

12719

No. _____

Supreme Court of Illinois

Armour

vs.

Walker

197 = 191

George Armour

vs

Augustus L. Wall

1859

United States of America
State of Illinois
Cook County

Pleas before the Honorable John M.
Wilson sole Judge of the Cook County
Court of Common Pleas, within and
for the County and State aforesaid, at
a regular Term of the Cook County
Court of Common Pleas, begun and
held at the Court House, in the City
of Chicago in the County of Cook, and
State of Illinois, on the Second Monday
being the Thirteenth day of September
in the year of our Lord one thousand
Eight hundred and fifty eight and of
the Independence of the United States
of America, the Eighty third.

Present John M. Wilson Judge
Charles Havens Prosecuting Attorney
John L. Wilson Sheriff
Attest, Walter Kimball . Clerk.

Be it Remembered that heretofore to wit on the
sixth day of July in the year of our Lord one
thousand eight hundred and fifty eight

there was filed in the office of the Clerk of the Court of the Cook County Court of Common Pleas a certain Declaration & Notice in Ejectment wherein George Armour is Plaintiff and Augustus S. Walker is Defendant; which said Declaration and Notice is in the words and figures following, that is to say.

State of Illinois
County of Cook, ss.

In the Cook County Court of Common Pleas. Of the July Term A. D. 1857.
George Armour Plaintiff, by Beates, McAllister & Jewett his Attorneys, complains of Augustus S. Walker Defendant of a Plea of Trespass in Ejectment
For that whereas the said George Armour on the first day of May in the year of our Lord one thousand eight hundred and fifty three was possessed of a certain Lot, piece or parcel of Land with the appurtenances situate lying and being in the City of Chicago in said County of Cook known and described as follows, to wit: Sublot Number Three (3) of Lot Number Nine (9) in Block Number Forty six (46) in the Original Town of Chicago, in said County of Cook, and State of Illinois; which said premises the said George Armour claims as owner thereof in fee simple, and being so possessed thereof the said

Augustus S. Walker, defendant, afterwards to wit;
on the day and year aforesaid entered into said
premises and unlawfully withholds from the
said George Armour the possession thereof
To the damage of the said George Armour of
Five hundred dollars and therefore he brings
this suit &c.

Seated, Mc Aleister & Jewett
Attys for Plff.

To

Augustus S. Walker,
Sir,

You will please take Notice, that a
Declaration in Ejectment, a Copy of which is
above given, will be filed in the Cook County
Court of Common Pleas, on the first day of the
next Term thereof, to be holden at the Court house
in the City of Chicago on the first Monday of
July next, to wit the Sixth day of July A.D.
1854 - That upon the filing of the same a rule
will be entered in said Court requiring you to
appear and plead to said Declaration within Twenty
days, after the entry of such rule. And that if you
neglect so to appear and plead, a Judgment by
default will be entered against you, and the
said George Armour will recover possession of the
premises in said Declaration described.

Chicago
June 11. 1854.

Seated, Mc Aleister & Jewett
Attys for Plt Geo Armour.

To which said Declaration there was appended an Affidavit of Service in the words and figures following, that is to say.

"States of Illinois
County of Cook

John H. Dart being first duly sworn deposes and says that he served the foregoing Declaration in Ejectment upon Augustus S. Walker the Defendant therein named by delivering to him a true and correct Copy thereof with the notice above set forth, thereto subpoenaed on the 3rd day of July A. D. 1857 upon the premises in said Declaration described.

Subscribed & sworn to before me

this 6th day of July A. D. 1857 John H. Dart

Wm. S. Church

Clerk of Circuit Court
of said County.

Fees for serving Declaration

\$1.10 paid by Plt's Atty

And thereafter, to wit on the Sixteenth day of July A. D. one thousand eight hundred and fifty seven the said defendant filed in the Office of the Clerk of said Court his Plea to said Declaration, which said Plea is in the words and figures following that is to say

Augustus S. Walker } In the Cook County Court
at } of Common Pleas.

George Armour . . . } July Vacation A. D. 1857.

And the said Walker by Arthur W. Wendell
his Attorney, comes and defends the force & injury
whereof &c and says that he is not guilty of the
said supposed trespass and Ejectment, above laid
to his charge, or of any part thereof in manner
and form as the said George Armour hath
above complained against him, and of this he the
said Walker puts himself upon the Country &c.
Arthur W. Wendell

July 17: 1857.

Atty for Deft.

And afterwards to wit on the tenth day of
November A. D. one thousand eight hundred and
fifty seven, there issued out of the Office of the
Clerk of said Court a Subpoena in said cause,
which said Subpoena is in the words and figures
following, that is to say,

"State of Illinois The People of the State of Illinois
County of Cook } ss. to the Sheriff of said County, Greeting
We Command you that you summon
George Noble, if he shall be found in your County
personally to be and appear before the Cook County
Court of Common Pleas of said County on the 11th
day of November instant at 9 o'clock A.M. at
the Court house in Chicago in said County to
testify and the truth to speak in a certain case
now pending and undetermined in said Court as
between George Armour Plaintiff and Augustus L.
Walker Defendant on the part of the said Plaintiff

and this you shall in nowise omit, under penalty
of the law; 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 at Chicago in said County this
10th day of November A. D. 1857.

(L.S.)

W Kimball. Clerk.

On which said Subpoena there was
endorsed the following return.

"The within named George Nobles not found
Novr 11: 1857 - John L. Wilson. Sheriff

By Wm. Townsend - Deputy."

And hereafter to wit on the nineteenth day
of November A. D. one thousand eight hundred and
fifty seven there was filed in the Office of the Clerk
of said Court a certain Stipulation in said
Cause, which said Stipulation is in the words and
figures following that is to say

"George Armour vs. Cook County Court of Common
Pleas. of the November Term 1857
Aug: S. Walker vs. Exemption

It is hereby stipulated by the
parties to the above entitled suit by their Attorneys
that this cause shall be tried at the next January
Term A. D. 1858 of this Court the same being a
Vacation Term And it is further stipulated that at

the time of the service of the Declaration upon the
defendant in this cause, he was in possession of the
premises therein described.

Scates, M^{rs} Allister & Jewett,
Attys for Plt

Arthur W. Windett
Atty for Def^t.

"The above Stipulation shall apply to the case of
George Armour vs Elizabeth Kniffen, and George
Armour vs David Buell, also in said Court.

Scates, M^{rs} Allister, & Peabody
Attys for Plt.

A. W. Windett. for Def^t.

And afterwards to wit on the fourth day of
October, being one of the days of the September
Term of said Court, in the year of our Lord, one
thousand eight hundred and fifty eight, the following
among other proceedings were had, and entered of
Record, in said Court, to wit;

"George Armour
vs
Exetment.

Augustus S. Walker

This day comes said Plaintiff
by Jewett, M^{rs} Allister & Peabody his attorneys, and
the said defendant by A. W. Windett his attorney
also comes, and ifue being joined herein it is

ordered that a Jury come, Whereupon comes the Jury
of good and lawful Men to wit

Lorenzo Snow - George Stevens - L. T. Clark - A. S. Fry
Joseph Spades - E. H. Gardner - M. S. Nichols, W. C. Claiborne
A. Sutton - D. T. Wood - James Youngs and G.
Belmont - who being duly elected tried and
sworn to try the issue joined aforesaid after hearing
the testimony adduced - arguments of counsel and
instructions of the Court retire to consider of their
Verdict and afterwards come into Court and say we
the Jury find the said defendant guilty in manner
and form as alleged in said Plaintiff's declaration,
of withholding from said Plaintiff the possession of
the premises described therein as follows: To
certain lot piece or parcel of land situate lying
and being in the City of Chicago, in the County
of Cook known and described as follows: Namely,
Sublot Number Three (3) of Lot Number Nine
(9) in Block Number Forty six (46) in the
Original Town of Chicago, in the said County
of Cook, in the State of Illinois, with the
privileges and appurtenances therunto belonging
or in anywise appertaining.

Therefore it is considered that the said Plaintiff
do have and recover of the said defendant the possession
of the premises described in his said declaration and
hereinbefore described, and that he have a Writ
of possession thereof, and that he also recover of

the said defendant his Costs by him about his Suit
in this behalf expended and have execution therefor.

And thereafter to wit on the sixteenth day of
October in the year of our Lord one thousand eight
hundred and fifty eight, there was filed in the office
of the Clerk of said Court, a certain Affidavit of
said defendant's Counsel; Which said Affidavit is
in the words and figures following, that is to say.

"State of Illinois

Cook County . . . ss.

Augustus L. Walker

at

George Armour . . .

In the Cook County Court
of Common Pleas.

September Term A.D. 1858

Arthur W. Wendt being first
duly sworn doth depose and say, that he is, and
for a year past, has been the Attorney of the
above named Defendant in this Cause. That he had
fully prepared and was ready for Trial at this Term
and personally was desirous of having said
Cause tried. That he was absent on Saturday
last from the City to fulfil an engagement made
three weeks before, and fixed for Saturday; as
he affiant, supposed that by that time, said Cause
would have been reached and tried.

Affiant further saith, that he made arrangements
to return to the City by the Night Express train, upon
the Burlington Road, by which he hoped to arrive

in this City on Sunday Morning - That with purpose, he stopped by the Depot Saturday Night, & especially engaged a man to sit up to call affiant in time for said Express train, and to signal the train, - that train not stopping unless specially signalled -

That through the negligence or stupidity of the man so engaged by affiant, altho' affiant was ready to take the cars when they approached, he had neglected to provide himself with a Lamp, to signal the Train, and was unable to make the signal, and in consequence, the train did not stop. and affiant was left - Affiant further saith that he then hoped to return to Chicago on Monday Morning by the Mendota Morning accommodation train, arriving here by 11 A.M. of each day, and was ready to take the same at half past seven, of Monday Morning, the usual hour of its reaching the Bristol Station, where affiant was; that affiant then learned for the first time, that said Mendota train had been withdrawn on Saturday, and would run no more this season - Having no means whatever by which affiant could possibly return to this City, before the arrival of the Monday Express train from Burlington, arriving at said Station of half past three o'clock in the afternoon of each day or thereabouts and reaching Chicago between six and seven o'clock in the evening, by which

train, affiant returned to this City Monday Evening. Affiant was extremely anxious to return to this City by Sunday Morning, and made every exertion in his power to do so, and should have done so, but by the neglect of the person employed by him to stop the train as aforesaid. That affiant was expressly informed on Saturday as he went out by the Conductor of the Morning Express train, that the accommodation train from Mendota would be run on Monday as usual. Affiant had not then or afterwards till he was informed on Monday Morning as aforesaid, that a change had been made. Affiant used his utmost endeavours in entire good faith by every means in his power to return to Chicago first by Sunday Morning then by Monday Morn. - Since his return to town, affiant has been confined to his room by severe cold and illness, till this morning, whereby he has been prevented from making earlier application to the Court. Affiant has diligently and thoroughly as he believes prepared himself for trial of said cause has examined the same and believes that the defendant have a perfectly valid and good title to the said premises in question in this case - that he deems the case one of great importance in point of value and of the legal character of the title; and he thinks that great hardship and injustice will be suffered by defendant, unless the Court grant a

new Trial. Affiant will if required by the Court,
be ready to try said cause at any day of this term,
Sworn to and subscribed before
me October 7th 1858 Arthur W. Wendell.
W. Kimball. Clerk

And afterwards to wit on the twenty seventh 16th
day of October in the year of our Lord one thousand
eight hundred and fifty eight, the following
amongst other proceedings, were had and entered
of record in said Court, to wit.

George Simons

(vs)
Augustus S. Walker

And now again come the
parties to this cause by their Attorneys aforesaid
and the Court, upon the reading the Affidavit of
said defendants counsel by his counsel, upon the
affidavit of said defendants counsel filed, submits
his Motion to set aside the judgment heretofore
rendered by the Verdict of the Jury in this cause, and
entered of record, and for a new trial herein.

And afterwards to wit on the twenty ninth day
of October in the year of our Lord one thousand
eight hundred and fifty eight, the following,
among other, proceedings were had and entered
of record in said Court to wit.

And now again come the parties to this cause by their Attorneys aforesaid, and this Court upon the reading the Affidavits of said defendants Counsel heretofore filed upon the Motion then submitted to set aside the judgment, entered of record in this Cause, and for a new trial, herein, and after hearing arguments of Counsel, having fully considered the premises, and being fully advised overrules & denies the Motion of said defendant. *And then and there excepted to the overruling of said motion.*

And afterwards to wit on the thirtieth day of October in the year of our Lord one thousand eight hundred and fifty eight, the following, among other, proceedings were had and entered of record in said Court, to wit:

And now comes again the said defendant by his Counsel and prays an Appeal of this cause to the Supreme Court of the State of Illinois, which is allowed to him upon the Condition that he file his Appeal bond within fifteen days in the penal sum of Four hundred dollars to be approved by the Judge of this Court, signed by W. H. Stow — which by agreement of parties was to be taken as a full bond.

And thereupon to wit on the Ninth day of November A. D. one thousand eight hundred and fifty eight, the said defendant filed in the Office of the Clerk of said Court his Appeal Bond; which said Bond is

in the words and figures following, that is to say.

" Know all Men by these presents that we Augustus L. Walker and William H. Storr of the County of Cook and State of Illinois are held and firmly bound unto George Armour, also of the same County and State, in the penal sum of Four 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 & administrators jointly severally and firmly by these presents.

Witness our hands and seals this fifth day of November A. D. 1858.

The Condition of the above obligation is such that whereas the said George Armour, did on the fourth day of October A. D. 1858 in the Cook County Court of Common Pleas in and for the County and State aforesaid, and of the September Term thereof A. D. 1858 recover a Judgment against the above bounden Augustus L. Walker in an action of Ejectment for the recovery of Sublot Three in Lot Nine in Block Forty six in the Original Town of Chicago in County of Cook Illinois, besides Costs of suit from which said judgment of the said Cook County Court of Common Pleas the said Augustus L. Walker has prayed for and obtained an Appeal to the Supreme Court of said State.

Now therefore if the said Augustus L. Walker shall duly prosecute his said Appeal with effect

and 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 Chicago

This day of
A.D. 185

This day of

Ad. 186

W. H. Stone



S. B.

Clerk

And hereafter to wit on the day of
in the year of our Lord one thousand eight hundred & fifty
Eight, the said defendant filed in the office of the Clerk of
said Court, his Bill of Exceptions in said suit; Which
said Bill of Exceptions is in the words and figures following,
that is to say.

George Armour } In the Cook County Court of Common
(vs) Pleas. September Term A.D. 1858
Augustus L. Walker } Esq. Clerk.

Augustus. L. Walker Esq. Agent.

Be it remembered that on the Sixteenth Day of October in the year of our Lord one Thousand Eight hundred and fifty eight, after the trial and verdict, and judgment on the Verdict in said cause, but during the term at which the trial was had, the said defendant by Arthur W. Windett his Attorney came and moved the Court to set aside the same and to give him a new trial, not under the Statute but for reasons assigned, which Motion

duely filed filed in said cause is as follows, namely,

"State of Illinois &

Book County . . . \$.

Augustus. L. Walker

ats

George Armour,

In the Cook County Court of

Common Pleas

September Term A. D. 1838

Arthur W. Windett being first duly sworn doth depose and say, that he is, and for a year past has been the Attorney of the above named defendant in this Cause. That he had faithfully prepared & was ready for trial at this term, and personally was desirous of having said cause tried. That he was absent on Saturday last from the City, to fulfil an engagement made three weeks before, and fixed for Saturday as he affiant supposed, that by that time said case would have been reached and tried. Affiant further saith that he made arrangements to return to the City by the night express train upon the Burlington Road, by which he hoped to arrive in this City on Sunday morning. That with purpose, he stopped by the Depot, Saturday night, and especially engaged a man to get up to call affiant in time for said Express train, and to signal the train, that train not stopping unless specially signalled. That through the negligence or stupidity of the man so engaged by affiant, although affiant was ready to take the cars when they approached, he had neglected to provide himself with a lamp to signal the train, and was unable to make the signal and in consequence the train did not stop.

and affiant was left. Affiant further saith that he then hoped to return to Chicago by Monday morning by the Mendota morning accommodation train, arriving here by 11 A.M. of each day, and was ready to take the same at half past seven of Monday morning, the usual hour of its reaching the Bristol Station where affiant was; that affiant then learned for the first time, that said Mendota train had been withdrawn on Saturday, and would no more run this season - leaving no means whatever by which affiant could possibly return to this City before the arrival of the Monday day Express train from Burlington arriving at said Station at half three o'clock in the afternoon of each day or thereabouts and reaching Chicago between six and seven o'clock in the evening, by which train affiant returned to this City Monday evening. Affiant was extremely anxious to return to this City by Sunday morning, and made every exertion in his power to do so, and should have done so, but for the neglect of the person employed by him to stop the train as aforesaid. That affiant was expressly informed on Saturday, as he went out, by the Conductor of the morning Express Train, that the accommodation train from Mendota would be run on Monday as usual. Affiant had not then or afterwards till he was informed on Monday morning as aforesaid that a change had been made. Affiant used his utmost endeavors in entire good faith by every means in his power to return to Chicago, first by Sunday morning, then by Monday

morn, all humbly. Since his return to Town affiant
 has been confined to his room, by severe cold and illness
 till this morning, whereby he has been prevented from
 making earlier application to the Court. Affiant has
 diligently and thoroughly as he believes prepared himself
 for trial in said Cause. has Examined the same and
 believes that the defendant has a perfectly solid title to
 the ^{premises in} question in this cause. And that all the defendants
 deeds and muniments of title were in defendants possession
 and only accessible to affiant, and not defendant during
 affiants absence as aforesaid. That he deems the case
 one of great importance in point of value, and of the
 legal character of the title, and he thinks that great
 hardship and injustice will be suffered by defendant,
 unless the Court grant a new Trial. Affiant will if
 required by the Court be ready to try said cause
 at any day of this term.

"Sworn to & subscribed before" Arthur W. Wendell
me October 7th 1838

W. Humbale. Clerk "O

Augustus S. Walker } In the Cook County Court of
at "Motion & Common Pleas Of the
George Armour . . . } September Term A.D. 1858

And now comes the said defendant by Arthur W. Hindelt his Attorney and moves to set aside the Verdict and judgment rendered in said Cause, and that the Court grant him a New Trial upon the

grounds set forth in the Affidavit herewith filed".

"Arthur. W. Wendell

Attorney for Deft."

Which Motion the Court being advised of the same, then and there overruled and refused to grant the said Defendant a New trial on his said Motion & Affidavit therewith filed and above set forth, But did not refuse the Defendant a New Trial under the Statute, nor did defendant pay, or offer to pay, the Costs of trial,

To which opinion and ruling of the Court the said Defendant by his said Attorney then & there Excepted, and then and there requested the said Court to sign seal and allow this, his Bill of Exceptions, which is accordingly done.

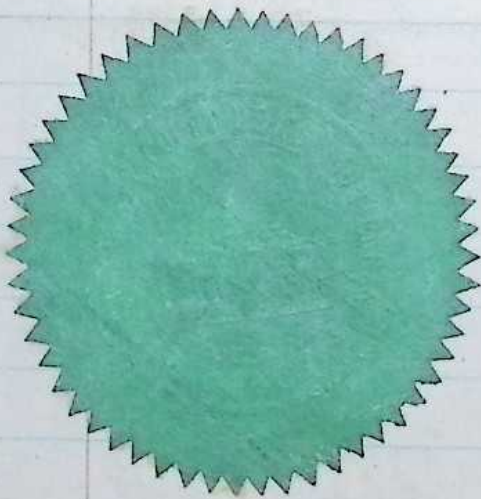
John. M. Wilson



State of Illinois }
Cook County . . }

I Walter Kimball Clerk of the Cook County Court of Common Pleas, within and for the County and State aforesaid Do hereby Certify That the foregoing is a true and correct Transcript of the papers now on file in my office, and of all proceedings entered of Record, in a certain suit wherein George Armour is plaintiff and Augustus, L. Walker is defendant.

In witness whereof I the said Walter Kimball have hereunto set my hand and affixed the Seal of said Court at Chicago, in said County, this Thirteenth day of January, in the year of our Lord one thousand Eight hundred and fifty eight nine.
Walter Kimball Clerk



Supreme Court of the
State of Illinois.
Third Grand Division.
April Term A.D. 1889.

Augustus L. Walker

George Amner }

And now comes the said Augustus L. Walker
Plaintiff in Error, by Arthur W. Windett
his Attorney, and says, that in the
record of Judgment and Proceedings
of the Court below in the above entitled
Cause there is great and manifest
error in this trial.

First. The Court erred in trying said Cause
without a Replection being ^{filed} of the Plea.

Second. The verdict of the Jury is insufficient,
informal, contrary to Law & void.

Third. The Judgment of the Court upon the ver-
dict is insufficient, informal,
contrary to Law, and void.

Fourth. The Court erred in overruling
the Motion to set aside the verdict,
and for a new trial - and in
rendering said Judgment upon
said verdict Arthur W. Windett

Atty for Appellants

And the said Dep't in view by Scates McAllister
& Jewett his attorneys Comes & says that at the
the end & proceedings aforesaid as to giving the
judgment aforesaid there is no error & whereas
he prays that said judgment may be in all
things affirmed &c

Scates McAllister & Jewett

Atty for Dep't in view

1877
In the County
Court of Common Pleas

George Armour

vs.

Augustus L. Walker

Record of
of Errors & founds

Filed April 12, 1859
L. Selman
Clerk.

Wm. det
att'y.

Trans: \$5.40

Certs of fee 38

\$5.75 by H. H. H. H.

Monday Morning Oct. 11th 1858.

George Armour }
as } Exponent

Augustus S. Walker,

This day comes said Plaintiff by
Scates, McAllister, Jewett & Peabody his Attorneys and
the said Defendant by A. H. Windett his Attorney also
comes and issues being joined herein It is ordered that
a Jury come Whereupon comes the Jury of good and
lawful men to wit: Lorenzo Snow, George Stevens, L. J.
Clark, A. S. Fay, Joseph Spaw, J. H. Gardner, M. S.
Nichols, M. Claxton, A. Sutton, D. J. Ward, James
Youngs, and G. Delmator, who being duly elected tried
and sworn to try the issues joined aforesaid; after
hearing the testimony adduced, arguments of Counsel, and
instructions of the Court retire to consider of their Verdict
and afterwards come into Court and say that the Jury find
that the Plaintiff is the owner in fee simple of the premises
described in his Declaration and the said Defendant
guilty in manner and form as alleged in said Plaintiff's
Declaration of withholding from said Plaintiff the possession
of the premises described therein as follows, namely, a certain
lot piece or parcel of land, situate lying and being in the
City of Chicago in the County of Cook, Illinois and described
as follows, namely, Sublot Number three (3) of Lot Number

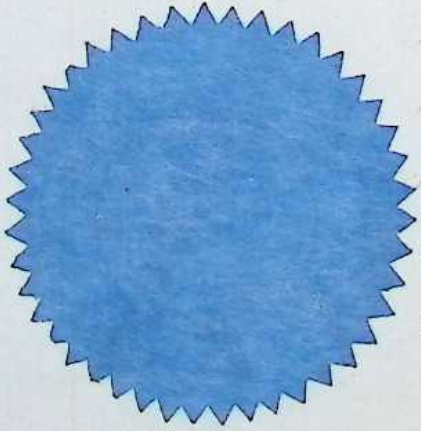
Nine (9) in Block Number Forty six (46) in the Original
Town of Chicago in said County of Cook and State of Illinois
with the privileges and appurtenances thereto belonging
or in anywise appertaining.

Therefore it is considered that the said Plaintiff is the owner
in fee simple of the premises described in his Declaration and
that he do have and recover of the said Defendant the possession
of the premises described in his said Declaration and herein
before described and that he have a Writ of Possession therefor
and that he also recover of the said Defendant his costs by
him about his suit in this behalf expended and have
Execution therefor.

State of Illinois }
Cook County . . . ss.

I Walter Kimball, Clerk of the Superior
Court of Chicago, (late Cook County Court of Common
Pleas) in the said County of Cook and State aforesaid
Do hereby Certify the above and foregoing to be a true
and correct Copy of the ~~original~~ ^{Verdict} and judgment
entered of record in said Court, in a certain suit heretofore

pending therein wherein George Arnold was Plaintiff and
Augustus S. Walker was defendant.



In testimony whereof I the said
Walter Kimball have hereunto set my
hand and affixed the seal of said Superior
Court at Chicago in said County this
tenth day of May A. D. Eighteen hundred
and fifty nine.

Walter Kimball Clerk

197
State of Illinois
Cook County

George Armour P
— (w) —

Augustus S. Walker J

Certified Copy
Amended Order and
Judgment.

Filed May 16. 1859
L. Leland
Clerk