

12359

No. _____

Supreme Court of Illinois

Quarter

vs.

University of St. Mary
of the Lake

71641  7

79
Walter Quarter
vs

The University of
St. Mary of the Lake

79

1857

12359



United States of America
State of Illinois Lake County } ss:

Pleas before the Honorable George
Manierre Judge of the Seventh Judicial
Circuit of the State of Illinois;
At a term of a Circuit Court for
the County of Lake in said Circuit
begun and held at Waukegan in said
County on the Eighth day of October
in the year of our Lord one thousand
Eight hundred and fifty five, and
after the Independence of the United States
the Eightieth

Present the Honorable George Manierre Judge
John F. Hughes Sheriff of Lake County
Daniel M. Troy States Attorney

Attest A B Cotes Clerk

Be it remembered that on the twenty ninth day
of September in the year of our Lord one thousand
Eight hundred fifty five, "The University of
St Mary of the Lake," Caused to be filed in the
office of the Clerk of the Circuit Court of Lake
County in the State of Illinois, a certain affi-
davit which is in the words and figures follow-
ing to wit:

" Lake County
" State of Illinois

Circuit Court of
Lake County

The affiant H Quigley being first duly sworn
to depose according to his best knowledge & belief
says he is the President of the University of the City of
of the Lake, in the City of Chicago Illinois, and
that Walter Quarters placed at said Institution
four boys viz; Walter Degan, James Degan, William
Degan & Patrick M Glynn & contracted for & promised
to pay for their board & tuition & necessaries furnished
them, that said boys entered into said Institution
pursuant to said agreement and on the day of 1853
and remained as students & boarders in the same until
June 1st 1855 This affiant further states that on the
6th day of January 1855 said Quarters owed a balance
on account of the board & tuition of said boys of ninety
seven & 9/100 Dollars, and that for their board tuition
& necessaries furnished to said boys subsequent to said
Sixth January until they left said Institution, said
Quarters owes the further sum of Two hundred & nine
ty Three Dollars, making in all the sum now due
by said Walter Quarters to said University, Three
hundred & ninety & 9/100 Dollars & that said last
mentioned sum is justly due by said Walter
Quarters to said University. This affiant further
states that said Walter Quarters is a non resident
of the State of Illinois, but that he is the legal owner
& proprietor of land in the County of Lake State of
Illinois, Wherefore this affiant prays that an attachment
issue against the lands & tenements, goods
Chattels & effects of every description of said Walter

"Quarters, and that the same or so much thereof as
"will be sufficient to pay said debt with interest
" & costs of this proceedings may be sold to satisfy
" said debt & that such other & further relief as is just
" & necessary be granted &c."

"Hugh Quigley"

"Cook County,
"State of Illinois } ss

✓ On this 28th September 1855 Hugh Quigley
"personally appeared & made oath before me, that the
"foregoing affidavit is true so far as set forth from ^{his}
"own knowledge & so far as set from information de-
"rived from others he believes it to be true.

"Calvin D Wolf Seal B."

"Justice of the Peace."

Endorsed, "Waller & Caulfield Plffs Atty's,"
And Be it also remembered, that on the same day
and at the same time aforesaid, of filing said affidavit
there was filed therewith, a paper writing or attachment
bond which is in the words and figures following
to wit:

✓ "Know all men by these Presents, that we, The Uni-
"versity of St Mary of the Lake & Henry Waller & B
"G Caulfield are held and firmly bound unto Walter
"Quarters in the penal sum of Seven Hundred and Eighty
"one dollars, & ninety six Cents, lawful money of the
"United States, for the payment of which said sum
"well and truly to be made, we bind ourselves, our
"heirs Executors and administrators jointly and sever

ally by these presents,

"Sealed with our Seals, and dated this 28th day of
"September AD 1883—

"The Condition of the above Obligation is such
"That Whereas the above bounden University
"of St. Mary of the Lake has on the day of the
"date hereof prayed an Attachment out of the
"Circuit Court of Lake County at the suit of
"said University of St. Mary of the Lake against
"the Estate of the above named Walter Quarters for
"the sum of Three hundred & Ninety dollars & 98 Cents
"and the same being about to be sued out of said Court
"returnable on the first Monday of next to the
"term of the said Court then to be holden, Now if the
"said University of St. Mary of the Lake shall prosecute
"said suit with effect, or in case of failure therein
"shall well and truly pay and satisfy the said
"Walter Quarters all such costs in said suit, and
"such damages as shall be awarded against the said
"University of St. Mary of the Lake in any suit or
"suits which may hereafter be brought for wrongfully
"suing out the said attachment, then the above obli-
"gation to be void; otherwise to remain in full force
"and effect."

"Signed Sealed and Delivered

"In Presence of

"E. B. Walker"

"University of St. Mary of the
"Lake by G. B. Caulfield Atty

"B. G. Caulfield

"H. Waller

Seal

Seal

"Approved by me at my Office this 29th day of
"September AD 1886

"A. B. Estes Clerk"

And be it also remembered that on the same
29th day of September 1855 immediately after the
filing of the aforesaid Affidavit and bond in the
said Clerk's Office, a writ of attachment was issued
thereupon out of said Circuit Court of Lake County,
which said writ of attachment is in the words
and figures following to wit;

"State of Illinois
"Lake County, ss

"The People of the State of Illinois to the
"Sheriff of said County Greeting: Whereas Hugh
"Quigley, President of the University of St. Mary
"of the Lake, hath complained on oath to Augustus
"Blakes Clerk of the Circuit Court of Lake County
"that Walter Quarters is justly indebted to the said
"University of St. Mary of the Lake to the amount of
"Three hundred and ninety dollars and ninety
"Eight Cents, and oath having been also made that
"the said Walter Quarters is a non resident of the
"State of Illinois, And the said ^{the} University of St.
"Mary of the Lake, having given bond and security
"according to the ^{directions of the} Act in such Cases made and provi-
"ded: We therefore Command you that you attach
"so much of the Estate, real or personal of the said Walter
"Quarters to be found in your County, as shall be of value
"sufficient to satisfy the said debt and costs, according
"to the said Complaint: and such Estate so attached in
"your hands to secure, or so to provide that the same may
"be liable to further proceedings thereupon according to Law

at a Circuit Court to be holden at Mauckegon within
and for the County of Lake aforesaid on the Second
Monday of October next; so as to compel the said Mat-
ter Quarters to appear and answer the Complaint of
the said "The University of St. Mary of the Lake, and that
you also summon as Garnishee to be and appear
before the said Court on the said Second Monday
of October next then and there to answer to what may
be objected against him; when and where you shall
know to the said Court how you have executed
this writ. And have you then and there this writ

Witness Augustus B. Cotes Clerk of our
said Court, and the Seal thereof at Mauckegon
aforesaid this twenty ninth day of September
in the year of our Lord one thousand Eight
hundred and fifty five
A. B. Cotes Clerk

And that on the said twenty ninth day of September
1856, the said writ of Attachment was delivered to the
Sheriff of said County of Lake to Execute, which said
Sheriff on the same day, returned said writ of at-
tachment; into the Office of the said Clerk of the Circuit
Executed as appears by a return thereon endorsed
which return is in the words and figures following to wit
Executed the within writ by levying upon the following
real Estate to wit: the South East $\frac{1}{4}$ of the South East $\frac{1}{4}$
and the North East $\frac{1}{4}$ of the South East $\frac{1}{4}$ of Section ~~44~~
32 in Township 45 North Range 12 East in the County
of Lake and State of Illinois, not served on the within

named defendant he not being found in my County

" Fees Levy 50

" Certf 50

" recording Certf 50

" return 10

" J. F. Gingles Sheriff \$1.60

And be it also remembered that on the said 29th day of September 1853, at the same time of filing the aforesaid affidavit and bond, therewith was filed a precipe for attachment ^{in summons} which is in the words and figures following to wit:

" Lake County

" State of Illinois } The University of St. Mary of the Lake

"

" Walter Quarters,

" The Clerk of the Circuit Court of Lake County will issue
" a summons for Walter Quarters and ^{and} attachment on his
" lands &c & order an immediate return of said attachment
" and then issue a notice of publication as is usual
" in case of non residents.

" Waller & Caulfield, Plffs atty.

And be it also remembered that on the said twenty ninth day, of September A.D. 1853- the said Waller and Caulfield as attorneys for the said The University of St. Mary of the Lake, filed in the said Office of the Clerk of the Circuit Court of Lake County aforesaid, a declaration against the said Walter Quarters, of which Declaration the following is a copy

"State of Illinois

"Lake County } ss

Circuit Court Lake County

"University of St Mary of the Lake

" vs

"Walter Quarter

"The University of St Mary of the
"Lake" by its attorneys Walter & Caulfield, complain
"of Walter Quarter of a plea of trespass on the case on
"promises - For that whereas the said Walter Quarter
"on ~~the~~ ~~1st~~ day of ~~July~~ ~~1888~~ at the County aforesaid, pla-
"ced at the said Institution four boys viz; Walter De-
"gan James Dezan William Dezan & Patrick M Glynn
"and Contracted with the said University, for their board
"tuition & necessaries, and thereunto faithfully promised
"to bound himself to pay the regular charges for tuition
"board for said boys & also to pay for whatever necessaries
"viz; Clothing, books, Stationery &c, which the said
"University might furnish to said boys; and the said
"University, in consideration of his faithful promise
"to pay as aforesaid and at the special instance & re-
"quest of said Quarters received said boys pursuant
"to said contract and continued to furnish them
"with board tuition & necessaries as in said contract
"was provided at the sum of One hundred & Twenty
"five dollars per annum for board and tuition
"the necessaries at whatever they should
"be reasonably worth and upon an accounting
"between said Institution ~~and~~ said Quarters on

the ~~XX~~^{July} day of ~~July~~¹⁸⁵⁵ it was found that said
 Quarters was indebted by a balance on account to
 said University on the 6th day of January last the
 sum of Ninety Seven & 9/100 Dollars & that for board
 tuition & necessaries furnished to said boys at the like
 special instance & request of said Walter Quarters
 since the said 6th day of January 1855, the said Quarters
 was indebted to said University in the further sum of
 Two Hundred & Ninety three Dollars making in all
 the sum of Three Hundred & Ninety & 9/100 Dollars, due
 by said Quarters to said University, which latter
 amount; viz: Three hundred & Ninety & 9/100 Dollars
 he undertook & then & there faithfully promised &
 bound himself to pay to said University &c, whenever
 he should be thereunto afterwards requested; & ever
 theless the said Quarters though frequently requested
 so to do never has paid ^{said} last mentioned sum or any
 part thereof but wholly refuses & still doth refuse to
 do the same to the damage of the Plaintiff six hundred
 Dollars, wherefore said University brings this suit
 "

Waller & Caulfield for Plaintiff

And be it also remembered that on the said twentieth
 day of September, and with said declaration was filed
 a bill of items in the words and figures following to wit:

" Rev Walter Quarters, in ac
 " With University of St Mary of the Lake
 " Jan'y 6, 1855 - To bal, due 897.98
 " To Six months board & tuition at \$125 per annum,
 " for Walter, James, William Dezan to 1st June / 55 - 187.50

" To Six months board & Truition of Patk
 " M Glynn to 1st June \$62,50
 " To washing for M Glynn 7,50
 " Do Do for the three Deans 22,50
 " To three pair of boots for Messrs Deans to 1st June 18,00
 \$390,98

" United States of America }
 " State of Illinois Lake County }

" Before the Honorable George Manierre
 " Judge of the Seventh Judicial Circuit of the
 " State of Illinois:

" At a term of the Circuit Court for the County of
 " Lake, in said Circuit, began and held at
 " Waukegan in said County on the fourteenth day
 " of January in the year of our Lord One thousand
 " Eight hundred and fifty six, and of the Independ-
 " ence of the United States the Eighty first

" Present the Honorable George Manierre Judge
 " John F Gayles Sheriff of Lake County

" Attest A B Cates Clerk

And be it also remembered that on the twenty
 third day of January 1856 the same being one of
 the days of the January Term of the said Circuit
 Court for the year last aforesaid, ~~such~~ proceedings
 were had in said Court, in relation to said suit
 wherein the said University of St Mary of the Lake was
 plaintiff and Walter Quarters was defendant, which are
 entered of record in the Records of said Court in the

and figures
words following to wit

"The University of St Mary of the Lakes
"99" vs } Attachment
"Halter Dearters }
"

Now comes the said
"defendant by Coventry his attorney and on his motion
"founded on affidavit filed, it is ordered that this
"Cause be and the same is hereby continued -

"United States of America }
"State of Illinois, Lake County } ss

Please for the Honorable
George Manierre Judge of the Seventh Judicial
Circuit of the State of Illinois, at a special term
of a Circuit Court for the County of Lake in
said Circuit began and held at Waukegan
in said County on the twenty first day
of April in the year of our Lord one thou-
sand Eight hundred and fifty six, and of the
Independence of the United States the Eighth
~~first~~, said term of Court being held pur-
suant to an order of the said Honorable
George Manierre Judge as aforesaid and pre-
siding Judge of the Circuit Court of Lake
County, aforesaid, which was made and
entered at the last January term of the
said Circuit Court the said term being a
regular term thereof - and which appointed

" the said twenty first day, of April in the
" year of our Lord one thousand Eight hun-
" dred and fifty six as a time for holding
" a Special term of the said Circuit Court for
" hearing and deciding Chancery Causes, and
" also for the trial of Civil and Criminal Causes
" Present the Honorable George Manierre Judge
" John F. Hughes Sheriff of Lake County
" Attest A. B. Cotes Clerk

" United States of America
" State of Illinois Lake County } p

" Pleas before the Honorable George
" Manierre Judge of the Seventh Judicial Circuit of the
" State of Illinois, at a Circuit Court for the County of Lake
" in said ^{circuit began and held at Waukegan in said county} ~~County~~ on the Second day of June in the year
" of our Lord, one thousand Eight hundred and fifty six
" and of the Independence of the United States the ~~21st~~
" ~~21st~~ ^{first} eightieth

" Present, the Honorable George Manierre Judge
" aforesaid, John F. Hughes Sheriff of Lake County
" Attest, A. B. Cotes Clerk;

Be it also remembered, that afterwards to wit on the
" ^{12th} day of June 1856, the same being one of the days of
" the June term of said Court for the year last aforesaid
" said defendant by his attorney Counsel to be filed in said
" Court, a demurrer in writing to the aforesaid declaration which
" demurrer is in the words & figures following to wit—

Walter J. Quanten
vs

Sake County Circuit Court
of June Term AD 1856

The University of St Mary
of the Lake

And the said defendant
by McCoventry his attorney comes and defends
the wrong and injury where and says that the
said declaration and the matters therein contained
in manner and form as the same are above
stated and set forth are not sufficient in
law for the said plaintiff & have or maintain
its aforesaid action thereof against the
said defendant and be the said defendant
is not bound by law to answer the same
And thus he is ready to verify wherefore
by reason of the insufficiency of the said
declaration in this behalf the said
defendant prays judgment and that
the said plaintiff may be barred from
having or maintaining his aforesaid
action thereof against him.

And the said defendant according
to the form of the Statute in such case made
and provided states and shows to the Court
the following causes of demurrer
to the said declaration

First

That said declaration does not
show said Plff to be a corporation

Second. Said declaration is uncertain
as to time -

Third. Said declaration does not show any
consideration for the promise,

Fourth. Said declaration is in other respects
informal uncertain and inefficient
Counseling for
for P. B. G. O. L.

And be it also remembered that proceedings
were had in said cause in relation to said
cause at said June term, which are
entered of record in the Records of said
Court in the words following to wit

18
The University of St Mary
of the Lake
vs
Walter Dacarters } Attachment

Now come said parties, said
Plaintiff by Terry its Attorney, and the said defendant
by Blodgett his Attorney, and joinder in demur-
rer being had herein, and the Court after arguments
of Counsel being fully advised in the premises it is
thereupon ordered and considered that the demur-
rer of the said defendant to the declaration of the
said plaintiff heretofore filed in this Cause
be and the same is hereby sustained at the costs of
the said plaintiff, and that the said defendant
have and recover of the said plaintiff his costs
and charges by him in and about his said demur-
rer expended and that he have Execution therefor —
Whereupon on motion of the said Attorney for the
said plaintiff it is ordered that the said plain-
tiff have leave to amend its declaration herein, and
afterwards the said declaration of the said plaintiff
having been amended, on motion of the said defendant
it is ordered that he have ~~leave~~ until Eleven o'clock
to-morrow morning in which to plead to the said
amended declaration herein,

Be it also remembered that afterwards to wit
on the 5th day of June 1856 being one of the days
of the aforesaid June term for the year last aforesaid

further proceedings were had in said Court in re-
lation to said suit which are entered in the
records of said Court for said term in the words
following to wit;

"The University of St }
"Mary of the Lake }
"vs } Attachment
"Walter Quarters }

Now come said parties by their
"respective attorneys, and thereupon the said plaintiff
"asks for a judgment for its damages herein, and
"for a jury to assess the same, because the said
"defendant has not filed his plea in this cause
"in accordance with the rule heretofore entered
"herein. Whereupon the said defendant asks
"leave of the Court to file a plea of the General issue
"and also a plea of Null tiel Corporation herein
"and it is thereupon ordered that the said defendant
"have leave to file his plea of the general issue, only
Whereupon be it also remembered that the said
defendants on the said fifth day of June 1856,
filed with the Clerk of said Court his certain
plea which is in the words following to wit

"Circuit Court of Lake County
"Walter Quarters }
"vs }
"University of St Mary }
"of the Lake }

And the said defendant by

Scammon and Coventry his attorneys comes
and defends the wrong and injury when 40, and
says that he did not undertake or promised in
manner and form as the said plaintiff hath above
thereof complained against him, and of this he puts
himself upon the Country &c

Scammon & Coventry
Defts attys

And be it also remembered that afterwards to wit
on this same fifth day of June 1856, proceedings
were had in said Court in relation to said cause
which are entered of record in the Records of
said Court in the words and figures following
to wit:

"The University of St.	}	Attachment
"Mary of the Lake		
70" vs		
"Walter Quaster		

"Now comes said parties by their respective
and attorneys, thereupon on motion of the said defendant
it is ordered that he have leave and leave is hereby
granted to withdraw his plea heretofore filed herein
and afterwards the said defendant having ^{withdrawn} his said
plea and being three times solemnly called, comes
not nor any one for him, but he herein fails
and makes default, whereupon on motion of
the said plaintiff it appearing to the Court that
due publication of notice according to the
Statute in such cases made and provided has

„being by the Clerk of this Court herein it is ordered
„that the said ~~that the said~~ plaintiff have and re-
„cover of the said defendant its damages herein
„and because those damages are uncertain and
„unknown to the Court, it is thereupon further
„ordered that a jury come to Enquire of the same
„whereupon come a jury to wit C. E. Clark, Elijah
„Alford, E. Plympton, Harry Rankin, Elisha Lake
„James G. Carey, P. D. Wilber, David Grover, J. H. Flinn
„Gustavus Simons, E. H. Nelson, and Edward Putnam
„who, being duly impannelled and sworn to well
„and ^{truly} enquire into and true assessment make
„of the damages of the said plaintiff herein
„and having heard the Evidence, assess the
„damages of the said plaintiff at the sum of Three
„hundred and ninety dollars, and thereupon
„on motion of the said plaintiff it is ordered
„and considered by the Court that the said
„Plaintiff have and recover of the said defendant
\$390, „the said sum of Three hundred and ninety dollars
„for its damages so as aforesaid assessed, together
„with its costs and charges in this behalf expended
„and that it have Execution therefor, and it is
„further ordered that a special Execution issue
„for the sale of the property attached by virtue of
„the writ of attachment heretofore issued in
„this cause

And the following is a copy of the amended
Declaration filed in said cause on the fourth
day of June 1856, pursuant to said order

11
State of Illinois
Salem County Ill.

Circuit Court Salem County

University of St Mary of
the Lake vs.

Walter Quarta

The University of

St Mary of the Lake by its attorney Walter Kaufman
Complain of Walter Quarta of a plea of trespass
on the Case in person - For that whereas Michael
Walter Quarta on the 1st day of Jan'y 1855 at the
County aforesaid placed at the said institution four
boys viz. Walter Segar James Segar William Segar
& Patrick McElynn and contracted with said
university for their board tuition & necessaries
and thereunto faithfully promised & bound himself
to pay the regular charges for tuition & board
for said boys & also to pay for whatever neces-
saries viz. clothing, books, stationery &c. which
the said university might furnish to said boys
and the said university in consideration of his
faithful promise to pay as aforesaid and at
the special instance & request of said Quarta
received said boys pursuant to said contract
and continued to furnish them with board
tuition & necessaries as in said contract
was provided at the sum of one hundred
& twenty five dollars per annum for board
& tuition & the necessaries at which they
should be reasonably worth and upon an

accounting between said institution & said
Quarters on the 1st of July 1855. it was found
that said Quarters was indebted by a balance
on account to said University on the
6th of January last the sum of Ninety Seven
& 98/100 Dollars & that for board tuition &
messengers furnished to said boy at the
like special instance & request of said Walter
Quarters since the said 6th day of January
1855 the said Quarters was indebted to said University
in the further sum of Two Hundred & Ninety
Three Dollars making in all the sum of
Three Hundred & Ninety & 98/100 Dollars due to said
Quarters to said University, which latter amount
viz. Three Hundred & Ninety & 98/100 Dollars he
undertook & then & there faithfully promised
& bound himself to pay to said ^{University &c} institution
wherein he should be thereto afterward requested
Notwithstanding the said Quarters though frequently requested
to do now has paid said last mentioned sum
in any part thereof but wholly refuses still to do
refuse to do the same to the damage of the Plaintiff
Six hundred dollars now for said University
being ^{this} suit

Walter Caulfield
for Plaintiff

And be it also remembered that on the 13th day
of June aforesaid in the said June Term aforesaid
the said defendant filed his motion papers in
arrest of judgment in said cause, the original
of which said motion papers are hereto at-
tached and are as follows.

Lake County Circuit Court.

June Term A.D. 1856.

Walter Searles

vs

The University of St Mary
of the Lake.

State of Illinois

Cook County vs Alexander C. Corcoran
of said County being duly sworn deposes
and says, that he this deponent is one of the
attorneys of the above named defendant, and is
one of the authorized agents of said Searles
in the above entitled cause, that he this
defendant deponent has been informed
of the merits of said cause and verily believes
from his information and knowledge of the
same that the said defendant Searles has
a good and substantial defence on the merits
of the said cause, and he further says that
he has been repeatedly consulted about the
said cause, and is the only one of the said
defendant attorneys who has been fully
consulted about the same, and is cognizant
of the facts & merits of the said defendant's
defence.

This deponent further says that he is
a resident of the City of Chicago in the

County of Cork. distant Thirty five miles or thereabouts
from Newry the place of trial of the above
entitled cause. and that he this defendant did
cause to be prepared in the said cause and
did deliver to Mr J W Blagden of Newry. the
Solicitor an attorney & Commissioner of this Honorable
Court on the 1st June that being Monday of the
week last past being the first day of the present
term of this Honorable Court, a summons to the
said plaintiffs declaration in said cause above
entitled, with directions to him the said Blagden
to file the same in the said cause above entitled
and to argue the same if he should deem it
necessary to do so. And he would here state and
show unto this Honorable Court that his reason
for so doing was that he deemed and considered
the said plaintiffs declaration in the said above
entitled cause. substantially defective in many
particulars. and that he did at the same time
believe that if the attention of this Honorable
Court was called and directed to the said
declaration, that this Court would compel
the said plaintiff to amend his said
declaration in said cause and would
continue the said cause at the said
plaintiffs costs. And for the further
reason that he deemed the said
declaration so indiginate that he

demanded ^{it} for the best interest of the defendant that the same should be amended and entered before the said defendant pleads to the same.

And this deponent further says that he has been informed & believes the same to be true that the said Blodgett did file the said summons in the said cause, and did submit the same to this Honorable Court, and that said summons so submitted was sustained by this Court, and that the said Plaintiff was permitted to amend his declaration, and to have a short rule to plead on the said defendant in said cause above entitled, and that this Honorable Court did further permit him to take a judgment in said cause as by default, of which ^{he} ^{rightly did} the said defendant Leach nor did this deponent have any notice, and that he this deponent had no knowledge of such facts except that said summons was sustained & that said Plaintiff had leave to amend, prior to or before Saturday of the week last past being the 14th day of June, on which day this deponent proceeded to work & was then for the first time made acquainted with

the facts hereinbefore set forth, and this defendant
deponent further states, that he was unable
to proceed to Waukegan aforesaid. prior to said
Saturday, for the reason that he this deponent
was detained at Chicago aforesaid, being
engaged in an important Chancery cause
then pending before the Hon. John M. Wilson
Judge of the Cook County Court of Common
Pleas, which this deponent was unable to
leave without great prejudice & which was not
finished & completed till the Friday preceding
the said Saturday above mentioned.

And this deponent further states
that he had not prior to the said Saturday
known that the above mentioned deponent the
said Plaintiff of the Nature Inmate of the
said defendant Leathers defence to the said
action above entitled, and that he this
deponent had well ^{known} and ~~truly~~ expected
to be at Waukegan early in the said week
last past, for attendance at this Honorable
Court early in the said week, but that he
was detained longer than he could reasonably
expect to be for the reasons hereinbefore stated.

And this deponent further
states from his knowledge & information in
regard to said above entitled cause,
that he the said defendant Leathers

has a good and substantial defence upon the merits to the said action above entitled, and that he the said defendant Quarters has ^{well} been greatly injured and oppressed by the judgment heretofore entered in the said cause be permitted to stand remain against him.

And this deponent would further state and show unto this Honorable Court, that the facts & causes from which the said action above entitled arose, arose in the said City of Chicago, & that the witnesses as well as the said Plaintiff are in said City of Chicago, and that he this deponent has often applied to said Plaintiff attorney to transfer said cause to said City, that the same might be properly & expediently disposed of, but that said Plff's attys have at all times refused to consent to such a change of venue, assigning for reason the Office of said Attorney would not consent to such a change of venue, it being done on this deponent's merely believe to harass the said defendant. Quarters

And this deponent further states that the said defendant Quarters resides in the sa Yorkville

that is now at Longville as this deponent believes
in the State of New York, and that he has
been unable to communicate with him
(except by Telegraph.) since he first
heard of said judgment, and that
for this reason he has not been
able to file the affidavit of said
defendant's Quarters in favor support
of this motion.

Wherefore for the reason
aforesaid, and that justice may
be done in the premises, this deponent
hopes that said judgment may
be set aside.

A. C. Country

Subscribed & sworn to before me
the undersigned Clerk of the Cook
County Court of Common Pleas.
In testimony whereof I have here-
unto set my hand & affixed the
Seal of said Court this 22th
day of June A.D. 1856

Walter Kimball, Clerk Cook
County Court of Common Pleas

72

✓

Like Circuit Court

The University of
Michigan of this
Lake

is
Walter L. Loomis

off of H. C. Corcoran
Filed Jan 13. 1856
At Boston Court

Heppner Much Corcoran
attys for deft

✓

Lake County Circuit Court

June Term A.D. 1856.

27 The Municipality of St Mary's
of the Lake

Plaintiff

vs Messrs Walter Caulfield

Defendants

Sheweth

That your petitioner doth hereby certify that on the
coming in of the Court, on the afternoon of ^{Friday} ~~Thursday~~
the 8th day of June instant or as soon thereafter
as Counsel may be heard, he shall move the Court
on the motions, with copies of which you are herewith
served to arrest the judgment in the above entitled cause,
and that he shall at the same time move the Court
of the said motion in arrest of judgment be
denied, to set aside the default entered in the
said cause, and that the said default
have leave to plead to said cause.

Yours respectfully

Chicago June 10th 1856. Higgins Muck & Co. Attys
Attys for Deft Intus

We do hereby submit herewith a copy
of some ^{notice} ~~notice~~ and of motions therein signed

Chicago June 10th 1856

Lake County Circuit Court.

The Inhabitants of St Mary of
the Lake

vs
Walter Swanton.

And now come the said
defendant, Walter Swanton by Higgins
Hugh & Corcoran his attorneys, and
here moves the Court for an arrest
of the judgment in the above entitled
cause and assigns for reason of
said motion.

1st That the Plaintiffs amended declaration
in said cause is defective ^{and insufficient} in this that no
consideration is alleged or set forth
in the said amended declaration for or
to support the promise laid and charged
in the breach to the said amended
declaration

2d That the said Plaintiffs amended declaration
is defective in this that the said Plaintiff
has not filed with his said amended
declaration a copy of the account or
Contract sued on or declared on, in the
said cause

3d That the Court Erred in Compelling the said defendant to plead to said action and to said amended declaration at the present term of said Court, after having first sustained the said defence against demurrer to the original declaration in said cause at this term of said Court.

4th That the Court Erred in Compelling the said defendant to proceed to the trial of the said cause, at the present term of said Court, after having first sustained the said defendants demurrer to the original declaration in said cause, at this the same term.

5th That the Court Erred in Compelling the said defendant to plead in answer to said Plaintiffs amended declaration in said cause.

6th That the Court Erred in entering judgment in said cause against the said defendant as by default, when he had appeared & there was no default.

7th That the Court Erred in entering judgment in said without said defendants express consent or Contract Cause, while there was no copy of the Account sued on or declared on filed in said cause.

8th That the Court Erred in not continuing said cause at said Plaintiff Cost, for want of a copy of account or Contract sued on, filed in said cause.

Weggs in Much of Country
Allys for Sept. Lecture

Lake County Circuit Court

The University of Chicago
of the Lake

Platte Quaker

And now come the said
defendant by Higgins. Much to contrary
his attorney, and here moves this Honorable
Court, to set aside the default entered
against the said defendant, in said
cause, and further moves this Honorable
Court, that he the said defendant,
have leave to plead in the said cause,
and assign for reasons the facts
set forth and stated in the affidavit
filed in said motion in said
cause.

Higgins Much to contrary
Chicago University
1880.

72

✓

Lake Circuit Court.

The University of Ill
County of the Lake

is

William S. Curtis

~~William~~

offt & motion

Filed June 13, 1856

A. V. Curtis, clerk

Wm. S. Curtis

Attor for Offt

✓

And be it also remembered that on the said
thirteenth day of June in the aforesaid June
term of said Court for the year 1856 proceed-
ings were had in said Court in relation
to said suit and especially in relation to
said motion in arrest of judgment which
are entered of record in the Records of said
Court for said term in the words following
to wit;

72 " The University of St Mary }
" of the Lake }
" us } Attachment
" Walter Masters }

Now come said parties, said
" plaintiff by Ferry its Attorney, and the said de-
" fendant by Wiggins his Attorney and thereupon
" the said defendant enters his motion for an
" arrest of the judgment herein for ~~the~~ rea-
" sons filed, and afterwards after arguments
" of Counsel the Court being fully advised
" in the premises, it is ordered that the said
" motion be and the same is hereby overru-
" led at the costs of the said defendant to
" which decision of the Court overruling
" said motion the said defendant Excepts

The University of St }
 Mary of the Lake }
 v. }
 Walter Quarters }

Attachment

State of Illinois }
 Lake County } J. S. Au-

gustus B. Bates, clerk of the circuit court
 in and for the County of Lake in the State
 of Illinois, hereby certify the foregoing to
 be a true transcript from the records and
 files of my office of the record of the pro-
 ceedings in said court, and of the pleadings
 on file, in the above entitled cause.

In testimony whereof I have
 hereunto set my hand and the
 seal of said court at
 Frank Ryan in said coun-
 ty this twenty fifth day
 of June A.D. 1856
 J. S. Bates, clerk

Let a supersedeas issue in this cause
 upon the plaintiff in error filing with the
 record a bond in the penal sum of six
 hundred dollars with J. Young Scammon
 as surety as by law required

J. S. Bates

Let a Supersedeas issue in this cause
upon the Plaintiff in error filing with
this record a bond in the penal sum
of six hundred dollars with John
McGovern or Philip Carlin as surety
as by law required.

Oliver H. Robbins
Justice of the Supreme
Court.

77
Halter Lucifers

University of the State of New York

Record

J. H. Seaman

of the University

George Seaman

and Wines

of the University

Filed March 16 1853

L. Seaman

Sec. R

S U P R E M E C O U R T .

WALTER J. QUARTERS,

vs.

} Error from Lake.

UNIVERSITY OF ST. MARYS OF THE LAKE.

ACTION below assumpsit. Commenced by attachment. Affidavit purports to be made by H. Quigly, before C. DeWolf, a Justice of the Peace of Cook County, without any proof that he was Justice of the Peace. Bond given in the usual form, omitting the term to which the writ was returnable. Signed without seal. University of St. Marys of the Lake by G. B. Caulfield, Attorney. Writ issues September 29, 1855, returnable at October Term, A. D. 1855. Plaintiff at the same time files a ~~præcipe~~ *which was done* that said writ be at once returned and advertize. No personal service. Declaration filed September 9, 1855, to which a demurer was filed. The demurer sustained at the June Term, 1856, and plaintiff have leave to file an amended declaration, which having been at once done, it was ordered that the defendant have till eleven o'clock, of the next day, to plead to the amended declaration.

The new and amended declaration is not entitled, at any time, is a common count for board and tuition, and concludes in this wise.

"Which latter amount, viz: \$390 98-100, he undertook and then and there faithfully promised and bound himself to pay to said University, &c. whenever he should be thereunto afterwards requested. Nevertheless the said Quarters, though frequently requested so to do, never has paid said last mentioned sum, or any part thereof, but wholly refuses and still does refuse to do the same to the damage of the plaintiff, &c."

Without any bill of particulars.

On the next day come the parties. Defendant filed a plea, *and moved for a continuance which was refused*. Same day defendant asked leave to withdraw his plea—which is granted. Judgment by default for \$390. Defendant by his Attorney, moves to set aside the Judgment, and files affidavit and moves arrest of Judgment. Both of which motions were overruled.

Errors assigned :—

1st. Attachment Bond does not state to what term the writ was returnable.

2d. That there is no evidence of the official character of the Justice of the Peace administering the oath.

3d. That the Sheriff was immediately directed, by the plaintiff's Attorney, to return the writ.

4th. That Judgment by default was entered against defendant when there had been an appearance.

5th. That the amended declaration is insufficient and does not allege sufficient to support the action, and that the motion to arrest should have been sustained.

6th. That the Court erred in permitting the defendant in error to take a short rule to plead after sustaining the demurrer, and in allowing the plaintiff below to amend his declaration, and compelling the defendant to plead without continuing the case.

79
Quater

University of Sh
Mary of the Lake

at

compelling the defendant to plead without continuing the case
and in allowing the plaintiff below to amend his declaration, and
not to take a short rule to plead after sustaining the demurrer.
6th. That the Court erred in permitting the defendant in er-
to arrest should have been sustained.

not allege sufficient to support the action, and that the motion
5th. That the amended declaration is insufficient and does
not when there has been an appearance.

That judgment by default was entered against defen-
dant's Attorney, to return the writ.

That the Sheriff was immediately directed by the plain-
tiff of the Peace administering the oath.

That there is no evidence of the official character of the
defendant.

Bond does not state to what return the writ
is returned.

Both of which motions were
moved to set aside the judgment, and files affidavit

judgment by default for \$330. Defendant by his
counsel moved to set aside the judgment, and files affidavit

On the next day came the parties. Defendant filed a plea
to the next day came the parties. Defendant filed a plea

Matter of Quarters }

"

University of St Mary
of the Loake }

Enor to Loake.

Argument for dist in enor.

II. It is a sufficient answer to the first three enors assigned to say, that the deft in the court below entered his appearance, and pleaded generally to the action, and he thereby waived any informality in the attachment and, affidavit and service of process.

III. The fourth error assigned is, that the court has said he did not come, when in fact he had come but would not speak - I submit that the judgment of the court is for a default in not speaking - A party fails to comply with the rule of the court, and for such default judgment is rendered against him for damages & costs - Such is the present case

III. The amended declaration is sufficient after verdict -

IV. The party cannot complain of the rule despite a plea, for he complied with the rule & filed the plea - Because he afterwards withdrew his plea, he cannot say that he was injured by a rule which he complied with -

If the deft desired a continuance he should have asked for it. Not asking for a continuance he cannot now say that he was injured by what he did not ask for -

The granting of a continuance under the circumstances was a matter of discretion and cannot be revised in this court.

42359-247

79
Quarter
University of St. Mary
of the Lake
Agmt for Soft

Supreme Court

Walter J. Swartons

"

Emor from Lake.

Municipality of St Marys of the Lake

The Bond filed in this cause was defective in this, that it does not comply with the requirements of the Statute, in this that it does not state to what term of the Court below the mit was returnable.

Idis 5 of Abstract

Word Statutes. Little attachments in the Civ let Sec 5.

The Bond is further defective in this it is executed without a seal, and is therefore no bond.

The affidavit filed in this cause in the Court below is insufficient in this that it was sworn to before a Justice of the Peace of Cook County with no certificate of Magistracy and without proof that he was a justice of the Peace
Nowley v Berrian 12th Illinois 201

The affidavit being insufficient and void for the reasons above stated it was

The duty of the Court below to dismiss
the case

Third Statutes. Little attack in Cui lets
Sec 4

It is the duty of the Sheriff to cause
personal service to be made on the defendant
in all cases of attachments, where the defendant
can be found and he must make all reasonable
efforts to obtain such service

N. S. Little attack in Cui lets Sec 3d.

In this case no effort could have been made and
no service was made. The writ being returned summarily
after being by order of H. H. atty
Also 8 of abstract

The Court below erred in allowing the Plaintiff
below to amend his declaration and have a short
rule to plead, it also erred in refusing to
continue the cause when requested so to do
by defendant below.

The Court below erred in entering judgment
by default after an appearance

The judgment below should have been re-
versed. This is good cause for a motion

for arrest of judgment

The Court below erred in refusing to set aside the judgment default Entered below for the reason that the amended declaration filed in this cause as well as the original declaration was defective in this that it did not allege sufficient to support the action and was not entitled of any term.

The Court below erred in not sustaining the motion of the defendant below in arrest of judgment for the reason that the bond and affidavit filed in this cause were defective and the amended declaration was bad on general demurrer.

That a declaration would be bad on general demurrer is a good cause for a motion in arrest of judgment

J. G. Hammond
of Counsel

79.

Supreme Court
Walter A. Scammon

vs

Minority of Members
of the Lake

Plaintiff vs
Defendant

Filed May 30. 1857
S. Leland
Clerk

A. Y. Scammon
Attorney

State of Illinois }
Supreme Court }

33

Same Term in the year of our Lord
one thousand eight hundred and fifty seven.

Walter Quarter

v.

The University of S.^c

Many of the Lake.

Afterwards to wit on the

day of A. D. 1856 came the said Walter Quarter
by Higgins, March & Coventry his Attorney and says that
in the record and proceedings aforesaid and also in the
rendition of the judgment aforesaid there is manifest error in
this, to wit: The attachment bond does not state to what
term of said Circuit Court if any, the attachment was
returnable, whereas by the law of the land the said
attachment bond should have stated to what term of said
Court said attachment was returnable.

And there is also error in this to wit:
the oath on which said attachment was predicated, was
administered by a person residing out of the County where
said Circuit Court was to be held and there was no
proof or evidence of the official character of the person admin-
istering said oath when by the laws of the land such
proofs and evidence were necessary.

And there is also error in this to wit: that the attachment bond recites that the University of S^{te} Mary of the Lake had prayed out an attachment where the fact is that one Hugh Quigley had prayed the attachment and by the laws of the land the affidavit and the attachment bond should agree,

And there is also error in this, to wit: that the plaintiffs Attorneys directed an immediate return of the writ in said action, thereby preventing the sheriff from finding and serving or attempting to find and serve said writ on the defendant therein mentioned, if he was to be found, and that the sheriff in fact did make an immediate return of said writ without attempting to find and make service of the same on the defendant therein mentioned; when by the laws of the land the sheriff was bound to serve said writ upon the said defendant therein mentioned if he could be found.

And there is also error in this to wit: that the Court entered against the defendant below a judgment by default, when in fact the defendant below entered an appearance and by the law of the land there should have been no judgment by default.

And there is also error in this to wit: that the amended declaration of the plaintiffs below does not state or show any consideration for or to support the promise laid and

charged in said amended declaration for the said sum of ninety seven dollars and ninety eight cents part and parcel of the sum for which judgment was rendered against the defendant below by default, whereas by the law of the land, a consideration good in itself to support said promise should be alledged and no judgment for said sum should have been rendered against the defendant below.

And there is also error in this writ: that the court below permitted the plaintiff below to take a short note to plead on the defendant below when the demurre filed by the defendant below had been sustained, when by the law of the land the defendant below was entitled to a continuance.

And there is also error in this writ: that the amended declaration of the plaintiff below does not allege or state any undertaking or promise of the defendant below to pay said sum of ninety seven dollars and ninety eight cents in said amended declaration mentioned, or any part thereof when by the laws of the land a promise and undertaking in the part of the said defendant below to pay said sum should have been alledged and no judgment for said sum should have been rendered against said defendant below.

And there is also error in this writ: that said amend-

-ded declaration is so uncertain, inartificial, and indis-
-tinct that the defendant below could have no sufficient
notice or information of the cause for which said Action
was brought, or of the sum or sums claimed and
upon what grounds so that the defendant below could
make answer or defence thereto, or upon which said
court could render judgment whereas by the laws of the
land said declaration should be certain, formal and
distinct.

And the said Walter Quarters prays that
the judgment aforesaid for the errors aforesaid and for
other errors apparent in the record and proceedings
aforesaid may be reversed, annulled and altogether held
for nothing and that he may be restored to all things
which he has lost by the occasion of the said judgment &c.

Wiggins Mearns Horrocks
Atty for Plf in error

And now the said University of St Mary of the Lake
by C. R. Kettle its Atty comes and says that there is
no error in the record and proceedings aforesaid and
prays that said judgment may be affirmed

By its Atty C. R. Kettle

Supreme Court 3rd
Grand Division
State of Illinois

Walter Quarters

"

University of St. Mary
of the Lake

assign of Enos

Filed March 16. 1897
L. Leland
Clerk

Higgins & Hinch Attorney
attys of
Paffin Enos

John McKeon
Philip Carlin

Know all men by these presents.

That the Matter
J. Quarters of the City of New York in the
County and State of New York and Philip
Carlin and John Mc Gowan, both of the
City of Chicago, in the County of Cook
and State of Illinois, are held and firmly
bound unto the Municipality of St. Marys of the Lake
in the penal sum of One thousand Dollars,
for which payment well and truly to be
made. We do hereby bind ourselves, our heirs
and administrators, and the executors and
administrators of each and every of us
firmly by these presents.

Dated with our Seals
and dated the Twentieth day of November
in the year of our Lord One thousand eight
hundred and fifty six.

The Condition of the
above obligation is such that if the said
Matter. J. Quarters shall fail to prosecute
a certain writ of Error wherein he is party
Plaintiff and the said Municipality of St.
Marys of the Lake is party defendant in a cause
pending in the Circuit Court of Lake
County ~~in~~ the Supreme Court of the State of
Illinois, or if said writ shall be quashed or
discontinued or if the judgment aforesaid
or any part thereof shall be affirmed then
that the said Matter. J. Quarters shall pay
the damages and costs recovered by such
judgment together such judgment so affirmed
with the interest thereon, together with all costs

and damage which shall be awarded upon
the judgment so affirmed by the Court affirming
the same. Then this obligation to be void. Thomas
Remains in full force and virtue.
Signed & Delivered in
the presence of

Philip Carlin
John M. Brown
Walter J. Quatey



Supreme Court

Walter J. Swain

vs

The Municipality of
St Mary's of the Lake

Bond

Filed March 16, 1887

L. Leland
Clerk