

No. 13319

Supreme Court of Illinois

Brown

vs.

Gorton

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the third Monday, (being the eighteenth day) of February in the year of our Lord one thousand eight hundred and sixty one and of the Independence of the said United States the eighty-fifth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Harlow States Attorney.

A. C. Nesing Sheriff of Cook County.

Attest, Wm L. Church Clerk.

Be it remembered that heretofore to-wit: on the fifth day of July A D Eighteen hundred and fifty nine there were filed in the Court aforesaid in a certain Cause lately pending in the Circuit Court of Lake County a certified Copy of the proceedings had in said Cause. in said Lake County Circuit Court, the declaration and Pleas thereto, which said Record, declaration and Pleas are in the words and figures following to-wit:

Copy of Record
 United States of America
 State of Illinois
 Lake County } ss.

Pleas before the Honorable
 George Manierre, Judge of the Seventh Judicial Circuit

of the State of Illinois.

At a Circuit Court for the County of Lake in said Circuit began and held at Waukegan in said County on the sixth day of June in the year of our Lord one thousand Eight hundred and fifty nine, and of the Independence of the United States the Eighty third.

Present the Honorable George Manierre
Judge aforesaid and John J Regan Sheriff of
Lake County
Attest A B Cotes Clerk.

Be it remembered that on the
Eight day of June A D 1859, and of the June
Term of said Court for the year aforesaid, the
following among other proceedings in said Court
were had and Entered of Record to wit:

82 John M Brown }
vs } Case
James B Cortow }

Now Comes said parties the
said Plaintiff by Seals his Attorney and the said
defendant by Kelley his Attorney and thereupon
the said defendant Enters his motion founded upon
affidavit filed for a rule on Plaintiff to file
Security for Costs herein, and the Court being fully
advised in the premises, it is Ordered that the
said Plaintiff file such Security or show Cause

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why he should not do so by the opening of Court tomorrow Morning.

And Afterwards to wit: on the fourteenth day of June in the year last aforesaid and of the term of said Court last aforesaid, the following Among other proceedings in said Court, were had and Entered of Record to wit:

John M Brown
vs
James B Gorton } Case

Now Comes said parties by their respective Attorneys, and joinder being had upon the said defendants demurer to the declaration of the said plaintiff herein, and after arguments of Counsel, the Court being fully advised in the premises it is ordered that said demurer be and the same is hereby overruled at the Costs of the said defendant and afterwards it is ordered that the said defendant have until Friday Morning) next in which to plead herein

And afterwards to wit: on the eighteenth day of June in the year last aforesaid and of the term of said Court last aforesaid the following, Among other proceedings in said Court were had and Entered of Record to wit:

John M Brown
vs
James B Gorton } Case
Now came said

parties by their respective Attorneys and there-
upon the said Plaintiff files his demurrer to the
second plea of the said defendant herein and
joinder being had thereon, and the Court after
arguments of Counsel being fully advised in the
premises, it is ordered that the said demurrer
be and the same is hereby overruled at the Costs
of the said Plaintiff. And afterwards the
said defendant presents his petition under
oath praying for a Change of Venue of this Cause
for the reasons set forth in said petition on file
herein that he verily believes he will not receive
a fair and impartial trial in said Cause
for that the minds of the inhabitants of
Lake County wherein said Cause is now
pending are prejudiced against him, and
after arguments of Counsel the Court being fully
advised in the premises it is ordered that the
Venue of this Cause be Changed to the Circuit
Court of Cook County in the State of Illinois
and that the Clerk of this Court make out and
transmit to the Clerk of the Circuit Court of
Cook County aforesaid a Certified Copy of the
records and proceedings in this Court in this
Cause together with all papers filed in and
appertaining or forming part of the record herein
And it is further Ordered that the Expenses
attending the Change of Venue herein be taxed by

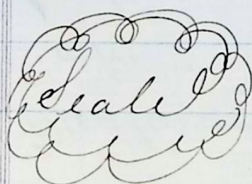
the Clerk of this Court and paid by the said defendant,
 State of Illinois }
 County of Lake }^{ss}

I Augustus B Cotes Clerk
 of the Circuit Court in and for the County of Lake
 in the state aforesaid do hereby Certify the within
 to be a true and Correct Copy of all the Orders
 made and Entered of Record in a Certain Cause
 lately pending therein wherein John M Brown
 was plaintiff and James B Boston was defendant

And I further Certify that the accompanying
 papers numbered from "1" to "18" inclusive & filed in
 our said Court are all the papers now on file
 in my office appertaining to said suit

In Witness whereof I have hereunto
 set my hand and affixed the seal of said
 Court at my Office at Naukegan in said County
 this 30th day of June A D 1859.

A B Cotes Clerk
 By A S Cotes Deputy.



Declaration.

John M Brown }
 vs }
 James B Boston } case
 State of Illinois }
 County of Lake ss.

The Circuit Court for the County of Lake
 As yet of the February Term
 A D 1859.

John M Brown plaintiff in

in this suit Complains by W S Searls his attorney
of James B Boston defendant in this suit who
has been duly summoned & of a plea of trespass
on the case For that whereas the said plaintiff
before and at the time of the Commencement of
the Chancery suit and issuing & service of
the summons consequent thereon and the issuing
and service of the Injunction hereinafter next
mentioned was at Waukegan in the County of
Lake & State of Illinois Engaged in the Lumber
trade & was then and there carrying on and
conducting a Lumber yard for the sale of the
different kinds of Lumber usually & commonly
sold by lumber dealers in said Town & County
and as such lumber dealer at the time &
place ^{last} aforesaid the plaintiff had a fair business
Credit & standing among the business community
at Lake County aforesaid and among the
business community at Manitowoc in the State
of Wisconsin Connected with & carrying on the
Manufacture of Lumber there, and as such
lumber dealer at the time and place last aforesaid
was daily selling large quantities of Lumber from
said yard at a fair nett business profit per
Thousand feet, and was then and there possessed
of a Monied Capital to the amount of two
Thousand dollars with which and said
business Credit said plaintiff was then and

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thus enabled to Conduct and Carry on said business in a prosperous and lucrative manner yet the said defendant well knowing the premises but falsely wickedly and maliciously contriving and intending to injure aggrieve and oppress the said plaintiff and to bring him into great disgrace and disrepute with and among all his friends, neighbors, customers, and acquaintances & the business community generally and to break up & destroy his business as a lumber dealer, and to put him the said plaintiff to great Expense of his monies, and falsely and maliciously to cause & procure the said Plaintiff to be declared and adjudged to be a Copartner and joint owner of said plaintiff in & concerning & in relation to a certain lot of lumber purchased of Smith & Murphy at Manitowoc in the State of Wisconsin & in relation to a certain lot of Shingled Bolts purchased at said Manitowoc of one Wheeler & known as the Wheeler bolts & to impoverish and wholly ruin him the said Plaintiff in business, business prospects & in credit heretofore to wit on the thirtieth day of October A.D. 1854 at Waukegan in the County of Lake & State of Illinois to wit in the Circuit Court of said County under pretence that the said Plaintiff was a Copartner of the said defendant & joint owner with him in & concerning said lumber & Bolts

and that the said plaintiff had taken the full & Exclusive possession of said lumber & was then and there wrongfully keeping ^{said} defendant out of his lawful and just rights in relation thereto as such Copartner and joint owner & selling & disposing of said lumber to the sole use of said plaintiff falsely and maliciously and without any reasonable or probable Cause whatsoever filed his bill of Complaint on the Chancery side of said Lake County Circuit Court & at the same time caused to be issued out of & under the seal of said Court the ~~several~~ ^{usual} summons in such cases issued and at the same time the said defendant falsely maliciously & without any reasonable or probable Cause caused to be issued out of and under the seal of said Court upon said bill & the endorsements of the Master in Chancery in said County through a Writ of Injunction bearing date on the thirtieth day of October A.D. 1854 against & to the said Plaintiff & directed to the Sheriff of said County to execute in and by which the said defendant caused said plaintiff to be enjoined & said plaintiff was in and by said Injunction commanded that he absolutely desist & refrain from selling or in any or manner disposing of or interfering with any of the lumber that was then remaining unsold of that which was purchased of Smith & Murphy at Manitowoc in the State of

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Wisconsin & which was in said Injunction stated to be owned by said Plaintiff & Defendant as partners, and said Plaintiff was also enjoined in and by said Injunction that he absolutely and entirely desist & refrain from Collecting or receiving any partnership debts, due or then to become due on account of any of said lumber so purchased & owned by said Plaintiff & Defendant jointly as partners that may have been sold on Credit by said Plaintiff until the further order of said Circuit Court, under the penalty of what the law directs, which said Injunction was by said Sheriff at or about the day of the date thereof to wit, at Lake County aforesaid served upon said Plaintiff in & by which said Plaintiff was then & there Enjoined under the penalty of what the law directs from selling or in any way or manner disposing of or interfering with any of the lumber then on hand in said yard which was purchased of Smith & Murphy at Manitowish in the State of Wisconsin then remaining unsold and also from Collecting or receiving any partnership debts due or to become due on account of any of said lumber which had previously been sold, and said Plaintiff avers that there was at ~~that~~ date of the issuing & at the time of the serving of said Injunction to wit, at Lake County aforesaid in said lumber yard

unsold. One hundred thousand feet of pine
Lumber mostly first quality of Clear pine lumber
which had been purchased of said Smith & Murphy
at Manitowoc in the State of Wisconsin and
that said lumber was then worth in the market
in Manly the sum of from thirty to thirty five
dollars per thousand feet, all of which said
lumber was then and there prohibited from being
sold or interference with by said plaintiff in and
by said Injunction. And such proceedings were
afterwards had in said Chancery suit in said
Court and in relation to said Injunction that
on the seventh day of August A D 1856 said
Injunction was unconditionally dissolved by said
Court & tried for naught and afterwards to wit: at
the September term of said Court A D 1857. said
defendant comes into said Court & dismisses his
said bill of Complaint & no further sought or
now seeks to prosecute the same and the said
plaintiff further avers that the lumber upon
which said Injunction was levied and from which
said plaintiff prohibited from selling or meddling
with was at the time of the issuing & service
of said Injunction to wit: at Lake County aforesaid
piled up in said yard as such kinds of lumber
are usually piled for daily sales & was then & there
in a good Merchantable Condition which was
then & there well known to the said defendant,

And said plaintiff further avers that at the
 time of the Commencing of said Chancery suit
 & the issuing & service of said Injunction &
 for a long time prior thereto, said defendant well
 knew the amount of money which said plaintiff
 had invested in said lumber business & the amount
 of business which the said Plaintiff was then doing
 as a lumber dealer at Waukegan in said County
 aforesaid and the business Credit which said
 plaintiff then had and enjoyed in said County
 & at Manitowoc where said plaintiff purchased
 his lumber with which to supply said yard &
 that he said defendant was not a Copartner of
 plaintiff or a joint owner with him in said Smith
 & Murphy's lumber or in or concerning any other lumber
 business, ^{or in or concerning any other} And the said Plaintiff further avers
 that by means of the Commencement of said Chancery
 suit & the procuring ^{& service} & issuing of said Injunction
 & the prosecuting of said suit & sustaining of said
 Injunction from the day of its service as aforesaid
 up to the time of the dissolution as aforesaid
 to wit at Lake County aforesaid by the said
 defendant against the said plaintiff as aforesaid
 and the several proceedings had thereon before
 the said Court before said Injunction was or
 could be dissolved and said Cause dismissed
 as aforesaid the said plaintiff was greatly injured
 in his Credit & reputation with & amongst all his

neighbors & acquaintances & all his business Customers
and patrons to whom he was in any wise
known and lost the use benefit & advantage
of his said lumber and the sale thereof
so levied Enjoined and said lumber during
the time that it was held by said Injunction
rotted damaged & spoiled so much so that
the same could not be sold in the market
in Wanigan in said County at the time of
the dissolution of said Injunction as aforesaid
for so much per thousand feet into ~~ten~~ to fifteen
dollars per thousand feet as it would have been
worth had it been in as good Condition as the
same was when said Injunction was served
or as it was worth in said Market at the
time of the service of said Injunction as
aforesaid and the said Plaintiff hath also
by means of the premises been forced & obliged
to lay out and expend & hath necessarily laid
out and Expended a large sum of Money to wit:
the sum of Five Hundred dollars in and about
the Employing of Counsel to defend said suit
& obtain a dissolution of said Injunction &
in & about the defence of said suit and the said
Plaintiff hath been & is by means of the premises
wholly ruined in his Circumstances & business Credit
to wit at Lake County aforesaid to the damage of the said Plaintiff
of two thousand dollars, and therefore he brings his suit. &c
W. S. Sears, Atty for Plff.

Endorsed. Filed May 14th 1859. At Notary Clerk
By A L Cortez Deputy.

Pleas

Lake County Circuit Court
June Term 1859.

James B Gorton
vs
John W Brown

And the said defendant by
H Kelley his Attorney, Comes and defends the wrong
and injury when &c and says that he is not guilty
of the said supposed grievances above in the said
plaintiffs declaration laid to his Charge, or any
or either of them or any part thereof in manner and
form as the said plaintiff hath above thereof Com-
plained against him, And of this he the said
defendant puts himself upon the Country for trial &c
And the plaintiff doth } H Kelley atty for Deft.
the like by W S Charles his }
atty }

And for a further plea in this
behalf the said defendant says the plaintiff ought
not to have or maintain his aforesaid action thereof
against him. Because he says that the said several
supposed Causes of Action in the said declaration
mentioned, did not nor did any or either of them
or any part thereof accrue at any time within two

years next before the Commencement of this suit, in
manner and form as the said plaintiff hath in his
said declaration complained against him the said
defendant. And thus the said defendant is
ready to verify &c. Wherefore the said defendant
prays judgment if the said plaintiff ought
to have or maintain his aforesaid action thereof
against him &c.

J. Kelly Atty for Def.

Endorsed "Filed Judge 15. 1859. A. B. Coates Clerk
per A. L. Coates deputy."

And afterwards to wit: on the 13th of September
in the year of our Lord one thousand Eight hundred
and sixty the said Plaintiff by his Attorney W. S.
Charles filed in the Court ^{first} aforesaid in said Cause
his certain Replication which is in the words
and figures following to wit.

The Circuit Court for the County
of Cook of the September term A.D. 1860.

John M. Brown }
vs

Jamies B. Gorton } Case
Change of Venue from Lake.

And the said plaintiff as to the said
Plea of the said defendant by him secondly above
pleaded saith that the said plaintiff by reason
of anything by the said defendant in that plea alleged
ought not to be barred from having and maintaining

his aforesaid Action thereof against the
said defendant because he saith that the
said several Causes of Action in his said
declaration mentioned did accrue within
two years next before the Commencement of
this suit and this he the said plaintiff
prays may be Enquired of by the Country..
And defet. doth the like)

by Blodgett & Upton
his attys

W S Searls
Atty for Def.

And afterwards to wit on the 13th day of April in
the year last aforesaid. The following among other
proceedings were had in said Court aforesaid to wit.
James M Brown }
^{vs}
James B Gordon } case

This day Comes the said Plaintiff
by W S Searls his Attorney, and the said defendant
by H. M. Blodgett his Attorney also Comes and moves
the Court to suppress the deposition of S B Stevens
William W Brown and L Nathan Manders
filed herein upon the ground of irregularity and
the Court being now fully advised in the premises
doth sustain said Motion and Orders that said
depositions be and the same hereby are quashed
upon the ground aforesaid, to which ruling
of the Court in quashing said depositions the

Plaintiff by his Counsel Now here Excepts, And
issue being joined herein between the parties
aforesaid it is thereupon ordered that a Jury
Come whereupon Come the Jurors of a Jury of
good and lawful men to wit: J. W. Norton
W. E. Andrews John Shent Elijah Powers. Moses Gray
L. Purley. Simon Doyle Thomas H. Moakley James
Campbell, John Bates, Henry Burnett, and
E. Alexander who being duly Elected tried and
sworn well and truly to try the issue joined
aforesaid And a true Verdict render according
to law and the Evidence, and after hearing a
part of the Evidence the Hour of adjournment
having arrived, it is ordered that said Jury have
leave to separate to meet the Court at the Calling
thereof on tomorrow Morning, nine o'clock.

And afterwards to wit: on the 14th day
of September in the year last aforesaid, the following
among other proceedings were further had in said Cause
in the Court aforesaid to wit:

James M. Brown }
vs } lease
James B. Boston }

This day again Come the said
parties by their Attorneys and the Jurors of the
Jury aforesaid also Come and having heard further
testimony in said Cause, the same not closed, and
the hour of adjournment having arrived, it is ordered

that said Jury have leave to separate to meet the Court on the coming in thereof tomorrow morning at nine o'clock.

And afterwards to wit: on the 15 day of September in the year last aforesaid, the following further proceedings were had in said Cause in the Court aforesaid to wit:

John M Brown
vs
James B Gorton } lease

This day again come the said parties by their attorneys and the Jurors of the Jury aforesaid also come, and having heard further testimony in said Cause, the same not being closed, and the hour of adjournment having arrived, it is ordered that said Jury have leave to separate to meet the Court at the coming in thereof on Monday Morning next at nine o'clock.

And afterwards to wit: on the 17 day of September in the year last aforesaid, the following further proceeding among others were had in said Cause in the Court aforesaid to wit:

John M Brown
vs
James B Gorton } lease.

This day again come the said parties by their attorneys and the Jurors of the

Jury aforesaid also Come, and Having now heard all the Evidence offered in said Cause, the Arguments of Counsel as well on the part of the Plaintiff as of the Defendant, and instructions from the Court retire to Consider of their Verdict, and afterwards return into Court and say "We the Jury find the Defendant guilty and Assess the damages of the Plaintiff by reason of the premises to the sum of Two Thousand dollars"

Whereupon the Defendant by his Counsel moves the Court for a new trial of said Cause and in arrest of Judgment.

And afterwards to wit: at the February Term of said Court to wit: on the 9th day of March A.D. 1861. the following proceedings among others were had and Entered of Record in said Cause, to wit

John W Brown }
vs } Case.
James B Cortow }

This day again Come the said parties by their Attorneys, and Counsel having been heard as well in support of the motion of the Defendant for a new trial of said Cause and in arrest of Judgment, as in opposition thereto. And the Court having Carefully Considered the premises and being now fully advised therein, doth order that said motion be and they each are hereby overruled, upon Condition that

the Plaintiff shall remit to the defendant the sum of Five Hundred dollars from the Verdict of the Jury herein, whereupon said Plaintiff in Open Court Consents to such remittance, and doth freely remit to the Defendant the said sum of Five Hundred dollars from the Verdict of the Jury aforesaid, to Each and all of which said rulings of the Court the Defendant by his Counsel Now here Excepts.

Therefore it is Considered by the Court that said Plaintiff do have and recover of ^{the} said defendant his damages of Two Thousand dollars in form as aforesaid by the Jury aforesaid assessed, less the said sum of five hundred dollars so as aforesaid remitted by the Plaintiff together with his Costs and Charges by him about his suit in this behalf Expended and have Execution therefor

Whereupon the said defendant by his Counsel Excepts. and prays an Appeal to the Supreme Court of the State of Illinois, which is granted by the Court upon Condition that the defendant shall within one week from this date Execute and file his Appeal Bond herein in the penal sum of Three Thousand dollars, Conditioned according to law, with John L Turner and Clark W Upton as sureties thereto,

And on Motion it is further Ordered that the Defendant have till the 10th day of April next to prepare and file his Bill of Exceptions in said Cause

And afterwards to wit on the 14th day of March
in the year last aforesaid the said defendant in the
Cause aforesaid filed ⁱⁿ the Court aforesaid their
Certain Appeal Bond in the words and figures
following to wit:

Know all men by these presents
that we James B Gorton as principal and John
L Turner and Clark W Upton as sureties are held
and firmly bound unto John M Brown in the
penal sum of Three thousand 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 and severally firmly by these presents.

Witness our hands and seals this
13th day of March A D 1861.

The Condition of the foregoing obligation is such
that whereas the said John M Brown did at the
February term of the Cook County Circuit Court
for the year A D 1861. recover a judgment
against the above bounden James B Gorton for
the sum of Fifteen Hundred Dollars and Costs
of such proceedings, from which said judgment
the said James B Gorton has prayed and taken
an appeal to the Supreme Court of the State of
Illinois. Now if the said James B Gorton shall
prosecute his appeal with effect and shall pay
said judgment Costs interest and damages in

Case the said Judgment shall be affirmed
 then the above obligation to be Void Otherwise
 to remain in full force and Effect.

Signed & sealed in presence
 of R Morse

James P Boston (Seal)
 John L Turner (Seal)
 Clark W Upton (Seal)

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the Record of proceedings in the Lake Co. Circuit Court, the Declaration of Plaintiff, final judgment and appeal bond in a certain cause latety ^{Circuit of Cook County} pending in said Court on the Common Law side thereof, wherein John M. Brown was Plaintiff and James B. Horton was Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this fourteenth day of April A. D. 1861

Wm L. Church Clerk.

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Supreme Court
No. 2 of Ills.

Jan. 18. Gorton
Appellant

vs.
John M. Brown
Appellee

Transcript of Record

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Filed Apl. 17. 1861
L. Seland

1861

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