

11894

No. _____

Supreme Court of Illinois

Norton, et al.

vs.

Dow, et al.

71641  7

No. 30
Amos Norton et al.
vs
Marcus F. Dow et al.

1849

11894

State of Illinois
County of Cook &c.

Pleas before the Honorable Jesse
B. Thomas one of the justices of the Supreme Court &
presiding Judge of the seventh judicial Circuit Court
of the State of Illinois of which said Circuit the County
of Cook forms a part, at a term thereof begun and
held at Chicago in said County, on the second mon-
day, being the twelfth day of June in the year of our
Lord one thousand eight hundred and forty eight, and
of the independence of the United States the seventy second,

Jessé B. Thomas Judge

Isaac Cook Sheriff

Jm A Boardman State Atty

Wm Samuel Board Clerk.

Be it remembered that hereoford, to wit, on
the thirteenth day of March A.D. 1848, came Thomas
Hoynes and filed in the office of the Clerk of the Cir-
cuit Court of the County and State aforesaid the fol-
lowing affidavit which is in words and figures as
follows to wit,

State of Illinois

Cook County &c.

Thomas Hoynes agent of Marcus
P. Dow John S King and John H Smith, Composing the
late firm of Dow, King, & Smith who are about to commence
a suit against Amos Norton George L Norton & Benjamin
Smith, trading under the name and style of P, G, L,
Norton, being first duly sworn deposes and says, That
Amos Norton and George L. Norton together with Ben-
jamin Smith are justly indebted to said firm of
Dow King & Smith, for the use of Lawrence Trimble &
Company in the just and full sum of four hundred
dollars, with interest thereon at and after the rate of

seven per centum per annum from the fifteenth day of
May A.D. 1846 upon and for a certain promissory note
of which the following is a copy,

\$400.

New York Feb, 12 1846

Three months after date we jointly and
severally promised to pay to the order of Messrs Dow-
King & Smith at the Union Bank New York, Four
hundred Dollars for value received.

Signed

A. G. Norton

Benjamin Smith

And the affiant further states that the said Amos
Norton and George L. Norton are not residents of the
State of Illinois, and have property in the County of
Cook & State of Illinois liable to be taken in attach-
ment of further said note.

Subscribed and sworn to before
me 11th March 1848.

W. Hoynes,

James Curtis, Ck.

And afterwards to wit on
the same day and year last aforesaid to wit the thir-
teenth day of March A.D. 1848. came Mark Skinner &
Thomas Hoynes Esq. attorney of the said Dow King &
Smith and filed in said Clerk's office the certain power
of attorney, which is in words and figures following
to wit:

"We Joseph Lawrence, David Trumble, & Stillman
S. Clapp merchants, transacting business in the City of
New York under the name, style and firm of Lawrence
Trumble Company & Marcus T. Dow, John T. King and
John H. Smith, late merchants transacting business
in said City, under the name style and firm of Dow
King & Smith do hereby authorize Mark Skinner and
Thomas Hoynes, of the City of Chicago and each of them, in
our names, or that of those of either or any of us, or lawfully
otherwise, to make execute & deliver any or all instruments

meals in writing with or without seal and to do all other acts necessary or expedient for the Commencement or prosecution of any suit or proceeding at law or in equity, for the collection of the amount of or due or to grow due upon a certain promissory note, for four hundred dollars bearing date, February 12. 1846 made by A & G Horton & Benjamin Smith jointly, severally, payable three months after date to the order of Dow, King & Smith.

Witness our hands and seals this tenth day of November 1847

In presence of	Joseph Lawrence	Seal
Job C Brown	Daniel Trumble	Seal
Joseph C Lawrence,	Stillman S Clapp	Seal
	Marcus J. Dow	Seal
	John S King	Seal
	John H Smith	Seal

State of New York
 City & County of New York

See it remembered that on the this tenth day of November in the year of our Lord one thousand eight hundred and forty seven, before me the subscribed a Commissioner in and for the State of New York appointed by the Governor of the State of Illinois with full power and authority, to take the acknowledgements ^{of proof} of deeds to be used or recorded in said State of Illinois and to administer oaths, affirmations and to take depositions duly sworn, residing in the City of New York appeared Joseph Lawrence Daniel Trumble, Stillman S Clapp Marcus J Dow John S King & John H Smith who are personally known to me to be the individuals described in and who executed the within letter of attorney, and acknowledged the same as their free act and deed for the purposes therein mentioned.

LSB

In testimony whereof I have subscribed my name & affixed my seal of office the day & year above written. Joseph C Lawrence Commissioner for the State of Illinois 87. Wall St.

And afterwards, to wit on the said thirteenth day of March A.D. 1848. Came the said plaintiffs by Skinner Hoynes their attorney and file the certain bond for costs herein which is in words and figures following to wit,

State of Illinois

Cook County, Circuit Court, 3cs.

Marcus F. Dow, John Sking and John
Smith who sue for the use of
Lawrence Trimble & Company

Amos Norton, George L. Norton &
Benjamin Smith.

Cook County, ss.

I do hereby enter myself security for costs, in this 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 Eleventh day of March 1848.

Skinner Hoynes,

And on the said thirteenth day of March A.D. 1848. Came the said plaintiffs by Skinner Hoynes their attorney and file their bond herein which is in words and figures as follows to wit:-

Know all men by these presents. That we Marcus F. Dow, John S. King, John Smith, Joseph C. Lawrence, Daniel Trimble, Stillman S. Clapp, Thomas Hoynes & Mark Skinner are held and firmly bound unto Amos Norton & George L. Norton in the penal sum of One thousand Dollars lawful money of the United States for the payment of which said sum well and truly to be made we bind ourselves our heirs Executors and administrators jointly severally by these

present, Sealed with our seals, and dated this Eleventh
day of March A.D. 1848.

The Condition of the above obligation is such, that
whenever the above bounden Marcus F Dow, John King
& John H Smith who sue for the use of Lawrence Trim-
ble & Company have on the day of the date hereof prayed
an attachment out of the Cook County Circuit Court of
said County, at the suit of said Marcus F Dow, John S
King & John H Smith for use of Lawrence Trimble & Company
against the Estate of the above named Amos Norton &
George L Norton, for the sum of Eight hundred Dollars,
and the same being about to be sued out of said Court
returnable on the second Monday of June next, to the
term of the said Court then to be holden Now if the said
Marcus F Dow, John S King & John H Smith shall
prosecute their said suit with effect, in case of failure
therein shall well and truly pay and satisfy the
said Amos Norton & George L. Norton, all such Costs
in said suit, and such damages as shall be awarded
against the said Dow King & Smith their heirs, Exec-
utors and administrators in any suit or suits which
may hereafter be brought for wrongfully suing out
the said attachment then the above obligation to be
void otherwise to remain in full force and ^{verge} effect.

Marcus F Dow Eccl
by Mark Skum his atty in fact Eccl
John S King, Eccl
by Mark Skum his atty in fact Eccl
John H Smith Eccl
by Mark Skum atty in fact Eccl
Joseph Lawrence Eccl
by Mark Skum atty in fact Eccl
Danne Trimble Eccl
by Mark Skum atty in fact Eccl
Sullivan S Clapp Eccl
by Mark Skum atty in fact Eccl
Mark Skum Eccl
J^r Hoym Eccl

And afterwards to wit on the said thirteenth
day of March A.D. 1848. then issued out of said Circuit
Court, The Peoples writ of attachment in the above
suit which is in words of figures as follows to wit,

State of Illinois
Cook County 3rd

The People of the State of Illinois to the
Sheriff of said County Greeting:—

Thomas Thomas Heyne agent for Marcus &
Dow John King & John H Smith who sue for the
use of Lawrence Trumble & Company hath com-
plained on oath to Samuel Hoard Clerk of the Cook
County Circuit Court of Cook County, that Amos
Norton George L Norton & Benjamin Smith trading
under the name and style of A G L Norton, is justly
indebted to the said Dow King & Smith to the amount
of Four hundred Dollars, and — cents; and
oath having been also made that the said Amos
Norton George L Norton and Benjamin Smith
reside out of this State so that ordinary process of law
cannot be served upon them and that the said Norton
& Smith have property in the County of Cook
and State of Illinois liable to be taken in attachment
And the said Dow King & Smith suing for the use of
Lawrence Trumble & Company having given bond
and security according to the directions of the act
in such case made and provided, We therefore
Command you that you attach so much of
the Estate real or personal of the said Amos Norton
George L Norton & Benjamin Smith trading under
the firm of A G L Norton to be found in your County,
as shall be of value sufficient to satisfy the said debt
and Costs according to the said Complaint, and
such Estate so attached in your hands to secure, or
so to provide that the same may be liable to further
proceedings thereon, according to law at a term
of said Cook County Circuit Court to be holden at Chi-
cago within and for the County of Cook on the second
Monday of June next so as to compel the said Amos

Norton George L Norton & Benjamin Smith trading as
aforesaid to appear and answer the Complaint of the
said Marcus J Dow, John S King & John H Smith
who sue as aforesaid, and that you summon Aras
Norton George L Norton & John H Smith as garnishes
to be and appear at the said Court on the said second
Monday of June next then and then to answer to
what may be objected against them, when and
where you shall make known to the said Court
how you have executed this writ, And have you
then and then this writ.

Witness the Honorable Jesse B Thomas Judge
of our said Court and the seal thereof at
Chicago in said County this thirteenth day
of March in the year of our Lord one thousand
and eight hundred & forty eight.

Samuel Hoard Clerk.

And on the back of said writ thus appears
the following endorsement, to wit,

Executed by attaching the Schooner Aurora Pearson
and a quantity of lumber in the yard of said Norton's
on the South Branch of the Chicago River supposed
to be 50 M. March 13, 1848. Norton & Smith not
found

Attaching

\$ 50

1 mile

.. 06 1/4

Retn

.. 12 1/2 \$ 68 1/2

J. Cook Sheriff By John Beards, Depty

And afterwards to wit on the seventeenth day of
April A D 1848. Came the same plaintiffs by Skimm
& Hoyns their attorney and file their declaration in
his cause which is in words and figures as
follows to wit,

State of Illinois

Cook County 301.

Circuit Court of Cook County of the June

term in the year of our Lord one thousand eight hundred and forty eight,

Marcus J. Dow John S King & John H Smith
for the use of Lawrence Trumble & Company plaintiffs
in this suit by Skinner & Hoynes, their Attorneys, Com-
plain of Amos Norton, George L. Norton & Benjamin
Smith Defendants in this suit in Custody &c of a plea
of trespass on the Case on promises, For that whereas the
said defendants on the twelfth day of February in
the year of our Lord one thousand eight hundred
and forty six, at New York to wit in the County of
Cook aforesaid made their certain promissory
note in writing, bearing date the same day and
year aforesaid, and thereby then and then jointly and
severally promised to pay to the order of the said
plaintiffs by the name and description of Dow
King & Smith, Three months after the date thereof
at the Union Bank New York four hundred dollars
for value received and then and then delivered
the said note to the said plaintiffs, By reason
whereof, and by force of the Statute in such case
made and provided, the said Defendants became
liable to pay to the said plaintiffs the said sum of
money mentioned in the said note, according to
the tenor and effect thereof, and being so liable, and
in consideration thereof the said defendants afterwards
to wit on the same day and year aforesaid at the place
aforesaid undertook and then and then faithfully
promised the said plaintiffs to pay them the said sum
of money mentioned in the said note according to the
tenor and effect thereof, And whereas also the said
defendants, afterwards to wit on the first day of March
in the year of our Lord Eighteen hundred and forty eight, at
the place aforesaid were indebted to the said plaintiffs
in the sum of Eight hundred Dollars for divers goods

wares and merchandise, by the said plaintiff, before that time sold and delivered to the said defendants, and at this instance and request, and also in the further sum of eight hundred dollars, for money by the said plaintiff, before that time lent and advanced to the said defendants, and at this like instance and request, and for other money by the said plaintiff before that time paid laid out and expended for the said defendants and at this like instance and request, and for other ^{by the said defendants,} money, before that time had and received to and for the use of the said plaintiff and being so indebted, and in consideration thereof the said defendants afterwards to wit on the same day and year last aforesaid at the place aforesaid undertook and faithfully promised the said plaintiff to pay them the said several sums of money above mentioned when they should be thereto afterwards requested. Yet the said defendants have not paid to the said plaintiff the whole or any part of the said several sums of money above mentioned although often requested or but to pay the same or any part thereof to the said plaintiff the said defendants have hitherto wholly neglected and refused and still do neglect and refuse, to the damage of the said plaintiff of eight hundred dollars and therefore they bring such P. Skinner & Hoynes

Attorney for Plaintiff

Copy of note and accounts declared upon,

\$400.

New York Feby 12. 1846.

Three months after date we jointly and severally promise to pay to the order of Messrs Dow King & Smith at the Union Bank New York Two Hundred Dollars for value received,

A. G. L. Norton

Benjaⁿ Smith

A. G. L. Norton & Dow King & Smith

2d Goods nam^e & Merchandize

For money loaned

\$800.00

\$800.00

And afterwards to wit on the thirteenth day of June
A.D. 1848. Came the said plaintiffs by Skinner & Hoynes
their attorneys and filed there certain notice of publication with
a certificate thereto attached which are in words and
figures as follows to wit,

State of Illinois }
Cook County } 3.

Marcus J Dow John S King &
John H Smith who are for the
use of Lawrence Trimble & Co.

Amos Norton George S Norton
& Benjamin Smith trading under
the name & style of A & G S. Norton

Cook Circuit Court
June Term 1848.

Public Notice is hereby

given to the said Amos Norton, George S. Norton & Benjamin
Smith that a writ of attachment issued out of the office
of the Clerk of the Circuit Court in and for said County of Cook
dated the 30th day of March A.D. 1848. at the suit of the said
Marcus J Dow John S King & John H Smith for the use
of Lawrence Trimble & Co. for the sum of \$400. directed to
the Sheriff of Cook County, which said writ has been re-
turned Executed. Now therefore unless you the said defen-
dants. shall personally be and appear before the said
Cook Circuit Court. on or before the first day of the next
term thereof, to be holden at the Court House in the City of
Chicago on the second Monday of June next. A.D. 1848.
give special bail and plead to said plaintiffs action
judgment will be entered against you and in favor of the
said plaintiffs and so much of the property attached as
may be sufficient to satisfy the said judgment and costs.
will be sold to satisfy the same.

Saml Howard. Clerk.

Skinner & Hoynes p[er] attys

Cook Co. Cir Ct.

This certifies that the appended has been published in the Chicago Democrat a newspaper printed in the City of Chicago, County of Cook & State of Illinois four weeks commencing with the 28th day of March and ending with the 28th day of April, 1848. and that I have received dollars in full for publishing the same.

D. W. Bradley publisher
for the Proprietor,

And afterwards to wit on the said thirteenth day of June 1848 it being one of the days of the June term of the Cook Circuit Court in said year the following among other proceedings were had to wit.

Marcus J. Dow John Sking &
John H. Smith vs for the use of
Lawrence Trumble & Co.

vs
Amos Norton, George L.
Norton & Benjamin Smith

} Attachment

This day comes into open Court Ralph V. McCros, and moves the Court to quash the attachment issued in this cause for the insufficiency of the affidavit, whereupon the plaintiffs by Skinner & Hoynes their attorneys move the Court for leave to amend which is granted.

And afterwards on the fourteenth day of June A.D. 1848, the following among other proceedings were had in said Court to wit.

Marcus J. Dow John Sking &
John H. Smith vs for the use
of Lawrence Trumble & Co.

vs
Amos Norton George L. Norton
& Benjamin Smith

} Attachment

This day comes the

said plaintiffs by Skinner & Hoyle their Attorneys and
it appearing to the Court that due notice of publica-
tion has been made in this cause, and the said
defendants being demanded to come not in or any
one for them but herein fail and make default
which is ordered to be entered wherefore the said
plaintiffs ought to recover of the said defendants
their damages herein sustained on occasions of the prom-
ises but because those damages are uncertain and
unknown to the Court & this suit being founded
on an instrument in writing for the payment of
money only it is referred to the Clerk to assess
the damages and the Clerk having assessed the
damages reports that they amount to the
sum of four hundred & eighty six dollars and
thirty three Cents, which said report is
ordered to be accepted and Confirmed, Where
upon R. V. McCree on the part of the said
defendants moves the Court in arrest of
Judgment.

And afterwards to wit on the 28th day
of June A.D. 1848 at yet of this same term the
following among the proceedings were had
to wit

Marcus F. Dow John S. King & John
A. Smith use of Lawrence Trumble & Co

109
Amos Norton George L. Norton
and Benjamin Smith

} Attachment

This day again
came the parties by their attorneys, and after argu-
ment had upon the motion in arrest of Judg-
ment herein It is ordered that the same be overruled,
Therefore it is Considered that the said plaintiffs have
and recover of the said Defendants their damages

of Four hundred and sixty six dollars and thirty three cents in form aforesaid assessed, together with their Costs and Charges herein Expended, and that they have execution therefor, Therefore the said Defendants Amos Norton & George L Norton pray an appeal, which is granted by their entering into bond, with Oliver G Butts and Franklin Patchellor as their securities in the sum of eight hundred dollars within forty days.

And afterwards to wit on the twenty seventh day of July A.D. 1848 Came the said Amos Norton & George L. Norton and file their appeal bond in this cause which is in words and figures as follows to wit,

Know all men by these presents that we Amos Norton, George L Norton Oliver G Butts and Franklin Patchellor are held and firmly bound unto Marcus F. Dow John S King & John H Smith who sue for the use of Lawrence Trumble & Co, in the penal sum of Eight hundred dollars lawful money of the United States for the payment of which said sum 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 26th day of July 1848.

The Condition of this obligation is such that whereas at the same term of the Cook County Circuit Court A.D. 1848. to wit on the twenty eighth day of June A.D. 1848. the said Marcus F. Dow John S King & John H Smith for the use aforesaid recovered a judgment against the above bounden Amos Norton George L Norton and Benjamin Smith for the sum of Four hundred and sixty six dollars and thirty three cents and Costs from which said Judgment the said Amos Norton and George L Norton prayed an appeal to the Supreme Court of the State of Illinois

which was granted upon their entering into bond in
within forty days in the penal sum of Eight hun-
dred dollars with Oliver G Butts and Franklin
Batchelor as their securities. Now if the said Amos
Norton and George L Norton shall prosecute their
appeal with effect or in case the said Judgment
shall be affirmed in the said Supreme Court, shall
pay all judgments, costs interests and damages which
may be awarded against them in said Court, Then
this obligation to be void otherwise to remain in
full force and virtue

In presence of
N H Hunsford

Amos Norton *Seal*
Geo. L Norton *Seal*
Oliver G Butts *Seal*
Franklin Batchelor *Seal*

Approved by me this 27th
day of July 1848.
Charles Hoard Clerk

State of Illinois
Cook County } ss.

I Louis J Hoard Clerk of the Circuit
Court in and for the County of Cook in the State of
Illinois do hereby certify the foregoing Record, to be
a full true and perfect transcript of the records and
proceedings in the above entitled cause, as the same
appear in my office.

In testimony whereof I have hereunto
set my hand and affixed the seal of
said Court at Chicago in said County
this 9th day of January 1849.

L. J. Hoard Clerk

Amos Norton et al appellants

^{vs}
Marcus F. Dow et al - appellees

And now comes the said appellants and assigns the following errors -

1st Because the writ of Attachment in this behalf issued was not tested as the laws direct -

2^d Because the Court proceeded to render judgment without the issuing of any legal or sufficient writ, for the purpose of bringing the defendants before the Court, so as to enable the Court below to take jurisdiction of the parties -

Marcus F. Dow et al appellees

vs

Amos Norton et al appellants

Wick
for appellees.

And now comes the Honorable Court and by their Honors John M. Wilcox & that there is no error in record or proceedings aforesaid as an alleged fact forth by the said appellants & therefore they pray that said Judgment & proceedings may in all things be affirmed &c

John M. Wilcox City

for appellants

Cook Circuit Court

A. & S. Norton

ads

Dow, King & Smith

Copy of Record

Filed June 12, 1849
H. C. Clark Clk.

See 7th page left.

June Term 1849.

Amos Barton & George S. Barton
vs

Marcus F. Dow, John S. King &
John H. Smith for use &c.

Appeal from Cook.

Judt. app. June 19, 1849.

Appellants - Costs.

Fil. from Court, Appellants 25, Appd. appd. judt. 25, 50,	56 $\frac{1}{4}$
Fil. opinion 64, Ent. judt. & opinion 1.80, copy of judt. 50,	2.36 $\frac{1}{4}$
Copy. seal 50, Ent. judt. for copy 25, Ord. for execution 25,	1.00
Execution 50, Fil. & Dh. 184, Exffs. uter. 12 $\frac{1}{2}$, bill of costs 37 $\frac{1}{2}$	1.18 $\frac{3}{4}$
Copy 25, postage 20, Ent. Satisfaction 25,	.70
	<hr/>
	5.81 $\frac{1}{4}$
Or. By balance of \$5. pd. after paying appellants costs	.17 $\frac{1}{2}$
	<hr/>
	Am't. \$ 5.63 $\frac{3}{4}$

A true copy from my fee book as taxed & recorded therein.
S. Leland Clk. Sup. Court.

Supreme Court

Storton & Storton
vs
Marcus F. Dow et al.

Bill of Costs \$5.63³/₄

State of Illinois, ss

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of Cook-County---Greeting:
WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of

Amos Norton & George L. Norton _____

you cause to be made the sum of *five* _____ dollars and
sixty three & three fourths ^{cents} in the said Supreme Court, which *Clarence F. Dow,*
John S. King & John H. Smith for the use of *Lawrence, Tremble & Co.*
lately recovered against *them* - before the Justices of our said Supreme Court, as appears to
us of record, and make return hereof in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this *27th* _____ day of *July* _____
in the year of our Lord one thousand eight hundred
and *forty nine*.

C. Deland Clerk of the Supreme Court.

Supreme Court.

Amos Norton &
George S. Norton
vs
Marion F. Dow et al.

Execution as Plffs. -
Bill of Costs \$5.63³/₄

Oliver G. Beatts & Franklin
Batcheller Esqs in appl. bond.

This Execution returned
satisfied in full
May 1850 J Cook
Filed May 29, 1850. J Cook
S. Leland Clk. C. C.

Prod. costs herein \$5.63³/₄
May 27, 1850.
S. Leland
per Geo. S. Fisher

property has being sold
on this and the Cook tent
the money for this

by return of the within show bond upon a list of bonds
August the 25th 1849 J Cook Clk. C. C.
D. McCarry atty.