

No. 13536

Supreme Court of Illinois

Barrett

vs.

Gorham, et al.

71641  7

STATE OF ILLINOIS,
SUPREME COURT.
Third Grand Division.

No. 344.

1860
Barrett.

vs
Gorkanson

1860

13536

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 there-
of, begun and held at the Court
House in Morris in said County
on Monday the 20th 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

W Kiersted Clerk

Be it Remembered that heretofore
to wit. on the 22nd day of February
A.D. 1860, it being one of the days
of session of said Term of said
Court, the following among other
proceedings were had before and

and entered of Record in said
Court. to wit:

Gorham & Newport }
vs } Assumpsit
John F. Barrett & }
Henry B. Goodrich }

Now on this day
Come the parties hereto by their res-
pective Attorneys, Newport for the
Plaintiffs & Southworth for the
defendants. And the Court
having had under consideration
the demurrer to the Plaintiffs
declaration filed herein, do
order that the same be overruled,

And the defendants abiding
by their demurrer. thereupon
by order of the Court the
said defendants are three times
Solemnly called but come not,
nor any one for them and herein
make default. which default
is ordered of record. And this
Cause being founded upon
a promissory note and the amount
of damages thereon being uncer-
tain, it is ordered that the same
be referred to the Clerk of this
Court for computation. and the

said Clerk having made computation thereon, reports to the Court as there being due for Principal & interest on the said promissory note the sum of Two Hundred and forty nine dollars and ten cents, which being approved by the Court is ordered of Record

It is therefore Considered and ordered by the Court that the said Plaintiffs do have and recover of the said defendants the said sum of Two hundred and Forty nine dollars and ten cents so assessed as aforesaid for their damages by them in this behalf sustained together with their Costs and Charges in this behalf expended. And that they have Execution therefor.

And thereupon the said Defendants by Southworth their said Attorney Pray the Court for an Appeal to the Supreme Court, which is granted upon condition that they file bond in the sum of five hundred dollars with security to be approved by the Clerk within thirty days from this date

Demurrer

State of Illinois } In Gundy County Circuit
Gundy County } Court February Term 1860

Graham & Newfort }

vs

John F. Barrett & }

Henry B. Godrich }

Demur

The said defendants
by John P. Southworth their Attorney
says that the said declaration
is not sufficient in Law

And the said defendants here
shows to the Court the following as
the Cause of demur.

There is no time alledged
in the 1st Count of said declaration
when the note therein set out becomes
due and payable

And also for that the said declaration is
in other respects uncertain in formal
and insufficient. wherefore for want of
a sufficient declaration in this behalf
the said defendants prays Judgment
and that the said Plaintiff may be
barred from having or maintaining his
aforesaid action thereof against them &c.

J. P. Southworth Defts Atty.

Declaration

Gundy County Circuit Court
Of the February Term A.D. 1860

State of Illinois } ss
County of Gundy }

Gardner J. Gorham
Thomas F. A. Newport & Stephen H.
Gorham partners Trading under the
firm name of Gorham & Newport
Plaintiffs in this suit by S. W. Newport
their Attorney Complain of John
H. Barrett and Henry B. Goodrich
Defendants who were summoned &c.
of a plea of Assumpsit. For
that whereas the said defendants
heretofore to wit: on the 7th day of
March in the year of our Lord
one thousand eight hundred and
fifty nine at Morris to wit. at said
County of Gundy. made their
certain Promissory Note in writing
bearing date the day and year
aforesaid. and then and there
delivered the same to George Sellick
in and by which said note said

Defendants by the name style and description of John H. Barrett and H. B. Goodrich promised to pay the order of the said George Sellock on the first day of October after the date thereof, Three Hundred Dollars, with interest at the rate of ten per cent per annum for value received. And the said George Sellock 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 George Sellock then and there ordered and appointed the said sum of money in said Note mentioned to be paid to said Gorham & Newport and then and there delivered said note, so indorsed, to the said Gorham & Newport By means whereof and by force of the Statute in such case made and provided, the said Defendants 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 Plaintiffs 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 Defendant afterwards, to wit: on the first day of February in the year of our Lord one Thousand eight Hundred and Sixty to wit; at said County, became and were indebted to the Plaintiff in a large sum of money, to wit Five Hundred dollars for money before the time lent and advanced to the 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 of money before that time had and received by said Defendants to and for the use of said Plaintiffs and also in like

sum. for goods, wares 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 Plaintiffs 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 Defendants 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 Plaintiffs either of said sums of money above mentioned, or any part thereof, but so to do has

hitherto wholly neglected and refused.
and still do neglect and refuse.
to the damage of said Plaintiffs
of Five Hundred Dollars, and
therefore he brings this suit &c
J. N. Newport
Plaintiff Attorney

Copy of Instrument and Account send on
(\$300)

Morris 16 Mar 7th 1859
On the first day of Oct after
date we promise to pay to the
order of Geo Selleck. Three Hundred
Dollars with interest at the rate
of Ten per cent per annum.
Value received. Payable at
No 785-Due John F. Barrett
H. B. Godrich

on the back of said note are the
following endorsements
"George Selleck"

"75⁰⁰" January 3 1860

Rec^d on the within seventy five dollars

John F. Barrett & H. B. Godrich
To Gorham & Newport 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 Service	\$500.00
To balance due on account stated	\$500.00

Declaration

Gundy County Circuit Court
Of the February Term A.D. 1860

State of Illinois } ss
County of Gundy }

Gardner J. Gorham
Thomas F. A. Newport & Stephen H.
Gorham partners Trading under the
firm name of Gorham & Newport
Plaintiffs in this suit by J. W. Newport
their Attorney Complain of John
H. Barrett and Henry B. Goodrich
Defendants who were summoned &c.
of a plea of Assumpsit. For
that whereas the said defendants
heretofore. to wit; on the 7th day of
March in the year of our Lord
one thousand eight hundred and
fifty nine at Morris to wit. at said
County of Gundy. made their
certain Promissory Note in writing
bearing date the day and year
aforesaid. and then and there

Precipe for Summons

"State of Illinois } Gundy C Circuit Court
Gundy County }

Gardner J. Gorham
Thomas F. A. Newport &
Stephen H. Gorham
Partners doing business
under firm name
of Gorham & Newport
Plaintiffs

^{vs}
John F. Barrett and
Henry B. Goddick

Assumpit

Issue Summons
on behalf of said Plaintiffs against
said defendants returnable accord-
ing to Law Damages claimed \$500.
To W^m A. Kiersted Egg & W. Newport
Clerk Atty for Plff.

Summons

State of Illinois } ss
Gundy County }

The People of the

State of Illinois. to the Sheriff
of said County - Greeting:

We Command You that You Summon
John F. Barrett & Henry B. Goddick
if they shall be found in your County.
personally to be and appear before
the Circuit Court of said Gundy
County, on the first day of the next
Term thereof, to be holden at the
Court House in Morris, in said County,
on the 3rd Monday of February 1860
to answer unto Gardner J. Gorham
Thomas H. A. Newport & Stephen A.
Gorham partners doing business
under the firm name of Gorham
& Newport in a plea of Assumpsit
to the damage of the said Plaintiffs
as they say in the sum of Five
Hundred Dollars. And have you
then and there this writ with an
endorsement thereon, in what man-
ner you shall have executed
the same.

(S.S.)

Witness W. A. Kiester Clerk
of our said Court, and the Seal
thereof at Morris aforesaid
this 9th day of February A.D. 1860
W. A. Kiester Clerk "

on which said Summons are the following Endorsements to wit:

State of Illinois }
Gundy County }

I have duly served the
within by reading the same to the
within named J H Barrett and
Henry B. Goodrich Feb 10th 1860
as I am therein commanded

J. R. Webber Sheriff
Wm Mason Depts

Fees Service	\$1.00
Mileage	30
Return	<u>10</u>
	140

Filed in Circuit Court this 20th day of
Feb'y A.D. 1860

Wm A Kiersted Clerk

Newport Attorney

Appeal Bond

"Know all men by these Presents that
We John E. Barrett, Henry B. Goodrich
and W. T. Foster are held and firmly
bound unto Gorham & Newport 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
17th day of March A.D. 1860

The Condition of the above obligation
is such whereas the said Gorham
and Newport did at the February
Term of the Gundy County Circuit
Court A.D. 1860 recover a Judgment
against the above bounden John
E. Barrett and Henry B. Goodrich
for the sum of Two Hundred & Forty
Nine Dollars and Ten Cents and
Costs of Suit. from which said
Judgment the said John E. Barrett
& Henry B. Goodrich has taken an
appeal to the Supreme Court of the
State of Illinois

Now if the said John E. Barrett
& Henry B. Goodrich 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, other-
wise to remain in full force and
effect

Taken & approved by me
this 17th day of March
A.D. 1860

W. A. Runtel

ck

John F. Barrett (seal)

H. B. Goodrich (seal)

W. T. Foster (seal)

State of Illinois 3rd
Mundy County 3rd

I William A. Kiersted
Clerk of the Circuit Court in and
for said County. do hereby certify
that 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 said 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 24th day of April A. D.
1860

W A Kiersted
Clerk

344
Supreme Court

April Term 1860.

John F. Barrett &
Henry B. Goodrich
Appellants.

vs.

Gorham & Newport
Appellees.

Filed Apr. 24, 1860

L. Seland

Clk.

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\$12,945 02 p