

No. **12209**

Supreme Court of Illinois

Morton

vs.

Tinney

State of Illinois:
Supreme Court.

3^d Grand Division

June Term A. D. 1855

George Montow

vs

William A. Penney

And now comes the
Appellant by his attorneys and says
that in the record and proceedings in
said cause there is manifest and
manifest error; and the said
appellant shows and assigns as error
in said cause

1. The said Court erred in
permitting the said promissory note
to be read in evidence

2. The court erred in over-
ruling the said appellants objections
to receiving said promissory note in
evidence

3. The court erred in rendering judg-
ment against the said appellant.

Wherefore said appellant
prays that the said judgment may be
reversed and set aside by judgment of
the Court here.

Manning Merriam
Atty for appellant

And Now Comes the Appellee by
his Attorney and says, that in
the Record and proceedings and
in the rendition of the Judgment
aforesaid there is no Error &
prays that the said Judgment
may be affirmed

July 10 1855 *A. B. Smith*
Atty for Appellee

Shew to the Circuit Court of Sagwell County
and State of Illinois, at a Term begun and
held at Pekin, on the fifth Monday of the
Month of April, in the year of our Lord,
One thousand eight hundred and fifty
five, before the Hon. David Davis, Judge
of the Eighth Judicial Circuit of the State
of Illinois. Composed of the Counties of
Sangamon, McLean, Sagwell, &c.

Be it remembered, that on the 21st day of March, in the
year of our Lord, one thousand eight hundred and fifty
five, William A. Tenny by his attorney E. Jones Esq. filed his
process in the office of the Circuit Court of said County,
in the words and figures, as follows, to-wit:

State of Illinois	}	In the Circuit Court
Sagwell County		To Spring Term 1855
William A. Tenny		vs In Debt
"	vs	Debt \$300.00
George Morton	}	Damages \$300.00
Clerk will issue process as above returnable as		
above		Jones for Plaintiff

And, now, afterwards, to-wit: do-wit: on said 21st
day of March A.D. 1855, summons was issued in the words and
figures, as follows, to-wit:

State of Illinois. } The People of the State of Illinois to the
Sagwell County } Sheriff of said County; Greeting:
We command you that you summon: George Morton
if he shall be found in your County, personally to be
and appear before the Circuit Court of said County
on the first day of the next term thereof to be held at
the Court House in Pekin, in said County on the
fifth Monday of month of April next to answer unto

William A. Tinney in a plea of Debt. Three hundred
dollars to the damage of the said plaintiff as he says
in the sum of Three hundred Dollars And have you
then and there this writ with indorsement thereon, in what
manner you shall have executed the same.

Witness John A. Jones, Clerk of our said Court
and the seal thereof, at Pekin aforesaid, this
21st day of March A.D. 1855

John A. Jones Clerk Circuit Court.
Served the within writ by reading the same to the
within George Morton this 21st day of March 1855
Fees serving 50
Returning $\frac{10}{60}$
Thomas A. Reeves S.T.C.
By C. Williamson Deputy

Now, afterwards; to wit: on the Nineteenth day
of April, A.D. 1855, the Plaintiff by his
Attorneys Jones and Prettyman files his
declaration in the words and figures, as
follows, to wit:

State of Illinois } Of the Spring Term of
Logan County } Logan Circuit Court
A.D. 1855.

William A. Tinney plaintiff in this suit
Complains of George Morton, defendant
in this suit, summoned &c. of a plea that
he render to the said William A. Tinney,
the sum of Three hundred dollars of
Lawful Money of the United States which
he owes to and unjustly detains from
him, For that whereas, the said defen-
dant heretofore to wit: on the twenty third (23^d)
day of October Eighteen hundred and fifty
four (1854) at the State and County aforesaid.

„Made his certain promissory note in writing bear-
„ing date a certain day and year therein named
„to wit: the day and year aforesaid. And thereof
„then and there promised to pay, on or before the
„first day of January - then next following the date
„thereof, to one Samuel W. Fuller or order the
„sum of three Hundred Dollars, for value received
„payable at the Banking house of N. B. Curtis & Co.
„in Peoria Illinois, and then and there delivered
„the said promissory note to the said Samuel W. Fuller.
„And the said Samuel W. Fuller to whom or to whose
„order the payment of the said sum of Money
„in the said promissory note specified was to
„be made, after the making of the said promissory
„note, and before the payment of the said sum
„of money in the said note specified, to wit:
„on the day and year aforesaid, at the State and
„County aforesaid, endorsed the said promissory
„note by which said endorsement he the said
„Samuel W. Fuller then & there ordered and appoin-
„ted the said sum of money in the said prom-
„issory note specified to be paid to the said plain-
„tiff, and then and there delivered the said prom-
„issory note so indorsed as aforesaid to the said
„Plaintiff by means whereof and by force of
„the Statute in such cases made and provided,
„the said defendant, then and there became liable
„to pay to the said Plaintiff the said sum
„of Money in the said promissory note specified
„according to the tenor and effect of the said
„promissory note, and although the said sum
„of money in the said promissory Note specified
„has been long since due and payable according
„to the tenor and Effect of the said note yet
„the said Plaintiff in fact saith that the said
„Defendant, although often requested so to do, did

" nor would pay the said sum of Three Hundred
" dollars in the said Note Specified or any part
" thereof in manner aforesaid or otherwise how-
" soever, but hath hitherto wholly neglected and
" refused so to do, whereof an action hath ac-
" crued to the said Plaintiff to demand and
" have of and from the said defendant, the said
" sum of three hundred dollars in the said note
" Specified as above demanded, yet the said defen-
" dant although often requested so to do hath not
" as yet paid the said sum of three hundred
" dollars above demanded or any part thereof
" to the said Plaintiff, But he to do this hitherto
" wholly refused and still doth refuse to the
" damage of the said Plaintiff of three hundred
" dollars, and therefore he brings this suit &c.

Wm. A. Tinney

Per Jones & Prettyman attys

" Copy of Note Sued on $\frac{2}{3}$

Pekin Illinois Oct. 23^d 1854.

" On the first day of January next for value
" received I promise to pay Samuel W. Fuller
" or Order Three Hundred Dollars (\$300.) payable
" at the banking house of A. B. Curtis & Co. in
" Peoria Illinois

George Morton

" Indorsed on the Back of note

" Pay to Wm. A. Tinney

Saml. W. Fuller

And now afterwards; to wit: at a Circuit Court,
begun and held at Pekin on the fifth monday
of the month of April A.D. 1855. and on the 13th
day of said Term, being the 2^d day of May A.D.
1855; the following proceeding was had in said
Cause; to wit:

" William A. Toney
 " vs
 " George Morton Debt

Now on this day comes the Plaintiff
 by his attorneys Jones and Prettyman, and on their motion
 the said defendant is ruled to plead by to
 morrow morning next, at the opening of this Court,
 or in default thereof Judgment will be rendered
 against him for want of a plea;

And now afterwards; to-wit: on the 3^d day of
 May A.D. 1855, the defendant files his plea in the
 words and figures, as follows; to-wit:

" William A. Toney
 " To
 " George Morton
 " In Equity Circuit Court April 3. 1855

And said defendant comes and
 defends the wrong & injury when &c and says
 he does not owe said plaintiff the said sum of
 Money in said declaration demanded; or any
 part thereof in manner & form as therein mention
 ed & of this he puts himself upon the Country &c.

" Manning & Merriam
 " for Defs

" And plaintiff doth the like

" Jones & Prettyman
 " for Plff

And, now, afterwards; to-wit: on said 3^d day
 of may A.D. 1855, the following proceedings were
 had in said entitled cause, to-wit:

" William A. Toney
 " vs
 " George Morton In debt

Now, on this day comes the plaintiff
by his attorney Jones & Prettyman and the defendant by
his attorney Manning & Merriam and by agreement of parties
jury having been waived, the issue joined in said cause
as tried by the Court, and the Court having heard the
proofs and allegations of the parties and argument
of Counsel, is of opinion that the Plaintiff recover of
the defendant the sum of Three hundred dollars the
debt in the declaration mentioned and the further
sum of six dollars and fifteen Cents damages for
the detention thereof. It is therefore, ordered and
adjudged by the Court, that the plaintiff recover
of the defendant his debt and damages aforesaid in
form aforesaid assessed, and likewise the costs and
charges by him about his suit expended, and that
execution issue therefor.

And, now, the said defendant pray an appeal to
the Supreme Court. It is therefore ordered that said appeal
be allowed upon the defendant within twenty days
from the adjournment of this ~~of~~ Court filing in
the office of the Clerk of this Court a bond payable to
the plaintiff in the sum of Five Hundred dollars with
security to be approved by the said Clerk, which bond shall
be conditioned for the payment of the judgment, costs
and interests and damages, in case this judgment shall
be affirmed and for the due prosecution of the appeal.

And, now, afterwards; to wit: on the 8th day of said Month of
May, being the 8th day of said Term, the following proceed-
ings were had in said cause; to wit:

William A. Finney

In debt

George Morton

Now on this day comes ^{again} the said de-
fendant and presents his bill of exceptions to the Court
which is signed and sealed and ordered to be made part of
the Record in this cause

Which said bill of exception is in the words and figures as
follows; to wit:

"State of Illinois }
"County of Jazewell }

"Jazewell Circuit Court
"April Term A.D. 1855

"William A. Tinney }

"George Morton }

"Be it remembered that on the
"trial of said Cause at said Term of said Court,
"by agreement of parties a jury was waived and
"the issue joined in said Cause submitted to the
"Court for trial whereupon the plaintiff offered
"in evidence a promissory note in the words and
"figures following:

"Pekin, Illinois Oct. 23^d 1854.
"On the first day of January next, for value received,
"I promise to pay Saml. H. Fuller or order, Three Hun-
"dred Dollars (\$300.), payable at the Banking House
"of A. B. Curtis & Co. in Peoria Illinois

"George Morton

"Pay to Wm A. Tinney

"Saml. H. Fuller

"To the introduction of which in evidence the
"defendant then and there objected on the Ground
"that there was a variance between said evi-
"dence and the allegations in said declaration
"but the court overruled the said objection and
"permitted the said note and indorsement to be
"read in evidence under said declaration
"to which opinion of the Court in overruling
"said objection and permitting said note and
"indorsement to be read in evidence the said
"defendant then and there excepted, which was
"all the evidence offered or given in the said
"Cause, and the Court rendered judgment
"for the amount of said Note and interest in

" favor of the said plaintiff;

" And for as much
" as said matters and things do not appear
" of record in said cause, the said defendant
" has made this his bill of exceptions and
" prayed the judge of said Court to sign
" and seal the same according to the Statute
" in such case made and provided:
" And it is done.

David, Davis (seal)

Now, afterwards; to-wit: on the 31st. day of May
A.D. 1855, the Defendant files his appeal bond
in the words and figures, as follows; to-wit:

" Know all men by these presents that we
" George Morton as principal and Jacob Darst as
" security are held and firmly bound unto William
" Finney in the penal sum of five hundred Dol-
" lars for the payment of which well and
" truly to be made we hereby bind ourselves
" our heirs executors administrators and assigns
" jointly severally and firmly by these presents
" Witness our hands and seals this 19th day
" of May A.D. 1855

" Whereas the said William Finney
" did at the April Term A.D. 1855 of the Circuit
" Court in and for the County of Jagswell in
" the State of Illinois recover a judgment before
" said Court against the said George Morton
" for the sum of Three hundred dollars debt
" and Six ¹⁵/₁₀₀ Dollars damages together with his
" the said Finney's Costs in that behalf expended
" from which judgment the said Morton then
" and there before said Court prayed and
" obtained an appeal to the Supreme Court

of the State of Illinois upon Condition that the
said Morton should enter into a good and
sufficient appeal bond and file the same with
the Clerk of said Court, with security to be ap-
proved by said Clerk within twenty days.

Now
the Condition of the above obligation is such
that if the said George Morton shall pay and
satisfy all judgments, costs, interests and dam-
ages made, rendered accruing or suffered by
reason of the obtaining of said appeal and
shall also duly prosecute said appeal then
the above obligation shall be void otherwise
to be and remain in full force and effect.

George Morton
Witness Henry Lander
Jacob Tarr

The above Bonds filed in
my office, and the above
named security approved
by me this 31st day of
May A.D. 1855

John A. Jones Clerk.

State of Illinois
Jagwell County J. A. John A. Jones, Clerk of the Circuit
Court, in and for said County, do hereby
Certify, that the foregoing nine pages, contain a
true, full and complete Transcript of all the pa-
pers filed, and all the proceedings had in said
Entitled Cause of William A. Finney vs George
Morton, as fully and completely as the same are
of record in my said office.

In testimony whereof, I have hereunto set my hand
and official seal at Pekin this 4th day of June
A.D. 1855.
John A. Jones Clerk

80

William A. Tunney
als.

George Mortow

Transcript

Filed June 12th 1855.
L. Ireland Clk.

Error assigned June 30, '55
L. Ireland Clk.

George Morton } Appeals from
William A. Finney } Taylor

In this case ~~I understand~~
the only question made is one of
variance between the note offered in
evidence and the declaration,
~~in this~~

~~that~~ The declaration describes a
note payable "on" a certain day
and the note offered in evidence is
payable "on or before" a certain
day.

The declaration describes the
note according to its legal effect, —
A promise to pay "on or before" a day
certain is only a promise to pay "on"
the day, and payment can not be
enforced til the expiration of that
day —

I can not perceive any force
in the objection — and think there
is no occasion for authorities upon
the subject

J. C. Duple
Atty for Wm. A. Finney
Defendant

July 10 '1855

George (89)
George Norton
Wm, A. Finney

Defendants
argument

George Moston
Hon^{ry} J. Quincy

The only question in this case is a question of variance.

The note declared on is payable on or before the first day of January next

The one offered in evidence is payable on the first day of January next.

This is matter of description of the note - the two cannot be the same note. A judgment recovered on the one described would not be a bar to an action on the other.

The time when payable is different; the one described could be paid at any time before the first day of January next at the option of the payor, the other could not except by the consent of the payee.

The question is not whether the note was due; the question is whether a note payable on a certain day is just as much a note payable on or before that certain day, as if its terms were "On or before that certain day I promise to pay; for all this substantial matter is matter of description.

We say the legal effect of
the two notes is different. The
note offered in ~~an~~ evidence is
not the one declared on, and
the Court erred in not so
determining when it was offered
in evidence

Manning V Merriam

50

George Morten

vs

William A. Conner

Argt. for

Appellant

Manning V Merriam

George Norton }
William A. Timney }

1. Receipt filed March 2/1855 Damage \$300.
2. Summons duly issued & returned March 2/1855
3. Declaration
On the 11th of April 1855 plaintiff below filed his declaration averring that on the 23rd of October 1854 defendant made his promissory note in writing and therein promised "to pay" or before the first day of January then next following "the date thereof" to Samuel W. Fuller or order \$300. for value received payable at the Banking House of A.B. Curtis & Co. Peoria Illinois. And that Fuller indorsed said note to plaintiff. Avere the note to be due & unpaid & defendant's refusal to make such payment therefore suit brought. Damage \$300.
4. Copy of Note declared on
Peoria Illinois Oct 23, 1854
On the first day of January next for value received I promise to pay Samuel W. Fuller or order Three Hundred Dollars (\$300) payable at the Banking House of A.B. Curtis & Co. in Peoria Illinois
George Norton
Indorsed on back of Note. "Pay to Wm A. Timney
Samuel W. Fuller"

- 5 May 2/1855 Defendant sold to plead by next morning
- 6 " 3. " Defendant plead the general issue & Plaintiff joined therein
- 7 May 3/1855 Jury waived by agreement, resorted to by the Court and judgment rendered in favor of the plaintiff for \$300 debt + \$6.15 damages
- 8 An Appeal prayed by defendant below & duly allowed
- 9 May 8/1855 Defendant presented to the Court his Bill of Exceptions which was duly signed, sealed & made part of this record. And defendant excepted to and assigns for error the ruling of the Court, after objection duly made, admitting in evidence the note above copied, there being a variance between the note introduced in evidence and the allegations in plaintiff's declaration
- 10 May 31/1855 An appeal bond in the usual form filed & the security approved
- 11 A transcript of the record in this case, duly made out, filed in this Court June 12/1855

80
 Quistor
 Henry
 Abstract
 Filed July 14 1855
 J. Deland

80

George Clinton

to

Mrs A. Quincy

80

12209

1855