

No. 12676

Supreme Court of Illinois

Wadsworth

vs.

Walker

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Walden

Walden

1858

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State of Illinois }
County of Cook } p.

Pleas before the Honorable John M.
Wilson Judge of the Cook County, Court of Common
Pleas within and for the County of Cook and State of
Illinois, at a vacation Term of said Cook County, Court
of Common Pleas 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 January in
the year of our Lord One thousand eight hundred
and fifty-seven and of the Independence of the United
States the eighty first.

Present the Honorable John M. Wilson, Judge
John E. Wilson, Sheriff
Walter Kimball, Clerk
Attest

Be it remembered, that heretofore, to wit, on the seventeenth day of December in the year of our Lord one thousand eight hundred and fifty six, came Tertius Wadsworth by H. T. Helms his Attorney, and filed in the Office of the Clerk of the Cook County Court of Common Pleas, his Bond for Costs and Preceps ^{for summons} against Martin O. Walker, which said Bond for Costs and Preceps are in the words and figures as follows, to wit:

Cook County Court of Common Pleas
January Term A.D. 1857.

Tertius Wadsworth	}	Apt. \$20,000 Cook Co.
Martin O. Walker		

Will the Clerk please issue a writ of summons in the above cause laying the damages at Twenty thousand dollars, & Oblige Yourself.
H. T. Helms Plf's Atty.

I hereby enter myself security for costs in the above cause and acknowledge myself bound to pay or cause to be paid all costs that may accrue in said cause either to the opposite party or to any of the Officers of this Court pursuant to the laws of this State. - Dated Dec. 17th 1856.

Geo M. Wells
H. T. Helms.

And afterward, to wit, on the day and year last aforesaid, there issued out of the Clerk's Office of said Court, a Writ of Summons, which said Summons, with the Sheriff's return thereon endorsed is in the words and figures as follows, to wit.

State of Illinois }
County of Cook }
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 Cook
County Court of Common Pleas of said County, on the
first day of the next term thereof, to be holden at
the Court House, in the City of Chicago, in said County,
on the first Monday of January next, to answer unto
Felix Wadsworth in a plea of Trespass on the Case
on promises to the damage of the said plaintiff as he
says in the sum of Twenty thousand dollars. And
have you then and there this writ, with an endorse-
ment 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 17 day of December
A.D. 1854. Walter Kimball, Clerk.



Served by reading to the within named Martin O.
Walker this 26th day of December 1854.

Service 50
Miles 5
Retn \$0.15

John L. Wilson Shoff
by George Rommelp D. J.

And afterwards, to wit, on the twenty sixth day of December in the year aforesaid, came the said Tertius Wadsworth by H. T. Helm his Attorney, and filed in the Office of the Clerk of said Court his declaration, which said declaration is in the words and figures as follows, to wit.

Cook County Court of Common Pleas.
January Term A.D. 1857.

State of Illinois,
Cook County, } ss.

Tertius Wadsworth, Plaintiff in this suit by Henry T. Helm his Attorney, complains of Martin C. Walker, defendant of a plea of trespass on the Case upon promises. For that whereas the said Defendant heretofore, to wit, On the twenty-eighth day of June in the year Eighteen hundred and fifty six, at Chicago to wit, The County of Cook aforesaid made and drew his certain Bill of Exchange in writing bearing date the day and year aforesaid upon one Thomas Ayer and thereby required the said Thomas Ayer to pay to the order of the said defendant the sum of Twelve thousand dollars for value received, five months after the date of said Bill of Exchange, at the Importers and Traders Bank in the City of New York, in the State of New York, And the said Defendant to whose order the sum of money in the said Bill of

Exchange was made payable, then and there and before the payment of the said sum of money or any part thereof, endorsed the said Bill of Exchange, and by the said endorsement ordered and appointed the said sum of money in said bill specified to be paid to the said Plaintiff, and then and there delivered the said Bill so endorsed to the said Plaintiff, and the said Thomas Dyer afterwards to wit, on the day and year last aforesaid, to wit, at the place aforesaid under his hand accepted the said Bill of Exchange so endorsed and payable as aforesaid. - And the said Plaintiff further says that the said Bill of Exchange afterwards and after the time appointed by the said Bill for payment of the money therein mentioned, to wit, On the twenty eighth day of November in the year Eighteen hundred and fifty-six aforesaid, at New York aforesaid, to wit, at Cook County aforesaid was shown and presented at the Importers and Traders Bank in said City of New York where the same was made payable for payment of the sum of money therein mentioned, and payment of said sum of money was then and there demanded according to the tenor and effect of the said Bill and of the acceptance aforesaid of the said Thomas Dyer and of the endorsement of the said Defendant, but the said Thomas Dyer did not, nor did any one for him, when the said

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Bill was so shown and presented at the Bank
aforesaid, or at any other time whatsoever pay the
money in the said Bill mentioned, or any part
thereof; but the payment thereof hath hitherto
wholly neglected and refused, and the said Bill
was then and there duly protested for nonpayment
thereof, according to the Statute made and provided
of all which said premises the said Defendant
afterwards, to wit, On the day and year last afore-
said at the place aforesaid had notice, by
reason whereof and according to the customs of
Merchants and by force of the Statute in such
case made and provided the said Defendant
became liable to pay the said Plaintiff the said
sum of money in the said Bill specified, together
with damages for the non-payment thereof and the costs of
protest when he the said Defendant should be thereunto
afterwards requested, And being so liable this said De-
fendant in consideration thereof afterwards, to wit, on the
day and year last aforesaid, at the place aforesaid under-
took and then and there faithfully, promised the said plain-
tiff well and truly, to pay the said Plaintiff the said sums
of money when he should be thereunto afterwards requested.

And whereas also the said Defendant afterwards
to wit, on the day and year last aforesaid at New York, to
wit, at the County of Cook aforesaid made his certain
other Bill of Exchange in writing bearing date the day
and year last aforesaid and then and there directed

the said Bill of Exchange to one Thomas Dyer of Chicago, and by the said Bill then and there requested the said Thomas Dyer to pay to the order of the said Defendant the sum of Twelve thousand dollars for value received, five months after the date of said Bill at the Importers and Traders Bank in the City of New York aforesaid, and the said Defendant then and there endorsed said Bill of Exchange and delivered the same to the said plaintiff, by which said endorsement the said Defendant then and there ordered and appointed the sum of money in said Bill specified to be paid to the said Plaintiff; And the said Bill of Exchange the said Thomas Dyer afterwards, to wit, on the day and year last aforesaid, and at the place aforesaid upon sight thereof accepted payable as aforesaid: And the said Plaintiff avers that afterwards, when the said Bill of Exchange became due and payable according to the tenor and effect thereof, to wit, on the twenty eighth day of November in the year aforesaid to wit, at said County, the said Bill of Exchange was presented and shown for payment thereof at the Importers and Traders Bank in New York aforesaid and payment of said sum of money in said Bill of Exchange specified then and there duly demanded, but the said Thomas Dyer did not nor would he or any one for him at any time thereafter pay the said sum of money, but to pay the same or any part thereof then and there wholly neglected and refused, And the said Plaintiff avers

that thereupon at the time and place last aforesaid the said Bill of Exchange was duly protested for non-payment thereof, according to the form of the Statute in such case made and provided, of all which said several premises the said Defendant afterwards to wit, on the day and year and at the place last aforesaid had due notice, by reason whereof, and of the acceptance of the said Thomas Syer and the endorsement of the said Defendant, and by force of the Statute in such case made and provided, the said Defendant became liable to pay the said Plaintiff the said sum of money in the said Bill of Exchange specified together with damages for the non-payment of the same and costs of protest, according to the tenor and effect of said Bill and of the Statute in such case made and provided when the said Defendant should be thereunto afterwards requested, and being so liable the said Defendant in consideration thereof afterwards to wit, on the day and year and at the place last aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay the said sum of money in said Bill specified together with the damages and costs aforesaid when he the said Defendant should be thereunto afterwards requested.

And whereas also, the said Defendant afterwards to wit, on the first day of July, in the year aforesaid was indebted to the said Plaintiff in the sum of Twenty thousand dollars, for the money of the said Plaintiff

before that time lent and advanced to the said Defendant by the said Plaintiff at the special instance and request of the Defendant, and for other the money of the said Plaintiff by the said Plaintiff before that time paid, laid out and expended to and for the use of the said Defendant at the like special instance and request of the Defendant, and for other the money of the said Plaintiff before that time had and received by the said Defendant to and for the use of the said Plaintiff and in the further sum, to wit, Twenty thousand dollars for money before that time found to be due and owing from said Defendant to said Plaintiff on an account stated by and between the said plaintiff and the said Defendant, and being so indebted and in arrears the said Defendant then and there undertook and faithfully promised the said Plaintiff well and truly to pay unto the said Plaintiff the sums of money above mentioned when he the said Defendant should be thereunto afterwards requested.

Nevertheless the said Defendant although often requested has not yet paid the said Plaintiff the said several sums of money above mentioned nor any or either of them, or any part thereof, but to pay the same or any part thereof has hitherto wholly refused and still does refuse to the damage of the said Plaintiff of the sum of Twenty thousand dollars, and therefore he brings suit &c.

N. T. Helm

Plf Attorney

Copy of the Instrument sued upon
Copy

\$12000.

June 28th 1856

Five months after date without grace, pay
to the order of myself at the Importers and Traders Bank
in the City of New York Twelve thousand dollars, value
received and I charge the same to account of
To Tho^s Mays Esq
Chicago Ill.
M. C. Walker

Endorsed "M. C. Walker"

And afterwards to wit, On the seventh day
of January in the year of our Lord One thousand
eight hundred and fifty seven, said day being one
of the days of the Vacation Term of said Court, the
following among other proceedings were had in said
Court and entered of record, as follows to wit.

Justin Wadsworth

vs

Martin C. Walker

Assumpsit.

And now at this day comes
the said plaintiff by M. T. Helm his Attorney, and
the said defendant having been duly personally served
with process of summons issued in this cause, being
now three times solemnly called in open Court comes
not nor does any person for him, but makes default,
and on motion of said plaintiff it is Ordered that the

default of the said defendant be taken and entered herein which is hereby done - Wherefore the said plaintiff ought to have and recover of the said defendant his damages herein sustained by occasion of the premises, and which damages are hereafter to be ascertained by the Court.

And afterwards to wit on the Eighth day of January in the year aforesaid, the said Defendant by T. L. Dickey his Attorney filed in the Office of the Clerk of said Court, his Motion, which said Motion is in the words as follows to wit.

State of Illinois,	}	In the Cook County Court of Common Pleas, January Term A.D. 1857
Cook County, p.		

Pertius W. Wadsworth	}	Action	Assumpsit
vs			
Martin O. Walker	}		Damages \$25,000.

And now on this day comes the said defendant by T. L. Dickey his Attorney and moves the Court to set aside the default herein, for the reason that no copy of the declaration or rule to plead herein was served on the said defendant ten days before the said term of this Court according to the form of the Statute in such case made and provided - See public laws of Illinois for the year of our Lord 1853, page 163 Section 3 of the act entitled "An act to

regulate the practice in the Circuit Court of Cook County, and the Cook County Court of Common Pleas.

And afterwards, to wit, On the ninth day of January, in the year aforesaid, there was filed in the office of the Clerk of said Court the defendants affidavit, which affidavit is in the words following, to wit,

State of Illinois, }
Cook County, } ss. In the Cook County Court of Common Pleas,
January Term AD 1857

Jertius Wadsworth, }
vs } Action Assumpsit
Martin O. Walker, } Damages \$20,000.

Martin O. Walker being duly sworn according to law on oath deposes and says that he is defendant in the above entitled Cause, and that no copy of the declaration in said Cause or rule to plead therein was served on him said defendant ten days before the said January term of said Cook County Court of Common Pleas, nor was such copy of said declaration or rule to plead ever at any time served on affiant, defendant as aforesaid, And further affiant saith not.

Martin O. Walker
Subscribed and sworn to before me
this 9th day of January A.D. 1857.
W. Kimball, Clerk

And afterwards, to wit, On the ninth day of January in the year aforesaid, the following among other proceedings were had in said Court and entered of record, to wit.

Tertius Wadsworth }
vs } asst.
Martin O. Walker }

And now at this day comes the said defendant by Wallace & Dent his attorneys, and enters his motions herein to set aside the default entered in this cause at a former day of this term, And the said plaintiff by his Attorney H. T. Helm also comes, And the Court after hearing the Argument of Counsel on said defendants motion being now fully advised in the premises overrules said defendants motion, to which ruling of the Court the said defendant here excepts.

And thereupon the Court after hearing the allegations and proofs submitted by said plaintiff being now fully advised in the premises assesses the said plaintiffs damages to the sum of Twelve thousand eight hundred & seventy two dollars and sixteen cents.

Therefore it is considered that the said plaintiff do have and recover of the said defendant his damages of Twelve thousand eight hundred and seventy-two dollars and sixteen cents in form aforesaid by the Court here aforesaid, and also his costs and charges by him

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about his suit in this behalf expended, and have execution therefor.

And the said defendant thereupon prays an appeal to the Supreme Court of the State of Illinois which is allowed by the Court on the said defendant's filing his appeal bond, with the usual conditions in the sum of Fifteen thousand dollars with Samuel B. Walker as security by the twelfth day of January instant.

And afterwards, to wit, on the same day, and year aforesaid Martin O. Walker filed herein his exceptions, which said exceptions are as follows, to wit.

Fertius Wadsworth	}	Cook County Court of Com. Pleas January Term 1857.
vs Martin O. Walker		

The defendant excepting to the assessment of damages, moves to set aside the same

Wallace & Dent

Atty for Deft.

And afterwards, to wit, on the tenth day of January in the year aforesaid Martin O. Walker filed herein his appeal bond, which said Bond is in the words and figures following, to wit:

Know all men by these presents, That we,
Martin C. Walker and Samuel B. Walker, of the
City of Chicago, County of Cook and State of Illinois,
are held and firmly bound unto Tertius Wadsworth
in the penal sum of Fifteen thousand dollars, for
the payment of which, well and truly, to be made
we bind ourselves, our heirs, executors and adminis-
trators, jointly and severally, firmly by these presents.

Witness our hands and seals this ninth day of
January A.D. Eighteen hundred and fifty-seven.

Whereas in a certain action pending in the
Cook County Court of Common Pleas at a Term
of said Court begun and held at the Court House
in the City of Chicago, in and for the County of
Cook aforesaid, on the first Monday in January
A.D. 1857, in which action the said Tertius Wad-
sworth was plaintiff and the said Martin C. Walker
was defendant, the said Tertius Wadsworth has,
by the consideration and judgment of said Court
recovered against the said Martin C. Walker judg-
ment for the sum of Twelve thousand eight hun-
dred and seventy two dollars and sixteen cents,
(plaintiffs damages,) and also for costs by said
Tertius Wadsworth expended in said suit, And
whereas the said Martin C. Walker has in said
case prayed and been allowed an appeal from
said Cook County Court of Common Pleas to the
Supreme Court of the State of Illinois: Therefore

the condition of the above obligation is such that if the said Martin O. Walker shall duly prosecute his said appeal, and if he shall pay the judgments costs, interests and damages in case the judgment shall be affirmed, then the above obligation shall be void, otherwise it shall remain in full force and effect.

Signed, ^{and} sealed
in presence of
Martin R. M. Wallace

Martin O. Walker 35
Samuel B. Walker 35

Approved by me, John M. Wilson Judge
Jan'y 10, 1857

And on the ninth day of January in the year aforesaid, Martin O. Walker filed his bill of exceptions, which said Bill of exceptions is in the words and figures following, to wit:

State of Illinois, }
Cook County, } In the Cook County Court of Common
Pleas, January Term A.D. 1857.

Terius Wadsworth }
vs } Assumpsit
Martin O. Walker }

Be it remembered that on the 9th day of January A.D. 1857. default having been previously entered in this cause at this term

of this court, the defendant by his counsel moved the court to set aside the default; which motion was made upon the ground that no copy of the declaration, nor rule to plead, nor any notice of intention to take such default had been served on the defendant; and the following affidavit of the defendant was filed, to wit:

State of Illinois }
Cook County } In the Cook County Court of Common
Pleas. January Term A.D. 1857.

Fertius Wadsworth }
vs } Action Apumpsit
Martin O. Walker } Damages \$20,000,
Martin O. Walker being duly

sworn according to law, on oath deposes and says, that he is defendant in the above entitled cause, and that no copy of the declaration in said cause or rule to plead therein was served on him said defendant ten days before the said January term of said Cook County Court of Common Pleas, nor was such copy of said declaration or rule to plead ever at any time served on affiant defendant as aforesaid. - And further affiant saith not. -

Subscribed and sworn to }
before me this 9 day of } Martin O. Walker.
January A.D. 1857 }

W. Kimball Clerk

And the plaintiff by his Counsel admitted that no copy of the declaration nor rule to plead was served on the defendant; thereupon the Court holding it unnecessary for the plaintiff in order to be entitled to such default, to serve the defendant with a copy of the declaration, or a rule to plead, overruled said motion, and the defendant by his counsel then and there excepted to the decision of the Court overruling said motion.

The Court thereupon proceeded to hear evidence as to the amount of damages, and the plaintiff offered in evidence a certain Bill of Exchange which with the endorsements thereon is as follows:

\$12,000.00

June 28th 1856.

Five months after date without grace Pay to the order of myself at the Importers & Traders Bank in the City of New York Twelve thousand dollars, value received, and charge the same to account of
 To Tho Dyer Esq
 Chicago Ill

W. O. Walker

W. O. Walker

Pay A. C. Williams Esq
 or order.
 A. C. Williams Esq

"Endorsed" on the back.

Attached to which Bill of Exchange and offered therewith by the plaintiff was and is a

Certificate of protest as follows.

United States of America,
State of New York, } ss.

On the twenty eighth day of November in the year of our Lord one thousand eight hundred and fifty six, at the request of the Merchants Bank, I Andrew H. Sands, Notary Public, duly admitted and sworn, dwelling in the State of New York, did present the original Bill of Exchange, herunto annexed for \$12,000. & dated June 28th, 1856 to the paying teller at the Importers & Traders Bank in New York where said Bill is payable and demanded of him payment thereof, which he refused.

Whereupon, I, the said Notary, at the request aforesaid, did Protest, and by these presents do publicly and solemnly Protest, as well against the Drawer, Acceptor and Endorsers of the said Bill of Exchange, as against all others whom it doth or may concern, for exchange, re-exchange and all costs, damages and interest, already incurred, and to be hereafter incurred for want of payment of the said Bill of Exchange.

Thus done and Protested, in the City of New York aforesaid, in the presence of John Roe and Richard Roe witnesses

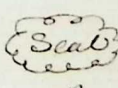
In testimonium veritatis.



Andrew H. Sands Notary Public

The plaintiff then called Edward P. Wells as a witness, and he was sworn and testified that on the seventh day of January A.D. 1857 he saw the defendant and had with him the said Bill of Exchange, to which said certificate is so attached, and conversed with the defendant about the same and asked the defendant if he received the notice of protest at the time of maturity of the Bill, and the defendant said he received it about that time.

The above was all the evidence offered, and upon the same the Court thereupon assessed the plaintiffs damages by reason of the premises at Twelve thousand eight hundred and seventy-two dollars and sixteen cents (\$12872.16) to which assessment of damages the defendant by his counsel then and there excepted. - The Court overruled the exception, and thereupon rendered judgment against the defendant for said Amount. And the defendant by his Counsel having at the time of making the aforesaid orders and decisions, excepted to the same respectively prayed that this Bill of exceptions might be signed, sealed and made a part of the record, And this bill of exceptions is accordingly signed & sealed.

John M. Wilson, Judge 
of the Cook County Court of Common Pleas.

State of Illinois
County of Cook } p.

I, Walter Kimball, Clerk of the Cook
County Court of Common Pleas within and for said County,
& State, do hereby certify that the foregoing is a full
and true transcript of all the papers on file in my office
and of the proceedings entered of Record in said Court
in the case wherein Tertius Wadsworth is Plaintiff and
Martin O. Walker is defendant in an action of assumpsit.

In testimony whereof I have hereunto set
my hand and the Seal of said Court at
the City of Chicago in said County and State
this Twenty fifth day of March A.D. 1857

Walter Kimball, Clerk

1857
Jertius Madsonworth
Appellant vs 20

Martin O. Walker
Appellant

Filed April 22, 1857
J. Leach
Clerk

5/26/12

Fees on transcript;
paid by Deft. \$5.50
J. H. [unclear]

In the Supreme Court, 3^d Grand Division
of the State of Illinois—

April term A. D. 1857

Martin O. Walker appellant
vs
Lentice Wadsworth appellee

Appeal from the Court
County Court of Common
Pleas—

Assignment of Errors

And the said Martin O. Walker plaintiff
in error, now comes and says, that in
the record and proceedings aforesaid
there is error in this to wit—

1st The Court erred in granting the plaintiff's motion for the default of defendant at said January term of said Court—

2^d The Court erred in overruling defendant's motion to set aside the default entered in said case—

3^d The Court erred in assessing the plaintiff's damages at said January term of said Court—

4th The Court erred in assessing the plaintiff's damages at the sum of \$12873.60 twelve thousand eight hundred and seventy three dollars and sixteen cents—

5th The Court erred in over-ruling defendant's motion to set aside the apportionment of damages in said cause —

6th The Court erred in rendering judgment against defendant for the sum of twelve thousand eight hundred and seventy two dollars and six pence cents (\$12,872.16 —

7th The Court erred in rendering judgment against defendant at said January term of said Court —

Wherefore, the said Martin O. Walker, plaintiff in error as aforesaid, prays that a citation may issue, and that the said judgment may be reversed and that he may be restored to all things which he has lost by reason thereof —