

No. 12842

Supreme Court of Illinois

People.

vs.

Wadsworth, et al.

71641  7

~~Handwritten~~
People's.

E. S. Wadsworth
cash.

1856

2 PD

1856

State of Illinois. ss.

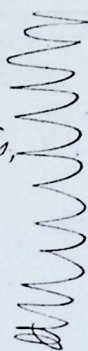
Supreme Court - third Grand Division
June term A.D. 1855.

The People of the State of Illinois

as

Covenant-

Elisha S. Traskworth, Francis,
C. Sherman, Thomas Dyer,
Hugh T. Hickey, impleaded
with Mark Skinner



And now come the said plaintiffs
by Hickey & Cook their attorneys, and as to the
first and ninth pleas of said defendants by them
above pleaded, and of which the said defendants
put themselves upon the country; the said people do
the like
Hickey & Cook
for plffs-

And as to each of the residue of the pleas filed herein
by said defendants, this is to say, the second, third,
fourth, fifth, sixth, seventh, eighth, tenth, eleventh,
twelfth, thirteenth, fourteenth, fifteenth, sixteenth
and seventeenth and eighteenth pleas of said defen-
dants by them above pleaded, the said plaintiffs
say precludi non &c, because they say that the
said last mentioned pleas respectively, and each of
them, and the matters therein respectively contained
are insufficient in law to bar the said plaintiffs
action aforesaid against the said defendants,
and that the said plaintiffs are not bound by
law to answer each or either of said pleas -
And this the said plaintiffs are ready to verify -
Wherefore they pray judgment &c -

And for cause of demurrer to each of said
pleas, plaintiffs show the following to the court
1st

That said pleas, and each of them, are
argumentative and uncertain, and attempts
to plead evidence instead of facts -

2nd The statements contained in said pleas
are too general and uncertain -

3rd That each of said pleas is double -

4th That the statement in said pleas, and
each of them, amount only to a qualified
indirect and argumentative denial of certain
allegations in the declaration - and do not
set up new matter in avoidance

5th That the matter contained in said
pleas, and each of them, if ever so well
pleaded - constitutes no bar to the action -

6th That said pleas and each of them
are in other respects uncertain, informal
and insufficient

Lickey & Cook
for plffs -

State of Illinois
Supreme Court - To the June Term A.D.
1855 -

The People of the State of Illinois
~~against~~
against

Action of Covenant -
Damages \$500,000 -

Elisha S. Wallworth
Thomas Dyer
Francis C. Sherman
Hugh J. Dickey &
Mark Skinner

The clerk of said Court will issue
summons in the above case to
the Sheriff of Cook County to be
served —

/ Dickey & Wallace
Glover & Cook

The people of the State of
Illinois VS. Elisha S.

Wadsworth, Thomas Leger,
Francis C. Sherman, Hugh
W. Dickey and Mark Skinner.

Action of Covenant-
Damages - \$500,000. —

Process for Summons.

Filed May 4, 1858.
S. Veland Clk.

48

The People &c

vs

E. S. Wadsworth

et al

Similar to 1st & 9th
pages &

Memorandum to resident

Filed July 30, 1855,
L. Island Ct.

July 11. 1856
George Ireland Esq
Clerk of Supreme Court of 3^d
Grand Division -

You will
please enter the suit of the People of
the State of Illinois against Elster
J Wadsworth, Thomas Dyer, Asa
J Dickey, Francis S Sherman &
Mark Skinner now pending
in said court, dismissed at
the cost of the defendants

T. L. Dickey
att'y for pl'tffs -

Chas. Smith
att'y for dr'fns

The People
^{vs}
Wadsworth & Co

Stipulation

Filed July 17. 1856
L. Seland

Carl A. Mutterson Governor & Successor of
Augustus C. French late Governor for the use of
The People of the State of Illinois

Supreme Court
Term Term Ad 1855

Thomas Dyer. Francis C. Merriam
Hugh P. Dickey & Eliza Washburn
impleaded with Mark Skinner

Augustus C. French Late Governor of the
State of Illinois for the use of the
People of the State of Illinois

same

same

The People of the State of Illinois

same

same

It is hereby stipulated and agreed that the defendants
in the above entitled cases shall be at liberty to raise upon the
answers therein filed herewith, the right of the plaintiffs, or either
of them to maintain either of said actions in the character in
which they have demanded.

Wiley Lever for plaintiffs

C^ol 48-49-50
Proph. French - Matteson

^{vs}
Wadsworth et als.

Stipulation

Filed July 12. 1855.
L. Keland Clk.

Wadsworth et al vs the People -

Defendants contracted "that all moneys placed by the authority of the State of Illinois in the hands of her said agent, Julius Wadsworth, should be accounted for."

Eleventh plea avers, that the moneys were placed in Wadsworth's hands "for the purpose of being used by him in his own business and for his own profit &c."

It necessarily follows, if this be so, that moneys were not placed in Wadsworth's hands by authority of the State, & Defts. are therefore discharged -

2. Deft. agreed that Wadsworth should pay out moneys "in such manner.... as may be hereafter directed by any Governor.... authorized by law to control or direct in relation thereto."

Eighth plea avers that "Wadsworth used and paid out all the moneys which were placed in his hands &c" in pursuance of the directions of Joel A. Matteson, who was then and there Governor &c. and by law authorized to direct the said Wadsworth in that behalf."

The contract is a voluntary - not a statutory obligation - Defts. are only liable according to its terms, and are discharged by the compliance of Wadsworth with its terms, whether Matteson had a right by law to direct as he did or not.

3. The Governor had power to remove the agent, take the funds from his hands, and place them in the hands of another more trust worthy - To that extent the Governor had authority to control and supervise the acts of the agent - If one officer, has the control and supervision of another office, so far as ^{hand} enabled to remove the latter take the funds in his ^{hand} from him, and put them or other funds into the hands of others more trust worthy, and the superior officer ^{knowingly} suffer or permit the officer under him to make an illegal use of funds in his hands or entrusted to his care, the securities of the latter are discharged, notwithstanding the conduct of the superior officer was illegal, and known to be such by the inferior officer -

Drakeham Bank v Chickering 4. Pick 338.

Atley v Culloway County Court 11. Mis 457.

Taylor v Bank of Ky 2. Hellenke 570

People v Tamm 7. Johns 339.

Us v Kirkpatrick 9. Wheat 738.

admitting the doctrine of 7 Johns 339. &c so far as it relates to mere
 books.

STATE OF ILLINOIS,
LaSalle County

} SS.

THE PEOPLE OF THE STATE OF ILLINOIS,
^{Cook}
TO THE SHERIFF OF ~~SAY~~ COUNTY,—GREETING:

WE COMMAND YOU THAT YOU SUMMON *Elisha S. Madeworth, Thomas Dyer,*
Francis C. Sherman, Hugh T. Dickey & Clark Skinner
if *they* shall be found in your County, personally to be and appear before the ^{Supreme} ~~Circuit~~ Court of said *State*, on the
first day of the next term thereof, to be holden at the Court House in Ottawa, in said *State*, on the *second Mon-*
day of *June* next, to answer unto *The People of the State*
of Illinois - plaintiffs
in a plea of *Covenant broken*

to the damage of the said plaintiffs as *they* say, in the sum of *five hundred thousand*
Dollars. And have you then and there this writ, with an endorsement thereon, in
what manner you execute the same.

The Hon. John D. Catron Chief Justice
WITNESS, ~~JOHN P. VASH~~, ~~Clerk~~ of our said Court, and the seal thereof, at Ottawa,
this *fourth* day of *May* A. D. 185*8*

L. Seland Clerk.

12542-9

Madeworth &
People &

150 People &c.

Elisha S. Foadsworth & Co.

Summons

I served this process by
reading the same to
& in the presence &
hearing of the -

~~Served the within sum-~~
~~mons by reading the~~
~~same to the presence~~
~~of the hearing of the~~
within named Elisha
& Foadsworth & Thomas
Oyer, Francis & Shuman
and Houghton & Dickey
May 7th 1855 the within
named Mark Skinner
not found in any county

4 Services	200
21 Miles	105
1 Return	10
	<u>315</u>

James Andrews Sheriff
Cook County

By J. Norton Depy

Filed May 9. 1855
L.eland Clerk

No. 48

The People &c 3 In Supreme Court - Illinois
vs 3 June term 1855.
Elisha Wadsworth 3
et al — 3

I, Francis C. Sherman
being duly sworn, do depose and say that
I am one of the defendants in the above
entitled suit and that I am advised
and verily believe that said defendants
have a good and valid defence to
said suit upon the merits - Affiant further
states that defendant cannot safely proceed
to trial in this suit without the testimo-
ny of Julius Wadsworth, James O. Sheldon
and Oscar A. Lowe, who reside in the
City of New York in the State of New
York and are material witnesses for said
defendants - that previous to this term of
this Court, Mark Skinner, one of said defen-
dants was informed by them, as this de-
fendant has been informed and believes that
they would severally attend this Court as
witnesses for said defendants, at this term
(upon notice that they would be wanted)
and bring with them all the correspondence
between Augustus C. French as Governor of
said State & Joel A. Matteson as Governor of
said State, respectively, on the one part and
said Julius Wadsworth and James O. Sheldon
and each of them on the other - That on
Friday last, July the 27th 1855 - as affiant
is informed and verily believes, said witnes-
ses were ^{caused to be} notified by C. Beckwith, one of

defendants' attorneys, for aid on behalf of these defendants - that their attendance at this term of the court, and as soon as practicable was wanted and required by these defendants - That Affiant believes the said witnesses have had time since they received said notice sufficient to have come to this place and now to be in attendance upon this court - that said witnesses are not in attendance upon this court - but are, as affiant believes, still in the State of New York - and Affiant has been informed that said Wadsworth, Sheldon and Lowe cannot and will not be present at this term of this court - and affiant believes that information to be true.

That defendants relied with confidence upon the agreement so made with said witnesses and believed that they would fulfil the same - and affiant so continued to believe until since said notice given by Mr. Beckwith as aforesaid, and the receiving of information that said witnesses cannot come - Affiant further says that the effort to secure the attendance of said witnesses as aforesaid was made in good faith on his part, and as he believes by his co-defendants and that they are not absent by any consent or connivance of affiant, or any of his co-defendants as he verily believes - Affiant further says that he expects to be able to prove on the trial of this cause that His Excellency, Augustus C. French

then Governor of the State of Illinois, as such - did, on the 30th of May A.D., 1848 constitute and appoint said Julius Wadsworth and James O. Sheldon - then partners under the firm of Wadsworth and Sheldon, agents of the State of Illinois for the payment of interest on the debt of said State, and for that purpose to have the joint Custody and Management in that behalf of the monies of said State, constituting the Interest fund of said State - which should be by the Governor of said State at any time thereafter placed in their hands - and said Julius Wadsworth and James O. Sheldon jointly accepted said appointment and became and until the first of January, last, continued to be such joint agents of the State of Illinois in that behalf. -

And affiant expects and believes that defendants can prove by said witnesses, Julius Wadsworth, James O. Sheldon and Oscar A. Love (who has been and is a clerk of said Wadsworth and Sheldon) that none of the monies - in the said declaration alleged to have come into the hands of the said Julius Wadsworth as State Agent, did come to his hands under and by virtue of ~~some~~ ^{the supposed} appointment of him as agent of the State of Illinois set forth in said declaration - that said monies were not placed in his

hands as such agent, and that said monies were not recieved by said Julius Wadsworth as such agent under said ^{supposed} appointment - ~~but~~ ^{and} that all of said monies which ever did come into his hands were placed by Joel A. Matteson, Governor of the State of Illinois, as such - in the hands of said Julius Wadsworth and James O. Sheldon jointly as partners ~~and~~ ^{they being their agents} of the said state of Illinois by the under and by virtue of the joint appointment of them the said Julius Wadsworth and James O. Sheldon as agents of the State of Illinois - by the late Governor, Augustus C. French, as such ^{made in two measures} ~~or~~ more particularly above set forth ~~and~~ ~~into the hands of the said Julius Wadsworth alone~~ - And Affiant further saith that he is advised and believes that the testimony of all of said Witnesses is necessary in order to show in their proper Connection and application the facts herein before stated and that he knows of no witnesses residing in this State by whom he can prove all of the same facts - And that he believes he shall be able to procure the testimony of the said witnesses to the facts herein before stated by the next term of this Court. - This Affiant further says that he was advised by two of his associate defendants, Hugh J. Leickey and Mark Skinner

and by Counsel that this Court had not
original jurisdiction of said Suit, and
that himself and his associates ^{have} believed
that such was the law, and therefore
this Affiant and his associates thought
it unnecessary to take the steps to pro-
cure their evidence which they other-
wise would have taken had they
supposed that said Court had origi-
nal jurisdiction of said cause -
and that since the decision of said
question the said affiant and his
Counsel have made every effort in
their power to procure the attend-
ance of said witnesses.

A. B. Sherman

Subscribed & sworn to before
me this 2^d day of August
A.D. 1855. L. Leland Clk.

Affidavit

Elihu S. Wadsworth et al
ads.

The People vs

Filed August 2, 1855

L. Leland tlb.

STATE OF ILLINOIS,

La Salle County,

} ss. The People of the State of Illinois,

To

Joel A. Matteson

Supreme GREETING :

YOU ARE HEREBY COMMANDED personally to be and appear before the ~~Circuit~~ Court of said State ~~county~~, on the ~~fourth~~ ^{now being} day of the ~~next~~ term thereof, to be holden at the Court House in Ottawa, in said county, on the ~~fourth~~ day of ~~forthwith~~ ^{next}, to testify and the truth to speak in a certain case now pending and undetermined in said court, wherein The People of the State of Illinois are plaintiffs, and Elisha S. Wadsworth & others are

defendants on the part of the said

and this you will in no wise omit under the penalty of the law.
WITNESS, Hon. Walter H. Sears Chief Justice, Paul Lindley Clerk of said Court, and Seal of said Court, at Ottawa, this 28th day of July A. D. 185 5.

L.eland Clerk.

Crack Moore

And that you bring with you all the
letters, papers and documents of every kind
and description in your custody & possession
or under your control between Augustus
C. French & Julius Wadsworth, or Wads-
worth & the State during the time he the
said A. C. French was Governor of the State
of Illinois, and between yourself and the
said Julius Wadsworth or Wadsworth & the State
since you became Governor of said State, which
relate ~~relating~~ to the payment ^{of interest} by them or either of them
upon the State debt, or the agency of them or either
of them in reference thereto -

Elisha S. Wadsworth
et al -

ads

The People of the State of
Illinois

In Supreme
Court.

June Term

1853.

And the said defendants, Elisha
S. Wadsworth, Thomas Dyer, Francis
C. Sherman & Hugh S. Dickery, by
Beckwith & Turnbull, their attorneys
come & defend the wrong & injury alleged
and crave over of the said writing obligatory
which is read to them in words &
figures following (Here insert)
which being read & heard the said
defendants say that the said declaration
& the matters therein contained in
manner & form as the same in their
plea & set forth are not sufficient
in law for the said plaintiffs to
have and maintain their action
preferred, & that they are ready to
verify. Wherefore they pray
judgment for.

Beckwith & Turnbull
attys for defts.

Elisha S. Wadsworth

et al

vs

The People of

General Denun-
 cer of Sella-
 ration.

Filed July 7, 1855.
 L. Keland Clk.

STATE OF ILLINOIS,

LaSalle County

} SS.

THE PEOPLE OF THE STATE OF ILLINOIS,

TO THE SHERIFF OF ^{Coah}~~SAD~~ COUNTY,—GREETING:

as we have heretofore done
WE COMMAND YOU THAT YOU SUMMON

Mark Skinner impleaded with Elshad. Wadsworth, Thomas Dyer, Francis Sherman & Hugh T. Dickey

if *he* shall be found in your County, personally to be and appear before the ^{Supreme}~~Circuit~~ Court of said ^{State}~~County~~, on the first day of the next term thereof, to be holden at the Court House in Ottawa, in said County, on the *Second Mon-* day of *June* next, to answer unto *The People of the State of Illinois—plaintiffs* in a plea of *Covenant broken*

to the damage of the said plaintiffs as *they say*, in the sum of *five hundred thousand* Dollars. And have you then and there this writ, with an endorsement thereon, in what manner you execute the same.

The Hon. Walter B. Scates, Chief Justice
WITNESS, ~~JOHN F. NASH, Clerk~~ of our said Court, and the seal thereof, at Ottawa,

this *twenty first* day of *January* A. D. 1856

S. Leland

Clerk.

J. B. Rice, Deputy Clerk.

281st People vs

Elisha Wadsworth et al,

Alias Summons

Served by reading to the within
named ~~St~~ Mark Skinner
this the 1st day of February 1856

For 1 Summ 50 Pl. Pffo.

1 Return 10 J L Dickey

1 Misc 5
65

James Ananias Sherris
By John H Dart Deputy

Filed Feb. 31, 1856
J. Seland Clk.

Eliza S Madronth
Francis C Sherman
Thomas Dyer &
Hugh T Dickey
impleaded with
Mark Skinner

ad

The People of the State of Illinois

Supreme Court

Term Term 1855

And now the said Eliza S Madronth, Francis C Sherman, Thomas Dyer & Hugh T Dickey by their Attorneys, Turnbull & Breckinridge come, and move this Court that the above entitled cause may be dismissed from the docket of said court, because they say that said suit does not relate to the revenue of the State of Illinois

as by the said plffs declaration will more fully appear
wherefore they say that said court has not original jurisdiction over the said ^{suit} ~~cause~~ ~~therefore~~ ~~this~~ ~~said~~ ~~dispute~~ pray
the said cause may be dismissed &c

Lepman Turnbull &

Breckinridge

Attys

Eliza Wadsworth
et al -

vs

The People of the
State of Illinois

Motion to dis-
miss suit for
want of jurisdiction
in Supreme Court.

Filed July 25, 1855.
L. Keland Clerk.

State of Illinois and Supreme Court thereof
To June Term A.D. 1855.
3rd Grand Division

Unmended Declaration

The People of the State of Illinois
plaintiffs in this suit complain of Elisha
S. Madsworth, Thomas Dyer, Francis C.
Sherman, George T. Dickey and Mark
Skinner defendants in this suit, demand
re of a plea of a breach of covenant.

For that whereas heretofore to wit
on the twenty ninth day of April in the
year of Our Lord Eighteen hundred and
forty eight at the State aforesaid, the said
defendants executed and delivered to the
said plaintiffs their certain writing
obligatory which was and is ~~as follows~~ ~~as follows~~
= ~~as follows~~ as follows; that is to say:

Whereas his excellency Augustus C. Smith
Governor of the State of Illinois has
designated and appointed Julius
Madsworth of the city of New York
in the State of New York agent of the
State of Illinois for the payment of
interest upon the State debt. Now
Therefore know all men by these presents
that we Elisha S. Madsworth, Thomas
Dyer, Francis C. Sherman, George T.
Dickey, and Mark Skinner all of the
city of Chicago in the county of Cook
and State of Illinois do for ourselves
our heirs executors administrators

and assigns again to and with the Governor
of the State of Illinois and his successors
in office to be held and to become security
for the above named Julius Wadsworth
to the people of the State of Illinois that
all monies placed by authority of the
State of Illinois in the hands of her said
agent Julius Wadsworth shall at all times
be applied and paid out and fully
accounted for to the people of the State
of Illinois through her legally authorized
agent or agents in such manner as the
present Governor may direct or as may
hereafter be directed by any Governor or
agent or other officer of said State of
Illinois empowered or authorized by law
to control or direct relative thereto.
In witness whereof we have hereunto
set our hands and seals this twenty
ninth day of April A.D. one thousand
eight hundred and forty eight

E. J. Wadsworth Seal

Mat Ryan Seal

Francis C. Sherman Seal

Henry T. Dickney Seal

Mark Skinner Seal

which said writing, obligatory, sealed with
the seals of the said signatories is now
shown to the court.

And the said plaintiffs aver that
afterwards and before the commencement
of this suit that is to say, on the first
day of December A.D. eighteen hundred

and fifty four the said Julius Wadsworth
the being then and there agent of the State
of Illinois as aforesaid) at New York to wit
at the State of Illinois aforesaid had in
his hands as such agent of the State of
Illinois a large sum of money to wit the
sum of five hundred thousand dollars
which said sum of money was then and there
the money of the State of Illinois and was
then and there a part of the revenue of the
State of Illinois to wit a part of the "Interest
Fund" belonging to the said State of Illinois
and provided for in and by an act of the
Legislature of said State of Illinois entitled
"An act to provide for paying a portion
of the interest on the State debt" approved
March 1st 1845 which said sum of
money so in the hands of the said Julius
Wadsworth as aforesaid was then and
there placed in the hands of the said
Julius Wadsworth as such agent of the State
of Illinois by authority of the State of Illinois
to wit by the direction of Joel A. Matteson
who was then and there the Governor of the
said State of Illinois duly elected and
qualified and authorized by law to
control and direct in that behalf and
which said sum of money was then and
there received by said Julius Wadsworth
as such agent of the State of Illinois as
aforesaid. And said plaintiffs aver
that said sum of money was then
and there so placed in the hands of
the said Julius Wadsworth and by him so

received as aforesaid for the purpose of being
used in paying a portion of the interest upon
the debt of said State in accordance with
the provisions of said act of the Legislature
of the State of Illinois.

And plaintiffs further aver that afterward
and while said sum of money thus remained
in the hands of the said Julius Wadsworth as
such agent of the State of Illinois as aforesaid,
to wit on the first day of December
A.D. eighteen hundred and fifty four
at the State aforesaid, Joel A. Matteson
who was then and there Governor of the
State of Illinois as aforesaid, and
authorized by law to control and
direct, in that behalf, did direct said
Julius Wadsworth agent as aforesaid to
apply and pay over, on the first day
of January A.D. Eighteen hundred and
fifty five, or as soon thereafter as the
same should be demanded at the place of
business of the said Julius Wadsworth in
the city of New York by the persons entitled
thereto, said sum of money or so much
thereof as should be necessary for that
purpose, in manner following, that is to
say - to pay to the persons entitled thereto
fifteen dollars interest upon each of
thousand dollars of the debt of said
State, for which canal bonds or interest
improvement bonds of said State had
been issued by said State except the
bonds which had been hypothecated

to McAllister and Stebbins. And
plaintiffs aver that said Julius
Madsworth afterwards to wit, on the
mid first day of January A.D. eighteen
hundred and fifty five, at New York
to wit, at the State aforesaid, he being
then and there agent of the State of
Illinois as aforesaid, disregarding his
duty in that behalf, absolutely refused
to apply said last mentioned sum of
money or any portion thereof to the
payment of the interest aforesaid,
and then and there wrongfully and
unlawfully appropriated and converted
the same and every part thereof to his
own use so that the same could not
be paid upon the interest due from
said State of Illinois as aforesaid;
Although the said sum of money
had not been before that time drawn
from his hands by the plaintiffs or
by the State of Illinois, or by any agent
of said State duly authorized in that
behalf, or by any officer of said State,
nor had the same been by the said
Julius Madsworth paid out by the
authority of the plaintiffs or by the
authority of the said State of Illinois,
or for the benefit of said State, or in
pursuance of any law thereof.

And plaintiffs aver that no portion
of said sum of money so placed in the
hands of said Julius Madsworth and
received by him as such agent of the

State of Illinois as aforesaid, has ever been applied or paid out by said Julius Wadsworth for the payment of any portion of the interest due from said State of Illinois, or paid out or applied in any manner directed by any authorized agent of said State, or by any Governor of said State, or by any officer or officers of said State authorized by law to control and direct said funds; and that no part of said sum of money was ever accounted for to the people of the State of Illinois by said Julius Wadsworth.

And plaintiffs aver that afterwards to wit, on the twentieth day of February A.D. Eighteen hundred and fifty five, the said Joel A. Matthews, who was then and there and ever since has been and still is Governor of the said State of Illinois as aforesaid, did, at New York, to wit, at the State aforesaid direct and require the said Julius Wadsworth to account to the People of the State of Illinois for said sum of money so belonging to said State and which had been so placed in the hands of said Julius Wadsworth as such agent as aforesaid, and then and there directed and required the said Julius Wadsworth to pay over the said sum of money to one Wm. Osgood, who was then and there

designated and appointed by said
Joel A. Mattison Governor of said
State of Illinois as aforesaid, to receive
the said sum of money of and from
the said Julius Wadsworth, for and
in behalf of the said State of Illinois
of which the said Julius Wadsworth then
and there had notice. And plaintiffs
aver that said Joel A. Mattison as such
Governor, was then and there empowered
and authorized by law to control
and direct relative to said sum of
money.

Yet the said plaintiffs in fact say
that the said Julius Wadsworth did
not nor would account to the
People of the State of Illinois for said
sum of money or any part thereof, but
so to do then and there neglected and
refused, and hath ever since neglected
and refused, and still does neglect and
refuse so to do. And that the said
Julius Wadsworth did not nor would
pay over said sum of money or any
part thereof, to the said Mr. Osgood, or
to any other person or officer, empowered
to receive the same for and in behalf
of the State of Illinois; but so to do,
though often requested, has ever
neglected and refused, and still
does neglect and refuse. Of all
which the said defendants had
notice. And the said plaintiffs
further say that the said defendants

have not, nor has any one of them, nor
any other person for them, paid said
sum of money, or any part thereof to
the said plaintiffs, or to the said State
of Illinois, or to any agent or officer
or officers of said State.

2^d Count.

And for that whereas heretofore, to-wit,
on the twenty ninth day of April A.D.
eighteen hundred and forty eight, at
the State aforesaid, the said defendants
made, signed and sealed ^{and executed to the said plaintiff} their certain other
writing obligatory of that date (sealed with
their seals and here shown to the Court)
and delivered the same to Augustus C.
French then and then Governor of the
State of Illinois, duly elected and qualified
by which said writing obligatory said
defendants, after reciting that said
Augustus C. French Governor of the State
of Illinois had "designated and
appointed Julius Wadsworth of the
City of New York in the State of
New York agent of the State of Illinois
for the payment of interest upon the
"State debt," did agree to and with
the then Governor of the State of Illinois
and his successors in office, to be held
and become securities for the above
named Julius Wadsworth to the people

of the State of Illinois, that all moneys placed by authority of the said State of Illinois in the hands of her said agent Julius Wadsworth, should at all times be applied and paid out fully accounted for to the People of the State of Illinois through her legally authorized agent or agents, in such manner as the then Governor should direct, or as should thereafter be directed by any Governor, agent or other officer of said State empowered or authorized by law to control or direct relative thereto.

And plaintiffs aver that afterwards to wit on the twentieth day of February A.D. eighteen hundred and fifty five, at New York, to wit, at the State aforesaid, the said Julius Wadsworth being then and there agent of the State of Illinois as aforesaid, there had been before that time placed in the hands of the said Julius Wadsworth as agent of the State of Illinois as aforesaid a large sum of money, to wit, the sum of five hundred thousand dollars, belonging to the said State of Illinois, and being a part of the revenue of said State of Illinois, to wit, a part of the "Interest Fund" belonging to the said State of Illinois, and provided for in and by a certain act of the Legislature of the said State of Illinois, entitled "An Act to provide for paying a portion of the

"interest on the State debt," approved
March 1st 1845 - which said large
sum of money had been placed in
the hands of, and received by the
said Julius Wadsworth as such agent
of the State of Illinois, to be by him, as
such agent, applied and paid out in
pursuance of the provisions of said
act of said Legislature, or to be fully
accounted for to the people of the State
of Illinois. And plaintiffs aver
that said sum of money, so belonging
to the State of Illinois, then and there
had been placed in the hands of the said
Julius Wadsworth as agent as aforesaid,
by authority of the State of Illinois
to wit, by the direction of Jas. A.
Matleson, who was then and there
Governor of the State of Illinois duly
elected and qualified and authorized
by law to direct in that behalf (and
who now is and ever since has been Governor
as aforesaid). And plaintiffs aver
that afterwards, to wit, on the day and
year last aforesaid, at New York to wit
at the State aforesaid, said last mentioned
large sum of money so belonging to the
State of Illinois, so remaining unaccounted
for by the said agent Julius Wadsworth
to the People of the State of Illinois
(and no part thereof having been
by said agent Julius Wadsworth
applied or paid out in any manner
directed by any Governor of the State

of Illinois, or agent or other officer or officers of said State empowered by law to control or direct in that behalf, or in any manner whatever to the benefit or use of said State of Illinois - the said Joel A. Matteson, being then and there Governor of the State of Illinois as aforesaid, and fully authorized by law to direct in that behalf, did then and there require of said agent Julius Wadsworth that he should account fully to the people of the State of Illinois through Uri Osgood, who was then and there a legally authorized agent of said State of Illinois in that behalf - and to pay over said large sum of money so still remaining unpaid unapplied and unaccounted for as aforesaid, to Uri Osgood who was then and there an agent of said State of Illinois, designated and appointed by said Joel A. Matteson as such Governor, to require such accounting and to accept and receive said sum of money from said Julius Wadsworth and for and in behalf of the State of Illinois - of which the said Julius Wadsworth then and there had notice.

Yet said plaintiffs say that the said Julius Wadsworth did not nor would so account to the people of the State of Illinois - and did not nor would so pay over said large

sum of money to said Mr. Osgood or any part thereof, but then and there wholly refused and neglected so to do, and has ever since refused and neglected so to do, and still does neglect so to do. And so the said plaintiffs say that all moneys placed by authority of the State of Illinois in the hands of her said agent have not been at all times applied and paid out and fully accounted for to the people of the State of Illinois, in any manner directed by any Governor or agent or other officer or officers of said State of Illinois empowered by law to control or direct relative thereto. And so said plaintiffs say that said defendants have not kept and performed their said covenants, but have broken the same.

And plaintiffs further aver that said defendants have not, nor has any of them, or any person for them, paid to the plaintiffs, or to said State of Illinois, or to any agent, Governor or any other officer or officers of said State in that behalf authorized, said sum of money or any part thereof, but so to do have ever neglected and refused, and still do neglect.

And so the said plaintiffs say
that said defendants have not kept
their said several covenants, but
have broken each of the same, and
that by reason of said several
breaches of said several covenants
in both of said covenants mentioned
plaintiffs have suffered damages
to the amount of five hundred
thousand dollars, and therefore
they bring their suit &c.

Dickey & Wallace &
Glover & Cook
plffs attys.

A copy of the instrument of
writing sued on is given in the
first count of this declaration - to
which copy plaintiffs refer.

People vs. Maddeworth et al.

The say in reply the points made
(in writing) and authorities cited by
defts. counsel —

Bedham Bank v. Chickering 4, Pick. 338.

In this case the directors of the
Bank were the Corporation — had full
and unlimited authority to control
in reference to the affairs of the
Bank — In the case at bar, the
Governor acts by a limited and
clearly defined authority — When
he exceeds that authority the State
is not bound

11. Missouri, 463.

This case only decides what
was decided by our Supreme Court in
case of The People vs Moon et al
3 Scam. 123, that where after the
giving of a bond by the treasurer, new
and independent duties are imposed
upon the treasurer, not contemplated
when the bond was given, a failure
by the treasurer to perform such
independent duties does not make
the sureties liable —

The People vs. Gause 7 Johnson R. 332

This case has been overruled
in 4 Mendell 570
9 Wheaton 720
11 do 124
12 do 554

And a contrary doctrine is held
in all these cases -

See also

14 Saco Library 134 top page
10 East R. 34
1 Bos & Pul. 419.
2 Pierre Wms 288
C. Bingham 94
2 Pick 611
9 Cowen 693 -

which were cited by us on the argument.

Why should a more rigid rule be
applied to the state than to individuals?
a principle at war with the general
indulgence allowed to its rights, which
are ordinarily protected from the laches
and negligence of its officers. The
provisions of the law are made by
the government for its own security
and protection, and to regulate the
conduct of its own officers -

They are directory to such officers and constitute no part of the contract with the surety.

The surety may place confidence in the agents of the government and rely on their fidelity in office; but he has of this the same means of judgment as the Government itself, and the Government does not undertake to guaranty such fidelity—

Quoted from 5 Condensed R. 739—

As to the other point in the case, we desire to direct the attention of the Court to the fact, that the agency of Tradsworth is not limited to New York, nor expressly located in New York— the description of Tradsworth as of New York, is merely descriptio personarum—

That interest is payable in London as well as New York—

And we make the following points:—
1st It is not enough that the business might be done by one agent alone— before the appointment of a second agency revokes the first, it must

appear that the business is of such a nature that two agencies could not be employed. In the second appointment there is no express revocation of the first, and consequently no revocation unless both agencies cannot exist at the same time -

It is like the repeal of a statute by implication - it must be clear that both cannot be in force -

If it be impossible that the State could use the services of Julius Tradersworth as one agency for paying interest, and the services of Tradersworth & Sheldon as another agency for paying interest, then the second appointment is a revocation of the first - not otherwise

There is nothing in the nature of the business to forbid its being done at more than one agency, and the question is reduced to this, Might Tradersworth carry on business in his own name, and also carry on, at the same time, business as a member of the firm of Tradersworth & Sheldon?

Would it not be competent for the Bank of Ottawa to agree with Julius Tradsworth to redeem its circulation in New York, and place funds in his hands for that purpose, and make a similar agreement with Tradsworth & Sheldon - and place other funds in their hands? And might not both these agencies exist at once?

So as relates to the effect of these words in the pleas "in the place and stead" and "to discharge the same identical duties" we say:-

If it is meant that there was any substitution other than a subsequent appointment of Tradsworth & Sheldon as an agency to pay interest, then we are willing to meet it as a question of fact.

If however it is meant by those words that the appointment of Tradsworth & Sheldon as an agency for the payment of interest was, ipso facto, a revocation of the appointment of Tradsworth, we say it is not the law -

Leach & Wallace

for the state -

Supreme Court
3rd Grand Juror

The People, &c

vs

William E. Madson
& others

Unsubscribed

Filed February 11th 1856

L. Leland Clr.

The People &c
vs
Madson & others