

Seward, Surgeon, both of the 66<sup>th</sup> Regiment, together with Thomas Martin and John Ryan be desired to view the premises and report to the Court the amount of Damages sustained. - Adjourned (For final judgement see page 37)

Pleas. In the Supreme Court

September 28<sup>th</sup> 1802

Peter Winser

Cook & Travers

This Matter was brought on by an Appeal from a judgement given last Year in the Surrogate Court, on a Protested Bill of Exchange and Charges.

It appeared the Defendants, Cook & Travers, who in the present cause were the Appellants, in the Fall of the Year 1800 Drew a Draft on Bennett and Waldron at Waterford payable to Peter Winser who remitted <sup>Waterford</sup> it to England the same Fall, and it was accordingly presented at the House of the Drawee by Wilcox & Phelps of Dublin and regularly accepted. - After Acceptance, the Bill remained in the hands of Wilcox & Phelps until it became payable, it having been sent to them to receive payment for Winser to whom the Bill properly belonged, about which time Wilcox & Phelps became Bankrupts and the Bill

Agent who got it again presented to the <sup>Acceptors</sup> ~~XXXXXX~~ for payment when it was refused, saying they had already paid it, in consequence of which it was protested and returned to this Country to recover from the Drawer the Bill being . . . . . £84. 16.

with Charges & Interest 11. 4. 7  
 of sum judgem. was given to 96. 0. 7 in words

The Question for the Court on the circumstances attending this transaction was whether the Drawer was liable, for the following reasons

- First. Because the <sup>Bill</sup> had been overholden.
- Secondly. That the Protest stated the Bill to have been already paid. And
- Thirdly. That it appeared to have been fraudulently obtained and by that means got a second time into circulation.

These were the grounds upon which the Drawer had resisted payment in the first instance when judgement was given against him in the Surrogate Court, and upon the same grounds he now supported his cause by Appeal.

In answer to which it was argued that the overholding a Bill after it became due, rendered the Holder liable to all the consequences in case of Failure in the Acceptor, by releasing the Drawer from all responsibility, but so long as a solvency continued both were liable.

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In answer to the second objection it was  
said that there could be no stronger proof of the Bill  
never having been paid than the Holder's being in  
possession of both the first and second set; this it  
was contended was prima facie proof in support  
of the protest; if it had been paid it was incumbent  
on the persons upon whom it was drawn to take  
it up, not only to prevent the possibility of its  
getting again into circulation, but also to enable  
them to produce it as a voucher, by which alone  
they could recover from the Drawer. - That it was  
necessary only for the Holder to prove that he had  
paid a valuable consideration for it and had never  
received payment. - And that a late determination  
in the Court of Kings Bench had decided in  
favor of this opinion. - It was also said that  
Wilcox and Phelps, the persons in whose hands the  
Bill was at the time it became due, were in the  
habit of carrying on large concerns in the Banking  
Business with Pennell and <sup>Walton</sup> Waldron, and the  
probability was, that instead of payment being  
made, a Credit was given for the amount in Pennell  
and <sup>Walton's</sup> Walton's Books just at the time of Wilcox and  
Phelps's Bankruptcy, by whom, or by their Assignees  
the Bill was returned through the same Channel

by which they had received it, to Winsor.

And in reply to the last objection, Peter Winsor proved his having paid a valuable consideration for the Bill, and upon Oath declared that he had never received payment thereof.

The Chief Justice from motives of Delicacy, having as Surrogate given his Judgment on this Question last Year recommended it to <sup>the</sup> parties to leave the matter in dispute to be settled by a Committee of Merchants, (which proposal being mutually acceded to) the following Gentlemen were made choice of for that purpose - Viz<sup>d</sup>

William Isham Esq<sup>r</sup>

Maimaduke Hart

William Elmer

David Rennie

John Bell

Alexander Cormack and

Roderic Robertson

Who after hearing all the Arguments which could be urged on both sides of the Question, and maturely considering the same six out of the seven were of opinion that "the Drawer was still liable".

Whereupon the Chief Justice

Affirmed the Decree

with full Costs of Suit

Adjourned.