No. 11918

Supreme Court of Illinois

Hilliard

vs.

Walker

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44

Lauren P. Hilliard
vs
Almond Walker

1850

11918

Prepaid
E P

United States of America
State of Illinois
County of Cook } ss

Pleas before the Honorable Giles Spring Judge of the Cook County Court of Common Pleas within and for the County of Cook and State of Illinois aforesaid at a regular term of said Court begun and holden at the Court House in the City of Chicago in said County and State on the first Monday being the Fourth day of February in the year of our Lord one thousand eight hundred and fifty, And of the Independance of the United States the Seventy third.

Present the Honorable Giles Spring Judge
Daniel McSkray Prosecuting Attorney
Isaac Cook Sheriff
Attest Walter Kimball Clerk

Be it Remembered that heretofore, to wit, on the thirty first day of December in the year of our Lord one thousand eight hundred and forty seven came Almond Walker and filed in the office of the Clerk of the Cook County Court his affidavit, And also came Lorenzo Bentley Attorney for the said Almond Walker and filed a precipe for an Writ of attachment, which said affidavit and precipe are in the words and figures following, to wit,

Cook Co Court — February Term 1848
Almond Walker vs Lauren P. Williard } Case on Promises Damages $3000.

And the said Almond Walker comes and makes affidavit as follows, to wit, that the said Lauren P Williard is indebted to him the said Plaintiff in the sum of Two Thousand one hundred and fifty nine

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50/100 Dollars by his three several promissory notes in writing by the said Hilliard signed, all bearing date on the first day of May A D 1846, all payable to the said Walker or order one day after date: one of the same being for the sum of two hundred dollars, another for the sum of fifteen hundred and forty 22/100 Dollars and an other for the sum of three hundred and twenty dollars together with the interest thereon: all of which said sums remain due and unpaid at the time of filing this affidavit, and the said Plaintiff further states that he is informed and verily believes that the said defendant conceals himself and purposely avoids the service of process so that a summon cannot be served upon him, and the said Plaintiff further states that the writ against said Hilliard sued out in the above named case was issued from the clerks office of this Court on the eighth day of December A D 1847 that said writ has been in the hands of the officer charged with the service of the same as in the hands of H P Richart a Deputy sheriff duly qualified for about two weeks prior to the time of filing this affidavit – that said Hilliard does business in the City of Chicago & resides here that this affiant is informed & verily believes that said officer has made numerous attempts to serve said writ upon said Hilliard during all the time aforesaid but that the said Hilliard purposely avoids and hides himself from said officer and remains away from said officer as soon as he appears in sight & conceals himself so that said officer cannot serve said writ upon him. That said officer has several times been in the sight of said Hilliard & has been seen by said Hilliard coming toward him to serve said writ the said Hilliard well knowing that said writ has been issued against him and well knowing the officer charged with the service

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of the same & has repeatedly avoided said officer and has run away from said officer, that said officer has pursued said Williard thro' the Streets & Alleys of said City of Chicago but said Williard has hitherto succeeded in eluding the said officer & concealing himself from the service of said process.

Wherefore this affiant prays that an attachment may ifsue out of the Clerks office of this Court against the Lands, tenements, goods & chattles & effects of the said Williard

Subscribed & Sworn before me
this 31st day of December A.D. 1847
James Curtin Clerk } Almond Walker

Cook County Court
Almond Walker
vs
Lauren P Williard } February Term 1848
Case for Promises
Damages $3000.

The Clerk will please ifsue attachment writ against defendant in the above cause and oblige

Yours &c
Larnard & Bentley
Attys for Plff

And on the same day and year last aforesaid there was filed in the office of the Clerk of the said Cook County Court an Attachment Bond which said Bond is in the words and figures following to wit,

Know all Men, by these presents, That we Almond Walker and Eli B Williams are held and firmly bound unto Lauren P Williard in the penal sum of Five thousand dollars, cents lawful money of the United States, for the payment of which said sum, well and truly to be made, we bind ourselves, our heirs, executors, and

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administrators jointly and severally, by these presents. Sealed with our seals and dated this thirty first day of December A.D. 1847

The condition of the above obligation is such, That whereas the above bounden Almond Walker has on the day of the date hereof, prayed an attachment out of the Cook County Court of said county, at the suit of the said Almond Walker against the estate of the above named Lauren P Williard for the sum of Two thousand one hundred & fifty nine dollars thirty cents, and the same being about to be sued out of said Court, returnable on the first monday of February next, to the term of the said Court, then to be holden. Now, if the said Almond Walker shall prosecute his said suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said Lauren P Williard all such costs in said suit, and such damages as shall be awarded against the said Almond Walker his heirs, executors, or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect.

Signed, Sealed, and delivered in presence of. } Almond Walker (Seal)
Eli B Williams (Seal)

And on the same day to wit the thirty first day of December in the year last aforesaid there was issued out of the office of the Clerk of the Cook County Court an attachment Writ which said Attachment writ is in the words and figures following to wit,

State of Illinois }
Cook County } ss

The People of the State of Illinois

to the Sheriff of said County, Greeting:-

Whereas, Almond Walker hath complained on oath to James Curtis, Clerk of the Cook County Court of Cook County, that Lauren P Williard is justly indebted to the said Almond Walker to the amount of Two thousand one hundred and fifty nine dollars, and thirty cents; and oath having been also made, that the said Williard conceals himself so that the ordinary process of law cannot be served upon him. And the said Almond Walker having given bond and security, according to the directions of the act in such case made and provided. We, therefore, command you, that you attach so much of the estate, real & personal, of the said Lauren P Williard to be found in your County, as shall be of the value sufficient to satisfy the said debt and costs, according to the said complaint; and such estate so attached in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon, according to law, at a term of said Cook County Court, to be holden at Chicago, within and for the County of Cook, on the first Monday of February next; so as to compel the said Lauren P Williard to appear and answer the complaint of the said Almond Walker. And that you also summon as garnishee to be and appear at the said Court on the said first Monday of— next, then and there to answer to what may be objected to against; when and where you shall make known to the said Court, how you have executed this writ. And have you then and there this writ.

Witness, the Honorable Hugh T Dickey, Judge of our said Court and the seal thereof, at Chicago, in said County, this thirty first day of December in the year of our

Seal

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Lord one thousand eight hundred and forty seven

James Curtis. Clerk

And afterwards to wit, on the Seventh day of January A.D. 1848 said Writ of attachment was returned into the office of the Clerk of said Court with an endorsement thereon and bond attached which said endorsement and Bond are in the words and figures following, to wit,

"Executed by attaching and levying upon the goods discribed on the within annexed bond this third day of January 1848

Isaac Cook Shff & c
By I A Reichert Deputy

I further return that said property and goods was this sixth day of January 1848 discharged by me upon bond being given by Deft and accepted sufficient by Pltff in pursuance of Statute said Bond is hereon annexed and have also served said writ by delivering a copy thereof to said Deft

Isaac Cook Shff & c
By I A Reichert Deputy Shff"

Know all men by these presents that we L P. Williard John M Turner and I. C. Miller of the County of Cook and State of Illinois are held and firmly bound unto Isaac Cook Sheriff in and for the County of Cook and State aforesaid in the Penal sum of Four thousand three hundred Eighteen Dollars and Sixty cents lawfull money of the United States for the payment of which said sum we and truly to be made to the said Isaac Cook Sheriff aforesaid or his successors in office all and each of us do hereby bind ourselves our heirs, Executors, administrators

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assigns, and personal representatives, each and every of them jointly, severally and firmly by these Presents.
In Witness whereof we have hereunto set our hands and seals at Chicago in the County and State aforesaid this fourth day of January A.D. 1848
The Condition of the above obligation is such that whereas an attachment issued out of the Clerks office of the Cook County Court in favor of Almond Walker and against Lauren P Williard bearing date the thirty first day of December A.D. 1847 which said attachment came to the hands of the above named Sheriff on the said thirty first day of December in the year last aforesaid attached on the third day of January A.D. 1848 the following described Property, to wit,

1 hg Wydis & 54 Calf Skins
1 Box 33½ doz Hoes
1 Bbl White fish
5 ½ " " "
1 Bbl Log Wood
1 " Vinegar
1 Plat form Scales
23 Bags Coffee
1 Box paper Tobacco
1 " Small "
1 Hd Sugar
½ Tierce Codfish
2 Bbls Beans
2 half Kegs Butter
2 Bbls Mackerel
10 Kegs Spikes
Wheel Heads
400 lb Saleratus
1 Bbl Oil
2 Boxes Ground Spices
5 " Raisins
3 " Loaf
2 " Starch
20 Reams Wrap Paper
1 Sack Sieves
2 doz Scythes
19 Brooms
4 Brass Kettles
29 Loaves Sugar
23 Shovels Scoops & Forks
1 Sack Ginseng
34 Pieces Gingham
34 " Print
62 " Do
15 " Alpaca
25 " Mom Delaine
47 " Sheeting
5 " Bagging

1 Hog Rosin
4 Bbls Sugar
1/2 " Chalk
3/4 " Copperas
1/2 Bunk Measures (2)
2 1/2 Nests Tubs
29 Sacks Salt
5 Bales Sheeting
10 boxes Tobacco
4 Bbls Brs Sugar
1 " Flax Seed
3 " S Stones
9 Chests Tea
2 boxes Sperm Candles
3 " G Pepper
9 pr White Flannel
20 table Covers
8 doz Gold thread
5 pr Brs Hollands
1 " Wiggans
1 " Cotton Velvet
1 " Blue Drill
1 " Wool Serge
4 " Bleach Sheeting
8 " apron Check
2 " Blue Drill
12 Silk Hdkfs
7 Cotton do
1 Can Coals thread
1 Lot Women Wear
1 " Tape
1 " Pins

2 " Ticking
6 " Marines Stripe
5 " Red flannel
3 " yellow
2 " Canvas
18 " Summer goods
10 " Cassimere
4 " Drill
17 " Grain
14 " Brs Cloth
14 " Diaper
1 " Wiggan
3 " Morning Print
25 " Bleached Cotton
24 " Cambric
9 doz fine tooth Combs
1 Lot Hats & Caps
Black & Side Combs
Box Bonnet Ribbons
" Gents Stock
" Linen Collars
3 Suspenders
Lot fancy goods
5 1/2 doz Comforters
1 3/12 Wool Mittens
1 doz Wrappers
1 Lot Worsteds
1/2 doz Drawers
Childrens Stocks
Mens "
Lot Wadding
4 pr Linen Hose

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1 " Coat & Pant Buttons
Welting Cord
Sewing Silk
Gents Cravats
Ladies do
Edgings & Insertings
23 lb Linen thread
11 pr Plaid Muslin
3 " Jarconette
1 " Bobinett
3 " Lace
6 Irish Linen
2 Green Barage
5/12 doz Bl'd table Covers
1 Lot Hkfs
1 pr Worsted Canvas
2 " Green Silk
Lot Wadings
4 Ladies Skirts
4 pr Twist
2 " Pink Camb
5/12 doz Umbrellas
3 pr Plaid Cloaking
2 Carpet Bags
1 Nest Cedar Tubs
1 5/8 doz Pails 82 chum
1 Nest Pa Tubs
1 Willow Basket
Patent Wrenches
3 pr Bm taps
1 lot W Paper
1 " Cav Tobacco
1 " Plug "

6 pr Shirts Grey
8 " Satinett
2 " Tweeds
14 " Kay Jean
1 Box Mens & boys Caps
10 pr Fringe
26 Shawls
2 pr Bishop Lawn
Knives & forks
2 M Gun Caps
5 Reams foolscap paper
4 " Letter
28 lb Batts
2 Cards Scissors
7 Cans Green Paint
1 Lot Varnish
" Bed cords
" Large paper Tobacco
" Bottles Ink
1 Dr Camphor Gum
1 " Indigo
1 " Cloves
1 " Shaving Soap
Lot Cotton Yarn
" Wrapping "
" Wicking
" Cut Tacks
" Castor Oil
" Pepper Sauce
" Ink Stands
" Bone Combs
" Coffee Mills
" Shoe thread

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1 Lot Prima paper "	2 Boxes axes
1 " Chocolate	8 Kegs Nails
1 " Cocoa	4 Jars Pickles
1 " Ground Pepper	4 " Preserves
1 " " Allspice	1 Lot Shoe Hammers
1 " Matches	1 " Brushes
23 bladders Snuff	" Sperm Candles
1 Lot Bell "	" Starch
Hardware	" Pepper
1 Bbl White Sugar	1 Bbl Coffee
Store & Pipe	1 Lot Traps
2 Lamps	6 broken lots Tea
pr Counter Scales	1 Keg Indigo
	1 " Raisins

The Property of him the said Lauren P Williard in the hands of the said L P Williard, and the said L P Williard being desirous of retaining the same in his possession, according to the premises of the Statute in such case made and provided and having tendered the above named Turner and Miller as security for the delivery thereof

Now therefore if the said effects estate and Property so attached as aforesaid shall be forthcoming to answer the judgment of the said Court, in said Suit in pursuance of Law, then this obligation to be void otherwise to remain in full force and virtue

Witness

P A Lanty

L. P. Williard (Seal)

Jno M. Turner (Seal)

J. C. Miller (Seal)

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And on the Sixth day of January in the year afore=said came Larnard & Bentley attorneys for the said Almond Walker and filed in the office of the Clerk of the said Court their declaration, which is in the words and figures following, to wit.

State of Illinois } Of the Term of February in the
Cook County, ss } Year one thousand eight hundred and forty eight.

Almond Walker Plaintiff in this suit, by Larnard & Bentley Attorneys complains of Lauren P Williard Defendant in this suit who is attached by the Sheriff in a plea of trespass on the case on promises. For that Whereas, the said defendant heretofore to wit: on the first day of May in the year of our Lord one thousand eight hundred and forty six at Chicago in the said County of Cook made and signed his certain Promissory Note in Writing, and then and there delivered the same, bearing date the same day and year aforesaid, to the said Almond Walker in and by which said Note said defendant by the name, style and description of L. P. Williard for value received promised to pay him said plaintiff, by the name style, and description of Almond ~~Almond~~ Walker in one day after date the sum of Fifteen hundred forty 23/100 Dollars with interest being balance due on settlement. And also for that Whereas the said defendant heretofore to wit, on the first day of May A.D. 1846 at said Chicago made and signed his certain other promissory note in writing & then & there delivered the same to the said plaintiff bearing date the day & year last aforesaid in & by which said note the said Defendant by the name & style of L. P. Williard promised to pay him said plaintiff the sum of three hundred & twenty dollars

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in one day after date with one for value recd. And also for that whereas the said defendant heretofore to wit on the first day of May A.D. 1846 at said Chicago made and signed his certain other promissory note in writing of that date and then & there delivered the same to the said plaintiff bearing date the day & year last aforesaid which said promissory note was in the words & terms following viz "$200. one day after date for value received I promise to pay Almond Walker Two hundred dollars - this note is for A W Services for C Walker the two years & is not to be paid unless C Walker allows the charge. Chicago May 1. 1846.

L. P. Williard

And the said plaintiff avers that the said C Walker did allow him the said charge of two hundred dollars to wit at said Chicago on the day of A.D. 1846 of which the Deft had notice By means whereof, and by force of the Statute in such case made and provided, the said Defendant became liable to pay said plaintiff said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to said Plaintiff according the tenor and effect, tone, intent and meaning of said notes to wit at the place aforesaid. And Whereas also, the said Defendant afterwards, to wit, on the thirty first day of December in the year of our Lord one thousand eight hundred and forty seven to wit, at Chicago in the said County, became indebted unto the plaintiff in a large sum of money to wit: Three thousand dollars, for money before that time lent and advanced to and paid, laid out and expended for said defendant by said Plaintiff at said Defendants request: and for money before that time had and received by said Defendant to and for the use of said Plaintiff; and also in the

like sum, for goods, wares, and Merchandize, before that time sold and delivered by said Plaintiff to said Defendant at his special instance and request; and also in the like sum, for the labor, care, and diligence of said Plaintiff before that time done and performed by said Plaintiff for said defendant and at the like instance and request of said Defendant; and also in the like sum for money found to be due from the Defendant to the Plaintiff on an account then and there stated between them, and being so indebted, said Defendant in consideration thereof, then and there undertook and promised to pay said Plaintiff said last mentioned sum of Money, when thereunto afterwards requested. Yet the said Defendant, not regarding his said promises and undertakings, but contriving, &c although often requested so to do, has not paid said Plaintiff either of said sums of Money, or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said Plaintiff of Three Thousand dollars, and therefore he brings suit &c By

Barnard & Bentley
Attys for Plaintiff

Copy of the Notes declared on.

$200.00 One day after date for Value Received I promise to pay Almond Walker Two Hundred dollars. this note is for B. W. Services for C. Walker Ho two years, and is not to be paid unless C. Walker allows the charge.
Chicago May 1st 1846. L. P. Williard

$1540.23 One day after date for Value Received I promise to pay Almond Walker Fifteen hundred forty 23/100 dollars with interest Being Balance on Settlement
Chicago May 1st 1846 L. P. Williard

$320.00 One day after date for value received I promise to pay Almond Walker Three Hundred & twenty dollars with me.

L. P. Williard

Chicago May 1st 1846.

And on the back of said declaration is the following Notice in the words and figures following to wit.

"To Lawrence P Williard

Take notice that a declaration of which the within is a copy has been duly filed in the office of the Clerk of the Cook County Court & that upon the filing thereof a rule was entered in the above entitled cause in the common rule Book in said office requiring you to plead to said declaration within ten days after the service of a copy thereof & notice of said rule or that judgment by default will be entered against you for want of such plea. Dated Jany 6. A.D. 1848

Yours Barnard & Bentley
Attys for Plff

And afterwards to wit on the Seventh day of February in the year aforesaid there was filed in the office of the Clerk of the Cook County Court of Common Pleas a Publication Notice and certificate which is in the words and figures following, to wit,

State of Illinois }
Cook County } ss

Cook County Court February term A.D. 1848

Almond Walker
vs } Attachment
Lawrence P Williard

Public Notice is hereby given to the said Lawrence

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P. Williard, that a writ of attachment issued out of the office of the Clerk of the Cook County Court dated the 31st day of December A.D. 1847, at the suit of the said Almond Walker, for the sum of Two thousand one hundred and fifty nine dollars and thirty cents directed to the Sheriff of Cook County, which said writ has been returned executed. Now, therefore unless you the said Lamen P. Williard, shall personally be and appear before the said Cook County Court on or before the first day of the next term thereof, to be holden at the Court House in the City of Chicago on the first Monday of February A.D. 1848, give special bail and plead to the said plaintiffs action, Judgment will be entered against you, and in favor of the said Almond Walker, and so much of the property attached as may be sufficient to satisfy the said judgment and costs will be sold to satisfy the same.

James Curtiss, Clerk

Leonard Bentley, Plffs Atty.

This is to certify, That the annexed notice was published in the Chicago Journal, a Daily Newspaper printed in the City of Chicago, County of Cook, and State of Illinois four successive weeks, as follows, The first insertion on the Seventh day of Jany 1848 in Vol 5 No 251 four weeks thereafter the last insertion on the fourth day of February 1848 Vol 5 No 275 of said paper.

Dated at Chicago Feby 7th 1848

R. L. Wilson

Publisher Chicago Daily Journal

[illegible]

And afterwards to wit on the Tenth day of February in the year aforesaid being one of the days the February term of the Circuit County Court for the year aforesaid the following proceedings were had before the said Court and ordered to be entered of Record to wit,

Almond Walker
vs
Lawren P Williard } Att

And now come the parties by their attorneys and the demurrer of the Defendant to the declaration of the plaintiff came on to be heard and after hearing the argument of Counsel is taken under adviserment by the court

And afterwards to wit the eleventh day of February in the year aforesaid the following order & proceedings were had in said cause & ordered to be entered of Record to wit

Almond Walker
vs
Lawren P Williard }

And now come the parties by their attorneys and the Court overrule the demurrer taken under adviserment in this cause on yesterday. It is therefore considered that the said plaintiff do recover against said defendant the costs of said demurrer to be taxed and have execution therefor,

Almond Walker
vs
Lawren P Williard } Att

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And now comes the plaintiff by his attorney Larnard and moves for final judgment in this cause on account of the frivolousness of the demurrer heretofore interposed herein by said Defendant.

And afterwards to wit on the Seventeenth day of February in the year aforesaid the following order & proceedings were had before the Judge of said Court and ordered to be entered of Record, to wit,

"Almond Walker
vs
Lawrence P Williard

And now comes the said Defendant and moves for leave to withdraw his demurrer herein and plead to the action. And the motion heretofore made for final judgment by said Plaintiff is overruled and the above motion after argument had is granted on the terms of filling affidavit of merits and paying the costs of said Motions, It is therefore considered that the said plaintiff recover against said Defendant the costs of the motion to overrule & of this motion and have execution therefor."

And afterwards to wit on the same day and year last aforesaid came Morris & Brown attorneys for Lawrence P Williard and filed in the office of the Clerk of said Court a Plea which is in the words and figures following to wit,

"Lawrence P Williard
ad
Almond Walker } Cass County Court

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And the said Lawrence P. Williams by Morris & Brown his attorneys, comes and defends the wrong and injury, &c and says that he did not assume and promise, in manner and form as the said Alonzo Walker hath declared against him: and of this he puts himself upon the country, &c

by Morris & Brown his atty

And the pltff likewise by his attorneys

Lamard & Bentley

The Plaintiff will also take notice that the Defendant on the trial of this cause will give in evidence and insist that on the promissory note of fifteen Hundred forty 2/100 Dollars the said defendant at the instance and request of the said Plaintiff paid the sum of five Hundred Dollars to Eri B Hulbert. And also that the ballance of said note and all others in said declarations mentioned have been fully paid to said plaintiff by said Defendant. And also that at the time of the commencement of this suit the said plaintiff was and still is indebted to the said defendant in the sum of $2000. for the price and value of goods before that time bargained and sold by the defendant to the plaintiff at his request, and also in the sum of $2000. for the price and value of goods sold and delivered by the Defendant to the plaintiff at his request, and also in the sum of $2000. for money before that time lent by the defendant to the plaintiff at his request, and also in the sum of $2000. for money before that time received by the plaintiff for the use of the Defendant and that the defendant will set off on said trial so much of the said several sums of money so due

owing from the said plaintiff to the said defendant against any demand of said plaintiff to be proved on said trial as will be sufficient to satisfy & discharge such demand & also then & there demand a judgment for the ballance due the said defendant according to the Statute in such case made and provided.

The Plaintiff objects to the notice of set off hereinbefore filed as insufficient & uncertain by

Sammard & Bentley, Atty,

And on the same day and year last aforesaid there was filed in the office of the Clerk of said Court an affidavit which is in the words and figures following to wit,

State of Illinois
Cook County } Cook County Court

Almond Walker
vs
L. P. Williard } L. P. Williard the defendant in this cause maketh oath, that he has a good and substantial defence to the action of the said plaintiff in this behalf against him, that he expects to prove and believes he can prove that he has paid five hundred dollars upon one of the notes upon which this action was instituted, and that the said plaintiff has the means in his own hands belonging to this defendant sufficient to pay and satisfy the entire amount or the greater part of the amount claimed by the said plaintiff as due upon the notes

set forth and described in the declaration of the said plaintiff

Sworn to and subscribed
before me this 17th feby 1848 L. P. Williard
J Curtis Clk

And afterwards to wit, on the twenty sixth day of February A.D. 1848. being one of the days of the February term of said Court the following proceedings were had and entered of Record to wit,

Almond Walker
vs } Att
Lawrence P Williard

And now comes said plaintiff by his attorney and on his motion it is ordered that the said defendant file a bill of the particulars of his set off in this cause by monday next.

And afterwards to wit on the eighth day of March in the year aforesaid there was filed in the office of the Clerk of said Court a notice in the words and figures following to wit

Cook County Court
Almond Walker } February Term A.D. 1848.
vs
Lawrence P Williard

The plaintiff in the above cause by Larrand & Bentley his attorney comes & objects to the sufficiency of the bond filed by the Sheriff of said County in said cause, and prays that the said Sheriff may be required to file during the

present term of this Court a good and sufficient bond for the return of the property attached to satisfy the judgment in said case

Barnard & Bentley

I acknowledge service of notice of the above motion
I Cook Shff. L.C.
By J.H. Reichert Depty Shff

And afterwards to wit on the same day and year last aforesaid the following proceedings were had in said Court and entered of record to wit.

Almond Walker
vs } Att.
Lawrence P. Williard

And now comes said plaintiff by Barnard his attorney and excepts to the sufficiency of the bail taken by the Sheriff to the forthcoming bond in this cause and on his motion it is ordered that the defendants show cause by the opening of the Court to morrow morning why good and sufficient bail should not be required to said Bond.

And on the Ninth day of March in the year aforesaid there was filed in the office of the Clerk of said Court two affidavits which are in the words and figures following, to wit.

L. P. Williard } Attachment: In the Circuit Ct
vs } Feby. term A.D. 1848.
Almond Walker

John M. Turner one of the sureties of the above named L. P. Williard in the forthcoming

Bond executed in the said above case, being duly sworn deposes and says that exclusive of all his debts and liabilities he has real and personal property in the county of Cook worth at least thirty four hundred dollars and further this deponent saith not

Sworn before me this 9th day of March 1848
James Curtis, Clerk

Jno M Turner

L. P. Williard
ads
Almond Walker } Attachment: In Cook Co. Cir Feby term A.D. 1848

Joseph C. Miller one of the sureties of the above named L. P. Williard in the forthcoming Bond executed in the said above case, being duly sworn deposes & says, that exclusive of all his debts and liabilities he has real and personal property in the county of Cook worth at least one thousand dollars, and further this deponent saith not

Sworn before me this 9th day of March 1848
J Curtis, Clk.

J. C. Miller

And on the same day and year last aforesaid the following order and proceedings were had in said cause and entered of Record, to wit,

Almond Walker
vs
Lauren P. Williard } Att

And now come the parties by their Attorneys and the Court being satisfied by affidavit on file of the sufficiency of the forewriting to the forthcoming bond taken by the Sheriff in this cause, Do order that the rule to show cause heretofore entered in this cause be discharged.

And afterwards to wit on the Ninth day of May in the year aforesaid the same being one of the days of the May Term of said Court the following proceedings were had and entered of Record. To wit,

Almond Walker
vs
Lawson P. Williard } Att

On motion of the said defendant leave is granted him until to morrow morning to amend his notice filed herein.

And on the tenth day of May in the year aforesaid there was filed in the office of the Clerk of said Court an Amended Notice in the words & figures following to wit.

L. P. Williard
ads
Almond Walker } Attachment Suit

The Plaintiff will take notice that on the trial of the general issue of this cause the defendant will give in evidence and insist that before and at the time of the commencement of this suit the said plaintiff was & stood justly indebted to the said defendant in the sum of Seven

thousand Dollars for money before that time paid by said defendant for said plaintiff at his request & for money before that time received by said plaintiff for the use of said defendant, and for goods wares and Merchandize before that time bargained and sold by said defendant to said plaintiff at his request, and for goods, lumber & property sold & delivered by said defendant to ~~said~~ said plaintiff at his request, and for goods, lumber and property sold & delivered by said defendant to C. B. Wolbert at the instance and request of said plaintiff. And the defendant will further give in evidence on said trial, that on or about the 21st day of March A.D. 1846, he made a contract in writing with said plaintiff for the purchase of the said plaintiffs interest in the property, debts & effects of the two firms, to wit, in firm of Walker & Williard & in firm of C Walker & Co at the price of ten thousand dollars which contract is in the words and figures following to wit, Articles of agreement made & entered into this 21 day of March A.D. 1846 between Almond Walker of Chicago Cook County State of Illinois of the first part, and Lauren P. Williard of the second part of the same place, Witnesseth that the said A Walker has this day sold to the said L. P. Williard all his right title & interest in the effects, books, demands and claims of any kind or nature of the late firm of C Walker & Co, also all the said Walkers right, title & interest the effects of the firm of Walker & Williard for the sum of Ten thousand dollars to be paid as follows viz, said Walker agrees to take the Street Lot

now occupied by Walker & Williard being the West one fourth of Lot (3) three in Block No (16) Sixteen Original town of Chicago, and Eleven & one half feet of Wharf lot opposite for the sum of Three thousand dollars $3000.00 Also the amt of H Dunlop Bill for building C and A Walkers New Warehouse.

Eight hundred & twenty six 55/100 Dollars $826.58
Also the Amt of Scrip & Illinois money as divided 383.00
Also the bal of A Walkers a/c on C Walker to Blk to Nov 1846 being nine hundred & sixty seven 76/100 Dollars 967.76
Total 5177.34

Deducting from above as follows viz
A Walkers Bal of Cooper shop a/c $6.55
Tuition Services for C Walker do 200.00
Bal due A Walker on Walker & Williard Blk 275.60 — 482.45
Leaving a ballance of above of $ 4694.89

And the said Almond Walker is further to assume the amount of the a/c on the Books of Walker & Williard called building a/c, this a/c being made for moneys etc expended in building two brick buildings for A Walker, said buildings being unfinished this a/c remains open and is to include all a/cs on the Books made to this date in the construction and hereafter so far as said Walkers contract calls for, also any a/c for which the said Walker may be responsible to either of the aforesaid firms, no interest to be calculated either way, until after the first day of May next. Said Walker is to see that L P Williard receives all the wheat now in the Store House of C & A Walker, Charges not to exceed three cents per Bushel. Also the wheat in the ware House of Charles Walker Charges on the same not to exceed four & one half cents, and use his best endeavours to a speedy and

amicable settlement of the affs of C Walker with C Walker & Co, The said L. P. Williard hereby agrees to above Statement &c and Stipulation and binds himself to pay all debts contracted by A Walker for goods purchased in New York last August, the same to be settled by the first of August next; and also to assume all the debts and demands against Walker & Williard or A Walker for their benefit; Also all the debts and demands against the late firm of C Walker & Co as far as A Walker is concerned, and use due diligence in the settlement of the same, and save A Walker harmless from all expenses of whatever name or nature if any should accrue in said settlement the same to be settled and closed by the first day of January A.D. 1847, Also to pay A Walker draft endorsed by L. P. Williard, drawn Dec 4th 1845, Six Months on Wadsworth & Curran payable June 4th 1846 at the Bank of Utica for one thousand dollars and on the close to be made of the building and other affs in the first of May next or as soon thereafter as the same can be done, A Walker is to pay five hundred dollars on the same and the said Williard is to give the said Walker his note for the ballance due him at that time with interest thereafter, the time of payment cannot be specified as the said Walker contemplates building and in that case the payments are to be in orders and instalments from time to time as the same may be wanted during the progress of the work, and the said L. P. Williard is to pay A Walker one hundred dollars for rent of Store and services to the first day of May next, and also to pay two hundred and fifty dollars for the rent of Store and wharf from the first day of May 1846 to 1st May 1847, if said Walker should not

contract to build. The five hundred dollars above mentioned to be paid by A. Walker is not to be included in the Ten thousand, but is an advance to make the payments on the building coming due the first May, easier for the said Williard, and the one hundred dollars rent of Store is to paid in goods. Interlined the words "as far as A. Walker is concerned" between the fourteenth & fifteenth lines, before signing. To the faithful performance of the above agreement we hereby bind ourselves our heirs Executors, administrators and assigns. In witness thereof we have hereunto set our hands & seals the day and year first above written

In presence of
R. C. Peacock Jr
Charles Harding
A. G. Kneickerbacker

Almond Walker (Seal)
L. P. Williard (Seal)

Copy

And that said Deft will further prove that at the time of said purchase it was well understood by said parties that the interest of said plaintiff in said firm of Walker & Williard did not exceed in value three thousand dollars and the same was so estimated, and that it was believed and supposed by said Defendant at said time that said plaintiff said interest in the property, debts and effects of L. Walker & Co and the use of his best endeavors to a speedy and amicable settlement of the account of L. Walker with L. Walker & Co was worth about seven thousand dollars and so estimated by said plaintiff and defendant in said sale to said defendant of said plaintiffs interest, and the said defendant will further prove that he did afterward in the

Summer of 1846 settle with and paid all the said purchase money of ten thousand dollars to the said plaintiff except the amount specified in the Note of Fifteen Hundred forty 2 3/100 dollars in the plaintiffs declaration mentioned - dated May 1st 1846. which said note was on said settlement made and given by said defendant to said plaintiff for the residue of the purchase money for said plaintiffs said interest in said firm of C Walker Bro as aforesaid, and that the consideration of said note of $1540. 2 3/100 has wholly failed, in this to wit that said plaintiffs said interest in said firm of C Walker Bro was utterly valueless and worth nothing at the time of said purchase, which said plaintiff then believed, as he now says, but fraudulently concealed that opinion from said defendant & further that said plaintiff did not nor would use his best endeavors to speedy & amicable settlement of C Walker's account with C Walker Bro, and the Deft will insist on said trial that he is entitled to recover back a part of said payment to wit, the sum of Six thousand dollars, the consideration of which has wholly failed as aforesaid, and the Deft will further give in evidence that said note of fifteen hundred forty 2 3/100 Dollars in said declaration mentioned was made and given by the said Defendant to the said plaintiff without any good or valuable consideration whatever, and also said Defendant will prove on said trial that before the commencement of said suit, the said plaintiff was indebted to said Deft, in the sum of $7000.00 for so much money paid by him for said plaintiff at his request, and also in the sum of $7000.00 for so much

money had and received by said plaintiff for the use of said deft. and in the sum of $500. for goods sold and delivered by said deft to E. B. Hulbert for and at the request of said plaintiff, and in the sum of $500. for goods property and effects bargained and sold by said defendant to & for said plaintiff, and that the Deft will set off on said trial so much of said several sums of money so due and owing from the plaintiff to said Defendant against any demands of said plaintiff to be produced on said trial, as will be sufficient to satisfy and discharge such demands, and also then and there demand a Judgment for the ballance due said Deft according to the Statute in such cases made and provided.

Morris & Brown Defts atty

And afterwards to wit on the eighth day of February in the year of our Lord one thousand eight hundred and fifty being one of the days of the February term of the Coll Court, Court of Common Pleas for the year aforesaid the following proceedings were had in said cause and entered of Record to wit,

Almond Walker
vs
Lawson Williams } Att

And now comes the plaintiff by his attorney and enters his motion to strike the amended notice of set off filed by the Defendant from the files of the court.

And afterwards to wit on the Ninth day of February in the year aforesaid the following proceedings were

had in said cause and entered of Record to wit.

Almond Walker
vs
Lawrence P. Williard } Att

And now comes Larnard Attorney for the plaintiff and withdraws his motion to strike amended notice of set off from the files.

And Morris Attorney for the defendant on reading and filing affidavit moves for the continuance of this cause to the next term which is taken under advisement by the Court.

And afterwards on the eleventh day of said month and year aforesaid the following proceedings were had in said cause and entered of Record to wit.

Almond Walker
vs
Lawrence P. Williard } Att

This day comes the said parties by their Attorneys and the Court having taken under advisement the motion of the said Defendant Attorney for a continuance of this cause, and being now fully advised in the premises doth order that the said motion be overruled.

And afterwards to wit on the eighteenth day of February in the year aforesaid, being one of the days of the February term of said Court for the year aforesaid the following proceedings were had in said cause and entered of record. to wit.

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Almond Walker
vs } Att
Lawrence P. Williard

And now upon this day come the said parties by their Attorneys, and issue being joined herein let a jury come, and thereupon came the Jurors of a Jury of good and lawful men to wit

John Ward	J. D. Carpenter	L. D. Robinson
Martin Diamond	Jacob Lowe	J. E. Kentworth
James King	David Witchcock	Patrick O'Malley
Thomas O'Malley	Charles Sloan	Bernard Blaine

who were duly elected tried and sworn well and truly to try the issue joined aforesaid and after hearing the evidence adduced, argument of Counsel and instructions of the Court retire under the charge of an officer of the Court to consider of their verdict And afterwards come into Court and say, We the Jury find the issue for the plaintiff and assess his damages to the sum of Eighteen hundred and fourteen dollars and eight cents, And thereupon the Defendants enter his motion for a new trial herein.

And afterwards to wit on the twenty eighth day of February in the year aforesaid the following order and proceedings were had in said cause and entered of Record, to wit,

Almond Walker
vs } Att
Lawrence P. Williard

This day again come the said parties by their Attorneys, and after argument heard on the said Defendants motion for a new trial herein

[11918-16]

The Court being now fully advised in the premises doth order that said motion be overruled.
Therefore it is considered that the said plaintiff do have and recover of the said defendant his damages of One thousand eight hundred and fourteen dollars and eighty cents in form aforesaid assessed and also his costs and charges by him in this behalf expended and have execution against the property attached to satisfy the same.

And thereupon the defendant enters his exceptions to the opinion of the Court overruling the said motion for a new trial, and prays an appeal herein which is granted upon his entering into a Bond in the usual form and with the usual conditions in the sum of Two thousand five hundred dollars with John M Turner, Marcus C Sterns, and James Beman or either two of them as security in thirty days from the day of adjournment of this Court. And leave is granted to file bill of exceptions in vacation

\+ And afterwards to wit on the twenty third day of May in the year aforesaid came the said defendant by his attorneys and filed in the office of the Clerk of the Cook County Court of Common Pleas ~~and~~ bill of exceptions which said bill is in the words and figures following, to wit,

Lauren P Williard
ads.
Almond Walker

Cook County, Court of Common Pleas February Term A.D. 1849

Be it remembered that upon the trial of this cause the plaintiff read in evidence

\+ And thereupon to wit on the Saturday next after the said Tuesday the said Court of Common Pleas at the office of the Clerk of said Court filed his Appeal Bond, which said bond is in the words and figures following to wit, attached to the Bill of exceptions on file

to the Jury two notes in the words and figures following, to wit.

$1540.23. One day after date for value received I promise to pay Almond Walker Fifteen Hundred forty 23/100 dollars with interest, Being Bal. due on settlement.

Chicago May 1st 1846 L. P. Williard

$320.00 One day after date for value received I promise to pay Almond Walker Three Hundred and twenty dollars with int.

Chicago May 1st 1846 L. P. Williard

on one of which notes is a credit indorsed in these words & figures viz

Recd Dec 5th 1847 on the within One hundred and one 95/100 dollars A. Walker

The plaintiff then rested his case

The Deft then undertook to prove that a portion of the consideration of the notes given in evidence was an agreement on the part of the plaintiff to use his best exertions to effect a settlement between the said Deft & one Charles Walker of matters in dispute between them. To prove this Defts Counsel first read a contract between the said Almond Walker & Lauren P Williard, to wit.

Articles of agreement made and entered into this 21 day of March A.D. 1846, between Almond Walker of Chicago Cook County State of Illinois of the first part and Lauren P Williard of the second part of the same place, Witnesseth that the said A. Walker has this day sold to the said L. P. Williard all his right title and interest in the effects books demands and claims of any kind

or nature of the late firm of C Walker & co Also all the said Walker right title and interest the effects of the firm of Walker and Williard for the sum of Ten thousand dollars to be paid as follows viz Said Walker agrees to take the Store and lot now occupied by Walker & Williard being the west one fourth of lot (3) three in Block No (16) Sixteen Original town of Chicago, and eleven and one half feet of Wharf lot opposite for the sum of Three thousand dollars $3000.00 Also the amt of H Dunlops bill for Building C and A Walker new ware house Eight hundred & twenty six 58/100 dollars 826.58
Also the amt of Scrip & Illinois money as divided 383.00
Also the ballance of A Walker a/c on C Walker & co books to Jan 1 1846 being Nine hundred & fifty seven 76/100 $ 967.76
Total 5177.34

Deducting from above as follows
A Walker's bal of Cooper shop a/c $ 6.85
Two years Services for C Walker & co 200.00
Bal due A Walker on Walker & Williard Books 275.60
482.45

leaving a bal of above of $ 4694.89
And the said Almond Walker is further to assume the amt of the a/c on the Books of Walker & Williard called building a/c this a/c being made for monies etc expended in building two brick buildings for A Walker, said buildings being unfinished this a/c remains open and is to include all a/cs on the Books made to this date in the construction and hereafter so far as said Walker contracts calls for. Also any a/c for which the said Walker may be responsible to either of the aforesaid firms, no interest to be calculated either way, until after the first day

of May next. Said Walker is to see that the Said L P Williard receives all the wheat now in the Store house of C. A. Walker. Charges not to exceed three cents per Bushel. Also the wheat in the ware house of Charles Walker, Charges on the Same not to exceed four and one half cents, and use his best endeavors to a speed, and amicable Settlement of the &c. of C Walker with C Walker & Co.

The Said L. P. Williard hereby agrees to above Statement &c and Stipulation and binds himself to pay all debts contracted by A Walker for goods purchased in New York last August the Same to be Settled by the first of August next, and also to assume all the debts and demands against Walker & Williard or A Walker for their benefit. Also all the debts and demands against the late firm of C Walker & Co so far as A Walker is concerned, and use due diligence in the settlement of the Same and Save A Walker harmless from all expences of whatever name or nature if any should accrue in said Settlement the Same to be Settled and Closed by the first day of January A.D. 1847. Also to pay A Walker draft endorsed by L P Williard drawn dec 4th 1845 Six Month on Hubbard & Curran payable June 4th 1846 at the Bank of Utica for one thousand dollars and on the Close to be made of the building and other &c on the first of May next or as soon thereafter as the Same can be done, A Walker is to pay five hundred dollars on the Same, and the Said Williard is to give the Said Walker his note for the ballance due him at that time with interest thereafter, the time of payment cannot be specified as the Said Walker contemplates building and in that case the payments are to be in order and instalments

from time to time as the same may be wanted during the progress of the work, and the said L. P. Williard is to pay A. Walker one hundred dollars for rent of Store and services to the first day of May next and also to pay two hundred and fifty dollars for the rent of Store and wharf from the first day of May 1846 to 1st May 1847, if said Walker should not conclude to build, The Five hundred dollars above mentioned to be paid by A Walker is not to be included in the Ten thousand, but is an advance to make the payments on the building coming due the first May earlier for the said Williard & the one hundred dollars rent of Store is to be paid in goods, Interlined the words "as far as A Walker is concerned" between the fourteenth and fifteenth lines before signing, To the faithful performance of the above agreements we hereby bind ourselves our heirs Executors, administrators and assigns, In witness whereof we have hereunto set our hands & seals the day & year first above written

In presence of
R. E. Peacock Jr
Charles Hending
A. T. Kniedlerbacher

Almond Walker (Seal)
L. P. Williard (Seal)

The defendant then offered in evidence a portion of the answer of the plaintiff to a bill in Chancery on file in said Court brought by said Williard vs said Almond Walker & others and that portion of the bill relates to the same for the purpose of proving that the said agreement to effect a settlement formed a part of the consideration of the said notes, The plaintiff counsel objected, The Court permitted

the portion of the answer to be read. The following portion of the answer was then read. "And the the Deft further answering admits that on or about the 21 day of March A.D. 1846 this Defendant sold to said Complainant his said defendant, entire interest in all the property & effects of the firm of C Walker & Co and Walker & Williard for the sum of Ten thousand dollars as stated in said bill." The Defts Counsel then read that portion of the said bill to which the portion of the answer before read was responsive which was in the words & terms following viz. "Your orator (Williard) further shows that after he had made the purchase of the said Almond as aforesaid he made payments on the same in performance of the agreement aforesaid till in the summer of 1846 a settlement was then made by and between your Orator & said Almond, and on that settlement your orator was found to be owing to said Almond as a ballance on said purchase of said Almond's interest in the property & effects of said C Walker & Co the sum of $1540 $\frac{23}{100}$ for which he gave his note payable one day after date, and dated the first day of May 1846 - the ballance of the ten thousand dollars having been paid by your orator"

The Deft then called Lewis a witness for Deft and asked here whether the said Deft did effect himself to effect a settlement. Question objected to by plaintiffs Counsel. Court refused to allow the question to be put. The Deft then withdrew all matters of defence set up in his notice from the consideration of the jury, except the claim of $[illegible] for goods &c furnished to C & B.

Hulbert in the notice mentioned. Mrs Hulbert testified on the part of the Deft that she had requested her brother the Plaintiff to loan her husband or otherwise assist him to erect & finish some Houses he was then building, but she could not get the plaintiff to say, whether he would do so or not, That she had never heard him say, he would do so or that he had done so, and that she did not know of his giving Mr Hulbert any aid in erecting the Store.

Mr Hulbert also testified for Deft that in the summer of 1846. he applied to the pltff. for assistance to help him on with his buildings, but he did not say whether he would or not. Subsequently in the same summer he obtained from the Defendant Lumber and other articles to the amount of $500. on the credit of the plaintiff and the credit was obtained as he supposed on good authority, at any rate he acted in good faith in the matter. That he was sure that between $270. and $300. thereof had been used in the building of his Store house in Chicago and perhaps much more, but he would not now at this late day say how much more had been used of said $500. in the erection & completion of said building. On Cross examination the said Hulbert stated that he had never had at any time any authority from the plaintiff either directly or indirectly, to obtain any goods or property from the said defendant on the plaintiffs account, and that the impression which he Hulbert had that such an authority had been given, was derived from statements made to him by the defendant, The Pltff Counsel

Objected —
to any Statements or confessions derived from conversations ~~with~~ with the Defendant in the absence of the plaintiff. The Court then stated to the jury that any Statements or impressions derived from Williard in the absence of the plaintiff were not evidence
Peter Lantz testified for the defendant that he was present in the year 1846 or 1847. at a conversation had between the plaintiff & Defendant at the Dept. Store in Chicago in the presence of several persons but he could not say who they were. That the parties were both considerably excited — That in that conversation he heard something said about an advance to Hulbert, Walker said he would not allow five hundred dollars but he would allow what went into the buildings — That he would not allow charge for pickles and other things got for the use of Hulbert family. The witness also stated that the amount of goods delivered by Defendant to Hulbert exceeded five hundred dollars.
On cross examination the witness stated that he was in the employ of the defendant at the time spoken of; that he still continued in his employ that is he was in receipt of a salary from him but at present had nothing to do. That this conversation took place so long since he could not recollect all that was said or give the exact words uttered, That the said Walker came to the Store to obtain a settlement of his claims against Williard. This being the whole of the evidence the plaintiff then asked the Court to give the following instructions —
The jury are not to take into consideration the evidence

introduced by the defendant in regard to the materials furnished to Hulbert by the defendant unless they shall be satisfied from the evidence that the plaintiff previously to the furnishing said goods authorized the defendant to let Hulbert have them on his a/c

2 Unless the jury believe from the evidence that the Hulbert a/c was originally contracted on the credit of Almond Walker then Deft is not entitled to offset & any subsequent ratification of it by parole would not make it valid

3 If the Bill of items introduced & the evidence shew that the goods sold to Hulbert by Williard were charged by Williard to Hulbert & no previous authority to get the goods on account of the plaintiff is shewn no subsequent verbal allowance of the account by the plaintiff would make it a legal set off against the note.

The Court gave the first and second instructions as asked by the plaintiff but refused to give the third as asked for by him.

The Deft asked the Court to give the Jury the following instructions

1 If the Jury shall believe from the evidence that Walker agented to Williard furnishing goods or other things to assist in building his Hulbert Store, then whatever amount the deft has proved he so furnished, ought to be allowed to him.

If the Jury shall believe from the evidence that Williard stated in the presence of or to Walker that Walker had directed him Williard to let Hulbert have $500. on his a/c and he did not deny it & that that amount was advanced by Williard to Hulbert on such order & Walker did ~~did~~ not deny it, it is evidence from which the jury may believe that

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~~that~~ such advances were made by the order of Walker

3 The Court will plean instruct the jury, that the fact of the small amount endorsed on the $320, note when there was a large sum due on the same & other notes, is very slight evidence of there being no other sett off existing & properly chargable to the said plff

4 If the jury shall belein from the evidence that Williard stated in the presence of & to Walker that he Walker had directed him Williard, to let Hulbert have $500, to apiet in building & Walker did not deny it, but said he would not allow the amount which went into the building, it is evidence from which the jury may infer the liabeil, of Walker for the amount advanced by Williard to Hulbert which directly, or indirectly, went into the building.

Which instructions were given by the Court as asked by the Deft

The jury subsequently returned into Court with a verdict for the plaintiff for $1814.00

Thereupon the Defendant moved for a new trial on the grounds that the Court erred in excluding the part of the answer of the plaintiff to the Deft's bill which was read in evidence by the Deft & secondly, that the verdict of the jury was against law & evidence, which motion the Court overruled & the defts excepted to that opinion of the Court & prays the Court to sign this bill of exceptions, which is done, This twenty third day of May A.D. 1850

Giles Spring (Seal)

[11918-2]

Copy of appeal Bond as referred to in Margin

Know all men by these presents that we Lauren P Williard, James Beeman and John M Turner are held and firmly bound unto Almond Walker his his heirs and Legal Representatives in the penal sum of Two Thousand five Hundred Dollars to the payment of which well and true, to be made, We bind ourselves, our heirs and legal Representatives jointly, severally and firmly by these presents. Witness our hands and seals this 7th day of March A.D. 1850. The condition of the above obligation is such that whereas the above named Almond Walker on the 28th day of February A.D. 1850. at the February Term of the Cook County Court of Common Pleas, recovered a judgment in a certain action at law against the above bounden Lauren P Williard for the sum of Eighteen Hundred and fourteen 80/100 Dollars for his damages besides his costs in that behalf expended and the said Williard then and there prayed an appeal from said judgment to the Supreme Court of this State which was granted to him upon condition that he execute a bond to said Walker in the penal sum of Two thousand five hundred Dollars conditioned according to law with James Beeman, John M Turner & Marcus C Stearns or any two of them in thirty days. Now therefore if the said Lauren P Williard shall well and true, pay said Judgment, costs interest and damages, in case the Judgment shall be affirmed and shall duly prosecute his said appeal, then this obligation shall be void otherwise remain in full force.

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L. P. Williard (Seal)
James Beeman (Seal)
John M Turner (Seal)

State of Illinois
Cook County } ss.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for the County of Cook & State aforesaid do hereby Certify that the foregoing is a true and Correct Copy and transcript of the Papers and of the Records of said Court in the Case of Almond Walter vs Lauren P Williard now on file in my Office

In Witness Whereof I have hereunto set my Hand and the Seal of said Court at Chicago in said County this 4th Day of June A D 1850

Walter Kimball
Clerk

[14916-51]

State of Illinois Supreme Court

Lauren P. Hilliard appellant } June Term 1850.
vs. } Appeal from Cook
Almond Walker appellee } County Court of Common Pleas.

The said Lauren P. Hilliard comes and says that there is error in the foregoing and annexed Record and proceedings to his prejudice in this, to wit.

First. The Court below erred in over ruling the motion for a continuance at the February term 1850. as asked for by said Hilliard. Second. That the court erred in giving the first & second instruction as asked by the appellee in the court below to wrong

Thirdly. The court below erred in over-ruling the motion made for a new trial. Wherefore he prays that said Judgment may be reversed and set aside with costs &c.

by Morris & Goodrich his attys.

And the said appellee says there is no such errors in said record & prays that the Judgment may be affirmed with costs & damages —

J. M. Avery for appellee

Filed June 11. 1850.
V. Leland Clk.

Manscript

Lauren P. Hilliard
vs
Almond Walker

In the Cook County Court of Common Pleas

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$5. pd. Clk. on this

State of Illinois }
County of Cook } ss

Be it Remembered that heretofore to wit on the first day of March in the year of our Lord one thousand eight hundred and fifty, the same being one of the days of the February term of the Cook County, Court of Common Pleas for the year aforesaid, came Buckner S. Morris attorney for L. P. Williard and filed in the office of the Clerk of said Court a Bill of Exceptions which said Bill is in the words and figures following to wit,

" L. P. Williard } Cook County, Court of Com Pleas
ads
A Walker }

Be it Remembered that upon this 8th day of February AD 1850, the Deft moved the court for a continuance of this cause to next term of this court, and in support of that motion read in evidence to the court the Defts affidavit filed by him in this cause in the words and figures following to wit.

L. P. Williard }
ads
A Walker } The Deft Williard makes oath & says that he cannot safely go to trial of this cause at this term of the court for the want of the testimony of E. E. Griggs Lucas Curtiss and John I Jackson who are material witnesses for this affiant in the trial of this cause. That said Griggs is a resident of the city of Chicago in Cook County and State of Illinois and has been absent from this State before and ever since the last term of this Court but is expected to return home before the next term of this court

by whom this affiant expects and believes he can prove, that on the 5th day of January, A.D. 1847, the plaintiff and Charles Walker entered into partnership and did business under the name & firm of C. & A. Walker in Chicago aforesaid at their store and that he said Briggs was clerk for them and received and collected for this affiant and Charles Walker aforesaid the sum of one hundred and sixty dollars two thirds of which said sum was received for this affiant but the whole sum was used and appropriated by the firm of C. & A. Walker aforesaid, This affiant expects and believes he can prove by said Briggs, the said firm of C. & A. Walker appropriated and used in their said partnership transaction from and after their entering into copartnership as aforesaid a large amount of the property, moneys and effects of the late firm of C. Walker & Co which firm had consisted of Charles Walker, Alonzo Walker and this affiant two thirds of which said property, moneys and effects so appropriated and used was belonging and did belong to this affiant and was carried into and formed part and parcel of the capital stock in trade of the said firm of C. & A. Walker to a larger amount than what is due to the said plaintiff on the Notes in the declaration mentioned, and which was used and appropriated in the business of the said firm of C. & A. Walker, This affiant further states that he expects and believes he can prove by the aforesaid Lucas Curtis who resides in the State of Wisconsin the payment to said C. & A. Walker & Co, after they had entered into partnership in January as aforesaid the sum of Three Hundred Dollars or more, two thirds of which was the money of this said affiant, That since the information was dissolved which stayed the proceedings in this suit, this affiant has not had time to take the depositions of said Curtis to be used as evidence

in this cause at this term of court, That he expects and believes he can procure the testimony of said Griggs and certify by the next term of this court. That this affiant had no notice or knowledge that said Injunction was dissolved till the 7th day of this instant while court was sitting. This affiant further states that he expects and believes he can prove by the testimony of the said Griggs that the Schooner called the Maria Williard was in the employ of the said firm of L & A Walker of Savannah during the sailing season of the year 1847, and during that time they were in the receipt of freights, use and profits of said vessel to a large amount to wit, to the amount of near Two thousand dollars, and that 5/12 of which sum was the money due to this affiant. This affiant further says that said John J. Jackson was the master of said Schooner and resides in this city, and he has been absent from this State since early last fall, but is expected home before the next fall term of this Court, by whom this affiant expects to prove that said Jackson was master of said Schooner during the sailing season of 1847, and that said vessel made that season for the owners of her (the said affiant owning 5/12 of said Vessel) a considerable sum of money, by showing the number of trips or voyages made by said vessel that season and the loading taken & conveyed by her; and the prices of freights about that time.

Subscribed & Sworn to before me this 8th day of Feby A.D. 1850. W. Kimball, Clk } L. P. Williard

It being stated to the Court, and the records showing that the injunction in Chancery staying the proceedings

[illegible]

in this suit was dissolved on the 4th instant, the first day of this term of this court. Yet the Court on argument overruled the motion to continue this cause and to that opinion of the Court the Deft excepted and prayed the Court to sign this his bill of Exception which is accordingly done in open Court

Giles Spring (Seal)

State of Illinois
Cook County } ss.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for the County and State aforesaid do hereby certify that the foregoing is a true and correct Copy of a Bill of Exceptions and affidavit now on file in my office in the case of Almira Walker vs Lauren S Williard.

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Chicago this 17th day of June A D 1850

Walter Kimball
Clerk

It is hereby stipulated and agreed by the parties in this cause by their respective attorneys - that the foregoing transcript of the Bill of exception & affidavit shall be taken and considered as part of the Record & proceedings in the appeal case of Lavon P. Hilliard vs. Almond Walker now on file in Clerks office of the Supreme Court at Ottawa State of Illinois - & no exception shall be taken to want of its being copied in the Record on file therein without issuing a writ of certiorari for a complete Record herein.

Arnett for appellee
Morris for appellant

44
Walker & Hilliard
Almon Walker
vs
Lavon P. Hilliard
Copy Bill of exceptions
Filed June 20. 1850.
A. McLean Clk.

Chicago Jany 29 1851

L. Leeland Esq

Dear Sir

The Enclosed Exc & Subpoe was left in my office last Fall, the parties were negotiating for a settlement at the time, I recd the money for the amt of the same and after deducting the amt for Transcript $12.50 enclose you herewith the balance & a few cents over (say Twelve dollars $12)

please accept my apology for detaining these papers & the money so long a time, I was engaged in Court, & they got laid aside & entirely escaped my notice.

Respectfully Yours &c
Walter Kimball
A.H. Cook Collect Com Ney

[11918-25]

Lauren P. Hilliard
44 vs
Almond Walker

Appeal from Cook County Court of Common Pleas.
Judt. affd.

Appellees costs = Appearance 25, fil. & ent. mo. to strike bill of exepts. for file 30, .55
affdt. & fil. 15, fil. certif. 5, ent. argt. of mo. 25, ~~Ord. certif. mo.~~ ent. order 25, .70
Order affdt. 25, mo. for contin. overruled 25, fil. & ent. order 30, .80
Ord. affg. 25, fil. opin. 5, ent. judt. & opin 1.00, copy of judt. 50, 1.80
Certif. & seal 25, Ord. for extra. 25, Clk. judt. 25, ent. judt. for costs 25, 1.00
Execution 25, fil. & Clk. 15, Sheriff. return. 10, bill of costs 25, .75
Copy 25, postg. 20, satisfn. 25, .70
Amt. $6.30

A true copy from my fee book as taxed & recorded therein.
L. Leland Clk. Sup. Court.

[11918-22]

Hilliard vs Walker
Bill of Costs

Received the amount of the within fee bill in full
Nov 5 1850 W. Kimball
And enclose
with bale of
bill. } Mail Jany 29 1851
W Kimball

Lauren P. Hilliard
44 vs
Alonzo Walker } Appeal from Cook County Court of Common Pleas.
fedt. appe.

Appellants costs =

Fil. transcpt. 15, Dk. cause 10, appear. of appellant 25, fil. cross 5,	.55
Fil. amended transcpt. & Stipl. 20, affdt. & fil. 15, Ent. mo. overruled 25,	.60
Ent. mo. for enter. 25, affdt. & fil. 15, mdn. addt. 25, fil. abstrts. &c. 20,	.85
Ent. arg't. 25, Ent. enter. 25, Ord. taking time 25, bill of costs 25,	1.00
Copy 25, Certif. & seal 25, fil. & Dk. 15, Stipl. enter. 10, Dk. fe 1.25,	2.00
Satisfn. 25, Transcripts &c. 12.50	12.75
Amt. $	17.75

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the state of Illinois to the sheriff of Cook county---Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of Lauren P. Hilliard you cause to be made the sum of seventeen dollars and seventy five cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 6th day of September A. D. 1850.

L. Leland *Clerk of the Supreme Court.*

[11918-27]

Lauren P. Hilliard
vs
Almond Walker

Fee Bill — $17.75

Recd Nov 5 1850 the amt
of the within Fee bill in full
W Slimbal

$17.75
12.50 for Transcript paid me by L P
$5.25 Hilliard
6.30 Bill Costs
$11.55 — $12. Enclosed by mail herewith
Jany 29 1851 W Kinder

left

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of Cook County---Greeting:

WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of Lauren P. Hilliard

you cause to be made the sum of six dollars and thirty cents costs in the said Supreme Court, which Alnard Walker

lately recovered against him before the Justices of our said Supreme Court, as appears to us of record, and make return hereof in ninety days.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this sixth day of September in the year of our Lord one thousand eight hundred and fifty.

L. Leland *Clerk of the Supreme Court.*

[illegible]

44

Lauren P. Hilliard
vs
Almond Walker

Execution.

Bill of Costs — $6.30
Fee Bill — 17.75
Amt. $24.05

Filed Jany. 21. 1851.
L. Leland Clk

Sup. Court

Lawrin P. Hilliard appellant
vs
Almond Walker

} appeal from Crook

Three errors are assigned -

1. Court erred in overruling motion for continuance.

No. because, the offset, set up by Hilliard as a defense was a claim against Charles & Almond Walker, jointly -

see Hinkley vs Rost 4 Gil. R. 136
Burgwin vs Babcock 11 Ills. R. 28 -

2. The giving the 12. instruction.

1st No exception was taken to these - & they are right -

3. Error. Refusing to grant a new Trial -

The amount of offset to be allowed was a question of fact, ~~to be~~ proper for the jury. The verdict is sustained by the evidence. They allowed as computation prices $270 to $300.

Hilliard sought to offset an account of goods furnished to Owen

Evi B. Hurlbut.

All that there is any pretense for allowing is the amount of goods which were usually Hurlbut in his warehouse. This amount Hurlbut swears was $270. to $300

Lastly. Swears that all that Walker would allow was this amount, & this amount was allowed by the jury.

Nothing ought to have been allowed, because Hurlbut obtained the goods of Hilliard without any authority from A. Walker. It was a debt of Hilliard against Hurlbut, & A. Walker could not have been made liable except by an agreement in writing. However, the jury allowed the account to the amount of $270. to $300. & this is all that there is any evidence at all to sustain

Arnold & Sawyer for
A. Walker —

[11918-30]

Sup. Court

James P. Hilliard

vs

Alman Stalfort

Answer to Cross
Assignment

State of Illinois —
Supreme Court - Ottawa.
June Term 1850.

Saulea P. Hilliard
vs.
Almond Walker

appeal

B. S. Morris of counsel for the appellant makes oath and says, that before the trial of the cause in the court below washed, at the same term of the trial, the said Hilliard moved the court for a continuance of said suit to the next term and in support of that motion he made filed & read in evidence to the court an affidavit of himself showing why he was unprepared for the trial of said cause at said term which motion the court overruled and the said Hilliard excepted to that opinion of the court tendering to the court a bill of exception incorporating the affidavit for said continuance by referring to it and making it a part of said bill of exception which the court signed & was filed with the papers in said suit and the same this affiant believes to be on file with the Clerk of said Cook county court of common pleas, but which he this affiant supposes and believes to have been omitted by said Clerk by accident. as the same does not appear in the transcript copy of said record furnished by said Clerk which is now on file in this Supreme Court as by the copy on file on reference thereto will appear.

B. S. Morris

Subscd. & sworn to before me June 12. 1850.
E. Leland Clk.

[11918-31]

44

Hilliard
vs.
Walker

appl. for certiorari

Filed June 12. 1850.
C. Leland Clk.

Hilliard
vs. } appeal
Walker

The Declaration is in assumpsit on two notes - in usual form - To which is filed the Genl. issue with notice of payment in part and failure of consideration of the residue; and set off. &c. &c.

1 Error. The First error assigned is.

See Revd. Laws p: 416. That the Court erred in over ruling the Defts. Motion for a continuance founded on the affidavit set out in the Record. (see Rule of exception & aff. in amendment to the Record filed since by agreed.)

2 Sid: 629 — 636.

The Court will see by the aff. that there was an injunction staying the proceedings at law till Walker had fully answered a bill in Chancery growing out of the same matter which injunction was dissolved a few days before the trial was had at the same term - thereby forcing the Deft. into trial of the case wholly unprepared for trial when a trial was unexpected: as the 3d. amended answer of Walker was standing upon exceptions taken: when motions made. The aff. shows the absence of Appellants witnesses to prove that the property purchased by him of Walker was in violation of the agreement retained in possession of the Walkers all the property & effects for which the $1542: Notes was given nor were using the same in their co-partnership transaction.

[11918-33]

2 Point – The Court erred in giving to the jury the first & second instructions, severally, as asked for by Appellee. which were as follows.

1 The jury are not to take into consideration the evidence introduced by the Deft. in regard to the materials furnished to Hurlbert by the Deft. unless they shall be satisfied from the evidence that the Plff. previously to the furnishing said goods, authorized the Deft. to let Hurlbert have them on his account.

2dly. Unless the jury believe from the evidence that the Hurlbert account was originally contracted on the credit of Alexander Walker then the Defendant is not entitled to offset and any subsequent ratification of it by parol would not make it valid".

By reference to the evidence of Mr. & Mrs. Hurlbert will be seen that the Wife (Mrs H.) was the sister of the Plff. below (Walker) to whom she had applied for aid in the way of a loan of money to assist her husband (Hurlbert) in building certain store houses in Chicago. That Walker did not say to her what he would do about it.

That Hilliard told Hurlbert he would have what goods he wanted out of his store to pay hands also what lumber he wanted for his buildings out

of his lumber yard not exceeding $500. on his brother in Law Walkers account, who had told him to that effect.

Mr. Lantz. proves he heard plff. & Deft. talking about settling their accounts. and the only objection Walker made to Hilliard account of articles furnished to Hurlbut was a few articles of Pickels which was used by Hurlbuts family - saying he was willing to allow them rest of the account for lumber &c. that went into Hurlbuts Store House. He did not deny the correctness of those charges That Hurlbut said the articles were all got in good faith on plff. Walkers account. Never heard any objections till the parties could not effect a settlement.

There was over a Hundred dollars paid & indorsed on the back of the $300 note which the Clerk in copying has omitted in the Record Copy given. but which the attys will admit. The jury only allowed by their Verdict about $300. of the $500. paid to Hurlbut. the whole of which should have been allowed.

[11918-33]

3 Point.

Rev. L. 416.

3. Point is that the court erred in refusing a new trial asked for by Appellant.

By looking at the whole case the court will see the appellant did not get a fair trial of his cause in the court below. and that the motion for a new trial ought to have prevailed: and a new trial granted.

Morris & Goodrich for Appellant.

44

S. P. Hilliard
vs.
A. Walker

Appellant's Brief

Filed June 24. 1859.
N. Leland Clk.

Morris & Goodrich
for

Supreme Court - June Term 1850.

L. P. Hilliard
vs.
Almond Walker
} Appeal

L. P. Hilliard makes oath & says, that he can not safely proceed in trial of this cause at the present term of this court in consequence of the absence of B. S. Morris the attorney in charge of this cause in his behalf employed to attend to this cause in this court by him.

That said Morris is obliged to attend the Circuit Court of Cook county in this State during its term commencing on Monday the first day of July 1850 at Chicago where he is employed in a number of causes of importance which court is expected to continue its ~~session~~ session for several weeks.

That said Morris is obliged to attend also the United States Circuit Court to be holden at Chicago for the District of the State of Illinois, commencing its session on the first of July 1850 and is expected to continue in session for several weeks. That this affiant is informed & believes that Mr. Goodrich the partner of said Morris is also obliged be in attendance on said two last named courts at Chicago, in causes wherein he was employed prior to his partnership with said Morris that had the sole management of them. So that neither of said attorneys can well be in attendance on the Supreme Court of this State at the present term again this session. Whereupon he moves the court for a continuance of this cause to another term of this court. he not having engaged any other attorneys in this cause.

L. P. Hilliard

[11918-34]

Supreme Court State of Illinois
Judicial Division
June Term AD 1850 At Ottawa

Almond Walker appellee
ads
Lauren P Hilliard appellant.

And now comes the said Almond Walker by Edwin C Larned & Isaac N Arnold his Attorneys & moves to strike the Bill of Exceptions filed in this cause from the files of this Court

1. Because said Bill of Exceptions was not filed in the Cook County Circuit Court of Common Pleas where the same was tried at a different term at which the trial of the said cause took place as the February Term of the same — as appears by said Bill of Exceptions of record in said cause

2. Because the leave given to file said Bill of Exceptions in vacation was given without notice to ~~the~~ without the knowledge & consent of the ad. appellee & his Counsel.

3. Because the said Bill of Exceptions was not filed within the time allowed by said leave — nor until long after the 30 time. ~~as under the~~

By his Atty
Edwin C Larned
& Isaac N Arnold

4th Because the said Bill of Exceptions was made up ~~in~~ without notice to the appellee or his counsel — or without them being present at the settling & signing of the same.

[1918-35]

Supreme Court State of Illinois
Judicial Division
At Ottawa. June Term AD 1852

Almond Walker. Appellee
— vs. —
Lauren. P. Skilliard. appellant

Edwin C Larned on oath makes affidavit that he was of counsel for Almond Walker the appellee in the ~~above entitled~~ cause of Almond Walker v. Lauren. P. Skilliard that the order giving leave to the said appellant to file a Bill of Exceptions in vacation in said cause was given without the consent of the said appellee or his counsel accordg to this affiants best knowledge & belief. — or without any notice of or knowledge of any application being made for such order —

This affiant further states that the ~~order~~ leave to file said Bill of Exceptions in vacation was given at the Feb. Term of said Court as appears by the Copy of the Record ~~herein~~ filed in this Court and that at the said February Term an order was passed for a Special Term of said Court to be holden on the 3d Monday of March AD 1852 ~~and~~ viz on the 19th day of said month and that said Special term was held on the said day as appears by the Certificate of the Clerk of said Court herewith annexed. — And this affiant further states that he appeared before the said Court at the said Special March Term and made inquiry of the Hon Giles Spring Judge of 3d Court if ~~the said~~ any Bill of Exceptions in said cause had been signed by him and was informed that none had been signed. Whereupon this affiant gave notice to said Court that he as counsel for said ~~appl~~ Almond Walker objected to any Bill of Exceptions being signed & filed in said cause — & prayed that his objection

[1918-35]

might be entered of record.

And this affiant further states that neither the said appellee & his counsel were present when the said Bill of Exceptions which is ~~filed~~ recorded in this cause was made up & signed and that neither the said appellee & his counsel were notified to be present at the settling & signing of the same. That at the February term at which said cause was tried this affiant was notified to assist in settling the Bill of Exceptions in said cause & did then prepare a Bill of Exceptions which the Court refused to sign & the said counsel for the appellant also at said time prepared a Bill of Exceptions which the said Court refused to sign and that since that time neither the said appellee & his counsel have been present & been notified to be present at the settling & signing of any Bill of Exceptions in said cause.

And this affiant further states that the Bill of Exceptions referred to in the affidavit of B. S. Morris for a certiorari as the Bill of Exceptions to the decision of the Court overruling the motion for a continuance of the cause was not ~~made~~ & signed & filed until after the Special March Term of said Court. & ~~not subpoenaed to the cause~~ and that neither the appellee & his counsel had any notice of the signing settling & filing of the same.

Edwin C. Lane
Atty of Appellee

Subscribed & sworn to
this 13th day of June 1860
L. Leland Clk.

State of Illinois
Cook County } ss.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for the County of Cook and State aforesaid Do hereby Certify that a Special Term of said Court was held at the Court House in the City of Chicago in said County, commencing on the third Tuesday being the nineteenth day of March and Closing on the ninth day of April A D 1850. And that said March Special Term of said Court was held in pursuance of an Order of the Judge of said Court entered of Record at the February A D 1850 term thereof.

In Witness whereof I have hereunto set my hand and the Seal of said Court at Chicago this 11th day of June A D 1850

Walter Kimball
Clerk

[11916-37]

44

Supreme Court

Almond Walker Appellee
vs
Laurin P. Holland Appellant

Motion to Strike the Bill of Ex from the file

Filed June 13. 1850.
L. Leland Clk.

Lamed & Bentley
J. N. Arnold