

12234

No. _____

Supreme Court of Illinois

Chor^V~~x~~in, et al

vs.

Walker

71641  7

State of Illinois
County of Cook

SS.

Now before the Honorable
John W. Wilson Judge of the Cook County
Court of Common Pleas within and for the County
of Cook and State of Illinois at a Vacation Term
of said Court begun and holden at the Court House
in the City of Chicago in said County & State on
the First Monday being the Seventh day of Nov-
ember in the year of our Lord one thousand eight
hundred and fifty-three, and of the Inde-
pendence of the United States the twenty eighth

Present the Hon John W. Wilson Judge
Cyrus P. Bradley Sheriff
Attest Walter Kimball Clerk

Be it Remembered that heretofore, to wit on
the Eighth day of February in the year eighteen
hundred and fifty-three. Henry S. Kuecker a
Justice of the Peace in and for the County of Cook
and State of Illinois, filed in the Office of the
Clerk of the Cook County Court of Common Pleas
within and for said County and State, as Transcript
and appeal bond, in a cause wherein Lucius
H. Root and Charles Choom for use of Substituted
are plaintiffs and Samuel B. Hacker defendant,
and which said Transcript is in words and figures
as follows. To wit.

State of Illinois &
County of Cook & S.S.
Lucius W. Root & Charles
Chouin for use of Satchell King

vs
Samuel B. Walker

Assumpsit

Dut. fees

Docket 12 1/2
Sec Cost 25
Sps 18 1/2
Rent 12 1/2
Wry 6 1/2
Add 25
Appel 25
Bond 50
Trans 25
Court fees 50

January 25th 1853 Security for Costs -

Filed, Parties come and by agreement service of process
is waived and suit set for trial on the 1st day of Feb-
ruary 1853. at 9 o'clock A.M. tender of twenty dollars hav-
ing been made by Defendant and declined, Sps. Ref.
Jury 25 1853. February 1st 1853 Parties appear and
by agreement Cause is continued to February 2nd
at 9 o'clock A.M. Feb 2nd 1853 Plaintiffs appear.
Defendant makes default, after hearing evidence
& Judgment is rendered for the Plaintiffs for amount
proven. being Damages \$65.91
and for Costs of Suit Costs

Mils fee 50

Const fee

Serv Sps 25

Writage 10

Judgment February 2nd 1853

Defendant prays appeal & files bond February 2nd
1853.

State of Illinois &
County of Cook & S.S.

I Henry S. Ruckers Justice of the Peace
in and for said County & State aforesaid do hereby certify
that the above transcript and accompanying papers
contain a true and correct statement of the Judg-
ment & proceedings had before me in the above entitled
Cause.

Given under my hand and seal this 2nd day of
February 1853. W. L. Ruckers
Justice Peace

And which said appeal bond is in words & figures as

Yours to wit,

Know all men by these Presents, That we, Samuel B. Walker and Martin Walker of the County of Cook in the State of Illinois, are held and firmly bound unto Charles Choim & Lucius W. Foot for the use of Juthill King, in the penal sum of one Hundred and Fifty 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. Witness our hands and Seals this second day of February, A.D. 1853. The Condition of the above obligation is such, that whereas the said Charles Choim and Lucius W. Foot for the use of Juthill King did on the second day of February, A.D. 1853, before H. S. Rucker a Justice of the Peace, for the said County of Cook recover a Judgment against the above bounden Samuel B. Walker for the sum of Sixty Five Dollars and ninety-one Cents damages besides costs of suit from which judgment the said Samuel B. Walker has taken appeal to the Cook County Court of Common Pleas in the County aforesaid and State of Illinois. Now if the said Samuel B. Walker shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void; otherwise to remain in full force and effect.

S. B. Walker

M. O. Walker

Seal
Seal

Approved by me at
my office this 2nd day
of February, 1853.
H. S. Rucker.

Justice of the Peace.

And afterwards to wit on the fourteenth day of April in the year aforesaid, a summons issued out of the office of the Clerk of said Cook County Court of Common Pleas, in said cause, which said summons is in words and figures as follows to wit,

State of Illinois
Cook County S.S.

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

We command you that you summons Charles Chovin & Lucius H. Fort for the use of Infill King, if they shall be found in your County personally to be and appear before the Cook County Court of Common Pleas of said County on the first day of the next term thereof to be holden at the Court House in the City of Chicago in said County on the first Monday of June next, to answer suit of Samuel B. Wacker in appeal from a Judgment rendered before H. L. Ruckers Justice of the Peace in & for said County. And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness Myself Walter Kimball Clerk of our said Court and the Seal thereof at the City of Chicago in said County this 14th day of April A.D. 1853.

Walter Kimball, Clerk

Which said summons was afterwards returned by the Sheriff of Cook County with an endorsement thereon in words and figures as follows to wit,

Served by reading to Charles Chovin, Lucius H. Fort not found in my County this 16th April 1853.

C. P. Bradley Sheriff
B. J. R. Norton Deputy

And afterwards to wit, on the fifteenth day of October in the year aforesaid, the said day being one of the days of the September term of the Cook County Court of Common Pleas for the year Eighteen Hundred and fifty three the following proceedings were had in said cause and entered of Record to wit,

Lucius H. Foot & Chas. Chasam
for use of Suthill King

^{vs}
Samuel B. Walker

} Appeal

This day comes the said plaintiff by Greer & Ingalls his attorneys and the said Defendant by W. Smith his attorney also comes, and after being joined herein by agreement of said parties this cause is submitted to the Court for trial without the intervention of a Jury. And the Court after hearing the evidence adduced and argument of Counsel, being now fully advised in the premises finds the issue for the plaintiff, and assesses his damages to the sum of Forty three dollars and sixty two cents. And thereupon the said Defendant enters his motion herein for a new trial in this cause.

And afterwards to wit on the twenty eighth day of November in the year aforesaid, the said day being one of the days of the November Vacation term of said Court for the year aforesaid, the following proceedings were had in said cause and entered of Record to wit,

Lucius H. Drake & Charles
Chas. L. Conner of Sutherland King
vs
Samuel B. Walker

Appeal

And now again come
the said parties by their attorneys aforesaid, and
after ~~argument~~ hearing the said Defendant's motion
for a new trial in this cause entered at the last
September term of this Court, the Court being nonfully
advised in the premises overrules said motion.

Therefore it is considered that the said plain-
tiffs for the use of Sutherland King do have and recover
of the said Defendant their damages of Forty three
Dollars and sixty two cents in form aforesaid by the
Court assessed, and also their costs and charges by
them in this behalf as well in this Court as in the
Court below expended and have execution therefor.

And thereupon the said Defendant enters
his exceptions herein, to the opinion of the Court,
and prays an appeal to the Supreme Court of the
State of Illinois which is allowed by the Court
on filing bond with the usual conditions to be
approved by the Judges of this Court, and said bond
and bill of Exceptions to be filed within fifteen
days from this day.

And afterwards to wit on the fifteenth
day of December in the year last aforesaid
the said Defendant filed in the office of the Clerk
of said Court his appeal Bond and Bill of
Exceptions in said cause, which said appeal Bond
is in words and figures as follows to wit,

Known all men by these Presents, that we Samuel B Walker and William Price are held and firmly bound unto Charles Chobin and Lucius H Foot for the use of Suthill King in the penal sum of Two Hundred dollars for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly and firmly by these Presents. Witness our Hands this 15th day of December in the Year 1853.

The condition of the above obligation is such that whereas the said Charles Chobin and Lucius H Foot for the use of Suthill King did at the November term of the Cook County Court of Common Pleas in the Year 1853. before the Honorable Justice W. Wilson Judge of said Court then and there presiding, recover a judgment against the said Samuel B Walker for the sum of Forty three dollars and sixty two cents damages besides cost of suit from which judgment the said Samuel B Walker has taken an appeal to the Supreme Court of the State of Illinois, from said Cook County Court of Common Pleas.

Now therefore if the said Samuel B Walker shall prosecute his Appeal with effect and in case the said judgment be affirmed shall pay the same and all costs interest and damages which may accrue in said Supreme Court by means of the due prosecution of said suit or in consequence thereof then this obligation to be void otherwise to remain in full force and effect.

Approved by me this 15th day of December 1853. S. B. Walker Seal
Wm Price Seal
John M. Wilson Judge of the Cook County Court of C. Pleas

And which said Bill of Exceptions filed as above said is in words and figures as follows to wit,

And now on this Fifteenth day of October 1853 in the term of September came the said parties and having named a Jury for the trial of said cause proceeded to the trial thereof by the Court, and the said Plaintiff, to maintain and prove the issue on their part proved by James Van Orger a witness sworn on their behalf, that he was Clerk for the Plaintiffs Choam & Foote from May 1851 until March 1852 that Choam & Foote were partners in trade doing business as Merchants at Chicago. On being shown a statement of account of S. B. Walker in account with Choam & Foote, says said statement was made out by him from Books which were copies of the original Books of Choam & Foote which statement of account is as follows.

Mr S. B. Walker

1850	To J King Apiece of Choam & Foote.		
December 16.	To 1 Roll Comforter	10/-	1. 25
"	" " Hooks & Eyes		. 05
"	" " Buttons		. 25
"	" " Paper Needles		. 06
"	" " 45 Skins Washed		. 40
"	" " 3 1/2 Yds A Silk		. 15
1851	February 23	To 3 1/2 Yds Sheetting	@ 16c 6. 00
"	" " 4 " Linen	6/-	3. 00
"	" " 2 1/2 " Yarn	14/-	. 44
"	" " 4 1/2 Oz 10s	12/-	. 44
"	" " 8 Yds Cotton	5	. 40
"	" " Tape		. 05
March 26	" 1 Pr Kid Gloves	6/-	. 75

"	"	"	2 Yds Ribbon	2	10c	.20
May	27	"	18" Lace	-	1/6	1.50
"	"	"	4" Gingham	.	20c	.80
"	"	"	2 1/2 - Do	.	22	.55
"	"	"	4" Quilling	.	1/3	.68
"	"	"	4 3/4" Silk	"	10/-	5.94
"	"	"	3 1/2" Silk Lace	9/-		3.94
"	"	"	5" Ribbon	2/-		1.25
"	"	"	1 1/2" White Lace	3/6		.66
"	"	"	2 - Inserting	3/6		.87
"	"	"	10 Spis Thread			.50
"	"	"	Do			.06
"	"	"	11 Skins Silk			.33
"	"	"	1 Pr Needles			.06
"	"	"	1 " Elastics			.10
"	"	"	1 " Do			.12
August	9	"	9 Yds Gingham	50		2.70
"	"	"	2 " Do	20		.40
"	"	"	1 1/2" Quilling			.18
"	"	"	1 Pr Needles			.05
"	"	"	Hooks & Eyes & Thread			.05
September	22	"	12 Yds Calico for me	1/-		1.50
"	"	"	9" Do	Do 1/-		1.13
October	8	"	1 1/2" Merino	-	6/-	1.12
"	"	"	1 Collar			1.00
"	"	"	1 " Mustin			.50
"	"	"	4" Ribbon	1/-		.50
"	"	"	2 - Cords	4		.08
"	"	"	5" Trimmings	6		.30
"	"	"	1 1/3 doz Buttons	1/-		.20
"	"	"	2 Shs Padding	4		.08
"	"	"	2 Pr Elastics			.25
October	15	"	1 Yds Silk	5/6		.69

October 26 .	1 pr Kid Gloves	6/-	" 75
" "	1 1/2 Yd Trimming	6	" 09
29 "	3 " Drilling	1/-	. 38
" "	2 pr Hose	1/6	. 38
" "	3 1/2 Insertion	5/-	- 47
" "	7 " Alpaca	10/-	8. 75
" "	9 " Print	1/-	1. 12
" "	10 " Shas Dick	4	" 40
" "	1 Bk Shant		11. 00
" "	3 Spks Thread		" 09
October 30 .	30 Yds Shirting for Me	10	3. 00
" "	2 " Linnen "	4/-	1. 00
" "	1/2 " Silk	6/-	. 38
" "	2 " Cambric	20	. 20
1851	Per		\$ 69. 54

October 30	By Collar ret'd	1. 00	
Sept 22	Goodget by Me	2 63	3. 63
Chicago April 10 th 1852			\$ 65. 91

Witness Van Duzer further testified that S B Walker objected to said Statement of account saying it should have been to S B & M O Walker and also to a charge of one item of goods charged as having been had by McCarty and claimed that the original account was against S B & M O Walker, and that said firm of S B & M O Walker had an account against Choan & Hooks. Said witness also testified that the account on the original ledger of Choan & Hooks was posted to S B & M O Walker, that at first the ledger commenced with the name of S B Walker but after one or two items had been charged to the account, the ledger was changed to S B & M O Walker by entering M O Walker in small letters. Don't know by whom it was done. Choan was in the country most of

the time while I was Clerk for them, and only came home occasionally a day. He went away a few days after I (Van Dusen) commenced clerking for Chaoin & Foote. Chaoin was attending to a Store at Aurora Illinois which belonged to Chaoin & Foote. Witness Van Dusen further stated that he never saw M O'Malley or any of his family in the store while he was clerking there and no part of the bill of goods were delivered to M O'Malley or any of his family. Chaoin remained in the care of Store at Aurora up to time of assignment. I heard the agreement for an exchange of trade referred to in Foote's letter. it was in the store and was made between Foote and S B Walker.

The Plaintiff proved by Ernst Riddle that he was Clerk for Chaoin & Foote from September 1850. to April 1852 when they made an assignment to Tuttle King. The Ledger was copied by me from the original and is an exact copy of the same in every particular. The old day book was somewhat shattered. The copying was done under the direction of Foote and Chaoin was not then and knew nothing about it. I sold and delivered most of the goods mentioned in the bill before set out. They were mostly delivered to Mr. S B Walker & Daughter. Has compared the bill with the books and it is correct. The Bill is made out in Kate's writing of Van Dusen. The plaintiff then gave in evidence the books copied from original books of Chaoin & Foote on the copy of Ledger the account is to S B Walker same as bill given in evidence.

Witness Riddle further stated that he never saw either M O'Malley or any of his family in the Store and that none of the said bill of goods were delivered to them or either of them. I (Witness) do not remember that any

of the goods were delivered to any other person except
Mrs J. B Walker and daughter the wife and daughter
of the defendant, except a bill for four dollars Oct
30th 1851. which was delivered to one McCarthy, all
the goods mentioned in said bill were delivered, and
the prices charged are fair and just.

The Plaintiff then Rested.
And the defendant proved by The Court, that
he was in the employ of Samuel B Walker & Martin O
Walker doing business under the name and firm of S B &
M O Walker in keeping a livery stable. I was in their
employ in 1850 until after the spring of 1852. Chasin &
Foots had a horse belonging to them kept in the stable
of S B & M O Walker in the winter of 1851. Some person
I don't know who brought the horse to the stable, Cha-
sin was at stable to see the horse. I was told by him
to charge the keeping to Chasin & Foots. Chasin &
Foots both frequently had horses and carriages
from the stable, both Chasin & Foots told me to
charge their use of the horses & carriages to the firm
of Chasin & Foots, Mr Chasin said we are making
quite a bill for living, and requested that we would
trade at their store. I did go to their store twice after
this request & purchased some goods and told
them or the Clerk traded with it charge the amount
to S B & M O Walker. Also that an account of
S B & M O Walker against said Chasin & Foots shown
the witness is a correct account of the charges
upon the books of S B & M O Walker against said
Chasin & Foots and which is as follows,

Me^{rs} Chasin & Foots.

An account with S B & M O Walker & On

1850	July 13.	Use of 2 Horses & Buggy	pr Foorie	\$ 2.00
	August 27.	" " " Saddle Horses	" "	2.00
	Sept 16.	" " " Carriage	" Choam	1.00
	" 28.	" " " 2 Saddle Horses	" Foorie	2.00
	Nov 5.	" " " Carriage	" Choam	3.00
	" 24.	" " " Horse & Buggy	" Foorie	1.00
1851	January 1.	" " " Horse & Cutter	" Foorie	1.00
	" 13.	" " " Keeping Horse 17 Weeks & 20 ft.	" "	4.28
	" 6.	" " " Use of Buggy & Horse	" Foorie	1.50
	" 20.	" " " " " " " "	" "	1.00
	Feb 11.	" " " " " " " "	" Choam	1.00
	" 19.	" " " 2 Horses & Buggy 6 days	pr Foorie	18.00
	June 5.	" " " Horse & Buggy pr	" Foorie	1.00
	" 20.	" " " " " " " "	" "	1.00
	" 24.	" " " 2 Saddle Horses	" "	2.00
	July 24.	" " " 1 Saddle Horse	" "	.75
	October 16.	Collar setd as charged on bill of 15 th	" "	1.00
1852	July 6.	Use of 2 Horses & Cutter	per Foorie	2.50
	July 7.	" " " Horse & Cutter	" Foorie	1.00
	Feb 21.	" " " Carriage	" Foorie	1.00
				47.08

The defendant also gave in evidence the books of account of said S.B. & M. O'Walker upon which said charges are made and that the sums charged are the usual prices charged, that in keeping said said account we mentioned who called for & had horses & carriages, and said defendant proved by Mc Carthy that he was engaged in the livery stable of S.B. & M. O'Walker from 1850 until the summer of 1853. that both Choam & Foorie were in a habit of getting horses & carriages from S.B. & M. O'Walker and each one of them directed that the use of the horses & carriages should be charged to Choam and Foorie,

Hoote told him that they had an exchange trade
with S B M Walker. The said defendant also
gave in evidence the following bill to wit.

Wm Hoote & Son
Bk of Choim & Hoote,
2 pr Pups Wore 16³⁸ 3/4 42 Inserting a 51⁴¹ 0.85
7 Musket caps 10⁵⁰ 9 Gas Print. 1¹² 9.87
10 Shirts 4⁴⁰ 1 Bk Shant 11.00 11.40
3 Sp. Bk Thread
22.21

which contains part of the items of the account
given in evidence and is made out in hand
writing of Wm Hoote Clerk of Choim & Hoote,
also a letter written by said Hoote as follows.
Decanaw Jan 28 1853.

Wm Smith

Dear Sir, Your favor is at hand. In
answer I would say that there was an express un-
derstanding between Mr Walker & myself that S B &
M Walker should open an account with Choim & Hoote
and that Choim & Hoote should open an account with
S B M Walker, and that the one account was to
be applied upon the other upon settlement and the
party owing a balance (if any should exist) should
pay said balance in cash. This understanding was
openly talked over in our Store between Mr Walker
and myself & I think (though I would not swear
that) it was known to Mr Choim. The account
stands charged upon our books against S B M
Walker.

Yours truly

S H Hoote

It was admitted that the said S B M Walker
had tendered to the plaintiffs a figure the sum

of Twenty Dollars after this suit was brought be-
fore Justice of the Peace in payment of the balance
of said account, and said Cause was submit-
ted to the Court and said Court entered judg-
ment against said Defendant for the sum of
Forty Three Dollars and Sixty two Cents damages and
costs of suit and the Defendant thereupon moved
the Court for a new trial, which was overruled
by the Court, to which the said Defendant
entered his exceptions, -

John W. Wilson ^{Judge}
It is Stipulated that the foregoing bill of exceptions
may be filed and may be signed by the Judge as of
this day, and the Word approved
December 15 1853

Wm. H. Smith for Deft
Geo. W. Ingalls for Plff

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

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 Transcript contains true Copies of all the
original papers filed in said Cause and of the orders
entered of Record in said Court in said Cause,
and that said transcript is a true and correct tran-
script of all the proceedings had in said Cause.

In Testimony Whereof I have here-
unto set my hand & the Seal of said
Court at the City of Chicago in said County
this 15th day of April A.D. 1854.

Walter Kimball, Clerk

76
Cook County Court of
Common Pleas

Charles Chaun &
Lucius H. Foote for
use of Dutthill King

vs
Samuel B. Walker

Transcript.

Filed June 14. 1884.
L. Seland Clk.

Geo. J. Smith, p. 5.00

Henry Smith
Defts atty.

State of Illinois
Supreme Court, June Term, 1854

Samuel B. Walker
vs
Charles. Chovin &
Lucius A. Fort for the use of
Tutthill King. Deft in error

And now, comes the said Samuel B. Walker
plaintiff in error by Henry F. Frink his attorney and
says that in the record and proceedings aforesaid there is
manifest Error in this to wit,

1. That the said Cook County Court of Common Pleas
ought to have given Judgment in favor of ~~a~~ against
said plaintiff in error and against the said Charles
Chovin Lucius A. Fort for the use of said Tutthill
King.

2. That the said Cook County Court of Common Pleas
ought to have rendered Judgment, that the plaintiff in
error and the defendant in the Court below, did not under-
take or provide in manners & form as alleged by said deft
in error and that said plaintiff in error, recovers
his cost, about his suit in that behalf expended.

3. That the said Cook County Court of Common
Pleas ought to have granted a new trial in said
case.

~~It for the errors~~ Wherefore and for other errors in the
record and proceedings aforesaid, the said plaintiff in error
prays that the Judgment aforesaid may be set aside
vacated and annulled, that said plaintiff may
have & recover his costs.

H. F. Frink
Att. for Plaintiff in Error

And the said defendant comes says that she no
 such mors in the neon as is above supposed,
 but that the said ruling specimens of the cones
 are in accordance with the case

Grinnell & Jones
 for deft

The
 Supreme Court
 of
 Charles Johnson
 Decided at New York
 in the case of
 Charles Johnson
 vs. Charles Johnson
 2d of March

Filed June 14, 1854.
 A. Nelson Cth.

34
 2,7200

J. J. Jones
 atty for deft
 in error

~~File~~ 16

Saml. B. Walker

Chap. Choristul.

16

12234

1855