

8863

No. _____

Supreme Court of Illinois

Gray

vs.

Kisk

71641  7

SUPREME COURT

Of the State of Illinois.

1st GRAND DIVISION.

June Term, 1868.

No. 12

Culver, Page & Hoyne, Stationers, Chicago.

8863

Pleas at a Circuit Court begun
and holden in and for the
County of White and State
of Illinois at the Court House
in the town of Carro on the
third Monday being the fifteenth
day of April A.D. 1867.

Present the Honourable James M. Pollock
Judge of the twelfth Judicial Circuit of
said State and sole Judge presiding.

It is remembered that heretofore
to-wit on the 9th day of January A.D. 1867
the following writ of Summons was
issued from the Clerk's office of said Court
in the following styled cause to-wit:

Sum. C.

State of Illinois
White County ^{vs} The People of the State
of Illinois to the Sheriff of said County
Greeting: We command you that you
summon William W. Gray if to be found
in your County personally to be and appear
before the Circuit Court of said White County
on the first day of the next Term thereof to be
holden at the Court House in Carro in
said County, on the Third Monday in the
month of April next to answer unto
Frederick B. Kirk in a plea of Assumpsit
to the damage of said plaintiff of \$1000.
damages as he says.

And have you then there this writ with

an endorsement thereon in what manner
you may execute the same

Witness James B. Hinde Clerk of
said Court and the Judicial Seal
thereof at Cairo this 9th day of
January A.D. 1867

Return

J. B. Hinde Clerk
Which said writ was duly returned into
Court by the Sheriff with the following
endorsement thereon, to wit:

Served the within Writ by reading to the
within named William W. Gray as I am
therein commanded this Ninth day of
January A.D. 1867.

John D. Martin

Sheriff of White County Ills

And afterwards to wit: on the 4th day of
March A.D. 1867 the said plaintiff by his
attorneys filed in said cause the following
declaration therein, which said declaration
is in the words and figures following to wit:

State of Illinois } White Circuit Court
White County } 388 April Term 1867

Fredrick Kirk the plaintiff in this
suit complains of William W. Gray the
defendant in this suit of a plea of trespass
on the case on promises for that whereas
heretofore to wit on the 1st day of December
A.D. 1866 at the County of White and State

None

of Illinois, the said defendant bargained
for and bought of the said plaintiff and
the said plaintiff at the special instance
and request of the said defendant, then
and there sold to the said defendant a
large quantity of meat, to wit eight
slaughtered hogs, at the rate or price of
Ten Dollars for each and every hundred
pounds thereof, provided the same should
average in weight over two hundred pounds
each, with a reduction at the rate of One
Dollar per hundred pounds if they the
said Hogs, should average in weight less
than two hundred pounds, to be delivered
by the said plaintiff to the said defendant
between the 20th day of December A.D. 1866
and the 20th day of January A.D. 1867 at
Grayville, Illinois, and to be paid for by
the said defendant to the said plaintiff
on the delivery thereof as aforesaid, and
in consideration thereof, and that the said
plaintiff at the request of the said defend-
ant, had then and there promised the said
defendant to deliver the said meat to the
said defendant in the time and at the
place aforesaid, he the said defendant
promised the said plaintiff to accept the
said meat of and from him the said
plaintiff, and to pay him for the same on

the delivery thereof to him the said defendant, as aforesaid. And although the said plaintiff afterwards and within six weeks next after the making of the said promise and undertaking of the said defendant to wit: on the 1st day of January A.D. 1867 at Grayville, Illinois, aforesaid was ready and willing and then and there tendered and offered to deliver the said meat to wit: Eight slaughtered hogs averaging in weight over two hundred pounds each, and weighing in all Nineteen hundred and Eighty one pounds to the said defendant, and then and there requested the said defendant, to accept the same, and to pay him the said plaintiff, for the same as aforesaid, yet the said defendant did not, nor would, at the said time when he was so requested as aforesaid, or at any time before or afterwards, accept the said meat or any part thereof, or pay the said plaintiff, or pay him for the same as aforesaid, but then and there wholly neglected and refused so to do.

And whereas, also, the said defendant, heretofore to wit, on the day and year first aforesaid at the County and State aforesaid was indebted to the said plaintiff in the further sum of One thousand dollars for

divers slaughtered Hogs before that time
sold and delivered by the said plaintiff to
the said defendant at his request.

And being so indebted, he the said
defendant in consideration thereof, afterwards
to wit on the day and year aforesaid, at the
County aforesaid undertook and promised
the said plaintiff to pay him the said sum
of money when requested, yet though
often requested the said defendant hath
not paid said sum of money but wholly
neglects and refuses so to do.

To the damage of the said plaintiff
of One Thousand dollars, wherefore he brings
suit &c

James & Casey and McDowell
attys for Plaintiff

And afterwards to wit on the 23rd day
of April A.D. 1867 the said defendant by
his attorneys filed the following plea in
said cause to wit. And on which plea the
said Plaintiff joined issue as follows to wit.

William W. Gray
at
Frederick Kirk
Assumpsit
White Circuit Court
April Term 1867.

The Deft comes & Defends the wrongs
& Injuries when & where &c and for plea says
he did not undertake and promise in

Chas

manner and form as the said Plaintiff
hath thereof complained against him & of this
he puts himself upon the Country. &c
Cubs & Conger
attys

Spec,

And the Plaintiff doth the like.
Tanner & Casey & McDowell
For Plff.

And afterwards to wit. at the April Term
of said Court to wit. on the 25th day of
April 1867 being the eleventh day of said
term the following proceedings and
judgments was had and entered and
made matter of record in said case to wit
Frederick Beck

N^o 53

vs
William W. Gray
vs Assumpsit

July month

And now at this day
comes the said Plaintiff by Tanner, Casey
and McDowell his attorneys, as well as the
said defendant by Cubs & Conger his attorney
and issue being now joined thereon it is
ordered by the Court that a Jury come
whereupon came a jury to wit. Samuel A.
Falkner, Solomon Charles, Samuel V. Williams,
Wiles McCallister, Alexander Hughes, John A.
Cotton, Jacob C. Parker, James T. Watcliff,
William Walker, John G. Colland, George W.
Crabtree and Joseph Surrall twelve good and

lawful men who being duly elected tried and sworn well and truly to try the issue joined, and being now fully advised upon their oaths do say and the jury find for the plaintiff and assess his damages at \$198.10. It is therefore considered by the court that the said plaintiff recover against the said defendants the said sum of One hundred and ninety eight dollars and ten cents his damages as assessed as aforesaid, together with his costs in and about his suit in this behalf expended, by the clerk to be taxed, and thereof have execution.

Whereupon the said defendant prays an appeal from said judgment, which is now allowed upon his filing bond with James R. Webb his security in the sum of four hundred dollars, in twenty days, Bill of Exception to be presented and signed during the term.

Whereupon afterwards to wit, on the 14th day of May 1867 the said defendant filed in said cause his said appeal bond in the words and figures following to wit:

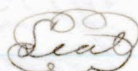
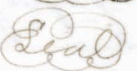
"Know all men by these presents that we William W. Gray and James R. Webb of the County of White and State of Illinois are held and firmly bound unto Frederick Kirtz, also of the same County and State in the penal sum of Four hundred dollars for

Appeal Bond

the payment of which will 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 14th day of May A. D. 1867.

The condition of the above obligation is such that whereas the said Frederick B. Kirk did on the 30th day of April A. D. 1867 in the Circuit Court in and for the County of White and State of Illinois recover a judgment against the above bounden William W. Gray for the sum of One hundred and ninety eight dollars and ten cents (\$198.10) Damages, and the costs of suit from which said judgment of the said Circuit Court the said William W. Gray has prayed for and obtained an Appeal to the Supreme Court of said State. Now if the said William W. Gray shall duly prosecute his appeal aforesaid with effect, and shall moreover pay the amount of the judgment costs interest and Damages, rendered, and to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court then the above obligation shall be null and void, otherwise to remain in full force and virtue.

Wm W. Gray 
James K. Webb 

Next afterwards to wit, on the 24th day of May
Honorable Judge M. Pollock Judge of said Court returned and
A. D. 1867 an ~~undisputed~~ filed in said case
the following Bill of Exemption, in the words and figures
following to wit, to say,

"

Fredrick Kirk

Said Exemption

"

William W Gray

Plaintiff

It is remembered that on the
trial of the above styled cause the Plaintiff Fredrick
Kirk was produced in his own behalf as a witness to
sustain the issue in his behalf and on his examination it
appearing that the contract existing between the said
Plaintiff and the said Defendant rested in writing,
Whereupon the same was produced and identified as the
contract existing between them, which said contract is
in the words and figures following, to wit, to say,
Enfield Ill. White County

Contract "

"

August 6th 1866

" I have this day sold W W Gray 7 or 8 good fat
" merchantable pork hogs to be well slaughtered
" cleaned and delivered in good order and condition at
" his pork house in Grayville Illinois between the 20th
" of December and the 20th of January next for which
" I am to receive Ten dollars per 100 lbs on delivery
" for an average of 200 lbs and one cent per pound to
" be deducted of the price if they fall short of that
" average none of said hogs to weigh less than 140 lbs

Fredrick Kirk

Now therefore the said Defendant by his
counsel objects to the reading of said written

agreement in evidence to the Jury, for the reason
that the same was not set out in Plaintiff Declaration
and the further reason that no copy of the same was
filed with the Declaration ten days before the
commencement of this Court, which objections were then
and there by the Court overruled and the agreement
permitted to be read - To the Jury of the Court
in overruling the objections of Deft. aforesaid, and
permitting said agreement to be read the Deft. did
then and there by his Counsel except, and did then
and there tender this his Bill of Exception which is
allowed. And whereas said Defendant by his
Counsel did further object to the reading of said
agreement to the Jury for the reason that said agreement
was not stamped in accordance with the Internal Revenue
laws of the United States, which objection was then and
there by the Court overruled, and the agreement permitted
to be read to the Jury. To the Jury of the Court in
overruling said objection and permitting said agreement to be
read said Defendant did then and there by his Counsel
except, and did then and there tender this his Bill of
Exception, which was then and there signed and allowed
as a part of the Record in this case. Whereupon, and after
hearing the evidence in the case, the jury retired to
consider of their verdict and did afterwards return into Court
a verdict as follows "We the Jury find for the Plaintiff and
assess his Damages at the sum of \$198.¹⁰/₁₀₀"
To the entering of Judgment upon said Verdict the said
Defendant did then and there object, for the reason

that there was no account of Plaintiff on file or any
written instrument read or upon file upon which
judgment could be entered, which objection was
then and there by the Court overruled, and judgment
entered on the Verdict, to the annulling of which said
Motion and entering judgment on said Verdict said
Defendant did then and there by his Counsel except,
and did then and there tender his Bill of Exceptions
which is also signed sealed and allowed as part of the
Record in this Cause

(Signed)

James M. Pollock
Judge

State of Illinois
White County ss James R. Hinds Clerk of
the Circuit Court in and for said County do hereby
Certify that the foregoing is a true Transcript of
the Record and proceedings of said Court, as well as
of the Bill of Exceptions filed therein in the case of
Anderson Kirk against William W. Gray, in an
action of Assumpsit, as shown by the Records in my
Office.

In testimony whereof I have hereunto set
my hand and affixed the seal of said
Court at Morris this 24th day of
May AD 1867

J. R. Hinds Clerk

Fredric Lisk
vs
William N. Gray

Dr suspect with 5 per
ct damage

Filed Aug. 20th 1867
R. W. Willcutt
clerk

Amount paid out - 3.46
Cost & Stamp - 75
\$ 4.21

Supreme Court - First Grand Div
Oct 3rd 1808

William Gray }
vs }
Frederick Kirk } Appeal from White

least Suprem Court will
please issue Procedendo & execution
against said William Gray
and Obeyes
James Casey
attys for
Appellee

Gray
or
Risk

Receipt

paid 3rd Oct 1808

W. Williams
clerk