be rendered. & 4th For other good &
sufficient reasons appearing upon the affidavit
S. P. Stevens
Atty for Deft

Endorsed

Filed Augt 25th 1851
Wm M. Bradley clk

And afterward to wit: on the 29th day of
August 1851 at yet of the August Term A.D. 1851
in the Records of said Court, in said cause
is the following entry to wit:

Case Welch & George McCully

vs

Daniel J. M. Walker

Case

Now came on to
be heard the Motion of the Defendant heretofore

filed by his attorney to quash the Capias &
cancel the bail bond herein and direct the
Capias to stand for a Summons for reasons
filed, which motion after argument by counsel
is overruled by the Court to which ruling &
decision of the Court the Defendant by his
attorney accepts

and afterwards to wit on the 13th November
a d 1851 the Plaintiffs by their attorney filed
in said Court their Declaration against
the said Defendant in the words and
figures following to Wit^s

State of Illinois } ss In & David Circuit
David County } Court November Term
1857.

First Count. Osee Welch and George McCully
trading as partners under the name and style of
Welch & McCully complain of Daniel C. Mc Walker
in a plea of trespass on the case on promises.

Second Count. For that the said Defendant
heretofore, to wit: on the 16th day of August, in the
year of our Lord One Thousand Eight hundred
and fifty one, at Galena, to wit: at the County
aforesaid, was indebted to the said Plaintiffs in
the sum of \$ 500 Dollars lawful money of the Uni-
ted States, for the work and labor, care and diligence
of the said Plaintiffs, by the said Plaintiffs before
that time done, performed and bestowed, in and about the
business of the said Defendant, and at his special
instance and request; and also, for divers materials
and other necessary things, by the said Plaintiffs before
that time found and provided, and used and ap-
plied in and about that work and labor, for the
said Defendant, and at his like special instance and
request; and also, in the further sum of \$ 500 Dollars
of like lawful money, for divers goods, wares and
merchandise, by the said Plaintiffs before that time
sold and delivered to the said Defendant and at

his like special instance and request; And also, in the further sum of \$ 500 Dollars of like lawful money, for money, by the said Plaintiffs before that time lent, and advanced to, and paid, laid out and expended, for the said Defendant, and at his like special instance and request; and also, in the further sum of \$ 500 Dollars of like lawful money, for other money by the said Defendant before that time had and received, to and for the use of the said Plaintiffs; and also, for that the said Defendant accounted with the said Plaintiffs of and concerning divers other sums of money from the said Defendant to the said Plaintiffs, before that time due and owing, and then in arrear and unpaid, and upon such accounting the said Defendant was

then and there found to be in arrear and indebted to the said Plaintiffs in the further sum of \$ 500 Dollars of like lawful money, and being so indebted, the said Defendant, in consideration thereof afterwards, to wit: on the day and year last aforesaid, at the County aforesaid undertook, and then and there promised the said Plaintiffs to pay them the said several sums of money in this Court mentioned, when he, the said Defendant, should be thereunto afterwards requested.

Breach. And yet, the said Defendant,

State of Illinois } ss. In So Davies Circuit
So Davies County } Court November Term
1857.

First Count. Osee Welch and George McCully
trading as partners under the name and style of
Welch & McCully complain of Daniel C. Mc Walker
in a plea of trespass on the case on promises.

Second Count. For that the said Defendant
heretofore, to wit: on the 16th day of August, in the
year of our Lord One Thousand Eight hundred
and fifty one, at Galena, to wit: at the County
aforesaid, was indebted to the said Plaintiffs in
the sum of \$ 500 Dollars lawful money of the Uni-
ted States, for the work and labor, care and diligence
of the said Plaintiffs, by the said Plaintiffs before
that time done, performed and bestowed, in and about the
business of the said Defendant, and at his special
instance and request; and also, for divers materials
and other necessary things, by the said Plaintiffs before
that time found and provided, and used and ap-
plied in and about that work and labor, for the
said Defendant, and at his like special instance and
request; and also, in the further sum of \$ 500 Dollars
of like lawful money, for divers goods, wares and
merchandise, by the said Plaintiffs before that time
sold and delivered to the said Defendant and at

not regarding his said several promises and undertakings, has not as yet paid the said several sums of money, or any, or either of them, or any part thereof, to the said Plaintiffs, though often requested so to do, but, the said Defendant to, pay him the same, has hitherto wholly neglected and refused, and still does neglect and refuse to the damage of said Plaintiffs, of 354 Dollars and 49 cents, & therefore. They sue, &c

Wiggins & Strother for Pls

Copy of the note sued on
Amended Bill of particulars

\$ 200.00

Galena May 14th 1837.

Gen^l

Three months after date
pay to the order of myself Two hundred Dollars
at the office of S. P. Corwin & Co Galena Ill for
value received, and charge to Messrs Welch & McCully
Galena Ill.

Accepted
Welch & McCully

Your obt servt

D. J. M. Walker.

Endorsed

Filed Nov 12th 1851

Wm H. Bradley Clerk

Mr J S Walker

To Welch & Mc Cully Dr

1850

December	7	To 24 L Cast Steel	" 22 ^c	" "	5 28
"	18	" 922 " Bar Iron	" 4 ^c	36 88	
"	"	" 194 " A. S. D	" 5 ¹ / ₂	10 67	
"	"	" 215 " 1/2 In Rd Iron	} 7 ^c	15 05	
"	"	" 3/4 In "			
"	"	" 67 L Nail Rod	8 ^c	5 36	
"	"	" 205 " Band Iron	6 ¹ / ₂	13 33	
"	"	" 1 Paper Tacks		10	81 39
Jan	6	" Transportation on Ploughs		" "	1 75
"	"	" 1 12 Inch Gauge		75	
"	"	" 1 Quake Bill chisel		50	
"	"	" 3 Auger Bits 1/6 In & 1/6		1 22	
"	"	" 1 small Gauge		25	2 72
"	8	" 125 D 1/2 In Iron Turnip 7 ^c			8 75
"	13	" 343 Iron	3 1/2	13 76	
"	"	" 200 Band do.	6 ¹ / ₂	13 00	26 76
"	"	" 1 Gr ^s Screws & 3/6 & 6/-		" "	1 19
"	23	" 1 Linn S Paper		" "	35
Feb	8	" 1 pr Batts & Screws		15	
"	"	" 1 Chest Lock		50	
"	"	" 1/2 Doz Files 12/-		75	1 40
"	14	" 1 Gr ^s Screws		44	
"	"	" 2 L 3 Nails	8 ^c	16	60
				amount paid	110 05

(22)	"	24	" 1 Paint Brush			56
"	"	24	" 24" Scallop Iron	5 1/2 c	160	
"	"	"	24" Bar "	4 c	964	
"	"	"	16 3/4 Inch Rd Timp	6 1/2	104	12 28
"	"	27	" 26 Dandy Tyre	6 1/2		169
Mar	7	"	22" Bar Bar Iron Timp	5 c	113	
"	"	"	36 Pittsburgh Bar	4	144	257
"	"	"	2 Files	7 1/2	175	
"	"	"	1 Quin Sand paper		35	2 10
"	12	"	1 Bdl H. S. Iron 100 Dr.	5 1/2	550	
"	"	"	75. De Bar &	4 c	300	
"	"	"	41. Scallop &	5 1/2	225	
"	"	"	34 3/4 In Rd Timp	6 1/2	221	
"	"	"	27. Nail Rod	8 c	216	15 12
"	"	"	107 1/2 In Sq Timp	7 c		7 49
"	19	"	17 1/2 - Cast-Steel	22 c	385	3 85
"	27	"	197 " Bar Iron	4	788	
"	"	"	65 " Horse shoe de	5 1/2	357	
"	"	"	97 " Bar Iron	6 1/2	630	
"	"	"	3 1/2 Octagon Steel	22 c	77	
"	"	"	40 3/4 In Series	4	25	18 77
April	7	"	76 1/2 Bar Iron	4	304	
"	"	"	18 Dandy Tyre	8 1/2 c	99	4 03
"	12	"	1 Spring " 33 L "	14 c		4 62
"	14	"	36 1/2 Bar Iron	4	1444	
"	"	"	174 Slab	7	1218	
"	"	"	3 " Hoop	8	24	26 86
"	17	"	10 1/2 Inch Rd Iron	6 1/2	65	
"	"	"	9 " 78 " "	6 c	54	
"	"	"	30 " 2 X 3/8 " Iron	4	120	2 39
Carried forward					232 47	

	To Amount Brought over			232 47
April 7	" 76 D Bar Iron		304	
" "	" 18 " Dandy Tyre	5 ²	99	403
" 12	" 1 Spring " " 332	14 ²		462
" 14	" 361 D Bar Iron	4 ⁰	1444	
" "	" 174 " Slot " "	7 ²	1218	
" "	" 3 " Hoop	8	24	2686
" 17	" 10 1/2 Inck Rd Iron	6 1/2	65	
" "	" 9 1/8 " " "	6	54	
" "	" 30 " 2X 3/8 " Iron	4 ⁰	120	239
" 19	" 25 1/2 x 1/2 Tennessee	5	" "	125
" 22	" 89 " 7 In Plough Steel	9 ²	801	
" "	" 54 1/2 In Square Iron	6 1/2	351	
" "	" 80 " H S Iron " "	5 1/2	440	1592
" 26	" 39 " Bar Iron " "	4 ⁰	" "	156
" 28	" 13 1/8 In Sq Iron	6 1/2	85	
" "	" 14 1/2 Inck Rd do	6 1/2	91	
" "	" 19 5/8 " " "	6 ⁰	114	
" "	" 1 Pocket Knife		100	390
" 30	" Screws & 1 Paper Sacks		" "	48
May 5	" 1 Wheel to do	5 ⁰		330
" 6	" 43 D Iron Tennessee	8	215	
" "	" 30 1/2 Inck x 5/8 Round	6 1/4	188	
" "	" 23 " Bar Iron	4 ⁰	92	495
" 7	" 31 " Iron Tennessee	6 1/2	" "	217
" 12	" 35 " Bar Iron	4 ⁰	140	
" "	" 2 Auger Bits		67	207
" "	" 1 Quire Sand paper			35
" 13	" 13 D 3/4 In Rd Iron	6 1/2	56	85
" 14	" 8 " 3/4 Rd Iron	7	56	
" "	" 20 5/8	8	120	
" "	" 64 Bar Iron	4	256	432
" 15	" 25 do do	4		100

"	16	" 88 " Dr	De	4 ⁰		352	
"	"	" 1 Saw	"	"	"	200	
"	19	" 19 ⁰ 5/8 In R ^d Iron	6	114			
"	"	" 12 " 1/2 In R ^d Iron	5	78			
"	"	" 3 " Bar Iron Tennessee	5	180		3,72	
"	"	1 Bar 1 1/4 In Cast Steel 37 ⁰ 22				814	
"	20	28 ⁰ 5/8 In Sp Tennessee	7 ⁰	196			
"	"	34 " Bar Iron	4 ⁰	136		332	
"	21	" 330 Bar Iron	4 ⁰	1320			
"	"	" 1 Slab Plough Steel 75 ⁰ 20	9 ⁰	675			
"	"	" 40 1/2 In Sp Tennessee	7 ⁰	280			
3 1957	"	" 25 1/2 In R ^d Pittsburgh	6 1/2	163		2428	
May	(2)	" 182 ⁰ Slab Iron 82	"	"		1456	
"	24	" 11 " Nail Rod Tennessee	8 ⁰	"		88	
"	26	" 53 " Bar Iron	4 ⁰	"		212	
"	27	" 1 Knife	"	125			
"	"	" 1 Saw Set	6 ⁰	75		200	
"	"	" 99 ⁰ Steel	9 ⁰			891	
"	29	" 30 3/8 In R ^d Iron	8 ⁰	240			
"	"	" 38 " 1/2	7 ⁰	266		506	
"	30	" 100 " Steel	9 ⁰	900			
"	31	" 83 " Bar Iron	4 ⁰	332		1232	
June 2	"	" 52 " Bar Iron	4 ⁰	208			
"	"	" 12 " 3/4 In R ^d Iron	5 1/2	66		274	
"	4	" 37 " Bar Iron (Tennessee)	5 ⁰	185			
"	"	" 27 " 1 x 2/3 " Dr	6 1/2	175			
"	"	" 13 " 5/8 In Sp Dr	6 1/2	85		448	
"	5	" 18 1/2 In Round Iron	6 1/2	117			
"	"	" 30 " 1/2 " Sp Tennessee	7 ⁰	210		327	
"	9	" 102 " Bar Iron	4 ⁰	408			
"	"	" 94 " Slab Iron	8 ⁰	672			
"	"	" 20 " 5/8 R ^d Dr	6 ⁰	120		1200	
Amount Carried forward						38798	

To Amount Brought forward				367.98
"	10	" 35 " Sqr cast Steel	22 ⁹	770
"	12	" 52 1/2 Bar Iron	4 ⁹	210
"	16	" 40 L L. Tennessee	5	200
"	18	" 45 Rail Rods	8 ⁹	360
"	19	" 17 1/2 Bar Iron	4 ⁹	810
"	23	" Cornsaw on cultivator		664
"	24	" 91 L Slab Iron	80	728
"	"	" 42 L Slab Steel	90	378
"	"	" 47 Bar Iron	4 ⁹	188
"	25	" 35 " Bar Iron (Tennessee)	5	175
"	"	" 9 " 1/2 In Sqr do	70	63
"	"	" 20 3/8 Rd Pittsburg	60	123
"	28	" Cash on Ac of note	"	6500
July 3	"	2. 1/3 Lst hollow augers		
"	"	6 pieces	6/	450
"	"	" 1 Bell		50
"	"	" 1 File		60
"	10	" Expenses in Correspondence	"	200
"	11	" 18 D. 3/4 Sqr Iron	5 1/2	99
"	19	" 67 " 1 1/2 In Sqr Iron	4 ⁹	268
"	"	" 154 " (2 Inch " "	6 1/2	1001
"	"	" 107 " (1 1/4 x 1/2 " "	40	428
"	"	" Cash your note		20000
				<u>72529</u>

Amended Bill of particulars

200\$ Galena May 14 1851

Gent

Three months after date pay to the order of myself
Two hundred dollars at the office of McCorvith & Co Galena Ill
for value received and Charge

To Messrs Welch
& McCully
Galena Ill

Your Obedt Servt
D. J. M. Walker

To accepting and paying a bill of exchange
of which the above is a true copy. for your
accommodation & at your request

To Messrs

\$ 200 or

To Interest on same

10, or



filed by his Attorney to quash the capias and
cancel the bail bond herein & direct the capias to
void stand for a summons for process filed. Which
motion after argument by counsel is overruled
by the Court, to which ruling & decision of the
Court the Defendant by his Attorney excepts

And afterwards to wit on the 24th day of Novem-
ber A.D. 1851 of the November Term A.D. 1851 of
said Court The Defendant by his attorney filed the
following Motion viz

Welch & McCully }
vs } In the 1st District Circuit
D. J. M. Walker } Court to the Nov Term 1851

The Defendant in the above Cause
moves the Court to rule the Plff to file with their
declaration in this Cause a copy of the note
fused on

S. P. Stevens Atty
for Deft

Endorsed

Filed Nov 24th 1851
Wm H. Bradley CLK

And afterwards, to wit: on the 19th day of
December A.D. 1851. as yet of the November Term
A.D. 1851 of said Court, is the following entry, to wit:

Osee Welch & George McCully

vs

Daniel J. M. Walker

Case

The Defendant
by his Attorney comes and moves the Court for
a continuance herein. Which motion is overruled
by the Court. And on motion of the Plaintiff by
their Attorney, the Defendant is ruled to plead by
the meeting of Court this afternoon. And the
Defendant by his Attorney comes and files his
plea & Notice.

Which Plea and Notice are in the words
and figures following. To wit:

D. J. M. Walker In Circuit Court of for
ad Daviess County to the
Welch & McCully Nov- Term 1851.

And the said Defendant, by A. P. Stevens
his Atty comes & defends the wrong & injury when
he and says that he did not undertake or pro-
mise in manner and form as the said
Plaintiffs hath above complained against him.
And of this he puts himself upon the Country
Stevens for Deft
And the said Plff with the like

The above named Plaintiffs will please take notice that on the trial of this cause the said Defendant Walker will insist upon, give evidence of, and prove to be true, the several items of account stated & mentioned in the two Bills of particulars hereto annexed, and marked (A & B) and made part of this notice, as a just, fair & true set off to, and in full payment of, and over payment of all and every of the said causes of action, in the said Plaintiffs declaration, charged and stated against said Defendant. And the said Deft will claim and demand judgment for all balance or balances found due him

Stevens for Deft

Bill of particulars marked (A)
Welch & McCully

Dec 12 /50

To D. F. M. Walker Dr

To ten 2 Horse plows at \$12. \$120. 00

do. one 16 inch Breaker — — 16. 00

March 25 /51 do. one 18 inch Breaker — — 18. 00

To one one horse plow — — 10. 00

do. one 2 horse plow 12. 00

April 7. To one 20 inch Breaker 20. 00

" do one 18 inch do — — 18. 00

" do one 16 inch Breaker — — 16. 00

" 14.	do one 18 inch Breaker - -	15. 00
" 17.	do 2 16 inch Breakers - -	32. 00
"	do one 15 inch Breaker	15. 00
30	do one 14 inch Breaker	14. 00
May 6.	To 5 one horse plows at 10 ⁰⁰ each -	50. 00
" 10.	do one 2 horse plow - - -	12. 00
" 16.	do 3 Two horse plows at 12 ⁰⁰ each	36. 00
" 19.	do 2 one horse plows at 10 ⁰⁰ each	20. 00
" 25.	do 4 Two horse plows at 12 - -	48. 00
" "	do one 18 inch Breaker - -	18. 00
June 6.	To one 15 inch Breaker - - -	15. 00
" 16.	do one 18 inch Breaker - -	18. 00
" "	do one 17 inch Breaker - -	17. 00
" "	do one 15 inch Breaker - -	15. 00
" 20.	To one cultivator - - -	7. 00
		<u>561. 00</u>

Bill of Par (marked P.)
 Welch & McCullly

1850.	To D. J. M. Walker Dr	
Dec. 10.	22 lbs Steel - - at 22 - - -	4. 84
" 12.	10 Two horse plows - - \$12	+ 120. 00
"	one Prairie plow - -	+ 16. 00
"	do do do	+ 19. 00
Jan. 28	To one piece steel 39 lbs -	3. 51
March 14.	To 14	. 91
" 26.	do one plow - - -	+ 9. 00
" "	do one plow (2 horse)	+ 12. 00

"	"	do one small prairie plow -	15.00
"	"	do one spring - - -	7.62
May	14	- steel	17.00
"	30	one plow com	17.00
June	6	To one prairie plow	15.00
"	12	To 3 1/2 lbs cast steel	6.98
"	21	To 3 prairie plows on com	47.00
"	23	do one cultivator	7.00
"	27	To cash from Jones & Co	65.00
July	11	To 65 lbs Lgr Iron	2.62
"	"	do 110. do do \$967.86	7.15
			178.56

Brought down from (A) 561.00
 Total amt due - \$ 739.56

Recapitulation

Amount of Bill of Par - (A)	\$ 561.00
Amount of Bill of Parti marked (B)	
and not included in Bill (A) - - -	\$ 178.56
Total amt due	\$ 739.56

Stevens & Johnson
 Atty for Deft

Additional Amended account filed under leave
 of Court.

6 one horse ploughs 10 \$ ea	\$ 60.00
To cash received	85.00

Endorsed. Filed Decr 19th 1851. Wm H. Bradley clk

And afterwards, to wit: on the same day
to wit: the 19th day of December A.D. 1851. the
Plaintiffs by their Attorney comes & files their
Replication to set off in the words and figures
following to wit:

Osce Welch & George McCully } for Daniel Cairns
vs } Court November
Daniel F. M. Walker } Term 1851

And the said Plaintiff as to the said
plea of set off of the said Defendants
say precludi non, because they say that
the said Plaintiffs were not & are not inserted
in the said Defendant in manner & form
as the said Defendant hath above in his said
last plea in that behalf alleged: And thus
they the said Plaintiffs pray may be en-
-ired of by the County.

Howard Higgins & Strother
Attorneys for Plff

And the Defendant with
the like

Stevens & Johnson Deft Atty

Endorsed. Filed Dec^r 19th 1851

Wm H. Bradley clk

Also Endorsed "Withdrawn as there is no plea
of set off in this case, by agreement of parties."

And afterwards to wit: in the March Term of
said Court A.D. 1852. to wit on the 8th day of
March A.D. 1852 in the records of said Court
in said Cause is the following entry to wit:

Orel Welch & George McCully }
vs } Case
Daniel J. Mc. Walker }

On motion of
The Defendant by his Attorney, leave is gran-
ted him by the Court to amend his account
filed herein. And also on motion of the
Plaintiffs by their Attorney leave is granted
them by the Court to amend their account
filed with their Declaration, which amendments
are accordingly made instant.

And afterwards. To wit: in the May
Term A.D. 1852. of said Court to wit on the
15th day of May A.D. 1852. in the records of said
Court, in said Cause is the following entry to wit:

Orel Welch & George McCully }
vs }
Daniel J. Mc. Walker } Now at this day
came the parties
by their Attorneys and upon issue joined

Thereupon came a jury of good and lawful men to wit: James Connolly, William J. Nicholson, Hugh Brady, Hugh Mc Guire, B. H. Mc Goan, J. C. Chamberlain, Alfred Thatcher, James Brown, William C. Green, Patrick Mc Lear, Matthew Faircliff, and Peter Ostrander, who were duly elected, tried and sworn, and after hearing the evidence on the part of the Plaintiffs the further consideration of the Cause is postponed until Monday morning next.

And afterwards, to wit: on the 17th day of May A.D. 1852, as yet of the May term A.D. 1852 of said Court, in the records of said Court in said Cause is the following entry, to wit:

Oliver Welch & George McCully	} Case
vs	
Daniel J. Mc Walker	

The jury heretofore empaneled in this Cause this day returned with Court, and now come again the parties by their Attorneys, and after hearing the remainder of the evidence and the opening arguments of Counsel, the further consideration of the Cause is postponed until tomorrow morning.

And afterwards, to wit: on the 18th
day of May A.D. 1852. as y^t of the May term
A. D. 1852. of said Court, in the records of said
Court in said Cause is the following entry to wit:

Orce Welch & George McKully }
vs } Case
Daniel F. M. Walker }

The jury heretofore
empaneled in this Cause this morning retu-
rned into Court, and now came again the
parties by their Attorneys, and after hearing the
concluding arguments of the Counsel the jury
retired to consider of their verdict, and after a
short absence they returned into Court, with the
following verdict, to wit: We the jury find for
the Plaintiffs and assess their damages at
the sum of Five hundred and sixty five Dollars
and twenty nine cents. And the Defendant by his
Attorney moves the Court for a new trial.

The Motion for a new trial is in the words &
figures following, to wit:

Walker } Circuit Court
vs } May Term A. D. 1852.
Welch & McKully }

The Defendant comes and
moves the Court for a new trial in the above cause

for the following reasons.

1. Because the verdict is contrary to law.
 2. Because the verdict is contrary to evidence.
 3. Because the jury have entirely disregarded the evidence in the cause.
 4. Because the jury have allowed the Plaintiff more than they claim in the affidavit, and show themselves entitled to by the proof.
 5. Because the jury have arbitrarily assessed an amount not warranted by any of the evidence in the cause.
- C. And for other reasons apparent on the records and proceedings in this cause.

Stevens & Johnson
Attys for Deft

Endorsed

Filed May 18th 1852.

Wm. H. Bradley clerk

The motion for an arrest of judgment is in the words & figures following. to wit:

Welsh & McCully	}	Superior Court May Term 1852
vs D. J. Mc Walker		

The Defendant by his attys

comes and moves the Court in arrest of judgment in the above entitled cause for the following reasons.

1. Because the verdict is special and does not find any debt or damages in favor of the Plaintiff.
2. Because the verdict returned by the jury is not responsive to the issue submitted to them.
3. Because no judgment for damages can be rendered on the finding and return of the Jury.
4. Because the verdict is uncertain in not stating whether the amount returned by them is Debt, Damages or the amount of the Plaintiff's or Defendant's account.
5. Because the verdict does not show a finding and return by the jury of any amount of Debt or Damages in favor of the Plaintiff, otherwise than inferential.
6. Because the verdict returned by the jury is uncertain, ambiguous, unfinished and void, and no judgment can be rendered by the Court responsive to the finding of the jury.
7. Because the Court can render no judgment on said verdict for Debt or Damages, the same not being found by the jury.
8. And for other sufficient reasons apparent

on the records and proceedings in the case.

Stevens & Johnson Deft Atty

Endorsed

Filed May 18th A.D. 1852

Wm H. Bradley, Clerk

and appended to the 19th Day of
May A.D. 1852 in the Record of the proceedings
of said Court in said Cause is the following
entry to wit: "



Case Welch & George Mc Cully vs Case

Daniel D. M. Walker & Son at this day came on to be heard the motion of the defendant heretofore filed by his Attorney for a new trial of this cause and the plaintiffs by their Attorney enter a remittitur ^{on the verdict} of two hundred and ten Dollars and eighty Cents and the defendant by his Attorney moves the Court for leave to withdraw from the files all those items of ploughs in his set off except the items of one one horse plough, one two horse plough, and one Cultivator which said last motion of the defendant by his Attorney is overruled by the Court to which the defendant by his Attorney excepts. And the Court overrules the motion of the defendant for a new trial of this cause and the defendant by his Attorney thereupon moves the Court in arrest of judgment which motion after argument by Counsel is overruled by the Court. to which ruling and decisions of the Court in overruling said motions for new trial and in arrest of judgment the said defendant by his Attorney excepts. and it is ordained by the Court that the verdict of the jury returned herein be entered of Record and is in the following words and figures to wit

Amount of Messrs Welch & McCullys Bill
as per account \$725.29

Amount of Interest on \$200. for 9 Months 9.00
734.29

Amount of D. J. M. Walkers account

1 One horse plough \$9.00

1 Two " " 11.00

1 Cultivator 7.00

Iron & Steel Returned 30.00

Money Collected 46.40

Cash received 65.00
169.00

Amount set down this day \$565.29

We the jury find for the plaintiff the sum of five hundred and sixty five dollars and twenty nine cents

\$565.29 R. H. McLean James Connolly P. Mc. Lear
W. S. Nicholson & Mc Guire James Brown
Hugh Brady M. S. Green J. C. Chamberlain
McFinnett P. Q. Stranden Alfred Thatcher

And therefore the Plaintiffs by their Attorneys move
the Court for judgment upon the verdict of the
jury less their Remittiter aforesaid. It is therefore
considered by the Court that the Plaintiffs have
and recover of the defendant the sum of Three
hundred and fifty four Dollars and forty nine
cents Damages that being the amount of the
verdict of the jury less the Plaintiffs Remittiter
aforesaid

aforsaid together with their cost by them about
their suit in this behalf expended and that
they have execution therefor. And the defend-
ant by his Attorney prays an appeal to the Supreme
Court which is granted by the Court conditioned
that the defendant enter into bond in the
sum of Five hundred dollars with Seth
Partridge as his security within twenty days
from this date

And afterwards to wit
on the 29th day of May A.D. 1852 the defendant
filed in the Clerks office of said Circuit Court
an appeal Bond which is in the words and fig-
ures following to wit

Know all men by these presents that we Daniel
J. M. Walker and Seth Partridge of the County
of Jo. Davis and the State of Illinois are held
and firmly bound unto Osee Welch and George
McBully also of said the same County and State
in the personal sum of five hundred dollars
lawful money of the United States for the
payment of which well and truly to be made
we bind ourselves our heirs executors and ad-
ministrators jointly severally and firmly by these
presents sealed with our seals and dated at Sal-
ina this twenty ninth day of May A.D. 1852

The condition of the above
obligation is such that whereas the above

named Osee Welch and George McCully
partners under the name and firm of
Welch and McCully did on the 19th day of
May A.D. 1852 in the Circuit Court in and
for the County of Jo Daviess aforesaid recover a
judgment against the above bounden Dan-
iel J. M. Walker for the sum of three hundred
and fifty-four dollars and forty nine cents
damages and also for the sum

judgment of the said circuit court the
said Daniel J. M. Walker has prayed for and
obtained an appeal to the Supreme Court of
said State ~~now~~ if the said Daniel J. M.
Walker shall duly prosecute his said appeal
with effect and shall moreover pay the amount
of the judgment costs interest and damages
rendered and to be rendered against him in
case the said judgment shall be affirmed in the
said Supreme Court then the above obligation
to be void otherwise to remain in full force
and virtue

Taken and entered
into before me at my
Office in Galena this 29th
day of May A.D. 1852

Wm^l Bradley Clerk

D. J. M. Walker (Seal)

Seth Partridge (Seal)

Filed May 29th 1852
Wm^l Bradley Clerk

State of Illinois
Jr Damp County 3rd Jct

I William H Bradley clerk
of the Jr Damp County Circuit Court in
and for Said County do hereby Certify that
the foregoing transcript is a true and correct
copy from the Records and files in my
office of the case of Asa Welch and
Gerrit Mc Cullis Partners de against Daniel
J Mc Walker.

In testimony whereof I have hereunto
set my hand & affixed the Seal
of Said Court at my office in
Gallena in Said County, this 17th
Day of June A D 1853

Attest

W^m H Bradley, clerk
By
Geo McMichael Deputy

And now comes the said appellant and says that in the record & proceedings aforesaid and in the rendition of the Judgment aforesaid there is manifest error in this to wit

- 1st The Court erred in overruling the motion of said appellant to quash the copies & discharge bail
 - 2 The Court erred in overruling the motion of appellant for leave to withdraw his set off in Court below
 - 3 The Court erred in overruling motion for a new trial
 - 4 The Court erred in overruling the motion for ~~new trial~~ in arrest of Judgment
 - 5th The Court erred in rendering ^{no} Judgment aforesaid in manner & form aforesaid
- For which errors & others in said record against said appellant prays said judgment maybe reversed

Stevens Woodcock
att^y for appellant

And said Appellees say that there is no error in the record, proceedings ~~aforesaid~~ ^{disputed by the} attorneys

74
Melchior McCalley
vs 3 Deans expt
d J M MacKen

Filed June 20. 1853.
C. Seland Clerk.

Atty Gen for Bancroft
Eight volumes, rec'd from
dependent Mr & Mrs Brady, ex
R. Gen M. Nichols Esq

Welch McCully } Appeal from Goddard =
 Daniel F. M. Walker }

The motion to quash the Capias
 was addressed to the discretion of the
 Court = Error cannot be assigned = 2 Scam
 McE 900 # 11000 & Scam 74 Bunker & 24
 Eastman & Gil 254 - 1 Scam 566 1000
 # 1000000 =

Answer to 2^d Error The motion to
 withdraw the account of set off of
 defendant was made after the items
 had been submitted to a jury & in part
 allowed & in part disallowed; the
 defendant takes his chance of re-
 verdict & as to the items allowed
 he is satisfied; but for the items
 not allowed he will leave to
 withdraw the case so that he may
 sue again = This he could not
 do even if allowed to withdraw
 his case for an account cannot
 be split up so as to maintain an
 action on separate items - Rule
 5 B & D = Lord Nugent & 1100000
 19 March Bunker & 24
 8 in Bunker & 24

Again the testimony is not preserved so that this court cannot see whether the court below erred or not. If the case was proved & the jury failed to believe the items proved, then if the defendant wished to review the action of the Circuit Court here he should have preserved the testimony to show to the court here that the court below was in error.

How can this court see whether a new trial ought to have been granted or whether the case could be allowed to be withdrawn.

The record shows that it ought not to be allowed because the application was made after verdict. & the record shows that a part of the items were allowed.

Again the presumption here is that the Circuit Court decided correctly, and the defendant is bound to show by the record that the court below erred. This the record

Welch & Co. Lully-
H-
Dumet & Co. Waller

Does not show -

Answer to Error 3rd ~~4th~~ There is no
Bill of Exceptions, and as the Court
here does not know what the testimony
in the Court below was it would
be rather difficult to say that the
Court below erred =

Error 4th 4 Black 12, 3 Johns 427 - 1 Bibb 257 -
2 Bibb, 178 = 10 Mass 64 = 2 Johns 181 = 7 Humph 220 -
14 Conn 272 = 8 Black 381 = 10 N. H. 574 =
6 Mass, 254 = 1 New Mass 579 = 8 B. Mon. 225 =

No objection in the Court below 3 Scam, 483 =

Answer to Error 5th The action
was assumpsit & the judgment
in the usual form for damages

Higgins, Strothers
Attorneys for
Appellees

There were no issues on this notice of
error & it is because the jury found
all that was necessary 8 B. Mon. 227 =

O'REILLY'S
Illinois and Mississippi Line.

Office up stairs, in Reddick's Block, Ottawa, Ill.

COMMUNICATIONS STRICTLY CONFIDENTIAL.

Please write plainly, answer promptly, avoid figures, give full address of yourself and correspondent, and state whether you desire to pay for reply.

Dated Galena June 13 1853.

To E. S. Delancey

Record was ordered
by appellants when
made out appellee's
attorney took them
Other records are now
being made out
J. P. Stevens

O'REILLY'S
Illinois and Mississippi Line.

Office up stairs, in Reddick's Block, Ottawa, Ill.

COMMUNICATIONS STRICTLY CONFIDENTIAL.

Please write plainly, answer promptly, avoid figures, give full address of yourself and correspondent, and state whether you desire to pay for reply.

Dated Galena June 15 1853.

To Ed Delancey

Ask for time to file records in
cases of Walker v Melick & McCully
appeals from this court also
Walker and Partidge v Melick &
McCully and I will send you
Records J. P. Stevens

State of Illinois
La Salle County

B. C. Cook being first duly sworn
saith on oath that he received a telegraphic
dispatch this morning directing a motion
to be made in the case of Walker & Welch
& McCully appeal from Joe Daviss and
in the case of Walker & Partridge & Welch
& McCully ^{appeal from Joe Daviss} for further time to file the records
Affiant has since received a telegraphic
dispatch from P. P. Stearns counsel for the
appellants. stating that the records were
ordered in time by the appellants but that
when made out said records were taken
by the counsel for the appellants, and that it
was necessary to have new records made
out which he is now having done with
all dispatch #

In the ^{last} named case affiant
understands from Mr. Higgins ^{attorney for appellants} that he has
the record now & that it was made out
for appellants with the understanding with
the clerk of the circuit court that
the same might be used by appellants
if they require the same & called upon him
for it & in that case ~~appellants~~ ^{to return}
~~same~~ ^{clerk} was not to make out a new record but
to have the one he delivered to
appellants

Subsd. & sworn to before
me June 16. 1853.

Heland C. K.

Walker & Welch

Affidavit

Filed June 15th 1853
 V. Leland Oth.
 By J. H. Leland dep.