

12679

No. _____

Supreme Court of Illinois

Bresenham

vs.

Walker

117

James C. Walker
vs

Thomas Breckenham

117

1858

12677

^{11/}No. 1326-C.S.

Thomas Presenham

vs.

James C. Melker

Record.

Filed April 6, 1858
Leland
clerk

Pleas continued and held at the Court House in Bloomington within and for the County of McLean in the Eighth Judicial Circuit of the State of Illinois. before the Hon David Davis Judge of said Eighth Judicial Circuit. in a certain action then pending wherein Thomas Breenham was Plaintiff and James C. Walker was Defendant. and in which Cause final judgment was rendered at the Special June Term of said Court To wit. on the Twenty Seventh day of June in the year of Our Lord One thousand Eight hundred and fifty Seven.

Thomas Breenham

vs

In Debt.

James C. Walker

Be it Remembered. That heretofore

to wit. on the fourteenth day of August in the year of Our Lord One thousand Eight hundred and fifty Six. came said Plaintiff by Gridley & Wickizer his Attorneys and filed in the Office of the Clerk of said Circuit Court. a Process. which said Process was in words and figures as follows. to wit.

Process

State of Illinois

McLean County

Thomas Breenham

vs

James C. Walker

McLean Circuit Court.

Sept. Term. A.D. 1856.

In Debt.

Debt. \$1100.

Dam. 100.

clk. issue process &c.

Grindley & Wickizer.

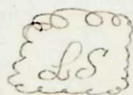
Plffs Attys.

And thereupon issued out of said Clerks office a writ of
Summons. which said writ of Summons was in words and
figures as follows to wit.

Summons= State of Illinois

McLean County The People of the State of Illinois
To the Sheriff of said County. Greeting.

We command you to Summon J. C. Walker
if found in your County. personally to appear before the Circuit
Court of said County on the first day of the next term thereof
to be holden at the Court House in Bloomington on the second
Monday of the Month of September next to answer Thomas
Breenham. in a plea that he render unto him Eleven Hundred
Dollars. Debt. which to him he justly owes. and from him un-
justly detains. to his damage One Hundred Dollars as he says
and have you then and there this writ. and make return thereon
in what manner you execute the same.



Witness William McCullough. Clerk of said Circuit
Court. and the Seal thereof hereto affixed at Bloomington
this 14th day of August. A.D. 1856.

Wm. McCullough Clerk

By H. Bann. Deputy

Which said writ of Summons was by the Sheriff of said County on the Nineteenth day of August in the year last aforesaid. returned into said Clerks office endorsed as follows to wit.

Endorsement

August the 19th 1856. Executed by reading to J. C. Walker. Service. Travel & Return, 60

J. J. Price. Shff.

By E. B. Mitchell. Defty.

And thereupon afterwards. to wit. on the Twenty first day of August in the year last aforesaid. Came again said Plaintiff by his Attorneys and filed in said Clerks office a Declaration and Copy of Note and on. which said Declaration and Copy of Note. are in words and figures as follows to wit.

Declaration

State of Illinois

McLean County

McLean Circuit Court. Sept Term. A.D. 1856.

Thomas Breenham by Gridley & Wickizer his Atty's. complain of James C. Walker in a plea of Debt. For That whereas the said Defendant on the Twenty fifth day of February A.D. Eighteen Hundred and fifty six. at the County and State aforesaid by his certain writing obligatory. commonly called a Single Bill. Sealed with his seal and now her to the Court Shown. the date whereof is the day and year aforesaid bound himself to pay the Plaintiff (whose name is erroneously written in said Note Thomas Breenham) or order Eleven Hundred Dollars at the McLean County Bank. Bloomington for value received on or before the 20th day of March 1856. which period hath now elapsed. whereby an action hath accrued to the Plaintiff

to demand and have of the Defendant. Said Sum of Money.
yet the Defendant hath not paid the same or any part thereof.
to the Plaintiffs Damage One Hundred Dollars.

And it for that whereas also on the twenty first day of March
A.D. Eighteen Hundred and fifty six at the County and
State aforesaid the Defendant was indebted to the Plaintiff for an
Eleven Hundred Dollars. for money then and then lent by the
Plaintiff to the Defendant. at his request. And an Eleven Hun-
dred Dollars for money then and then paid by the Plaintiff for
the use of the Defendant. at his request. And an Eleven Hundred
Dollars for money then and then received by the Defendant. for the
use of the Plaintiff. And in fifty Dollars for the use of aforesaid
money. And in Eleven Hundred Dollars for money found to be due
from the Defendant to the Plaintiff on an account. then and
then stated between them. which said several moneys were to
be respectively paid by the Defendant to the Plaintiff on request
yet the Defendant hath not paid any of the said moneys. or any
part thereof to the Plaintiffs Damage One Hundred Dollars

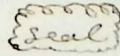
Girdley & Wicks

Pltff Attys.

Copy of Note Dued on

Copy of Note

On or before the 20th day of March 1856. I promise to pay
Thomas Breckinham or order Eleven Hundred Dollars at the
McLean County Bank. Bloomington for value received.
Feb. 25th 1856.

J. C. Walker. 

And also on said Twenty first day of August. in the year of
Our Lord Eighteen Hundred and fifty six. said Plaintiff

by his Attorneys filed in said Clerks office. a Note. which said Note is in words and figures as follows. to wit.

note. An or before the 20th day of March. 1856 I promise to pay Thomas Breanehem or order Eleven Hundred Dollars, at the McLean County Bank Bloomington.

Feb. 25th. 1856

J. C. Walker. 

And thereupon afterwards to wit. at a September Term of said Circuit Court held within and for the County aforesaid
Present,

Hon. David Davis. Judge
A. McWilliams. Pros. Atty.
William McCallough. Clerk
John J. Price. Sheriff.

On the first day of said Term. being the Eighth day of September in the year aforesaid. Came said Defendant and Moved the Court to continue this cause. and presented to the Court an affidavit in that behalf. which affidavit is in words and figures following. to wit.

State of Illinois

McLean Circuit Court.

Walker

Advs

Breaneham



Defendant States That he has a valid offset and Defense to the Suit of pltff. in this case & the

amt. about four Hundred and thirty Dollars, the note of
plthff. date about 1st. April 1857 & interest, That he is re-
quired to leave Court and go to Ky- and cannot be here
during the remainder of this term, and believes that his
personal attendance is necessary on the trial of this case.
Subscribed & Sworn to before

me 8th. Sept. 1856

W^m. McCullough Clerk

By H. Burr. Deft.

J. C. Walker.

And thereupon the following order was made by said Court
in the above cause as appears of Record. to wit.

Thomas Breenham

vs

James C. Walker

In Debt.

This day came said Defendant
and moved the Court. to continue this cause and presented to
The Court his affidavit in that behalf. and the Court having
considered the same doth order that this cause stand con-
tinued at the costs of said Defendant.

And thereupon afterwards to wit. at The March Term of
said Circuit Court in the year of our Lord One thousand
Eight hundred and fifty seven.

Present.

Hon. David Davis.

Judge

Ward H. Lamon.

Pros. Atty.

William McCullough.

Clerk

Joseph H. Moore.

Sheriff.

On the first day of said Term. being the
thirty first day of March in the year last aforesaid. the following
order was made by said Court in this cause as appears of record
to wit.

Thomas Wrenham

vs

In Debt.

James C. Walker

This day on motion of said Plaintiff
by his Attorney. said Defendant is by the Court ruled to plead
to the Declaration herein filed by Wednesday morning next or
judgment will be rendered against him by Default.

And Thereupon afterwards to wit. at said March Term of
said Court. to wit. on the first day of April in the year last
aforesaid came said Defendant and filed among the papers
of this cause his pleas to said Plaintiffs Declaration. which
said Pleas with Plaintiffs rejoinder thereto are in words and figures
as follows to wit.

Breenehen

vs

Walker

And the said Defendant says that he did
not owe the said sum of money in said Plaintiffs Declaration
mentioned or any part thereof. in manner and form as said
Plaintiff hath complained. and of this he puts himself
upon the Country &c.

And Pltff. doth the like

And Wick.

Pltffs atty.

Cord. Williams & Walker
attys

And the said Defendant for further Plea in this behalf
says Actio Non. because he says That said Plaintiff. before
and at the time of commencement of this Suit, of the said
Plaintiff against said Defendant in this behalf. to wit. on
the 1st day of July. A.D. 1856 at the County & Circuit aforesaid
was and from thence hitherto has been and still is indebted
to the said Defendant. in the sum of Four Hundred Dollars
For that whereas. heretofore. to wit. on the 1st day of April 1854
by his certain promissory note bearing that date. twelve months
after date thereof said Plaintiff promised to pay said Defen-
dant, the sum of Four Hundred Dollars & then and there de-
livered said note Plaintiff. which is now here to the Court
shown. which he hereby offers to set off. against said Plaintiff
supposed Debt & Damages. according to the form of the Statute
and this Defendant is ready to verify. &c.

Cond. Williams & Walker.

Atty.

And thereupon afterwards. to wit. at said Term of said
Circuit Court. came said Plaintiff by his Attorneys and
filed among the papers of this cause. his Replication to said
Defendants pleas. which said Replication is in words and
figures as follows. to wit.

Greenham

vs

Walker.



And the Plaintiff. as to the said Plea of
Defolt. secondly above pleaded. says precludi Non. Because

he That said note in said filea (and now sought to be
set off to Pltffs Demand) was made executed and delivered
by the Pltff to Defolt. for and in consideration of a certain piece
or parcel of land to wit Sec. ———— If ———— N. B. East.
in McLean County, sold by said Defolt. to Pltff. and pltff ^{avrs} ~~avrs~~
That at the time of said sale of said land by Defolt. to Pltff.
and for which said Note specified in Defolts said second filea, was
executed and delivered by pltff to Defolt. said Defolt had no title
to said land and has not from then hitherto, and now has no
title to said land. wherefore Pltff. avrs that the consideration
of said note has wholly failed. And this said pltff is ready to
verify. wherefore he prays judgment. &c.

Gird. & Wick.

Pltffs attys.

And for a further replication in this behalf. Pltff. says
precludi non. Because he says that said Defendant. after the
making and delivery of said note. in said Defolts 2nd filea
specified, by Pltff to Defolt. said Defolt. sold and transferred
said note to ———— and That said Defolt. was not the owner
and had not the possession of said note. at the time of the com-
mencement of this suit. And this pltff. is ready to verify.
wherefore &c.

Girdley & Wick

Pltffs. atty.

And thereupon afterwards to wit. at the Special June
Term of said Circuit Court. held within and for the County
aforesaid. in the year of Our Lord One thousand eight hundred
and fifty seven. Present.

Hon. Josep C. Norton Judge
William McCallough Clerk
Joseph H. Moore, Sheriff.

On the thirtieth day of said Term. being the Tawenty Sevvnth day of June in the year last aforesaid. final Judgment was rendered in this Cause as appears of Record. to wit,

Thomas Bressenham

vs

In Debt.

James C. Walker

And now at this day came said parties by their Attorneys. and motion of said Defendant. by his attorney. leave is granted him to withdraw his pleas filed herein. and the same is done. And the said Defendant saying nothing further. Thereupon came a jury of twelve good and lawful men to wit. Oliver Pease. William H. Hodge. Uriah Washburn. Joseph Spellman. George W. Knolls. Daniel B. Robinson. John McAlroy. Jeremiah Spurgin. Cyrus B. Drunkle. Zachariah Simmons. Bazo Parsons. James Nicolls. who being first duly sworn. and having heard the evidence. upon their oaths do say. That the said James C. Walker. doth owe to the said plaintiff the sum of Eleven Hundred Dollars above demanded. in manner and form as said Plaintiff hath above thereof complained against him. And they assess the Damages of said Plaintiff by occasion of the deterioration of the said Debt. at Eighty two Dollars. Therefore it is considered by the Court here that the said Plaintiff recover of the said Defendant. The said sum of Eleven Hundred Dollars. his

Debt aforesaid. And the sum of Eighty two Dollars. Damages consequent upon the detention of his said Debt. and likewise his costs of suit in this behalf expended. and that he have execution therefor. And thereupon the said Defendant prays an Appeal to the Supreme Court. which is granted him on condition that within sixty days. he file with the Clerk of this Court. a Bond to be approved by said Clerk.

And thereupon comes said Defendant by his Attorney and presents to the Court his Bill of exceptions. to the ruling of the Court in the above entitled Cause. and prays that the same may be signed and sealed. and made part of the Record of this Cause which is done. And which said Bill of Exceptions is in words and figures as follows, to wit.

State of Illinois. McLean Circuit Court. June Term. 1857

Thomas Breeneham

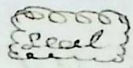
vs

Debt.

James C. Walker

Be it remembered that this Cause came on to be tried at this term of the Court. whereupon the Defendant by leave of the Court. withdrew his plea. and thereupon the Plaintiff took a judgment. by default. and had a jury empanelled to find his Debt and Damages. and offered in evidence the following note. "On or before the 20th day of March 1856. I promise to pay Thomas Breeneham or order. Eleven Hundred Dollars. at the McLean County Bank Bloomington for value received.

which was objected to by the Defendant. for a variance between the note offered in evidence and the one copied in the Declaration. which objection was overruled by the Court. to which ruling of the Court. the Defendant at the time excepted. And thereupon the note was given in evidence, which was all the evidence given by plaintiff. and the jury found for the plaintiff. Eleven Hundred Dollars Debt. and Eighty two Dollars. Damages. Consequent upon the detention of his said Debt. upon which verdict the Court entered judgment. Whereupon Defendant moved the Court to set aside the verdict. and vacate the judgment. and grant a new trial. because the Court erred. in admitting the note in evidence. which motion was overruled by the Court. to which ruling of the Court. Defendant at the time excepted. and prayed an appeal. which was granted upon terms. That the Defendant file a Bond in sixty days. to be approved by the Clerk. And the Defendant. files this his bill of exceptions and prays that the same be signed. Sealed and made part of the Record. which is done by the Court.

J. O. Norton. 

And thereupon afterwards. to wit. On The Twenty first day of August in the year last aforesaid, came said Defendant and filed in the office of the Clerk of said Circuit Court an Appeal Bond. which said Appeal Bond was in words and figures as follows to wit.

Know all men by these presents. That we James C. Walker principal & John R. Smith deputy of the County of McLean and State of Illinois are held and firmly bound unto

Thomas Breenham. in the penal sum of Twenty five
Hundred Dollars. for the payment of which well and truly to
be made, we and each of us bind ourselves, our heirs, executors
and administrators, jointly and severally and firmly
by these presents. Sealed with our Seals, and dated at
Bloomington this 20th day of August. Anno Domini. One
Thousand Eight hundred and fifty seven.

The condition of the above obligation is such that whereas, The
said Thomas Breenham, did on the Twenty seventh day of
June A.D. 1857. in the Circuit Court within and for the County
of McLean and State of Illinois obtain a judgment against
the above bounden James C. Walker, for the sum of Eleven
Hundred and Eighty two Dollars, and costs of suit, from
which judgment, the said James C. Walker, has prayed for
and obtained an appeal to the Supreme Court of said State

Now if the said James C. Walker shall duly prosecute said
appeal, and shall moreover pay the amount of the judgment
costs, interests and damages, rendered and to be rendered,
against him the said James C. Walker, in case the said
judgment shall be affirmed, in the said Supreme Court,
then the above obligation to be null and void, otherwise to
remain in full force and virtue.

Approved by me, August 21st 1857

W^m. McCullough

Clerk

J. C. Walker

Geo. B. Smith

LS

LS

State of Illinois

McLean County

J. William McCullough Clerk of
the Circuit Court within and for said County do hereby

certify that the foregoing is a true and correct copy
of the records and papers on file in the above entitled cause
in my office.

Witness my hand and the Seal of said Circuit
Court hereto affixed at Bloomington this twelfth
day of November A.D. 1857.

Wm McCallough, Clerk.

by H. Burr. - Deputy

Clerk's fees on transcripts \$6.50

Rec'd above fees of Plaintiff -

Wm McCallough, Clerk.

per H. Burr. - Deputy