

14373


No. _____

Supreme Court of Illinois

Walker

vs.

Brown et al.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 82

14373

Macar
vs.
Brown

1862

1862

Know All Men by these presents, that
we Martin O Walker ^{of} J. W. Cutting
and Guy W. Cutting are held and
firmly bound unto James Brown
and James Hollingsworth in the full
sum of Three Thousand Six Hundred &
Eighty Dollars Lawful money of the
United States for the true payment
whereof they bind themselves their
heirs executors & administrators
firmly by these presents, signed
with our hands, sealed with our seals
and dated this 26th day of July 1861

The condition of the foregoing
obligation is such that whereas the
said Brown & Hollingsworth recovered
against said Walker in the Superior
Court of Chicogo a judgment for
Sixteen Hundred & Forty Dollars with
costs of suit at the term
thereof 1860 upon which the said
Walker has sued out a writ of
error from the Supreme Court of the
State of Illinois, and the same
is ordered to operate as a supersedeas
upon the said Walker's filing this
bond conditioned as the Law
directs. Now if the said Walker
shall pay the judgment costs interest

and damages in case the judgment shall be affirmed and shall duly prosecute his suit in this behalf, then this obligation shall be void, otherwise the same shall be in full force and effect in Law,

W. O. Walker

F. H. Cutting

Guy Cutting

Seal
Seal
Seal

Approved

Justice of Supreme Court

State of Illinois }
Cook County } "

On this day came Franklin W. Cutting and Guy W. Cutting personally before me and made oath that they, and each of them own unincumbered real estate of the value of four thousand dollars, over and above all debts & liabilities & further so on.

Subscribed & sworn to } Calvin D. Mott / J.P.
before me this 26th day of }
July A.D. 1861 }

State of Illinois
County of Cook

Franklin H. Cutting being
justly sworn deposes and says that the
in one of the Secretaries described in and who
seizes the foregoing Bond. That he is the
Owner of numerous Real Estate sit-
uated in the State of Illinois of the value
of Four Thousand Dollars. And that he
is worth the sum of Four Thousand Dollars
(\$4000) over and above all his debts & liabilities
Subscribed & sworn to before me

this 6th Day of August A.D. 1861

William F. Snow
Notary Public

F. H. Cutting

82
844
Martin O. Walker
vs
James Brown et al.

Supts. Bend

Filed Aug. 8. 1861.
S. Seland
Clk.

150
UNITED STATES OF AMERICA,
STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Fifth day of November in the year of our Lord One Thousand Eight Hundred and Sixty Fifth and of the Independence of the United States of America the Eighty Fifth

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Sam H. Higgins }
Judges. }

Grant Goodrich }
Charles Haven Prosecuting Attorney. }

John Gray Sheriff of Cook County.

Attest, Walter Kimball Clerk.

It is remembered that heretofore, to wit: on
10th day of January in the year of our Lord
One Thousand Eight Hundred and Sixty
they issued out of and under the seal of the
Superior Court of Chicago, the Peoples
 writ of Summons, which said writ with
the Sheriff returns thereon endorsed, is in
the words of figures following, to wit:

State of Illinois }
County of Cook } ss.

The People of the State of Illinois
To the Sheriff of said County, Greeting:
We command you that you Summon Martin
O. Walker if he shall be found in your
County, personally to be and appear before
the Superior Court of Chicago of said Cook
County, on the first day of the term thereof
to be holden at the Court House, in the
City of Chicago, in said Cook County,
on the First Monday of February next,
to answer unto James Brown and James
Hollingsworth in a plea of trespass on the case
or promises, to the damage of said plaintiff
as they say in the sum of Three Thousand
Dollars.

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 the City
of Chicago, in said County
this 18th day of Jan'y A.D. 1866.
Walter Kimball Clerk.

Seal

Served by reading this writ to the within named Defendant the 18th day of
January 1866. John Gray Sheriff by J. Lumbard Deputy.

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And afterwards, to wit on the 2nd day of the month of June aforesaid, came James Brown & James Hollingsworth by their attorneys & filed in the office of the clerk of said Superior Court of Chicago their certain Declaration in the words & figures following, to wit:

Superior Court of Chicago
of the February Term A. D. 1860.

State of Illinois
County of Cook ^{ss.}

James Brown & James Hollingsworth Plaintiffs in this suit, by Gallup & Hitchcock their attorneys complain of Martin O. Walker Defendant in this suit who has been summoned to answer the plaintiffs of a plea of trespass on the case on premises:

For that whereas, the said defendant on the first day of January in the year of our Lord one thousand eight hundred and fifty, at Chicago in said County became and was indebted to the said plaintiffs in the sum of Sixteen hundred dollars of lawful money of the United States of America, for sundry goods, wares and merchandises, by the said plaintiffs before that time sold and delivered to the said

defendant and at the special instance and request of the said defendant and being so indebted to the said plaintiff the said defendant in consideration thereof, afterwards to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff, the sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Also whereas also the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, in consideration that the said defendant afterwards, to wit, plaintiff had before that time, at the like special instance and request of the said defendant sold and delivered to the said defendant divers other goods, wares and merchandises of the said plaintiff the said defendant then and there undertook and faithfully promised the said plaintiff, that the said defendant would well and truly pay to the said plaintiff so much money as the ^{value} aforesaid goods, wares, and merchandises, at the time of the sale and delivery thereof, was reasonably worth when the said defendant should be thereunto afterwards requested; and the said

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Plaintiffs aver that the said goods, wares and
merchandise last mentioned, at the time of
the sale and delivery thereof, were reasonably
worth the further sum of Sixteen hundred dol-
lars, of like lawful money as aforesaid, to wit,
at the place aforesaid, whereof the said defend-
ant afterwards, on the same day and year,
and at the place aforesaid, had notice.

And whereas also, the said defendant after-
wards, to wit, on the same day and year, and
at the place aforesaid was indebted to the said
plaintiffs in the further sum of Sixteen hun-
dred dollars, of like lawful money as
aforesaid, for money before that time lent
and advanced by the said plaintiff to the
said defendant, and at the like request
of the said defendant.

And in the like sum for other money
by the said plaintiff before that time paid
laid out, and expended for the said defend-
ant, and at the like request of the said
defendant. And in the like sum for
other money by the said defendant before
that time lent and received to and for the
use of the said defendants plaintiffs.

And in the like sum for other money before
that time due and owing the said plaintiff
for interest upon and for the forbearance

of divers other sums of money before that time
and then due and owing from said defendant
to said plaintiffs.

And in the like sum for the price and
value of work then done in & about the raising
after building on Randolph Street in the
City of Chicago & with the servants, horses,
Carts & goods & chattels of the plaintiffs, and
materials for the same provided by the plaintiff-
s for the defendant and at the like re-
quest of the defendant. And being so indebted
the said defendant in consideration thereof, after-
wards, to wit, on the same day and year, and
at the place aforesaid undertook, and then
and there faithfully promised the said plaintiff-
s well and truly to pay unto the said
plaintiffs the several sums of money in this
indent mentioned, when the said defendant
should be thereunto afterwards requested.

And whereas also the said defendant
afterwards, to wit, on the same day and
year, and at the place aforesaid, accounted
together with the said plaintiffs of and con-
cerning divers other sums of money, before
that time due and owing from the said
defendant to the said plaintiff and then and
there being in arrears and unpaid, and
upon such accounting, the said defendant

A 100.

then and there found to be in arrears and indebted to the said plaintiffs in the further sum of Sixteen Hundred dollars of like lawful money as aforesaid. And being so found in arrears and indebted to the said plaintiffs the said defendant in consideration thereof, afterwards, to wit on the same day and year, and at the place aforesaid undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be therunto afterwards requested.

Nevertheless the said defendant (al though often requested &c) has not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff the said defendant has hitherto altogether refused and still do refuse to the damage of the said plaintiff three thousand dollars. and therefore the said plaintiff bring suit &c.

Gallup & Hitchcock
Plaintiffs Attorneys

Copy of the Account sued on.

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Martin O. Walker

To Brown & Hollingsworth dr.

For labor and diligence & maintenance in
raising the building on Randolph St
in the City of Chicago

\$1600.00

Martin O. Walker

To Brown & Hollingsworth dr.

For money lent and advanced

\$1600

For money paid, laid out and expended

\$1600

For money had and received to and for the use of this Plaintiff

\$1600

For goods, wares and merchandises sold and delivered

\$1600

For labor and services

\$1600

Total amount due on account stated

\$1600

And afterwards, to wit, on the 10th day of
February in the year aforesaid, said day being
one of the days of the February Term of said
Court the following among other proceedings
were had entered of record in said Court, to wit:

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James Brownrd
James Hellingrd
vs Assumpsit
Martin O. Walker

This day comes said Plaintiff by G. S. Hitchcock their Attorneys and due personal service of process of summons issued in this cause showing them that on said defendant and being three times solemnly called in open Court comes not nor does any person for him, but herein he makes default, which is on motion ordered to be taken and is hereby entered of record. Wherefore said Plaintiff ought to have and recover of said defendant their damages sustained herein by reason of the premises.

And thereupon reference is had to the Court to assess damages herein hereafter.

And afterwards, to wit, on the 14th day of the month of June aforesaid, said day being one of the days of the July Term of said Court the following among other proceedings were had entered of record to wit:

James Brown vs James Hollinger & Co
 as Assumpsit.
 Martin O. Walker

And now again comes said plaintiffs by their attorney, and default of said defendant having been taken and entered of record herein against him on the 10th day of February instant and referred being had to the Court to assess damages and the Court now here after hearing proofs and allegations submitted by said plaintiffs and being fully advised in the premises assess their damages herein to the sum of sixteen hundred Dollars.

Then it is considered said plaintiffs do have and recover of said defendant their damages of sixteen hundred Dollars in form aforesaid assessed and also their costs and charges in this behalf expended and have execution therefor.

And afterwards, to wit on the 25th day of the month aforesaid said day being one of the days of the February Term of said Court, the following among other proceedings now had and entered of record in said Court to wit:

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James Brown ^{and}
James Hollingsworth
^{vs} Assumpsit
Martin O. Walker

This day comes said de-
fendant, and having submitted his motion
to set aside the judgment & default entered
herein against him the Court continues the
motion and hearing thereof until next term.

And afterwards, to wit, on the 20th day
of March in the year aforesaid, came
the said Defendant by his Attorney, and
filed in the Office of the Clerk of said Court
his certain plea in the words of figures fol-
lowing, to wit:

State of Illinois }
Cook County } of the March Term of the
Superior Court of Chicago, 1882.
Martin O. Walker
^{vs} Assumpsit
James Brown
James Hollingsworth

And now comes the said defend
 ant by Scato McAllister & Junett his
 Attorneys - and defends the wrong and
 injury when he and says the plaintiff
 their action aforesaid against him to
 have and maintain ought not. because
 he says he did not and what and prom
 is in manner of form as the said plaint
 iff have in their declaration alleged
 And this he prays may be inquired of by
 the Country.

Scato McAllister & Junett Attys for Defs.
 And Plaintiff doth the like.

State of Illinois
 Cook County

Martin O. Walker
 being first duly sworn deposes & says that
 he has agreed defence to the said action
 upon the merits as he verily believes and
 further saith not.

Subscribed & sworn to M. O. Walker
 before me this 17th day
 of March 1860
 Walter Kimball Clerk

And afterwards to wit, on the 5th day of April in the year aforesaid, said day being one of the days of the April Term of said Court: the following among other proceedings now had and intended of record in said Court to wit:

James Brown and
James Hollingsworth
vs
Martin O. Walker Assumpsit

And now again comes said plaintiff as well said defendant by Scates McAllister & Jones his attorneys, and defendants motion pending since last term of this Court to set aside his default and for leave to plead to plaintiff's action on the merits being now heard, the Court sustains defendants' motions to the extent of leave to plead to the merits of said action, and it is ordered that the judgment heretofore rendered herein stand as security for whatever judgment may be recovered on the trial of the issue on defendants' plea to the plaintiff's action, which she has sought & obtained leave at this time to file in his defence to such action.

And afterwards, to wit, on the 14th day of November in the year aforesaid, said day being one of the days of the November Term of said Court the following among other proceedings were had and entered of record in said Court, to wit:

James Brown and
James Hollingsworth
Martin O. Walker ^{vs} Adversus

This day comes said Plaintiff by Gallup & Hitchcock their attorney and the said defendant by Beate McAllister & Jewett 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, P. M. Antypio, J. S. Buelke, C. J. Conkey, L. D. Rulley, J. B. Sturtevant, L. Clark, George Phillips, Charles Lewis, A. J. Beck, Chas. Colby, J. F. Erwin and P. Deane who being duly elected, tried and sworn to try the issue joined as aforesaid after hearing testimony and the hour of adjournment having arrived, it is ordered upon agreement of the parties that the jury separate until tomorrow morning.

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And afterwards, to wit, on the 15th day of
the month of June last aforesaid, said day
being one of the days of the November Term
of said Court the following among other
proceedings were had and entered of record
in said Court, to wit:

James Brown and
James Hollingsworth
vs
Martin O. Walker Adversely

And now again come the
said plaintiffs by Gallup Hitchcock their attor-
ney and the said defendant by Beater McAllister
& Jerritt his attorney also come and the jury
before named herein on yesterday for the trial of
this cause, also come and the cause having been
submitted, the jury retired to consider of their ver-
dict, and afterwards returned into court, submit
their verdict and say that the jury find issue
for the said plaintiffs and assess their damages
herein against the said defendant to the sum of
one thousand eight hundred and forty dollars.

And thereupon the said defendant submits
his motion herein for a new trial in this cause.

And afterwards to wit, on the 15th day of December in the year aforesaid, said day being one of the days of the December Term of said Court the following among other proceedings were had and entered of Record in said Court, to wit:

James Brown vs
 James Hollingsworth
 vs Assumpsit
 Martin O'Malley

And now again comes the said plaintiff by Gallup & Hitchcock their attorneys and the said defendant by Scato McAllister & James his attorneys also comes and counsel being heard on the motion heretofore submitted herein by the said defendant, for a new trial in said Cause. And the Court being fully advised in the premises, upon due deliberation being thereupon had and the premises being fully understood, overrules said defendant's motion for a new trial herein, to which ruling and decision of the Court the said defendant now here in open Court by his Counsel takes exception and thereupon enters his exceptions.

Whereupon on motion of the said plaintiff

it is ordered that the judgment heretofore entered herein by default against the said defendant on the Fourteenth day of February last of the February Term of this Court eighteen hundred and sixty for the sum of One thousand six hundred dollars Damages be and the same is hereby set aside and vacated. Wherefore plaintiffs ought now to have judgment entered on the verdict of the jury rendered herein on the fifteenth day of November of the November Term last past of this Court.

Therefore it is considered that the said plaintiffs do have and recover of the said defendant their damages of One thousand eight hundred and forty dollars in favor of said by the jury at the November Term last past found and assessed together with their costs and charges in this behalf expended and thereof have execution.

And whereas the said defendant having entered his exceptions, prays an appeal herein to the Supreme Court of this State which is allowed to him upon filing his appeal bond in the penalty of twenty five hundred dollars with security to be approved by a judge of this Court and to be filed during the term of the Court with his bill of exceptions to be filed within thirty days.

And afterwards to-wit on the fourteenth day of January in the year of our Lord one thousand eight hundred and sixty one Martin Walker filed in the Clerk's Office of said Court his bill of exceptions which was in the words and figures following to-wit

Superior Court of Chicago
Cook County
State of Illinois November
Brown and Tamm 1860
Hollingsworth
- vs - Humphreys
M Walker

Tuesday November 14th 1860

It is remembered that in the trial of this cause to maintain the issue on his part

The Plaintiff introduced — as a witness John Coughlin who being duly sworn was examined by Mr Nitchcock and testified as follows

Q In the spring of 1858 were you in the employ of Brown & Hollingsworth
a yes Sir

Q were you their foreman?

A Yes Sir engaged in raising buildings

Q Do you know the place in Randolph Street between State and Dearborn Streets upon which the buildings were raised by Brown and Hallingworth in the spring of 1858

A Yes Sir

Q Do you remember of two stores occupied by Otto and Adams?

A I remember the two stores one of them a harness establishment and the other is a wall paper establishment I was the foreman of Brown and Hallingworth in the raising of these buildings

Q State what time you began to work and when you finished it?

Judge Scates desired that Council would begin at the foundation of the case by introducing proof in order

Mr Hitchcock said he would show by the tenants in occupancy that they took this lease from Mr Walker

after some further discussion the examination was resumed

Q State at what time you began to work on these stores?

A about the fifteenth March or thereabouts in 1858

Q How long were you engaged in raising these two stores

A He worked on the whole concern until nearly the first of May

The Court enquired for the contract where upon Judge Scates produced the document Mr Hitchcock urged that this contract was not binding or of force after some discussion the examination was resumed.

21 Q You say you began about the middle of March
and ended about the end of April 1858?
A Yes Sir about the latter end
of May

Q What kind of buildings were on those two
lots?

A They were either three or four
stories I dont recollect exactly
They were brick buildings

Q What was the depth?

A I dont recollect exactly
They were probably about eighty
feet

Q Did you ever measure them?

A I dont recollect that I ever
measured them

Q How much deeper were they than the adjoining
buildings in in the block?

A Walkers ^{two} buildings were three
feet longer than the
adjoining building I have
measured that. That is to the
best of my recollection. That
is what projected back from

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the other building beyond the other I think it was thirteen feet

Q How high were they raised above the old foundation?

A I think it was six feet

Q Were they raised fully to the grade of Randolph Street?

A That was the understanding at the time they were raised

Q In what condition did you find the cellars of that building?

A The cellars were in rather a bad condition they were low and watery.

Q Did that water that was in there make it specially difficult?

A Yes Sir; very much so to put the screws under it we had a great deal of trouble with it

2³ Q Did you have to use longer timbers than were usual?

A Yes Sir

Q Do you know Martin Walker?

A I do not know that I should know the Gentleman if I saw him but at the time we were at work there, there was a lot of boxes in this cellar under the harness shop and I had some men at work getting these boxes out, my team was coming up to the yard here and they sent some few boxes & put in the team to bring them up and there was a man standing there who asked me where I was going to take them I told him and he said "Don't you take any more of them; they are mine" Then after he turned away I asked one of the teamsters who this man was.

Council for defense objected to showing the declarations of tenants objection sustained

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Crop Examined by Judge Scates

Q Do you know F. H. Cutting?

A I do not know him by name I might know the man if I might see him

Q Do you know this man ^{here} pointing to a person who sat by counsel

A. No Sir I do not

Q Was that the man who was about the building there?

A Well he might have been about the building for what I know I don't recognize him

*

Witness

My opinion is that don't look like Mr Brown's hand writing but it does to the best of my opinion look like Mr Hallingsworth's writing

Q Have you ever seen him write?

A Yes Sir I have seen both of them write but I would not swear positively to either of them

* Do you know the handwriting of Brown and Hallingsworth? Now I could not swear to it I have seen them write several times, but still I could not swear to it Mr Hitchcock objected to joining the contract in instrument shown after set out by this witness of two answers - Judge Scates submitted the document to witness (the contract)
The Court You will only give your opinion

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Document being "a proposition"
shown to witness.

Q whose hand writing is that?

A I could not exactly swear
to that I could not say Sir
whose signature that is it -
dont look to me ~~me~~ like
Mr Browns order Hallingworths
that name in my opinion
is different from the one on
that it looks like Mr
Hallingworths name

Q Is it different from Mr Hallingworths
signature?

A I think it is

At F Otto called for Plaintiff being duly
sworn is examined by Mr Hitchcock and
testifies as follows

Q Do you know Martin Walker?

A Yes Sir

Q Do you remember the raising of two stones
on Randolph Street

A Yes Sir

26 Q Was Mr Walker present at the time they
were raised in the Spring of 1858?

A Yes Sir he was about three
several times once before he
went to Washington and once
after he came back I think
so He told me he had been
to Washington after he came
back Brown and Stollingsworth
were engaged at the time in
raising buildings

Q Did you occupy one of those Stores?

A My Brother did I leased it
of him Mr Walker ~~and~~ and
assigned it to him and
paid the rent to Mr Walker
or to Mr Walker's rent agent
Mr Waughop I made the
bargain with him or Mr
Walker he sent me to Mr
Waughop his agent to make
out the lease then in 1856
or 1857 I think I made an agree-
ment, I forget whether I signed
that lease or whether my
Brother got a new lease

27 Q You know he held under Mr Walker?

A Yes Sir and paid rent to him there is no question about that

Q That was one of those stores?

A Yes Sir on Randolph Street

Cross examined by Judge Scates

Q Are you any ways certain that you said Mr Walker about this before he went to Washington?

A I made a complaint - about Mr Walker I cant give you my reason it is so long ago and I did not know that I should ever be called upon to tell it This foreman that has just sworn when he commenced was getting out a box^{lt} of boxes from underneath the building the building or cellar the cellar was a narrow cellar and Mr Walker came along and I think forbid it. He came

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to me and asked me who it was He said who is that man he has forbidden me take out those boxes I said that is Mr Martin O'Walku

Q Do you know when that was?

A It was about the time they were preparing to raise the buildings getting the scaffolding under the beginning

Q The Stoms were occupied by your brother as lessee?

A Yes Sir I cant tell you whether he held under my lease or got out a new ~~new~~ lease

Q He had possession of the building?

A No Sir he did not have possession Yes he did too He was using it there was no cellar scarcely it was not very deep it was not used we could not use it, there was to much water in it

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Q It was dug out?

A Yes Sir we could not use it - it was not high enough I could not stand up in it I might stoop and go down I never went down in it I always looked and found water & I never tried it it had no floor it was all under the 80 feet of the Stone. That is all the building the first story is 80 feet and the second is 60 & 80 as to give light there is a sky light. There is what in former days would have been considered a cellar may be 4 or 5 or 6 feet deep

Q The first old fashion cellars?

A Yes Sir There was a stone wall I don't know how low it went down it went below the Stone we occupied a man could stoop about half way I should think it was about 5 or 6 feet I am guessing now I never was in the Cellar in my life I only looked down

Q I'm say Mr Walker forbade his taking the boxes out of the Cellar

A That is my impression now I know I saw him after he came back from Washington -

30

Q Do you know when they finished there?

A They didn't get through I think until sometime in August I know we had a great deal of trouble indeed I know one man came to pay a note & couldn't get into the Store the building was raised it was the fault of the brick man & my friend ^{Mr Price} thus printing to Mr Price

Mr Hitchcock. You don't mean that the Plaintiffs did not get along?

A No Sir my impression is that they commenced some time in the latter part of March or first of April & got through about the latter part of April or first of May

Q They did not have the job of putting the wall under?

A I believe not

Sirsch Ex^m resumed by Mr Hitchcock

Q Did Mr Walker forbid the foreman going on with the work when he told him not to take the boxes away?

A Not to my knowledge I believe he said the boxes belonged to him

Q He gave that as a reason for not allowing him to take the boxes away?

A Yes

Q These boxes you think belonged to the Methodist Book Concern?

A Yes Sir I think so The Methodist

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Book concern was in there before & they looked about the size of these boxes I think I told a man who came in to enquire that they belonged to the Methodist Book Concern I supposed he was one of Brown & Hallingworth's men
Q By Judge Scates, do you know the handwriting of Brown & Hallingworth?

A I never saw those units

C. R. Adams called by the plff. being duly sworn was x^c in chief by Mr. Hitchcock & testified as follows

Q Did you occupy one of these stores on Randolph Street that we have been inquiring about?

A Yes Sir I was the occupant of one

Q Do you know Martin Walker
A I do

Q Did you occupy under him as tenant?

A He lease was held at that time I think was under Swornstedt & Pol Methodist Book concern agents He paid rent to Mr. Knapp

Q Do you know whether he was the agent of Mr. Walker for collecting rents?

A He was I think we paid rent to him

Q Do you remember the existence of these kind of things by Brown & Hallingworth?

A I do Sir

Q Did you see Mr Malkin about there at any time when they were engaged in that work?

A I think I did Sir

Q Did you know of his ever forbidding them going on with the work

A I did not

Q How high were those buildings raised?

A So as to in basements six feet in the clear - all of that my impression is that they were raised six & half feet

Q Did you ever make any contract for raising those buildings

A I never did Sir

Cross Ex^a by Judge Scates

Q Do you know the handwriting of Brown & Hallingsworth?

A No Sir Mr Hallingsworth has written at my desk just to direct a letter or something of that sort but I never paid any attention to his writing at all

Q At the time this raising took place you occupied the Store as tenant?

A Yes Sir the lease was in Mr Chapman's name He was entitled to possession

Q Has there a cellar under it?

A Yes Sir I think it ran the whole length of the building I think the building

is so feet deep the first story

Q Do you know the depth of the Cellar originally?

A I do not I suppose some four & a half or five feet It was enough to go under to do some sort of business The building had foundation walls

Q At the bottom of the Cellar?

A I suppose so I never examined particularly

Q If you saw Mr Walker then can you tell me when it was?

A My impression is I saw him before the raising commenced while they were making preparations I saw him several times during the time the work was in progress, that is the interior work: whether I saw him more than once before the raising was completed I cant say I think I saw him once my impression is it was at the time Mr Otto refers to, when they were getting out these boxes that was early in the commencement when they were clearing out the cellar

Q There was no outside demonstration made at that time was there? no excavation of the side walk cellar?

A I cant say whether that was commenced at the time or not

34 Q The Store you speak of is another one than the one spoken of by Mr Otto?

A Yes Sir No 79

Q State when the raising was completed?

A I think it ran along pretty well into April

Q So you think it was done by the first of May?

A I think it was about that time a little before or it might have been a little after my impression is that the building was up before the 1st of May

Redirection Ex^d by Mr Hitchcock

Q Were the screws and timbers used in raising that building, then in piles in front of that building when you saw Mr Malkin there?

A I think they were I know we were very much annoyed by the operations for a long time

Q Do you mean to say you were at the time you saw Mr Malkin there?

A I think it had commenced at that time from the time it commenced there was a good deal of annoyance to tenants - to us at least

Q Was the first thing the bringing the screws & timbers there & putting them down in front of the building?

A I cant say whether they commenced excavating & clearing out before they brought the screws & timbers, or whether that was first done

Q At the time you saw Mr Walker there had they commenced the operation of raising the building so that there was an appearance of that kind there?

A Yes Sir I think there was a decided appearance of it there

2nd Cross Ex by Judge Scates

Q Do you say that applied to the Walker building or ought it not have applied to that and the others, as well as his?

A They were laid where they interfered considerably with our getting out & in with persons coming into the Store

Q That is before your Store door?

A Yes Sir

Cornelius Price called by the pliff being duly sworn was examined in chief by Mr Hitchcock & testified as follows

Q Do you know these premises?

A I do Sir

Q Will you do the mason work upon these buildings?

A Yes I believe I did

Q Was the raising of that building by Brown &

Hallingsworth?

A Yes Sir

Q Who employed you to do the mason work?

A Mr Walker

Objected to as incompetent

objection overruled

Exception noted by Judge Scates Sept

Q You say you contracted with Martin Walker to do the mason work?

A Yes Sir

Q What time was that contract made with him?

A It was made some time before they commenced raising - I forget what time exactly

Q Was that job still done by Brown & Hallingsworth?

A I supposed it was it was raised up to grade

Cross Ex^d by Judge Scates

Q Was not the talk you had with Mr Walker contingent upon his having the building raised?

A It was some time before the commenced raising

Q Was not that the character of Mr Walker's talk to you?

A Yes Sir he said he expected the building to be raised

Q If they were raised he wanted you to put the wall up?

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A. Yes

Q Did he say he had contracted to raise it or was only entertaining the proposition?

A I dont recollect it was some time ago

Q It was contingent upon this being done that you were engaged?

A. Yes

Q Do you know the handwriting of Brown & Hollingsworth?

A I dont know that I do, I have seen the signature

Q (Presenting to the witness two documents the "Proposition" & the "contract")

A. I should think that was the hand write (alluding to one of the documents) & I think that is also (alluding to the other) that is the hand write of Mr Hollingsworth (the proposition)

Q Do you know the handwriting of Mr Shergold?

A. I do not

Israel C Ely called by the plff being duly sworn was exd in chief by Mr Hitchcock & testified as follows

Q Were you engaged in the spring of 1858 in raising Stone houses?

A - Yes Sir

Q Do you know what services of that nature were worth at that time?

A Yes Sir

Q In March & April 1858 A - Yes Sir

Q Did you hear the testimony of the Witness Coughlin in regard to the raising of those Stems on Randolph St.?

A Yes Sir

Q State what it was worth to raise those Stems ... to grade at that time?

A I consider it worth sixteen hundred dollars (\$1600.⁰⁰) to raise the two Stems

By Judge Scatur Q You have been engaged in that business A Yes Sir

Q by Judge S were you engaged in that particular job? A No Sir I have been doing that business in the City myself

John Coughlin recalled by Plffs and further Examined by Mr Stichecock as follows

Q When Mr Walker told you not to take away the boxes as they were his, did he then or at any other time forbid them going on & doing the work?

A No Sir

Plaintiffs Rested

Defendants Evidence

Judge Scates offered in evidence the pleadings in the case of Brown & Hallingsworth vs - Thomas Shegold Andrew J Hayward & Martin Walker & was about to proceed to read the second & third counts of the declaration when,

Mr Hitchcock objected to the introduction of these counts on the ground that they had not shown the authority of the attorneys of Brown & Hallingsworth & that they were incompetent

Judge Scates proposed to show by the declaration in aforesaid case that the plaintiffs set up a claim for compensation under a contract set forth in said declaration. He also proposed to call a witness to prove the authority of the Attorneys of Brown & Hallingsworth

The court overruled the objection to which ruling Offi Counsel then & there excepted

Mr Hitchcock said he did not object to the plea or the affidavit of Walker

Judge Scates proceeded to read to the jury the following portions of the declaration & plea aforesaid viz

Charles Hitchcock called by the defence being, duly sworn, was ex^a in chief by Judge Scates & testified as follows

Q Did you not file this declaration as attorney in the first suit? The one I have just read

A Yes Sir

Q Were you not authorized to do so?

A Yes I understood myself to be so

Q By these plaintiffs A- Yes Sir

Q I ask to identify it whether the declaration was not drawn upon that instrument (the contract)

A The declaration was drawn with this instrument before me

Q That account of it? A Yes Sir I was employed by Mr Hallingsworth to recover this money from Mr Walker & commenced the suit & filed the declaration which has been read It is proper for me to state that neither Mr Brown nor Mr Hallingsworth ever saw that declaration or knew anything about its contents I was simply retained to see for raising these buildings & I drew such a declaration as I saw fit with the papers before me They brought me this contract but did not assert their claim under this contract solely They did not base their claim solely on this contract

41 Q Didnt they assert this claim under that contract

A He claimed that they had done to them under that contract. Yes they asserted that

Q I would ask if you dont know otherwise - that in confidence that they received payment in some form, either money or otherwise or took obligations & payment in release or discharge of that contract from Shingold and Hayward

A - No Sir I know nothing of the kind in any way confidentially or otherwise. I am not cognizant of any such act. If it can be proved I shall abandon this case of course

Q So you know of no payment made under it?

A I have no knowledge of any payment made under it. I have been told by my clients & I suppose it was not a matter of confidence or at all events I suppose they would release me from any obligation of secrecy. That all these parties except Mr Walker have paid for raising their own buildings

Q And have got discharges?

A I do not know about that sir but each of them have paid for their own buildings

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Judge Scates I now propose to offer this proposition. preceding the contract which was made to Mr Mr Walker & rejected

Mr Hitchcock objected to it on the grounds that it was a mere proposition. The Court overruled objection & plaintiffs Counsel accepted

Judge Scates read the proposition which is as follows:—

Chicago March 5th 1888
"M O Walker Esq"

We will raise you two stories on Randolph St adjoining Mr Shu golds to required grade for the sum of Fifteen Thousand Dollars you taking care of Gas & water pipes we holding ourselves liable for all damage done not necessary in preparing to raise

Yours Respectfully

Irwin & Hallingworth

Judge Scates — I now offer in evidence the contract

Mr Hitchcock. we object on the ground that it is not proven to have been signed by M O Walker that he is trying to set up a contract which he has sworn he has never executed & which he claims binding upon us; that is Assumpsit upon the common —

accounts this instrument would be admiss-
 able if signed by Mr Walker that ^{it} is wholly
 immaterial not tending to establish any
 defence but on the contrary if it proves any
 thing, proving that Walker is indebted to us
 \$3500 - when we only claim \$1600 that
 with the Shergold Walker or Hayward sig-
 natures are proved

Judge Scates - I will call a witness
 to prove Mr Shergold's signature

A. W. Andrews - called by the defence
 being duly sworn was examined in chief by
 Judge Scates & testified as follows

Q Do you know Mr Shergold's handwriting?

A I think I do

Q Have you seen him write?

A Oh Yes

Q (Presenting contract): State if that is his signat-
 ure & when it was signed and all about it

A I know Mr Shergold's signature this I
 should think was it. I have had it a great many
 times this article was drawn up and brought
 into my store & signed by Mr Shergold & Mr
 Hall up north to Mr. Brown in my presence
 I could not say who put these other signatures

Hayward and Walker

Q Were they put there at the same time?

A I do not know that

Q Do you know Mr Hayward's handwriting?

A I do not

Q Do you not know that these two signatures Hayward and Walker are in Mr Shergold's handwriting?

A It resembles Mr Shergold's handwriting somewhat but I would not be competent to say. I don't think I have any opinion about it

Q This is his own signature?

A Yes I know that very well because I have paid him a good deal of money & have seen his signature a great many times I am trying to study the writing to form an opinion

Q Was not the instrument delivered to Brown & Hallingsworth in your presence?

A They all signed the document there together

Q Didnt they take the instrument?

A I dont know. I stood one side and saw the Gentlemen there

Q Do you know Martin O'Walker's handwriting?

A No Sir

Q Did you occupy one of Mr Shergold's buildings that were raised by contract as tenant under

him

A. Yes Sir

Q. How many any cellars under Hayward's & Shergold's two buildings?

A. There was none under Mr Shergold's building Mr Shergold has but one building, I occupied that Mr Hayward has two buildings there are five in all I don't think there was any cellar under either of the buildings except ~~except~~ Mr Walker's two buildings

Q. Was not it worth more to raise & dig cellars than simply to raise a building that has a cellar under it?

A. I presume it would be there would be the additional work of excavating the cellar

Q. Would not it cost more to get in there besides the labour of excavation?

A. Yes Sir certainly

Q. Whereas with the cellar you could put them right under without any gouging or ground hog work?

A. Yes Sir however I have no knowledge of that kind of work

Q. Did the work include side walk excavation?

A. That I cannot say I know the sidewalks were all excavated that is there are vaults all there now & there were none before

Cross examined by Mr Hitchcock

Q I don't know anything about that kind of work?

A I don't know anything about excavating cellars

Q Would not considerable water in the cellar interfere with the process of raising so that it would be very much more work to raise the building with the cellar than to excavate the soil?

A I'm ask me if I don't know that to be the case I answer No Sir I do not but it may be for aught I know I give my opinion that it would not - that the water in the cellar might be easily taken out by draining it off. There would be various ways of getting the water out of the cellar or it might be pumped or raised out so as to use the screws to advantage

Q Don't you know that at that time the material excavated would pay all the expenses of excavation?

A I don't know anything about it I have heard that they sold the material I don't know the price at which they sold it. I should think that parties going to raise a building would prefer to have a cellar because it would be already to raise

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Q Suppose that they got for the material all
all that the labor would cost?

A Then still I should think they would prefer
not to excavate because they would not
be making anything out of it they merely
sell the dirt for what they pay for taking
it out. It would be no difference except
the delay of excavation & the work for
which they had no profit.

Q Suppose they had a building which
had the material under it & they could
sell the material for what it costs to exc-
avate it & they had a building adjoining
with water under it needing draining -
~~draining~~ or pumping in such case which
would be most profitable to raise?

A I don't understand you I don't know
anything about it.

Q You expressed an opinion that it would
be worth more to raise a building without
a cellar than with it?

A I did that is my opinion.

Q If you had two buildings ~~one~~ adjoining,
one of which had a cellar with water in it
to be drained or pumped out & the other
no cellar & the cost of excavation could
be made by the material taken out. Which
would it be worth most to raise?

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A That would depend upon the amount of water in the cellar. If there was not much water I don't think it would be as profitable as the one with the cellar. I don't think the cost of pumping or draining, would be much.

Q They don't get anything for the water? Judge Scates - tell him whether the material they dig out belongs to them?

A I am not a cellar digger & know nothing about it & my opinion on it would not be worth anything. So far as digging a cellar is concerned I give you my opinion on the relative value. If you consider it worth anything - you can take it as such.

The Court - He cannot state his opinion unless he shows some peculiar knowledge.

Q At the time this was ^{executed upon} there any conversation between the parties?

A Yes Sir

Q Did Mr Shergold state that he was authorized by Mr Walker to make any contract?

Objected to by Judge Scates objection sustained

Re Direct examination by Judge Scates

Q Would the dirt taken out by the excavation

belong to the Plaintiffs unless they bargained for it?

Objected to objection sustained

Q Do not cellars here and everywhere in the City go down to the water & dont the foundations lie in the water is it not as good to support buildings & screws as the earth above the water?

A I do not consider myself a competent witness on that subject

Q Dont the best class of buildings ^{here} go down to the water?

A From observation I think they do I have seen it in a number of cases

Q Have you not seen the foundations of these large first class buildings laid in water?

A I have

The Court now decided that the contract or instrument offered was admissible overruling Plaintiffs objection to which ruling Plaintiffs Counsel excepted

Judge Scates proceeded to read the contract to the Jury as follows:

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" We the undersigned agree to raise the five
" buildings East & adjoining Mr Browns on the
" north side of Randolph St between Dearborn & State
" Streets up to the required grade on said Street
" also to excavate & take care of said dirt so
" that there shall be no damage to arise against
" said owners of the aforesaid block or any obstruc-
" tion that might be made by raising & excavating
" under said Block of building also will take
" care of all water and Gas pipes so that there
" shall be no damage arise from the aforesaid
" pipes & will perform & carry out with safety every
" part & parcel of said block in as good a man-
" ner or condition as the block west that was
" raised for Mr Newhall & will also agree that
" it shall be completed by the 30th day of -
" April 1858 for the consideration of thirty
" five hundred dollars to be paid as
" follows one half of the whole amt when
" the buildings are raised to their required
" height & the other half of the amt at the
" expiration of six months from the above
" payment we will faithfully perform
" the above requirements according as is required

" In witness whereof we set
" our hands & seal this 13th day
" of March 1858

James Brown

Seal

James Hallingworth

Seal

Thos Shergold for himself

A Hayward M Walker

Seal

Thomas Shergold called by the defence being duly sworn was examined in chief by Judge Scates & testified as follows

Q Do you know Mr Walker's handwriting?

A No sir I dont know that I do

Q Do you know Mr Hayward's?

A I cant say that I do

Q Do you know your own?

A I do

Q How these two last signatures Hayward's & Walker's made by you?

A They were

Q Have you not paid in full & have you not a discharge from any liability at all under that agreement? In the first place I would ask if these buildings were not raised under that agreement?

A Brown & Hallingworth agreed to raise these buildings at \$400⁰⁰ a building which in the

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agregate would make \$3500 They did the work under that contract

Q Did you pay in full and get a receipt for all liabilities under that contract?

Mr Hitchcock objected to evidence of a receipt being proved by parol

Q I ask for the facts?

A I got a receipt from Brown & Hallingworth for raising me building. I owned one building of the firm It was in full for my amount \$1400

Q Do you know whether Mr Hayward has settled

A Yes Sir in full He has settled for the same amount \$1400 for two buildings

Q Did you bring that receipt with you?

A No Sir I havent any receipt - I havent it with me I met Mr Hallingworth - accidentally going home to dinner I have a receipt I live about a mile and a half from here on the west side not far from Mills Road

Cross examined by Mr Hitchcock

Q You contracted with Brown & Hallingworth to raise these buildings in the Spring of 1858?

A Yes ^{Sir} about the tenth or twentieth of March?

Q Did Mr Walker tell you to contract for it?

Objected to objection overruled and decision excepted to

A He did Sir. He requested me to do it

Q Did Mr Walker before any work was done upon these buildings authorize you to make a contract for raising them?

Objected to, objection overruled & depts Council excepted to ruling of the Court

A He did Sir

Q Did you before the work was began make a contract for Mr Walker for raising his two buildings on Randolph Street with Brown & Hallingworth

A I did Sir

Q Did he in repeated instances authorize you to do it?

A Yes Sir he solicited me to do it

Q Was he present to your knowledge when the work was going on?

A Yes Sir I saw him

Q - (Presenting an affidavit of Walker to set aside a default in which he says he was at Washington)

Judge Scates - Is that affidavit in evidence?

Mr Hitchcock - No Sir it is to refresh his memory -

Question withdrawn

Q- Was anything said when Mr Walker authorized about the form of the contract?

A- I drew that contract myself I read it to Mr Walker after it was done. He authorized me to go^{on} and do the best I could. He considered Brown & Hallingsworth worthy men. He said he would rather give them a hundred dollars than any other parties because they had been on & done the job most of it & that job was well done.

There was a space underneath Mr Walker's buildings that didn't require as much excavating as the others & Mr Walker's Stairs were larger than ours. They were four stories high & 20 feet deep.

Q- So that it was necessary to use longer timbers?

A- I don't know it was something new to me I suppose it was. There were a greater number of screws. There was more weight. There was water in the cellar to some extent.

Q- Didn't that interfere with the operation?

A- I did not attend very closely but I should naturally suppose that it would be so.

Q- Was the dirt taken from your Stairs sold

By these parties

A - I understand from them that it was I was buying dirt myself at the time & was paying a shilling a yard & was purchasing from the Hydraulic Company

Q - Did the parties get enough for the material to pay the cost of excavation?

A They said so at the time but whether they did or not I don't know I knew - nothing of the value they were getting but I know what I was giving myself

They told me that it was paying for excavating. I was buying dirt to fill up my yard

Re Direct Ex by Judge Scates

Q - Give me an estimate how much the dirt was worth. You say they excavated under Mr Walker's building?

A I don't know whether they did or not. They did under mine and Mr Haywards

Q - I thought you said it was better to excavate?

A I don't know

Q - Were you authorized to make a bargain for raising the buildings?

A - Yes Sir

*Q - You made no other?

*Q - Is that the bargain you made, (Concerning the bargain or contract)

A Yes Sir

56 A- No Sir

Q- You say sir the work was done under that bargain?

A- Yes Sir

Q- You say the dirt would pay for excavation would it belong to Brown & Hallingworth unless they bargained for it?

A- They said it would pay for excavation & I suppose it did.

Q- Did you sell them the dirt that lay under that building?

A- The dirt was spoken of at the time. It is not put into the contract I did not put it in. we spoke of dirt in excavating because I was buying dirt I live two miles from the place or I should certainly have drawn it for I was buying.

Q^d Cross ex by Mr Hitchcock

Q- Did Mr Walker say anything about you putting a seal to his name when he told you to make the contract?

A- No sir I read that contract to Mr Walker.

Q- Have you heard Mr Walker say since that he repudiated that contract?

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A - Yes he came to my store and talked the matter over I didn't pay much attention to it. I made the instrument I was requested to & neglected my business to attend to it for Mr Walker

Q - Has he since repudiated it?

A - He wanted that I should consider that there was nothing binding about it so far as he was concerned

Q - Did he say it didn't bind him?

A - I can't say positively that he did but I should infer from the remarks he made that he did

3rd Direct examination by Judge Scates

Q - [Presenting the proposition] Is that Brown & Hollingsworth's signature?

A - I never saw any of their signatures

Q - Did not Mr Walker say to you that he rejected that proposition at the time he told you this?

A - No, sir he told me ^{he} had received propositions but I had received better ones

Q - Did he say he excepted the ones he received?

A - To Sir He said that mine was better than ~~is~~ ~~as far~~ ~~as~~ that is as far as they are concerned - that I had done better - that mine was a better bid -

Q - Did he say that he rejected this proposition to him?

A - To Sir he said that mine was the best bid, that he left it to me to make the bargain with these ^{men}. He said he had received bids made to him, but mine was a lower bid

Q - What did he say about rejecting bids?

A - My memory dont serve me that he spoke about rejecting them at all. But he said he didnt want them to come to his house bothering of him

Judge Scates offered in evidence the receipt as follows

" Chicago Illinois May 1st 1858
 " Received from A J Hayward his note
 " for Seven hundred & fifty dollars & his
 " check for Seven hundred & fifty dollars
 " & when said note is paid will be in
 " full for raising his two stores on Randolph
 " Street

Iron & Hallingsworth

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" The above Fifteen hundred dollars in-
cludes One hundred for A. Brown on
" his Store "

Objected as proof of any thing ^{rather}
than payment

The Court - It is not admissible as a
discharge - but to show that amount
of payment it is admissible

J. H. Cutting called by the
defence being duly sworn was examined
in chief by Judge Scates & testified
as follows

Q - Were you acting as agent for Mr
Walker in 1858

A - Yes Sir

Q - Do you know at what time he went
to Washington from here & when he came
back except to fix upon circumstances

I know what he went for. The only
way I can fix upon the time is the
business he went upon. It could not
have been a great ways from some of
the last days of March or 1st of
April that he went away. I should
suppose it was ^{the last} days of March from the
fact that he was to have been there at
the opening of the mail contracts which

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I think was on the 1st of April that I know was the arrangement talked of before he went away - I have no means of telling when he left here ~~excepting~~ that - not the least - He hadn't returned the 1st of June I know that from the fact of having had a letter from him dated the 1st of June New York

Q - Don't you know that he rejected that offer

A - I know he told me he did

Objected to

The Agent - Did he tell you at the time?

A - I can't tell you the time because in this casual conversation I can't remember the date

Q - Did he tell you this before he went to Washington?

A - I don't think I knew anything about it at that time - I know he had had some conversation that I had some conversation with Mr Brown before any bids were Yet as to the date when he informed me he had rejected^{it} I could not state

Q - Was Mr Naugbop acting as agent for him at the same time?

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A - He called him his renting agent
His general business I attended to every-
thing I knew about I had special in-
structions about as well as some things I
hadnt - There were some things I refused
to do anything about because I know
nothing about them. But everything
was always confirmed by him when
he authorized

Q - Do you know of any other agent?

A - No Sir not here in the City

Q - Did you ever know Mr Walker to trans-
act a business like this through a
stranger at the time he was in the
City & having Agents here?

A - I dont know that I ever did Sir
He never informed me that he did

Cross ex by Mr Hitchcock

Q - You say Mr Walker went to Washing-
ton about the last of March or 1st of
April

Q - If the contract was made on the 13th
& the work was to be commenced on the
15th & he was in Town on the 15th it was
after the work was commenced?

[Indistinct]

A - I suppose so

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Q- If Mr Walker should swear that he was not here from the time the work commenced from the 15th of March up to the 1st of June would it change your recollection?

A I could not swear that he went before the 15th of March

Q But your impression is that it was the 1st of April?

A Yes

Q- I'm dont know that he was not here that 15 days

A- I should be inclined to think it was less than that but I could not be positive about it I have no means of fixing upon the time.

Q I'm heard Mr Walker say that he was not bound by & never authorized this particular contract & signing his name & putting a seal to it [Presenting the document]

A- I never saw this before now I have heard him say that he never authorized Mr Shergold to make any contract for him

Deference Rusted

Plaintiff's Rebutting Testimony

John Oughlin Recalled was further examined by Mr Hitchcock and testified as follows

Q Was that whole block of buildings raised by April 30th 1858 Mr Shergold, Hayward & Brown & Walker Was that whole block raised at the same time & were they all raised by April 30th 1858?

A - Yes Sir

Case closed it being agreed that a receipt alluded ^{to} shoned should be read when produced

Court adjourned ^{until} ten O'clock AM

Upon the re-assembling of the Court the defendant read in evidence to the Jury the following Receipt viz:

"Chicago Ills May 1. 1858

Rec'd from Mr Thomas Shergold his note dated this day due in six months for Three hundred & fifty dollars and Check of Messrs Shergold & Wayman for

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Three hundred & fifty dollars and when said note of three hundred & fifty dollars is paid, will be in full for raising his Store on Randolph Street

Brown & Hallingworth

And this was all the testimony in the cause

When upon the court at the instance of the Plaintiffs gave the following instructions

- 1 If the jury shall believe from the evidence in this case that money has been withheld by the defendant by an unreasonable & vexatious delay of payment then if they shall find for the plaintiffs they will be authorized in allowing six per centum per annum upon such money after the same became due But to make the delay of payment unreasonable & vexatious the debtor must have thrown obstacles in the way of collection or by some circumvention, artifice or management must have included the condition to prolong the time if proceeding to recover payment longer than he otherwise would have done

To the giving of which and each of them the defendant then & there excepted

The Court gave the following instructions at the instance of the defendant

2^d If the Jury believe from the evidence that there was and is a subsisting, special contract, under seal, between the plaintiffs and Thomas Shugold and another for the doing ^{of the} same identical work sued for, and that the said work was done under said contract but not finished the plaintiffs remedy is alone upon that contract then this suit cannot be maintained and they will find for the defendant

3^d If the Jury believe from the evidence that Shugold & Hayward signed the contract under seal read in evidence - that then & in that case by the terms of the contract they ^{were} liable to pay for each of the buildings raised under it, whether said building belonged to them or either of them or not.

And if Walker had signed said contract he would have made himself liable for raising each of the buildings of Shugold & Hayward

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raised under it

Given

4th If the jury believe that Bonn & Hallingsworth signed said contract under seal, read in evidence. They are bound by it, notwithstanding Walker may not have become bound by, or a party to it but this would not prevent a recovery against Walker if he authorized the work to be done or knew of its being done at the time by the plaintiff & made no objection to their doing the work for him

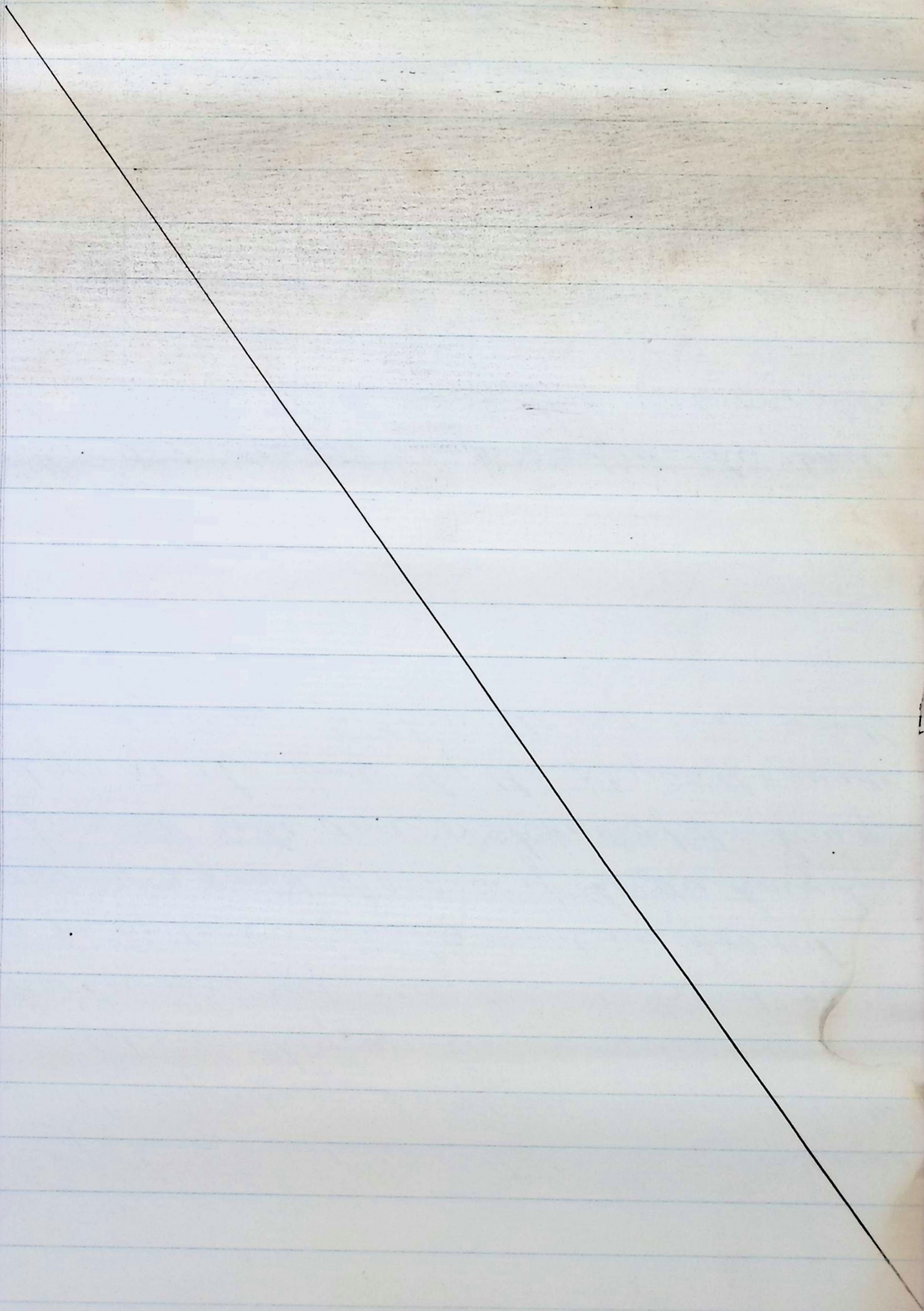
The defendant also asked the court to give the following instructions, viz

Refused

1st If the jury believe from the evidence that the plaintiff entered into a contract in writing and under seal with Thomas Shugold and others, the contract read in evidence - and performed the work said for under said contract then the jury will find for the defendant

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To the refusal of which the defendants
then & there excepted



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Whereupon after argument the jury retire to consider of their verdict and afterwards returned into court the following verdict to wit

That the jury find for the plaintiffs and assess their damages at the sum of Eighteen hundred and forty - Dollars

Thereupon the defendant moved the Court for a new trial upon the following grounds

First the Court refused to give proper instructions asked by the defendant

Second The court gave improper instructions asked for by Plaintiffs

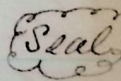
Third The jury found a verdict against the law and against the evidence and against the law and evidence

Fourth The verdict of the jury includes interest - which the plaintiffs have no right to receive

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And afterwards on the day of
December 1860 the said motion for
a new trial came on to be argued
and after mature deliberation thereon
had the Court overruled said motion
& rendered a judgment for the amount
of said verdict to all which decis-
ions & judgment defendant then &
there excepted

Whereupon defendant prayed an
appeal to the Supreme Court upon
defendants entering into bond in the
penalty of Twenty five hundred dollars
with Franklin H. Cutting surety conditioned
as the law directs within days from
this date It was further ordered by the
Court with the assent of plaintiffs
Council that time be given to defendant
for thirty days to prepare and settle
a bill of exceptions

And the said defendants now here
tend this bill of exceptions and pray
that the same may be allowed and made
a part of the record in this case which
is sealed signed and allowed according-
ly and ordered to be made a part of the
record in this case Van H. Higgins 
Judge

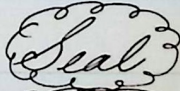
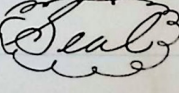
And afterwards to wit on the
 Twenty First day of December in the
 year of our Lord One thousand eight -
 hundred and Sixty, ^{Martin J. Walker} filed in the Office
 of the Clerk of said Court his appeal
 bond which is in words and figures
 following to wit

Know all men by these presents
 that we Martin J. Walker and Franklin
 H. Cutting of the City of Chicago Cook
 County Illinois are held and firmly
 bound unto James Brown & James Halling-
 sworth in the penal sum of Twenty five
 hundred Dollars lawful money of the
 United States - for the payment of which
 well and truly to be made we bind our-
 selves our Heirs executors and administrators,
 jointly severally and firmly by these
 presents

Witness our hands and seals this 19th -
 day of December A.D. 1860

The condition of the above obligation
 is such that whereas at the December Term
 A.D. 1860 of the Superior Court of Chicago
 to wit on the day of December A.D. 1860

in a certain suit at common law pending
 in said Court wherein the said James Brown
 and James Hallingworth were Plaintiffs and
 the above bounded Martin Walker was
 Defendant, the said James Brown and James
 Hallingworth by the consideration of said
 Court recovered a judgment against the
 said Martin Walker for the sum of one
 thousand eight hundred & forty dollars, Law
 and costs of suit from which judgment
 the said Martin Walker has prayed an appeal
 to the Supreme Court of the State of Illinois
 Now if the said Martin Walker shall
 duly prosecute his said appeal and will
 and truly pay ^{the} Judgment's costs Interest and
 Damages in case the judgment aforesaid shall
 be affirmed in & by the said Supreme Court
 then this obligation to be void otherwise to
 remain in full force

M Walker 
 F. H. Cutting 

apps
 Van H. Higgins
 Judge

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State of Illinois)
Cook County) I Matthew Kimball Clerk
of the Superior Court of Chicago in said
County do hereby certify that the foregoing
is a full true and complete transcript of
all the papers on file in my Office and
proceedings and judgment entered of record in
said Court, together with the appeal bond and
bill of exceptions in a certain cause wherein
James Brown and James Hallingsworth were Plaintiffs
and Martin Walker was Defendant



In testimony whereof I here by
subscribe my name and affix
the seal of said Court at
Chicago in said County this
19th day of April A.D. 1861
Matthew Kimball Clerk

And the said Plaintiff in Error Martin Q. Walker by Scates, McAllister & Jewett his Counsel Come & say that in the Record and proceedings, & in the rendition of judgment in this Cause in the Court below manifest error hath intervened in this to wit

1. The Court erred in overruling the Plaintiff Walker's objections to the questions put to and answer given by C. Price, as to who employed him to do the Mason work on Walker's buildings
2. The Court erred in overruling objections to questions put to, and answers given by the Sheriff, as to whether Walker told him to contract for raising his Walker's buildings
3. The Court erred in deciding that the defts. receipt to Hayward, was inadmissible, and not to be considered as evidence of a discharge under said contract
4. The Court erred in giving the instruction asked for by Defendants in error.

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5th The Court erred in refusing to give the instruction asked for by Plaintiff in error

6 The Court erred in refusing to set aside the verdict, because the Jury allowed interest on the Claim of Defendants in error

7 The Court erred in overruling Plaintiff's motion for a new trial

8 The Court erred in rendering a judgment for the defendants and against the Plaintiff in error

Wherefore for these & other errors apparent upon the record, he prays that the judgment be reversed, annulled & for nothing esteemed, & that he may be restored to all his rights, & that he may recover his reasonable costs

Scates McAllister & Jewett
of Counsel for Plaintiff in error

And now come the said defendants & say that there is no error in said record & they pray that the judgment herein may be affirmed

Gallup & Hitchcock
attorneys

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Martin A. Walker

or

Gas Brown &
Gas Hollingsworth

Record

Filed April 27, 1861

L. L. Linn
Clerk

5 Feb 1861
1840,00
920,00
920,00

Scatter me a g.
for appeal

Fee \$15.00