

No. 11890

Supreme Court of Illinois

Walrath ex-rel.

vs.

Norton, et al.

71641 7

No. 21

Genl. L. Walrath

vs.
Hiram Norton Survivor
of John Blackstone &c.

1890

1879

Held before the Honorable Theophilus L Dickey
 Circuit Judge, of the ninth Judicial Circuit of
 the State of Illinois at a special Term of the
 Mendall County Circuit Court begun and holden
 at the Court House in Oswego on the 2^d day
 of February in the year of Our Lord one thousand
 and eight hundred and forty nine and of
 the Independance of the United States the

Present The Honorable Theophilus L Dickey Judge
 Buxton C Cook State Attorney
 William L Fowler Sheriff
 John W Crothers Clerk

Do it remembered that heretofore to wit on the
 twenty first day of July in the year of Our Lord
 one thousand eight hundred and forty eight
 ustus Burr Esq one of the acting Justices of the
 Peace in and for said County filed in the Office
 of the Clerk of the Circuit Court of said County
 a certain Transcript and papers in a certain cause
 wherein Norton & Blackstone for the use of
 John Blackstone were plaintiffs and Gerrit & Hal
 rath defendant and which transcript was in
 the words and figures following to wit:

In the Justice Court

State of Illinois
 Mendall County

Norton & Blackstone }
 for the use of John Blackstone } Demand \$100

Gerrit & Halrath }
 Doctering 12^{1/2} } June 19th 1848 summons
 Summons 18^{1/4} } issued to Kellogg const returnable the 24th
 2 outas 12^{1/2} } of June inst at 10 o'clock P.M.
 Judgment 25 } Subpna issued the 21st of June del^d to Kellogg
 Entering Writ 25 } const
 Transcript 25 } June 24th summons returned served by rear
 Certificate 25 } ing to the def^t June 19th 1848 service 9 miles 30 cts
 Const Kellogg's fee 65 } A H Kellogg const
 Writup Fee 1.00 } served Fee 35 cts A. H. Kellogg const

June 24th 1848 Parties appeared. Plaintiff by his
Attorney J. S. Pitzer deft in person with Norman Dodge
and S. H. Randall as council
Plaintiff declares for goods wares and merchandise
had and received to his damage \$100 Deft by S. H. Ran-
dall pleads the general issue and gave notice of set-
off two witnesses now sworn viz J. S. Pitzer and
Jacob Mitzko After hearing the proofs Deft presented
a receipt in full of all demands to this date
dated July 10th 1847 signed Norton & Blackstone
Judgment was rendered against the plaintiff for his
costs and discontinuance of suit this 24th day of June
1848

On the rendition of Judgment Plaintiffs Council gave
notice of appeal to the Circuit Court of Kendall
County On the 13th of July 1848 Plaintiff filed his
Bond for appeal which was approved by me
Jestus Burr J. P.

State of Illinois
Kendall County }
I the subscriber a Justice of
the Peace in and for said County do certify that the
within transcript and papers annexed contain a
full and perfect statement of all the proceedings
and of the Judgment before me in the within entitled
cause
Dated July 20th 1848 Jestus Burr J. P.

And amongst which papers was also a summons in the
words and figures following to wit:

State of Illinois
Kendall County }
The People of the State of Illinois
to any Constable of said County Greeting

You are hereby commanded to summon Gerrit
S. Halbach to appear before me at my office
in Oswego on the 24th day of June A. D. 1848 at one
o'clock P. M. to answer the complaint of Norton
& Blackstone for the use of John Blackstone
for a failure to pay them a certain demand not exceeding
one hundred dollars and thereof make return as the law directs
Given under my hand and seal this 19th day of June A. D. 1848
Jestus Burr Justice of the Peace

And on the back of which summons was the following endorsement to wit Demand \$100 Justices 56
Served by reading the within to the Defendant June the
19 1848 services 25
Mills 30 A. A. Kellogg Const

And amongst said papers was also a certain bond in the words and figures following to wit

Know all men by these presents, that we John Blackston John W Crother and Dr Peter are held and firmly bound unto Gerrit S. Walrath in the penal sum of six dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents
Witness our hands and seals this 13th day of June
A.D. 1848

The condition of the above obligation is such that whereas the said Gerrit S. Walrath did on the 24th day of June A.D. 1848 before Festus Burr a Justice of the Peace, for the County of Kendall receive a Judgment against the above bounden John Blackston for the sum of two dollars and seventy seven cents (\$2.77) costs from which Judgment the said John Blackston has taken an appeal to the Circuit Court of the County of Kendall aforesaid and State of Illinois. Now if the said John Blackston shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force & effect

Approved by me at } John Blackston seal
my Office this 13th day of } Dr. P. Peter seal
July A.D. 1848 } John W Crother seal
Festus Burr
Justice of the Peace

And amongst said papers was also two accounts in the words and figures following to wit

A. B. Dodge To Horton and Blackston Dr

| | | | |
|-------|----|-------------------------------|---------------|
| Dec 1 | To | 1 pr small boots | \$1.50 |
| 7 | " | 1 powder flask | .63 |
| 16 | " | Paid Mellis & Schram | 12.50 |
| 17 | " | 1 horse blanket | .75 |
| " | " | 3 yds Brown shirting | .30 |
| " | " | 1 pap book | .44 |
| " | " | 1 1/4 bit | .51 |
| " | " | 1 file | .44 |
| " | " | " | .19 |
| " | " | " | .22 |
| " | " | 1 hand axe | .75 |
| " | " | 2 1/2 candles | .25 |
| " | " | 1 bed cord | .38 |
| " | " | Paid Bleker | 6.00 |
| " | " | Suspenders &c | .44 |
| 19 | " | 1 pr Kid gloves | 1.00 |
| 25 | " | 1 hed drep & necklae | 1.00 |
| Feb 3 | " | Bal on trimmings for Blankets | .41 |
| | | | <hr/> \$27.71 |

W H Randall

To Norton & Blackstone
Goods per Bill 31.33

And afterwards to wit on the twenty first day of July aforesaid a summons issued out of the Clerk's Office of said Circuit Court in said Cause in the words and figures following to wit

State of Illinois }
Randall County }
Illinois } To the Sheriff of said County Creating

The People of the State of Illinois }
The command you to summon Garret & Malrath if to be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next Term thereof to be holden at the Court House in Oswego on the fourth monday in August next to answer unto a suit now pending in said Court wherein Norton & Blackstone for the use of John Blackstone is plaintiff and the said Garret & Malrath is defendant and in which suit the said Garret & Malrath recovered Judgment for costs

against said plaintiff before Justice Burr a Justice
of the Peace in and for said County on the 22^d
day of June AD 1848

From which said Judgment the said John Black-
stone has taken an appeal to the Circuit Court of
said County and further to do and perform
whatssoever the said Court may then think consider
in the premises and have you then there this
writ

(seal)

Witness A B Smith Clerk of our
said Court and the seal thereof
at Oswego this 21st day of July
1848 A B Smith Clk

And afterwards to wit on the twenty seventh
day of August in the year of Our Lord One thousand
and eight hundred and forty eight the Sherriff
of said County of Kendall filed in the Office
of the Clerk of the Circuit Court of said County
said summons with an endorsement thereon in
the words and figures following to wit

August the 27th 1848 Not found Returning 13²
W^m S. Fowler Sherriff

And afterwards to wit on the third day of
March in the year of our Lord One thousand
eight hundred and forty nine the same being
one of the days of the February special term
of said Court in the year last aforesaid proceedings
were had in the words and figures following to
wit

Norton & Blackstone
vs
John Blackstone
vs appellants } Appeal
Gerrit S Walrath }
appellee }

This day comes Jesse S
Pitco and suggests the death of John Blackstone
and it is ordered by the Court on motion that
said suit proceed in the name of Abram Norton
survivor of John Blackstone who sues for the use
of Elizabeth Blackstone executrix and Oliver P
Gooding executor of the last will and testament
of John Blackstone deceased Plaintiffs, and now
And now comes the plaintiff by Pitco their

attorney and the defendant by Randall his attorney and by their agreement issue being joined and a jury being waived this cause is submitted to the Court for trial who having heard the evidence and the arguments of counsel finds the issue joined in favor of plaintiffs

It is therefore ordered and considered by the Court that the Judgment below be overruled and that the plaintiffs have and recover of defendant the sum of fifty nine dollars and three cents damages as well as his costs and charges as well in the Court below as in this Court expended and that he have execution therefor

And afterwards on the fifth day of March in the year of Our Lord one thousand eight hundred and forty nine the same being one of the days of the February special Term of said Circuit Court proceedings were had in the words and figures following to wit:

Wm Norton Currier
of Ohio Blackston Deced
who sues for the use of
Elizabeth Blackston executrix
& Oliver P Gooding executor
of Chas Blackston Deced
v Appellant

Appeal

Genl L Walrath

appellee

This day comes the Defendant by Randall his attorney and moves for a new trial herein which being fully heard is overruled by the Court whereupon the defendant prays an appeal herein to the Supreme Court which is granted him on condition that he will file in the Office of the Clerk of this Court within twenty days from the adjourning of this Court an appeal bond in the penal sum of One hundred and ~~fifty~~^{twenty} dollars with Norman Dodge as security conditioned that said Defendant will duly prosecute his appeal and pay the Judgment costs interest & damages in case the said judgment herein shall be affirmed by the Supreme Court

And afterwards to wit On the fifth day
of March last aforesaid the same still being
one of the days of the February special Term of
said Circuit Court comes the defendant by S^r W
Randall his attorney and files his bill of excep-
tions herein in the words and figures following

Norton & Blackston }
 " " } The Randall Circuit Court
Gerret & Halsath } Appeal

Be it remembered that this cause
coming on to be heard Jacob Metzger was called
as a witness on the part of the plaintiffs who testified
that some time in the spring or summer of 1847
the witness was in conversation with the defendant
negotiating a settlement of some dispute between
the witness and defendant when the defendant
said he paid his attorney out of the store of
Norton & Blackston and had to pay Norton
& Blackston the plaintiffs in cash. Witness could
not state the precise time but thought it was
the latter part of June or the first of July
It was when the final negotiation between
the witness and defendant was consummated
and the papers were being signed

And John W. Cocher being called as a witness
on the part of plaintiffs testified that some time
early in the spring of 1847 Defendant for Norton
& Blackston placed in the hands of witness and
his partner certain accounts for collection one
of about \$300.00 against the Defendant and also
two certain accounts one of \$27.71 against A
R Dodge and one of \$31.33 against S^r W Randall
And that at the time defendant told witness
that he supposed he would have to pay
the two said last mentioned accounts as he
owed them for professional services and request-
ed witness to hold on and not sue them im-
mediately. That some time afterwards as
witness supposes from one to three months
but does not know as to precise time defend-
ant produced to witness and partner a writing

from Norton & Blackston which paper was produced here in evidence in the words and figures following.

Messrs Brothers & Peters
Gent^l Mr^r Halrath has paid us eighty dollars on yr ac. He also settled his ac with us for which you gave a receipt to us

Respy yours

10 July 18

Norton & Blackston

That at the time witness and partner received the accounts herein before spoken of from defendant they receipted for the account of Defendant of about \$300.00 to Norton & Blackston and also for the account of Dodge & Randall which was changed to them and not to defendant. Witness further stated that he had become familiar with the hand writing of the plaintiffs had seen one of them write and believed that the receipt hereinafter named filed in this case was the hand writing of one of the plaintiffs. Witness states that to the best of his recollection the settlement between Metzger and Defendant did not take place until after the first of June in as much as witness was employed by the year by Metzger as attorney that the year terminated on the first of June and said cases were not then settled but were settled before the August Term of the Kendall Circuit Court of the year 1847

The plaintiffs in the further progress of his suit called A R Dodge who testified that he traded in the Store of Norton & Blackston to the amount of about \$27.71 and that the defendant told witness that he was either selling goods on commission or as Clerk of the said Norton & Blackston that witness was at the same time doing professional business as an attorney for defendant and was willing to take the amount of his fees out of the store aforesaid. That defendant said he should charge the same to himself that witness did not contract with Norton & Blackston for said goods

that witness commenced trading with defendant at said store about the first day of December A.D. 1846

The plaintiff in the further progress of his suit called S. H. Randall as a witness who testified that in 1846 & 1847 he was attorney for Defendant in some suits he then had with Jacob Metzger that he received from the defendant out of the store of Norton & Blackstone \$3132 towards his account against the defendant that he then supposed the goods belonged to defendant - that some time in the Spring of 1847 Mr. Pitzer partner of the witness Crothers called on witness and stated that he had said account when witness told him he witness had supposed the goods belonged to defendant but if defendant would not pay for them he supposed he should have to. Metzger further said that he knew when the negotiation took place between Metzger and Defendant spoken of by witness Metzger he could not be positive as to time but thought it was as early as the fore part of June. He felt quite confident it was before defendant started for New York

The plaintiff in the further progress of their said suit produced in evidence three certain papers between the said Jacob Metzger and defendant and disposing of three suits between the said Metzger and the defendant which were dated and filed 26th July 1847 and the said S. H. Randall further testifying said that his recollection was very distinct that the said papers were made and filed a considerable time after the negotiation spoken of by Metzger

The defendant then offered in evidence a receipt of the plaintiff having first proved the execution as mentioned in the testimony of John W. Crothers which said receipt was in the words and figures following

Rec^d Lockport 10th July 1847 from G. S. Walrath
two hundred and twenty one $\frac{00}{100}$ Dollars in full of
all demands to this date Norton & Blackstone

the defendant in the further progress of his suit
offered John H. Chapman who testified that he and
defendant started for New York some time in
May 1847 and in his opinion the negotiation
spoken of by Metken took place before they
went but not consummated until they returned
they did ~~not~~ not return till some time in
June

And it is hereby certified that this bill of
exceptions contains all the testimony given
on said trial upon which said testimony
the Court found for the plaintiff \$59.03 whereupon
the defendant by his counsel moved for a
new trial which motion was overruled
To the opinion of the Court overruling the
motion for a new trial the defendant
excepted and prayed that this bill of except-
ions be allowed which is done
J. L. Dickey (seal)

And afterwards on the seventeenth day
of March in the year of Our Lord One
Thousand eight hundred and forty nine
the same being less than twenty days from
the adjournment made of the February Special
Term of the said Circuit Court aforesaid comes
the said Gerrit L. Malrath and files in
the office of the Clerk of the Circuit Court
of said County of Kendall his appeal Bond
in the words and figures following to wit

Know all men by these presents that we Gerrit L.
Malrath and Norman Dodge of the County of Kendall
and State of Illinois are held and firmly bound unto
Hiram Norton survivor of John Blackstone who sues for the
use of Elizabeth Blackstone Executrix and Oliver P. Gooding
Executor of the estate of John Blackstone deceased in
the penal sum of One hundred and twenty dollars
to be paid to the said Hiram Norton as aforesaid for
the use &c as aforesaid his executors administrators
or assigns to which payment well and truly to be
made we do bind ourselves Our heirs executors and

administrators jointly, severally and firmly by their presents. Sealed with Our seals dated the fourteenth day of March A.D. 1849

Whereas the said above named Hiram Norton survivor as aforesaid, for the use & aforesaid, did at the February Special Term 1849 of the Circuit Court of Kendall County in the State of Illinois recover a judgment against the above bounden Gerrit & Walrath in the said Circuit Court for the sum of fifty nine dollars and three cents besides costs of suit in a certain action which had been appealed from the judgment of Justus Burr Esq a Justice of the Peace in and for said County which said case the said Gerrit & Walrath is about to remove to the Supreme Court he having prayed an appeal thereon which was granted on condition of his giving bond with Norman Dodge as security in the penalty of one hundred and twenty dollars to be ~~paid~~^{paid} within twenty days from the adjournment of the said Circuit Court. Now therefore the condition of the above obligation is such that if the said Gerrit & Walrath shall duly prosecute his appeal with effect and shall pay or cause to be paid whatever judgment costs interest & damages that shall be awarded against the said Gerrit & Walrath by the said supreme Court in said case said judgment shall be affirmed then this obligation to be void otherwise to remain in full force & virtue.

Hiram Norton
J. M. Brothers

Gerrit & Walrath seals
Norman Dodge seals

State of Illinois }
Kendall County } ss

I John M. Brothers Clerk of the Circuit Court in and for said County of Kendall and State of Illinois do hereby certify the foregoing to be a full true and perfect transcript of all the records and proceedings in the above entitled cause now file in my office

In testimony whereof I have here-

set my hand and affixed the
seal of said Court at Oswego in
said County this 28th day of May
A.D. 1849

John W. Brotherton
Clerk

A signment of Errors
The Court erred in finding for the plaintiff, ^{below,} against the weight
of evidence.

The Court erred in overruling the defendants motion for
a new trial.

S. M. Wainwright
Attorney for Defendant

Supreme Court State of N.Y.

Wm. A. Taylor vs
Estate of John Black-
ston for the use of
Elizabeth Blackston
Executrix & Admin^r
Gooding executor of
last will & testament
of John Blackston
Defendant in Error
vs
Gerrit S. Walcott
Plaintiff in Error

Filed June 1st 1849.
S. Island Clerk.

Supreme Court, 3^d Grand Division - June Term 1844.

Genet L. Walrath

vs

Arrian Norton Sumner &c.

Appeal from Kendall.
Judt., appo.

Appellants costs = Ent. apper. 25, fil. jointu 64, Adv. app. 9, judt. 25, 564

Fil. Opinion 64, Ent. judt. & opinion 9 fol. 162, copy of judt. 50, 2.184

Certif. & seal 50, judt. in costs 25, Adv. in extra. 25, & centurion 50, 1.50

Fil. & Dr. 184, Shffs. return, 12^{rs}, bill of costs 37^{rs}, copies 25, posty. 20, Satofp. 25, 1.384

Cr. By bal. pd. after deducting appellants costs 5.634

Am't. of 4.64^{rs}

at true copy from my fee book as taxed & rendered therein.
Skeland Clk. Sup. Court.

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of Kendall County---Greeting:
WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of

Georget S. Waratah _____

you cause to be made the sum of *four* _____ dollars and

sixty four & a half - cents costs in the said Supreme Court, which *Adrian*

Anton Survin & pr _____

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 *28th* day of *July*
in the year of our Lord one thousand eight hundred
and *forty nine*.

S. Heland Clerk of the Supreme Court.

21
Supreme Court

Gerret L. Nahrath

vs
Ariam Norton &c.

Execution vs Peff.

Bill of Costs - \$464²

Received July 31st 1849 at
12 o'clock
Wm. H. Foster & Co.

Served on three light two
horse Wagon

Wm. L. Hurdle Sheriff
Wm. D. Townsend

This Debit returned
Satisfied in full
by Cash of J. L. Hurdle

Wm. D. Townsend
Filed March 20. 1850.
Wm. D. Townsend
Wm. D. Townsend