

14330

No. _____

Supreme Court of Illinois

Downs

vs.

Kelly

71641  7

OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 207

14380

Kelly
vs
Lawson

12962

Reference

Page 18 of Record

October 26, 1861 - a motion was made to vacate the judgment & for a change of venue - the motion was overruled and ^{an} appeal prayed - which the court granted on the depts filing a bond in a penalty of \$2500 - to be filed by 1st day of Nov Term next - "bill of exceptions to be filed within eight days from this date" see page 18 of Record.

Nov 4, 1861 - (9 days)

on motion of W. W. Drummond atty for depts the court "Ordered that the time for depts to file appeal bond on appeal to supreme court be and is hereby extended from this day to the coming ⁱⁿ of the court on Friday morning next". Nothing whatever was said about the bill of exceptions and it is not even referred to or mentioned.

Now the time for filing the bill of exceptions expired on the 3rd day of Nov - there being 9 days from 26th Oct to 4th of Nov - but if this method of reckoning is not correct - it certainly expires the 4th of November.

Page 19 of Record

P. 34 of
Record.

Nov 7th 1861 - (12 days after the order of the 26th Oct.)
The time for filing
the bill of exceptions and appeal
bond was extended till the 11th
day of Nov -

This is 12 days from
the 26th of Oct - the order required
it to be filed within 8 days from the
26th of October - and it is now
the November Term of the Court.

9th Wheaton 657-8

How can a court extend the
time after - the time which it had fixed
had expired? see 9th Wheaton 657-8.

Page

21 Missouri 121-272 -
" " 157 -
" " 569

Page 35 of
Record

Nov 11 - 1861

Time is given to file
the appeal bond to Thursday morning
next - i.e. the 14th day of Nov -
but nothing whatever is said
about filing the bill of exceptions

If you look at the order as
it now stands - and if no attention
should be paid to the expiration
of the time for filing the bill
of exceptions ^{on Nov 14th} - it will be seen at
a glance - that the time for
filing the bill of ex - expired ^{by the above order} on
the 11th - There is now no extension

whatever—

Page 204
Record } The bill of Exceptions
was ~~presented~~ filed on the
14th day of November—

The bill
of exceptions itself shows ^{all} this
~~except that it~~ but is worded
"in this manner—" on November
" 7 the court on motion of Defen=
" dants attys extended the time to file
" the bond & bill of exceptions (Subject
" to the right of the plaintiffs) to
" Monday next."— which was
as before shown after the
time, ^{had} expired for filing the bill
of exceptions— The court was
perfectly aware of what would
be the effect of such an order when
it was granted & so informed
the counsel who had charge
of the case in the court below—

We have now shown
by the record that the time for filing
the bill of Exceptions expired—
1st on the 4th day of Nov—
" — that three days
after this to wit on the 7th
day of November, an application

was made for extending the time
for the bill of exceptions till the
11th of Nov - ~~which~~ was
granted - and that
no other suspension ever
took place at all ~~but~~

And that on the 14th day
of November without any
permission or authority from
any body or any source
the bill of exceptions was
filed -

We most respectfully
submit that this was error
and that it is entirely contrary
to the long established & uniform
practice of this court to
permit such a practice,
and therefore we insist
that the bill of Exceptions
should be stricken out as
it forms no part of the
record in this cause.

Hervey, Anthony & Galt
attys for Appellee.

(over) -

No 2083

Edward Kelly &
Hugh Mober

vs

Local Bank of Maryland

And now comes the said
Appellee and enters its motion
herein & moves the court to
strike out of & from the record
herein the certain paper writing
purporting to be a bill of
exceptions in this said case -
and the said Appelle bases
its motion on the matters & things
as in the case of Kelly & Mober vs,
Edward H. Downes - the record
& bill of exceptions being identical
Hervey Anthony & Sons
Attys for Appellee.

See also the Bill of Exceptions page 32
of Record-

No 207 - 127

Edward Kelly +

Hugh Mober

vs
Edward H. Dondos

Motion to strike
out bill of exceptions

Filed Apr. 24 - 1862

L. Leland

Clk

Motion Denied

Harvey Anthony Galt
(Dissatisfied)

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Seventh day of October in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the United States of America the Eighty Sixth.

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago. }

Vault Higgins } Judges.
Grant Goodrich }

Carlos Haven Prosecuting Attorney.

Anthony C. Hering Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that heretofore to wit: On the Seventh day of October in the year of our Lord One Thousand Eight Hundred and Sixty One there issued out of and under the Seal of the Superior Court of Chicago a certain Peoples writ of summons which said summons together with the Sheriffs return thereon indorsed are in the words and figures following to wit:

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State of Illinois
County of Cook } ss

The People of the State
of Illinois To the Sheriff of said County
Greeting:

We command you that you
summon Edward Kelly and Hugh
Maker if they shall be found in your
County, personally to be and appear
before the Superior Court of Chicago
of said Cook County, on the first
day of the next term thereof to be
holden at the Court house in the
City of Chicago in said Cook County
on the first Monday of November
next to answer unto Edward H.
Downs in a plea of Trespass on the
Case upon promises to the damage
of the said plaintiff as is said in
the sum of twenty five hundred
Dollars. And have you there this
writ, with an endorsement thereon
in what manner you shall have
executed the same

Witness Walter Kimball clerk
of our said Court and the
seal thereof at Chicago
aforesaid this 9th day of October
A.D. 1860 Walter Kimball clerk

(seal)

Served by reading to the within
named Defendants this 10th October
1860. John Gray Sheriff
By George Anderson Deputy

And afterwards to wit, on the twenty
sixth day of October in the year
aforesaid there was filed in the
office of the clerk aforesaid a certain
Declaration in the words and figures
following to wit:

The Superior Court of Chicago
Of the November Term A.D. 1860
State of Illinois
County of Cook } vs.
Edward N. Downs
plaintiff in this suit by Henry Anthony
& Galb his attorneys complains of Edward
Kelly and Hugh Maher former Co-
partners in business under the name
and style of Kelly & Co defendants
who are summoned &c of a plea
of trespass on the Case on promises
For that whereas the said defendants

as such Copartners heretofore to wit, on the Fourth day of May in the year of our Lord one thousand eight hundred and sixty at Chicago to wit: at said County of Cook made their certain promissory note in writing bearing date the day and year aforesaid, and then and there delivered the same to one Hugh Maher in and by which said note said defendants by the name style and description of Kelly & Co promised as such Copartners to pay to the order of the said Hugh Maher, three months after date (which time has long since elapsed) the sum of fifteen hundred and twenty five dollars at the Bank of North America in the City of New York, in the State of New York for value received. And the said Hugh Maher to whom or to whose order said note was payable, afterwards to wit, on the day and year aforesaid at Chicago that is to say at the County of Cook aforesaid endorsed said note in writing by which said indorsement the said Hugh Maher then and there ordered and

appointed the said sum of money in said note mentioned to be paid to said plaintiff and then and there delivered said note, so indorsed to said plaintiff, and the said plaintiff avers that the difference in Exchange between City of Chicago in the State of Illinois and New York City in the State of New York on the seventh day of August A.D. 1860 the date of the maturity of said note was one and a quarter per cent.

By means whereof and by force of the statute in such case made and provided the said defendants became liable as such Copartners to pay said plaintiff said sum of money mentioned in said note, according to the tenor and effect of said note, and of the indorsement so thereon made as aforesaid, and being so liable, the said defendants as such Copartners in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect of the said note and of the indorsement aforesaid

to wit. at the place aforesaid -
And whereas also the said defendants as such Copartners afterwards. to wit: on the first day of October in the year of our Lord one thousand eight hundred and sixty, to wit. as said County became and were indebted to the plaintiff in a large sum of money to wit. the sum of Two thousand five hundred dollars for money before that time lent and advanced to said defendants as such Copartners by said plaintiff at said defendants request, and also in the like sum, for money before that time paid laid out and expended for said defendants as such Copartners by the said plaintiff at the like special request of said defendants, and in the like sum for money before that time had and received by said defendants as such Copartners. to wit. and for the use of said plaintiff, and also in the like sum for goods ware and merchandise before that time sold and delivered by said plaintiff to said defendants

as such Copartners at the like special instance and request, and also in the like sum for the labor, care and diligence of the said plaintiff before that time done and performed by said plaintiff for said defendants as such Copartners and at the like instance and request of said defendants, and being so indebted said defendants in consideration thereof, then and there as such Copartners undertook and promised to pay said plaintiff said several sums of money above mentioned when thereunto afterwards requested-

And whereas also the said defendants afterwards to wit, on the same day and year last aforesaid, and at the place last aforesaid, accounted together as such Copartners with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the said defendants as such Copartners to the said plaintiff, and then and there being in arrears & unpaid

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and upon such accounting, the said defendants as such Copartners were found to be in arrear and indebted to said plaintiff in the further sum of Twenty five hundred dollars. And being so found in arrear, and indebted to said plaintiff, the said defendants in consideration thereof afterwards to wit, on the same day and year last aforesaid and at the place aforesaid as such Copartners undertook and then and there faithfully promised the said plaintiff to pay unto the said plaintiff the said sum of money last above mentioned when they the said defendants should be thereunto afterwards requested.

Yet the said defendants not regarding their said promises and undertakings, but contriving & although often requested so to do have not paid said plaintiff either of said sums of money above mentioned, or any part thereof, but so to do have hitherto wholly neglected and refused

and still do neglect and
refuse, to do damage of said
Plaintiff of twenty five hundred
dollars, and therefore he brings
this suit etc.

Hervey Anthony & Galb
Plaintiff's attorneys.

Copy of Instrument sued on.

1525 Chicago May 4th 1860
Three months after date my
promise to pay to the order of
Hugh Maher Esq Fifteen hundred
& Twenty five Dollars at Bank
North America N.Y. value received.
(Signed) Kelly & Co

Endorsed
Hugh Maher

10 Kelly & Co
To Edward Rowan, D^r
To Money lent and advanced \$ 2500-
To Money paid laid out and expended \$ 2500-
To Money had and received to and for the
use of said plaintiff \$ 2500-
To goods wares & Merchandise
sold and delivered \$ 2500-
To labor and service \$ 2500-
To balance due on account stated \$ 2500-

And afterwards to wit, on the
Fifth day of November, in the year
of our Lord One thousand eight
hundred and sixty, there was filed
in the office of the Clerk aforesaid
a certain Plea, Affidavit & Notice
in the words and figures following
to wit:

State of Illinois
County of Cook 3^{ss}.
Superior Court of Chicago
November Term 1860

Edward Kelly &
Hugh Maher
vs
Edward A Downs

And the said
defendants by W W Drummond their
attorneys come and defend the
wrong and injury when & and
say that they did not undertake
or promise in manner and form
as the said plaintiff hath above
thereof complained against them
and of this they put themselves upon
the Country & C

by W W Drummond
defts atty.

And the said plaintiff
doth the like

Nervey Anthony Gaet
attys for plff

In Superior Court of Chicago
To Nov Term 1860.

Edward A Downs

Edward Kelly &
Hugh Maher

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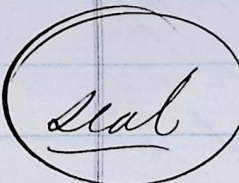
State of Illinois
County of Cook 3 ss.

Superior Court of Chicago
Nov Term 1860.

Edward Kelly and Hugh Maher
each for himself being first duly
sworn depose and say that they
are the defendants in the above
entitled suit and that they believe
that they and each of them have
a good defense to the said suit
on the merits and further say that
not Hugh Maher.

Subscribed and sworn to before me
this fifth day of November A.D. 1860

Samuel Straus
Notary Public



In Superior Court of Chicago
of November Term A.D. 1860

Edward N. Downs pff
and
Edward Kelly and
Hugh Maher defts.

To Henry Anthony & Co.

Take notice that the above named defendants on the trial of this cause will give in evidence, and insist that, the promissory note or notes which are the subject matter and basis of the above entitled suit were not assigned transferred and endorsed over unto the said plaintiff, nor became their property until after the time when by the terms thereof they became due & payable, and that the following equities attached to and were operative against the said note or notes in the hands of Edward A Downs the payee in said note or notes mentioned, to wit, that the said Downs was and still is indebted to these defendants in the sum of Ten thousand Dollars for breach of Contract in the furnishing and supplying of Coals to be sold for the joint benefit of the said Downs and said defendants under and according to the terms and Condition of certain articles of agreement and special partnership entered into

and in force between the said Downs and the said defendants. And also in the further sum of Ten thousand Dollars found to be due and owing, and in arrears and unpaid by the said Downs to said defendants on an account stated between them.

And also in the further sum of Ten thousand Dollars for so much money by the said defendants before that time paid laid out and expended to and for the use of the said Downs, and the said defendants will set off and allow to the said plaintiff on the said trial, so much of the said sum of Ten thousand Dollars due and owing from the said Downs to the said defendants against any promissory note or notes indorsed over to and in the hands of the said plaintiff by Edward N Downs aforesaid to be proved on the said trial as will be sufficient to satisfy and discharge such demand according to the form of the statute in such case

made and provided,

Yours,
W W Drummond

Oct 29 1860

And afterwards to wit: on the
Eighth day of October in the year
of our Lord One thousand eight
hundred and sixty one said day
being one of the days of the
October Term of said Court the
following among other proceedings
were had and entered of record
to wit

Edward N Downs

Edward Kelly &
Hugh Maher, Assumpsit

This day came the
said plaintiff by Henry Anthony &
Galt his attorneys and the said
Defendants by W W Drummond their
attorney also came and defendants
submit their motion on petition
filed for change of venue in this cause

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which application being considered
is overruled by the Court and
issues being joined herein it is
ordered that a jury come. Whereupon
comes the jury of good and lawful
men to wit: George M Todd, George
Lawson, Edward Voudon, Lem Clark,
Jacob Miller, J O Rully, A Otto, Charles
McDonald, J D Carpenter, David Hitchcock,
E J Enness, and R L Chapman who
being duly elected tried and sworn
to try the issues joined as aforesaid
after hearing the evidence, arguments
of Counsel and instructions of the
Court retire to consider of their
verdict and afterwards return into
Court submit their verdict and say
That the jury find issues for said
plaintiff and assess his damages
herein to the sum of One thousand
six hundred and thirty one dollars
and seventy five Cents.

Therefore it is considered that the
said plaintiff do have and recover
of and from the said defendants
their damages of One thousand
six hundred and thirty one dollars
and seventy five Cents in form

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aforsaid found and assessed
by the jury, and also his costs
and Charges in this behalf expended
and have Execution therefor.

And afterwards to wit. On the twenty
sixth day of the month & year aforesaid,
said day being still one of
the days of said Term thereof.
the following among other proceedings
were had and entered of record
in said Court. to wit:

Edward A Downs

Edward Kelly & Hugh Maher. Assumpsit

This day again
comes the said plaintiff by Hervey
Anthony & Galt his attorneys, and
the said defendants by W W Drum-
mond their attorney also come and
the Cause coming on to be heard
upon the motion of the said

defendants to vacate the judgment heretofore entered at this term of the Court, against them, and also for a change of venue in said Cause and Counsel being heard, and the Court being fully advised in the premises overrules the motion to vacate the judgment, and also overrules the motion for a change of venue, to which ruling of the Court the said defendants except and enter their Exceptions herein to the ruling and decision of the Court in overruling said motions and thereupon pray an appeal herein to the Supreme Court of this State from the judgment of this Court which is allowed to them on filing bond in penalty of twenty five hundred dollars, with security to be approved by a Judge of this Court and to be filed by first day of the November Term next ensuing of this Court, with bill of Exceptions to be filed within eight days from this date.

19. And afterwards to wit, on the fourth day of November in the year aforesaid, said day being one of the days of the November Term of said Court, the following among other proceedings were had in said Court and entered of record to wit,

Edward A Downs

Edward Kelly &
Hugh Maher

assumpsit

This day again comes the said plaintiff by Henry Anthony and Galt his attorneys and the said defendants by W. W. Drummond their attorney also come and on his motion it is ordered that time for defendants to file appeal bond on appeal to Supreme Court, be and is hereby extended from this day to the coming in of the Court on Friday morning next. And thereupon plaintiff attorneys enter exceptions to the ruling of the Court in allowing extension of time to file appeal bond herein —

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In the Superior Court of Chicago
Of the October Term 1861.

Edward M. Downs

Edward Kelly &
Hugh Maher

Bill of Exceptions

Be it remembered that heretofore to wit on the 8th day of October A.D. 1861. the following proceedings were had to wit, after issue joined the defendants by their attorneys filed in said Court their petition for a change of venue in the words and figures following viz

State of Illinois
County of Cook

Superior Court of Chicago
October Term A.D. 1861.

Edward M. Downs

Hugh Maher &
Edward Kelly

assumpsit

To the Honorable the judges of the Superior Court of Chicago the undersigned Edward Kelly one of the defendants in the

above entitled suit would represent and show unto your Honor that this affiant fears that he and his codefendant Hugh Maher will not receive a fair trial in the Court in which this action is pending, on account that the inhabitants of the County of Cook are prejudiced against this affiant so that he cannot expect a fair trial in the said Court, and that the causes of such prejudice have arisen and come to the knowledge of this defendant within less than ten days last past. This affiant also says that this application is made with the consent of his codefendant Hugh Maher. He therefore prays for a change of venue in this cause to some County where the above causes do not exist.

Edward Kelly

State of Illinois,
County of Cook 3 ss

Edward Kelly, being first duly sworn on oath saith that

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he is one of the defendants to
the above entitled suit that he has
read the above and foregoing
petition and knows the contents
thereof and that the same is
true and further saith not.

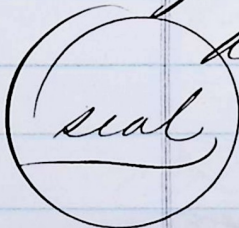
Subscribed to Edward Kelly

and sworn to
before me this

7th day of October

AD 1861. Henry Morey

Notary Public



In the Superior Court of Chicago
Of the Oct Term AD 1861
Edward N Downs

Edward Kelly &
Hugh Maher

To Messrs Hervey
Anthony & Galt, attys for the Plaintiff
in the above entitled suit.

Please take notice that we
shall at the opening of the Court
on the morning of the ninth inst
or as soon thereafter as counsel

Can be heard, move the Court
for a change of the venue in the
above entitled Cause based on
the affidavit filed in said Cause
a copy of which is herewith
served on you

Respectfully yours
Drummond & Ford
Attys for Defs.

Chicago Ill.
Oct 8 1861

I hereby consent to the change
of venue in the above entitled
Cause.

Chicago Ill Hugh Maher
October 8, 1861.

The Court on examination of
the petition for a change of
venue decided that it was
insufficient and refused to
change the venue.

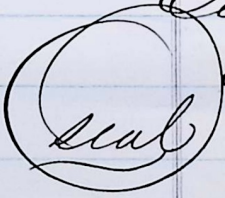
The case having been reached
for trial in its regular order
was called and a jury em-
-panelled and the issues tried

day of July last past that the said injunction was dissolved on the 7th day of this month before the Hon John W Wilson Chief Justice of this Court, this affiant saith further that he directed his attys immediately after he received information of the dissolution of said injunction which was about five o'clock in the afternoon of the 7th inst to give the necessary notice to the plaintiffs attys for and to take steps at once to procure a change of venue in said Cause from the County of Cook. This affiant further saith that he went to see his Codefendant Maker but could not find him until the morning of the 8th inst in relation to the change of venue, that said Maker gave his consent and did consent to the petition for a change of venue on the morning of the 8th inst and the first time this affiant saw said Maker after hearing of the dissolution of the said injunction, that this affiant

made and caused to be filed a petition and affidavit for a change of the venue in said cause on the morning of the 8th inst. and notice of the said application was served on Messrs Kervey, Anthony & Galt or Mr Galt of said firm who are the plaintiffs attys in this suit of the said application as aforesaid. That the notice was given and affidavit made & filed for a change of venue as soon as the same could have been done after this affiant received information of the dissolution of the injunction as aforesaid. That he is informed and believes that a judgment was rendered against this affiant and his Codefendant Maher on the 8th inst in this Court for the sum of \$ and before the time expired under the notice given to plaintiff for a change of the venue of the said cause. That said affiant could not give longer notice for the said application

than he did for the reasons above set forth. and he now asks the Court for to set aside or vacate the judgment heretofore rendered in said Cause and to change the venue of the said Cause from the County of Cook as prayed for in this affiant's affidavit now on file in said Cause in said Court and further saith not.

Subscribed and sworn to before me
this 25th day of
October, 1861.



E. F. Runyon
Notary Public

State of Illinois
County of Cook
Superior Court of Chicago
Oct Term A.D. 1861.

Edward H. Downs

Hugh Maher &
Edward Kelly

To Messrs

29 Henry Anthony & Galt,
Plffs attys.

Please take
notice that on the opening of
the Court on Saturday Morning
the 26th inst we shall move the
Court to vacate the judgment
heretofore rendered in the above
entitled Cause at this term of
the said Court, and again
move the Court for and
insist upon a change of
the venue in the above entitled
Cause upon the Petition and
affidavit heretofore filed in the
said Cause.

Yours Respectfully
Dorronmond & Ford &
E. N. Brackett
Plffs attys.

Chicago Illinois
October 25 1861.

and moved the Court to vacate
the judgment heretofore entered
in said Cause and to change
the venue, which motion came
on to be heard and upon the
argument of said motion the

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Henry Anthony Galt,
Plff. atty.

Please take
notice that on the opening of
the Court on Saturday Morning
the 26th inst we shall move the
Court to vacate the judgment
heretofore rendered in the above
entitled Cause at this term of
the said Court, and again
move the Court for and
insist upon a change of
the venue in the above entitled
Cause upon the Petition and
affidavit heretofore filed in the
said Cause.

Yours Respectfully
Dorronney & Ford
E. N. Brackett
Plff. atty.

Chicago Illinois
October 25 1861.

and moved the Court to vacate
the judgment heretofore entered
in said Cause and to change
the venue, which motion came
on to be heard and upon the
argument of said motion the

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for defendant and Brackett & Drummond solicitors for the Complainants it is hereby ordered adjudged and decreed that the injunction in the above case be dissolved and the bill dismissed. Therefore it is considered that defendant do have and recover of and from the said Complainants his costs about his defence in this behalf expended & have execution

The Court after hearing the arguments of counsel upon both sides overruled the motion and decided that it would not look beyond the matters contained in the petition for a change of venue itself, and that it was irregular to file supplementary affidavits to cure defects in the original Petition for a change of venue, to which decision of the Court in so overruling said motion the said defendant then and there assented - The said

32 Defendants then prayed an appeal to the Supreme Court which the Court granted upon the defendants filing a bond in the sum of \$2500, Twenty five Hundred Dollars, to be approved by the Court & filed by the first day of November Term 1861 and the Bill of Exceptions to be made and filed in eight days from said date.

On November 4th the defendants came and moved the Court to extend the time for filing the bond until Friday next (to which the plaintiff objected) the Court extended the time to Friday next to which decision of the Court the plaintiff then and there accepted.

On November 7th the Court on motion of Defendants atty extended the time to file the bond & bill of Exceptions, subject to the right of the plaintiff to Monday next.

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On the 11th day of November
the Court on motion of the
attorneys for defendants extended
the time to file the bond to
Thursday next.

On the 13th day of
November the Court on motion
of the defendants attorneys
extended the time to file bond
to Saturday morning next.

On the 14th day of November
1886 the Court approved the
bond presented by the defendants
and the said defendants then
prayed the Court to sign and
seal this the said defendants
Bill of Exceptions, which is
accordingly done.

Wm. H. Higgins Esq
Judge of Sup Ct.

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and afterwards to wit on the
tenth day of the same month and
year aforesaid. said day being
still one of the days of the November
term of said Court. The following
among other proceedings were
had and entered of record. to wit:

Edward N. Downs

Edward Kelly & Hugh Maher ^{vs} Assumpsit

This day again
comes the said defendants by
N. W. Drummond their attorney, and
on his motion it is ordered that
time for defendants to file bill of
Exceptions and appeal bond herein
be and is hereby further extended
to coming in of the Court on Monday
next, the eleventh day of November
Instant.

And afterwards to wit on the
tenth day of the month, and

year aforesaid, said day being still one of the days of the November term of said Court. the following among other proceedings was had and entered of record to wit:

Edward A Daws

Edward Kelly & Hugh Maher. ^{vs} Assumpsit

This day again comes the said defendants by W W Drummond their attorney and on his motion it is ordered that time for defendants to file their appeal bond herein be and is hereby further extended to Thursday Morning next.

And afterwards to wit, on the thirteenth day of the same month and year aforesaid, said day being still one of the days of the November term thereof the following among other proceedings were had & entered of record to wit:

Edward N. Downs

Edward Kelly & Hugh. Maher

Assumpsit.

On motion of
 W. Drummond attorney for said
 defendants it is ordered that time
 to file bond on appeal herein to
 Supreme Court be and is hereby
 further extended to coming in of
 the Court on Saturday morning
 next.

and afterwards to wit, on the
 fourteenth day of November in
 the year aforesaid, the was filed in
 the office of the Clerk aforesaid a
 certain appeal bond in the words
 and figures following, to wit:


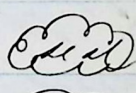

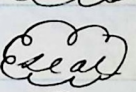

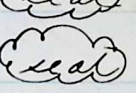



Know all men by these presents
 that we Edward Kelly, Hugh
 Maher and Joseph McDonald of
 the County of Cook and State of

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Illinois are held and firmly bound unto Edward A Downs of the State of New York in the penal sum of Twenty five hundred 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 November A D 1861,

The Conditions of the above obligations is such that whereas the said Edward A Downs did on the 7th day of October A D 1861 recover a judgment against the above bounden Edward Kelly & Hugh Maher for the sum of Sixteen hundred & thirty one and 75/100 Dollars besides Costs of suit from which judgment of the said Superior Court the said Edward Kelly and Hugh Maher have prayed for and obtained an appeal to the Supreme Court of said State of Illinois. Now therefore if the said Edward Kelly & Hugh

Makes shall duly prosecute
 their said appeal with effect
 and moreover pay the amount
 of the judgment costs interest
 and damages rendered & to be
 rendered against them in case
 the said judgment shall be
 affirmed in said Supreme Court
 then the above obligation to be
 void otherwise to remain in
 full force & effect

Taken and entered  Edward Kelly 
 into before me at  Hugh Maher 
 my office in  Joseph McDonald 
 Chicago Ill. 
 14th day of November. 
 1881. 
 Van Niggins

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State of Illinois,
Cook County ss.

I Thomas B. Carter Clerk of the Superior Court of Chicago in and for said County and State aforesaid Do hereby Certify the foregoing to be a true full and complete transcript of all the pleadings on file, and all orders entered of Record including the order of Judgment, together with the Bill of Exception and appeal bond in the case wherein Edward H. Downs is plaintiff and Edward Kelly & Hugh Maher defendants.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at the City of Chicago in said County this twelfth day of April A D 1862.

Thomas B. Carter
Clerk



State of Illinois 3rd Grand Division

Edward Kelley &
Hugh Maher

vs

Edward H. Downs

Appeal from Superior Court

Supreme Court April Term 1862

And now comes the said Appellants and say that manifest error hath intervened in the record ~~and~~ proceedings to their injury and assigns the following

1. The Superior Court of Chicago erred in overruling the motion for a change of venue

2. The said Court erred in refusing to vacate the judgment & grant a change of Venue

3. The said Court erred in rendering judgment against the appellants.

Therefore they pray

H. W. Drummond

for appellants

And now comes the said appellee and says that there is no error whatever in the record & proceedings of the case & therefore asks that the said judgment be affirmed. Henry A. Anthony & Co. Attorneys for appellee

127 207
Downs
Kelly et al

Transcript

Filed April 22, 1862

L. Leland
Clerk

Fees \$8.00

Paid by H. Maher

J. B. Carter
Clerk