

No. 13592

# Supreme Court of Illinois

Ross

---

vs.

Hamilton

---

71641  7

STATE OF ILLINOIS

SUPREME COURT,

Third Grand Division.

No. **343.**

Russ  
vs  
Hamilton  
1860

State of Illinois  
Grundy County

Pleas before the Honorable  
Jesse O. Norton Judge of the Eleventh  
Judicial Circuit of the State of Illinois  
and presiding Judge of the Circuit  
Court of said Grundy County, at a Term  
thereof, begun & held at the Court House  
in Morris in said County on Monday  
the 20<sup>th</sup> day of February in the year  
of our Lord one thousand Eight hundred  
and Sixty, and of the independence  
of the United States the Eighty fourth  
Present

The Hon. Jesse O. Norton Judge  
Jonathan R. Webber Sheriff  
Attest H. A. Bartleson State Attorney  
Wm. W. Keirsted Clerk

Be it Remembered that heretofore  
to wit: on the third day of November  
AD 1859 there was filed with the  
Clerk of said Court, certain papers  
on change of Venue, from the County  
Court of said County, in a certain  
cause wherein Wade Hampton was  
Plaintiff and Edgar W. Ross was

Defendant, and which said papers  
are in the words & figures following  
to wit:

Grundy County Court  
State of Illinois }  
Grundy County }

Pleas pleadings motions  
orders judgments and decrees had held  
made ordered taken and entered of  
record in and before the Grundy County  
Court at the June Term thereof begun  
and held at the Court House in the  
City of Morris in said County and  
State on Monday the 6<sup>th</sup> day of June  
A.D. one thousand Eight Hundred  
and Fifty nine and of the Independence  
of the United States the Eighty Fourth  
Present Hon Colquhoun Grant Co Judge  
Amathan R Webber Sheriff  
Perry A Armstrong County Clerk

Be it remembered that at the June Term  
A.D. 1859 the following among other  
proceedings were had

Wade Hampton

<sup>vs</sup>  
Edgar M Ross } Appraiser

On the first day of  
the term the defendant was ruled

to plead by the coming in of Court on the second day of the Term and afterwards to wit: on the second day of the term came the parties hereto the Plff by his Attorney J. W. Newport, as well as the Defendant by John P. Southworth his Attorney And the said Defendant files a Plea in abatement which he afterwards obtains leave of the Court to withdraw, and leave given to plead anew by the coming in of Court on the third day of the Term. And afterwards to wit: on the third day of the term again come the parties hereto by their respective Attorneys and the said Defendant asks for a change of Venue based upon an affidavit alleging prejudice of the Court. Whereupon it is ordered by the Court that the change be granted to the Circuit Court of Gundy County Illinois upon the payment of the costs which have accrued in this Court and that the clerk is hereby instructed to forward the papers in this cause to the clerk of the said Circuit Court upon

payment of the legal costs which  
have accrued in this Court in  
said suit

The papers marked from 1 to 5  
inclusive are all the papers in  
the cause

State of Missouri  
Gundy County

I Perry A. Armstrong  
Clerk of the Gundy County Court  
do hereby certify that the fore-  
going is a correct copy of the  
proceedings had in the above  
stated cause as appears of Record  
in my Office

Witness my hand and the Seal  
of the Gundy County Court  
at Morris this 3<sup>d</sup> day of  
November A.D. 1859

Perry A. Armstrong  
pr Woodrow Dept

Separation

Gundy County Court  
of the June Term A.D. 1859

State of Illinois } ss  
County of Gundy }

Wade Hampton  
Plaintiff in this suit by J. W. Newport  
his Attorney complains of Edgar W. Ross  
Defendant who was summoned &c. of  
a plea of assumpsit: For that  
whereas the said Defendant here-  
tofore to wit: on the twenty seventh  
day of January in the year of  
our Lord one thousand eight hun-  
dred and fifty Eight at Sandwich  
to wit: at said County of Gundy.  
made his certain promissory note  
in writing, bearing date the day  
and year aforesaid, and then  
and there delivered the same to  
one J. B. Stewart in and by which  
said note said Defendant by the  
name, style and description of  
E. W. Ross promised to pay the order  
of the said J. B. Stewart the sum  
of One Hundred & thirty six dollars

and Eight cents in five months after the date thereof at the Banking House of George Sellock in Morris, Illinois in the County aforesaid for value received, And the said D. B. Stewart to whom or to whose order said Note was payable, afterwards, to wit, on the day and year aforesaid at Morris that is to say at the County of Grundy, aforesaid, endorsed said Note in writing, by which said endorsement the said D. B. Stewart then and there ordered and appointed the said sum of money in said Note mentioned to be paid to said Plaintiff under the name and style of Wade Hampton & Co. and then and there delivered said Note, so indorsed, to the said Plaintiff

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

the said Plaintiff according to the tenor and effect of the said note, and of the indorsement aforesaid to wit: at the place aforesaid;

For that whereas also the said defendant heretofore to wit: on the twenty seventh day of January in the year of our Lord one thousand Eight hundred & fifty eight at Sandwich to wit: at the County of Gundy aforesaid, made his certain other promissory note in writing bearing date the day & year aforesaid and then & there delivered the same to one D. B. Stewart, in and by which said note the said defendant, by the name style & description of E. M. Ross promised to pay to the order of the said D. B. Stewart the sum of One hundred & thirty six dollars and Eight cents in Eight months after the date thereof at the Banking House of George Sellick in Merms Illinois County aforesaid with interest at the rate of six per centum

per annum after six months  
from the date of said note for  
value received; and the said  
D. B. Stewart to whom or to whose  
order the said note was payable,  
afterwards, to wit; on the day & year  
aforesaid at Morris, to wit; at the  
County of Gundy aforesaid  
indorsed said note in writing  
by which said endorsement, the  
said D. B. Stewart, then & there  
ordered & appointed the said sum  
of money in said note mentioned,  
to be paid to said plaintiff  
under the name and style of  
Wade Hampton & Co, and then  
& there delivered the said note  
so endorsed to the said plaintiff  
By means whereof and by force  
of the Statute in such made  
and provided the said defendant  
became liable to pay the plaintiff  
said sum of money mentioned in  
said note, and, being so liable in  
consideration thereof & then & there  
& there undertook & promised  
to pay the same to the plaintiff  
according to the tenor & effect

of the said note and of the endorsement  
aforesaid to wit: at the place aforesaid.

And Whereas, also, the said Defendant  
afterwards, to wit: on the first day  
of April in the year of our Lord,  
one thousand eight hundred and  
fifty nine to wit: Five Hundred,  
dollars for money before that time  
lent and advanced to said Defendant  
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  
Defendant by the said Plaintiff,  
at the like special request of  
said Defendant, and in the like  
sum 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 merchandise, before the  
time sold and delivered by  
said Plaintiff to said Defendant,  
at the like 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, then and there found to be due and owing to said Plaintiff on an account stated between them, and being so indebted said Defendant in consideration thereof, then and there undertook and promised to pay said Plaintiff said several sums of money above mentioned when thereunto afterwards requested.

Yet the said Defendant, not regarding his said promise and undertakings, but contriving, &c. although often requested so to do, hath not paid said Plaintiff either of said sums of money above mentioned, or any part thereof, but so to do hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of said Plaintiff of Five Hundred Dollars and therefore he brings

this suit & c  
J. H. Newport  
Plaintiffs Attorney

Copy of Instruments and Account sued on

Instrument mentioned in first Count  
\$136.<sup>08</sup>

Sandwich January 27/58  
Five months from date I promise  
to pay D. B. Stewart or order  
one Hundred & thirty Six  
Dollars and Eight Cents  
for value rec<sup>d</sup> payable at the  
Banking office of Geo. Sellock  
in Morris Illinois

E. W. Ross

Endorsed as follows to wit  
Pay Wade Hampton & Co  
D. B. Stewart "

Instrument mentioned in second Count  
\$136.<sup>08</sup>

Sandwich January 27 1858  
Eight months from date  
I promise to pay D. B. Stewart  
or order one Hundred and

thirty six Dollars and Eight Cents  
for Value Received Payable at  
The Banking House of George  
Sellock in Monro Illinois  
with interest at six per cent  
after six months from date  
E. M. Ross

Endorsed as follows

Pay Wade Hampton & Co  
J. B. Stewart

Edgar M Ross .

To Wade Hampton Dr

To money lent and advanced	\$500.00
To money paid. Laid out and expended	\$500.00
To money had and received to and for the use of said Plaintiff	\$500.00
To goods, wares and merchandise sold and delivered	\$500.00
To Labor and Services	\$500.00
To balance due on account Stated	\$500.00

Copy of one of the Notes Sued on

"\$136<sup>08</sup> Sandwich January 27<sup>th</sup> 1858  
Eight months from date I promise  
to pay D. B. Stewart or order. One  
Hundred and Thirty six Dollars  
and Eight Cents for Value Received  
Payable at the Banking House  
of George Sellock in Morris  
Illinois with Interest at six per  
cent after six months from date  
E. M. Ross "

Upon which said Note appears  
the following endorsement to wit:  
"Pay Made Hampton & Co  
D. B. Stewart "

Copy of Second Note Sued on

"\$136<sup>08</sup> Sandwich January 27/58  
Five months from date I promise to  
pay D. B. Stewart or order One Hundred  
and Thirty Six Dollars and Eight  
cents for Value Rec<sup>d</sup>. Payable at the  
Banking Office of Geo Sellock in  
Morris Illinois  
E. M. Ross "

copy of Protest attached to last  
mentioned note

copy \$136<sup>00</sup> Sandwich January 27/58  
Five Months from date I promise  
to pay D.B. Stewart or order One  
Hundred and thirty six Dollars and  
Eight cents for value Rec<sup>d</sup>. Payable  
at the Banking Office of Geo Sellock,  
in Morris Illinois

E. W. Ross

Inclosed "Pay Made Hampton & Co  
D.B. Stewart"

"W Hampton & Co Pay Chicopee Mang Co  
John C Lodge" "John C Lodge Treasr"

"Pay Exchange Bank or order Chas  
Sprague Cash" "Pay Messrs J.H. Birch  
& Co or order Geo W. Sawyer P" "Pay Geo  
Sellock or order for collection J.H. Birch  
& Co"

State of Illinois } ss  
County of Gundy }

Be it known That on  
this thirtieth day of June in the  
year of our Lord one thousand eight  
hundred and fifty eight I B.M. Atterton  
Notary Public, duly commissioned and  
sworn and residing in the city of Morris

in said County and State. at the request of George Sellick went with the original promissory note of which a true copy is above written, to the Banking Office of George Sellick in said City of Morris and there presented the same and demanded payment thereof to which demands James W. Raymond, a clerk in said Office replied in the words following viz, "No funds"

Whereupon I the said Notary, at the request aforesaid, did Protest, and by these presents, do Solemnly Protest, as well against the Maker of said Note the endorsors thereof, as all others whom it doth or may concern, for exchange, re-change, and all costs charges damages, and interest, already incurred, by reason of the non payment of the said promissory note.

And I the said Notary, do hereby certify, that on the same day and year above written, due notice of the foregoing Protest was put in the Post Office at Morris, as follows:  
Notice for E. M. Ross Gundy County Illinois

- 1 " for J. H. Burckle Chicago Ill under cover  
with which enclosed  
1 each for Geo W Thayer P. W. Hampton & Co  
John C Lodge & John C. Lodge Treasr  
their residence being unknown  
1 " for D. B. Stewart by me given to him  
at his house in Morris

Each of the above named places being  
the reputed places of residence of the  
persons to whom notice was directed

In Testimony Whereof I have here-  
unto set my hand and affixed  
my official seal. the day and  
Year above written



B. M. Altherton  
Notary Public

Receipt for Summons

State of Illinois } S'S  
Gundy County }

Grundy County Court  
June Term A.D. 1859

Wade Hampton  
Plaintiff

vs

Edgar W Ross  
Defendant

The Clerk of  
said Court will issue a Summons  
in the above cause, directed to  
the Sheriff of Grundy County,  
in a plea of Assumpsit  
returnable at the June  
Term of said Court A.D. 1859  
to the damage of the Plaintiff  
of Five Hundred Dollars

A. W. Newport

Plaintiff's Attorney

J. P. A. Armstrong Esq Clerk

May 5<sup>th</sup> 1859

Summons

The People of the State of Illinois.  
To the Sheriff of Gundy County  
Greeting.

We Command You that you  
Summon Edgar W Ross if  
he shall be found in your  
County personally to be and  
appear in the Gundy County Court  
before the Judge thereof on the  
first day of the next term of said  
Court to be held at the Court  
House in Morris on the first  
Monday of June next at ten o'clock  
in the forenoon then and there  
to answer unto Wade Hampton  
in a plea a summons to the plff  
damages \$500 as he avers. And  
have you then and there this writ  
and the manner in which you  
shall have executed the same.  
In Witness Whereof we have caused  
the seal of said Court to be here-  
to affixed attested by P. A.  
Armstrong Clerk thereof at  
Morris this 5<sup>th</sup> of May 1859

Perry A. Armstrong Clerk

23

On which said summons are the following endorsements  
Served the within writ by reading to the within named Edgar W Ross this 17th day of  
May A.D. 1859. Service 50c  
By S. B. Walker Sheriff Mileage 10  
S. J. Gould Deputy Return 70c

Wond for Costs

Wade Hampton } State of Illinois  
vs } Gundy County  
Edgar W. Ross } Gundy County Court

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause, and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action, either to the opposite party, or to any of the officers of this Court, in pursuance of the Laws of this State

Dated this 5<sup>th</sup> day } J. W. Newport  
of May A.D. 1859 }

Affidavit for Change of Venue

State of Illinois } In Gundy County Court  
Gundy County } June Term A.D. 1859

Wade Hampton }  
vs }  
Edgar W. Ross }  
The Said defendant

Edgar M. Ross being first duly sworn according to law says that he entertains serious and well-grounded fears that he will not receive a fair and impartial in this cause on account of the prejudice that he believes exists in the mind of the Judge of this Court, and that he believes those prejudices so great against him that he would be unsafe in submitting to a trial before him the said Judge, the said defendant therefore prays that a change of venue may be granted in this cause

Subscribed and sworn to  
before me this 7<sup>th</sup> day of

June A.D., 1859

W. A. Kierstead

Clk Cir Court

E. M. Ross

And upon the 9<sup>th</sup> day of November A.D., 1859 the said Defendant filed his Affidavit of Merits & Plea, which are as follows to wit

Affidavit of Merits

"State of Illinois / In Grand Jury Court  
Grand Jury / October Term 1859

Wade Hampton }  
vs }  
Edgar W. Ross }

Edgar W. Ross the  
above named Defendant being  
first duly sworn according to Law  
on his oath says that he is  
informed by his Attorney and  
believes that he has a good just  
and sufficient defence in  
whole or in part in the above  
entitled Cause.

Subscribed and sworn to } E. W. Ross  
before me this 8<sup>th</sup> day }  
of November A.D. 1859 }  
J. P. Southworth J.P. } "

Plea

"State of Illinois / In Grand Jury Court  
Grand Jury / October Term A.D. 1859

Wade Hampton }  
vs  
Edgar M. Ross }

And now Comes  
the said defendant Edgar M. Ross  
by J. P. Southworth his attorney  
and defends the wrong and injury  
&c and says that he did not  
undertake and promise in the  
manner and form as the said  
plaintiff in his declaration hath  
alleged against him and of  
this he puts himself upon the  
Country

J. P. Southworth

Defendants Attorney "

And on the 21<sup>st</sup> day of February A.D. 1860  
was filed the following Affidavit for continuance in said  
cause

Affidavit for Continuance

"State of Illinois } In Grundy Circuit Court  
Grundy County } February Term A.D. 1860

Wade Hampton }  
vs  
Edgar M. Ross }

Assumpsit

Edgar W. Ross the

above named defendant being first duly sworn according to law. Upon his oath says that David B. Stewart is a material witness in behalf of the said defendant without whose testimony he the said defendant can not safely proceed to trial. That said Stewart resides in the State of Missouri and has resided there since the commencement of this suit; that he has heretofore been unable to procure the testimony of said Stewart, but expects to be able to get the testimony of said Stewart by the next term of this Court. This Affiant also says that he expects to be able to prove by said Stewart, that the note sued upon in this Cause was given for a stock of Ready made clothing under a Contract that the said clothing was to be sold to said Affiant at first cost and that there was a mistake made in the cost mark of said clothing, by means whereof, the said note sued upon in this Cause was given for about

one hundred dollars to much -  
This affiant also says that this  
Application for a Continuance  
is not made for delay but that  
Justice may be done  
Subscribed and Sworn to }  
before me this 31<sup>st</sup> day } E. M. Ross  
of February A.D. 1860 }  
W. W. Keister }  
Clerk " "

Be it remembered that on the  
10<sup>th</sup> day of November A.D. 1859  
at a term of the Circuit Court of  
Grundy County Illinois, then being  
held the Hon. Jesse O. Norton Presiding  
the following among other proceedings  
were had before & entered of record  
in said court to wit:

"Wade Hampton } Assumpsit  
vs } Ven from County Court  
E. M. Ross }

Now on this day  
come the parties hereto by their  
respective attorneys Newbert  
for the Plaintiff and Southworth  
for the Defendant and upon

Motion of the said Plaintiff  
This cause is continued with  
leave to him to amend his  
declaration, and thereupon by  
Motion of the said Defendant  
by his said Attorney said defen-  
dant is granted leave to Plead  
over. "

And afterwards to wit. on the  
21<sup>st</sup> day of February A.D. 1860  
at a term of said Circuit Court  
then being held, the following  
further proceedings were had  
in said cause to wit;

Wade Hampton, Assumpsit  
vs } Venue from  
E. W. Ross } Co Court

This day come the  
parties hereto by their respective  
Attorneys A. W. Newport for the  
Plaintiff, & J. P. Southworth for the  
defendant, and the said defendant  
upon affidavit filed moves the  
Court for a continuance, which  
motion is overruled. And there-  
upon on Motion of the Plaintiff

Attorney the defendant is ruled  
to Plead herein by to Morrow Morn-  
ing.

And upon the 22<sup>nd</sup> day of February A D 1860  
as yet of the Term last aforesaid the  
following further Proceedings were had  
& entered of Record to wit:

Wade Hampton Assumpsit  
vs  
E M. Ross      Venue from County Court

And now again on  
this day come the parties hereto by their  
respective Attorneys and by their  
agreement this cause is submitted  
to the Court for trial. And the Court  
after due consideration do order  
that Judgment be rendered against  
the said defendant in favor of  
the said Plaintiff for the sum  
of Two Hundred and Eighty seven  
dollars. that being the amount  
of the principal & interest of  
the notes upon which this suit  
is founded. and also his Costs  
& Charges herein expended and  
that Execution issue therefor

and thereupon the said defendant Prays the Court for an appeal to the Supreme Court, which appeal is granted upon condition that he enter into bond in the sum of five hundred dollars, with security to be approved by the Clerk of this Court, within thirty days.

And afterwards on the 12<sup>th</sup> day of March 1860, the said defendant filed in said Circuit Clerks office his appeal bond which is as follows to wit:

Appeal Bond To Supreme Court

" Know all men by these Presents  
That we Edgar M. Ross, and H. P.  
Gillett are held and firmly bound  
unto Wade Hampton in the penal sum  
of 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 and administrators jointly, severally  
and firmly by these presents.

Witness Our hands and Seals.

this 12<sup>th</sup> day of March A.D., 1860

The Condition of the above  
obligation is such, Whereas, the said  
Wade Hampton did at the February  
Term of the Grundy County Circuit  
Court A.D., 1860, recover a Judg-  
ment against the above bounden  
Edgar M. Ross for the sum of  
Two Hundred Eighty Seven Dollars  
and - Cents and Costs of  
suit, from which said Judgment  
the said Edgar M. Ross has  
taken an Appeal to the Supreme  
Court of the State of Illinois.  
Now if the said

Edgar W. Ross 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 and effect

Taken and approved by

E. W. Ross

(seal)

me this 12<sup>th</sup> day of

H. F. Gillett

(seal)

March A.D., 1860

W. W. Wiersted

at

State of Illinois 3 vs  
Grundy County 3

I William A. Kiersted  
Clerk of the Circuit Court within  
and for said County & State aforesaid  
do hereby certify the foregoing to be  
a full true & correct Transcript  
of all the papers remaining on  
file in my said office, and of  
the proceedings of the Court  
in the above entitled Cause

In Testimony Whereof I have  
hereunto set my hand and  
affixed the seal of said Court  
at Morris this 24<sup>th</sup> day of  
April A.D. 1860

Wm A Kiersted  
Clerk

043 *Sup*  
Supreme Court  
April Term 1860.

Edgar M. Cross  
Appellant

<sup>vs.</sup>  
Wade Hampton  
appellee

---

Filed Apr. 24. 1860  
L. Deland  
Clk.

\$287.00  
+ 05  
-----  
\$143 50.00 D. J.