

13793

No. \_\_\_\_\_

# Supreme Court of Illinois

Aiken et al

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vs.

King

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United States of America  
State of Illinois Cook County

Plas 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 fifth day of March  
in the year of Our Lord eighteen hundred and sixty  
and of the Independence of the United States of Amer-  
ica the eighty fourth.

Present the Hon John M. Wilson Chief Justice  
Of the Superior Court of Chicago  
Van H. Higgins and Grant Goodrich Judges  
Carlos Haven Prosecuting Attorney

Attest

John Gray Sheriff of Cook County

Walter Kimball Clerk

Be it remembered that heretofore to wit on the twenty  
fifth day of January in the year aforesaid came the  
said Plaintiffs and filed in the office of the Clerk  
aforesaid their certain Declaration in words and  
figures following to wit:

State of Illinois }  
County of Cook } Ed In the Superior Court of Chicago  
Of the February Term A.D. 1860

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Edmund Aiken, who appears in his own proper person and John D. Norton who appears by the said Edmund Aiken as his Attorney Partner in business under the name and style of Aiken & Norton Plaintiffs in this suit, complain of William W. King and Jason Greely Defendants who were summoned, &c. of a plea of trespass on the case on promises For that whereas the said Defendants heretofore to wit on the Twenty Seventh day of June in the year of Our Lord one thousand eight hundred and fifty nine 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 the Plaintiffs in and by which said Note said Defendants by the name, style and description of W. W. King and Jason Greely as surety promised to pay to the order of the said Plaintiffs by the name and style of Aiken & Norton six months after the date thereof One Thousand Dollars with interest at ten per cent per annum

By means whereof, and by force of the Statute in such cases made and provided, the said Defendants became liable to pay said Plaintiffs said sum of money mentioned in said Note, and being so liable in consideration thereof, they and there undertook and promised to pay the same to the said Plaintiffs according to the tenor and effect of <sup>the</sup> said Note to wit, at the place aforesaid

And Whereas, also the said Defendants, afterwards, to wit, on the First day of January in the year of Our Lord one thousand eight hundred and sixty to wit, at said County, became and were indebted unto the said Plaintiffs in a large sum of money to wit the sum of Two thousand dollars, for money before that time lent and advanced to said Defendants by said Plaintiffs at said Defendants request; and also in the like sum, for money before that time paid, laid out and expended for said defendants by the said Plaintiffs at the like special request of said Defendants; and in the like sum for money before that time had and received by said Defendants to and for the use of said Plaintiffs; and also in the like sum for goods ware and merchandise before that time sold and delivered by said Plaintiffs to said Defendants, at the like special instance and request; and also in the like sum for the labor, care and diligence of said Plaintiffs before that time done and performed by said Plaintiff for said Defendants, and at the like instance and request of said Defendants and also in the like sum, then and there found to be due and owing to said Plaintiffs on an account stated between them; and being so indebted, said Defendant, in consideration thereof, then and there undertook and promised to pay said Plaintiffs said several sums of money above mentioned.

when thereunto afterwards requested.

Yet the said Defendants, not regarding their said promises and undertakings, but contriving, &c, 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 the damage of said Plaintiff of Two Thousand Dollars, and therefore they bring this suit, &c

E. Aiken

Pro Se and Attorney  
for John D Norton

Copy of Instrument and Account Sued on

"Six months after date for value received we promise to pay to the order of Aiken & Norton One Thousand Dollars \$1000 with interest at ten per cent per annum

W. W. King

Chicago June 27<sup>th</sup> 1859

Jason Greedy

assurety"

W. W. King & Jason Greedy Surety

To Aiken & Norton Dr

To money lent and advanced	\$2000
To money paid, laid out, and expended	\$2000
To money had and received to and for the use of said Plaintiff	\$2000
To goods, wares and Merchandise sold and delivered	\$2000
To labor and services	\$2000

To balance due on account stated

\$2000

And afterwards to wit on the eighth day of February in the year aforesaid came defendant Greely by his attorney and filed in the office of the Clerk aforesaid his certain demurrer in words and figures following to wit:

William H King &  
Jason Greely  
ats  
Edmund Aiken &  
John D Norton

In the Superior Court of Chicago  
Of the term of February A.D. 1860

And the said Jason Greely one of the said co-defendants, <sup>in</sup> the above entitled cause by R. S. Blackwell his attorney comes and defends the wrong and injury when &c and says that the said several counts of the said declaration and the matters & things therein contained in manner and form as the same are before pleaded and set forth, are not sufficient in law nor are either of said counts of said declaration sufficient in law for the said plaintiffs to have & maintain their aforesaid action thereof against him the said codefendant and that he is not bound by the law of the land to answer the same or any or either of them. Therefore for want of a sufficient declaration in this behalf he the

said codefendant prays hence to be dismissed  
with his reasonable costs in this behalf sustain-  
ed

R. S. Blackwell  
att'y for def't Greely

And afterwards to wit on the tenth day of March  
in the year aforesaid said day being one of the days  
of <sup>the</sup> March Term of said Court the following among  
other proceedings was had and entered of record  
in said Court to wit:

Edmund Aiken and  
John D. Norton

v's

Assumpsit

William W. King and Jason Greely

This day comes said plaintiffs by E. Aiken their attorney  
and due personal service of process of summons  
issued in this cause having been had on each of said  
defendants and being three times severally solemnly  
called in open Court comes not nor does any person  
for them or either of them but herein they severally  
make default which is on motion ordered to be  
taken and is hereby entered of record. Whereupon said  
plaintiffs ought to have and recover of said defend-  
ants their damages sustained herein by reason of  
the premises. And thereupon reference is had to  
the Court to assess ~~the~~ damages herein hereafter

And afterwards to wit on the fourteenth day of the month and year last aforesaid said day being one of the days of the March Term of the said Court the following among other proceedings was had and entered of record in the said Court to wit:

Edmund Oiken and John D Norton

v's

A pumpfit

William W. King and Jason Credley

And now again comes said plaintiffs by their Attorney and default of each of said defendants having been taken and entered of record herein against them on the 10<sup>th</sup> day of March instant and reference being had to the Court to assess damages herein and the Court now here after hearing the proofs and allegations submitted by said plaintiffs and being fully advised in the premises assess their damages herein to the sum of One thousand and seventy two dollars and fifty cents.

Therefore it is considered that said plaintiffs do have and recover of said defendants their damages of One thousand and seventy two dollars and fifty cents in form aforesaid by the Court here assessed and also their costs and charges in this behalf expended and have execution therefor.

And thereupon said defendants pray an appeal herein to the Supreme Court which is allowed to them on filing bond in sum of sixteen hundred

dollars with security to be approved by court in ten days

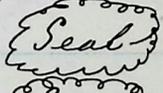
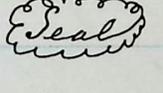
And afterwards to wit on the twenty third day of March in the year aforesaid came the defendants by their attorney and filed in the office of the Clerk aforesaid their certain Appeal Bond in words and figures following to wit:

Know all men by these presents, That we Jason Gurley and Joel Gurley ————— of the City of Chicago in the County of Cook and State of Illinois are held and firmly bound unto Edmund Aiken and John D. Norton in the sum of sixteen hundred dollars lawful money of the United States to be paid to the said Edmund Aiken and John D. Norton their heirs executors administrators and assigns; for which payment well and truly to be made we bind ourselves our and each of our heirs executors and administrators jointly severally and firmly by these presents sealed with our seals and dated the Twenty third day (23) of March in the year of our Lord One Thousand Eight hundred and sixty.

The condition of this Obligation is such that whereas Edmund Aiken and John D. Norton plaintiffs on the fourteenth day of March in the year of Our Lord Eighteen hundred and sixty in the Superior Court of Chicago.

by the Judgment and consideration of said Court recovered of the said Jason Gurley and William W. King. (the said William W. King not having been served with process of summons) the sum of one thousand seventy two Dollars and fifty cents damages in an action of Trespass upon the case upon promises besides the costs of said action and whereas the said Jason Gurley hath prayed for and obtained an appeal to the Supreme Court of the Third Grand division of the State of Illinois. Now if the said Jason Gurley shall prosecute his said appeal with effect and without delay and shall moreover pay the said judgment costs interest and damages in case the said judgment shall be affirmed then this obligation to be void else to remain in full force and effect.

Approved Feb 23/1860  
Grant Goodrich

Jason Gurley   
Joel Gurley 

State of Illinois }  
Cook County } ss  
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being first duly sworn doth depose and say that he is a resident of the City of Chicago in the County and State aforesaid that he is worth over and above all his just debts the sum of One Thousand and Six Hundred Dollars and

further affidavit saith not.

Joel Gurley

Subscribed & sworn to before

me this 23 day of March A.D. 1860

Walter Kimball Clk

State of Illinois }  
County of Cook } S.S.

I, Walter Kimball Clerk of the Superior Court of Chicago, in and for said County do hereby certify that the foregoing is a full, true and complete transcript of all the pleadings on file in my office, and of the proceedings and judgment entered of Record in said Court, in the case wherein Edmund Kilen & John D. Norton, are plaintiffs and William W. King and Jason Gurley, are defendants.

In testimony whereof I hereunto subscribe my name, and affix the Seal of said Court at the City of Chicago, in said County this 10<sup>th</sup> day of April A.D. 1860

Walter Kimball Clerk



William H. King &  
Jason Gurley  
vs  
Edmond Aiken &  
John D. Norton

In the Supreme Court  
of the State of Illinois  
Third Grand Division  
Of the term of April  
And 1860.

Appeal from the Superior  
Court of Chicago.

And on this day comes the said  
appellant Jason Gurley by R. B.  
MacPherson his attorney and says that  
in the record of the proceedings afore-  
said and in the rendition of the  
judgment aforesaid, Manifest  
Error hath intervened to his prejudice,  
in this to wit

That it appears by the said  
record, that the said Superior  
Court erred in rendering a judg-  
ment <sup>by default</sup> in favor of the said appellee  
when by the record of the said Super-  
ior Court ~~it~~ appears that the  
demurrer of the said appellant  
to the declaration of the said appellee  
was undisposed of.

2. It appears by the record aforesaid that the said Superior Court erred in rendering a judgment for the said appellees when by the laws of the land the said judgment ought to have been rendered for the said appellant and this the said appellant is ready to verify &c.

Wherefore and for other errors appearing upon the face of the record aforesaid &c. the said appellant prays that the said judgment may be reversed, set aside, annulled and for nothing esteemed and that the said appellant may be restored to all things he has lost by occasion thereof &c.

W. Macmillan  
Attorney for Appellant

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Strew et al

vs

King et al

Record

Filed May 14, 1860

S. Island  
Ch.

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