

No. 14581

Supreme Court of Illinois

Farwell, Imp

vs.

Meyer

STATE OF ILLINOIS,

pl. 5. 1864
SUPREME COURT,

THIRD GRAND DIVISION.

(Reported) 36-20
No. 83 *139*

J. W. Middleton & Co., Stationers, 126 Lake St.

Farnell

vs

Mayer

vs

vs

1864

14581

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

MAX A. MEYER

als.

CHARLES B. FARWELL, IMPEADED, ETC.

Error to the Superior
Court of Chicago.
No. 83.

Max A. Meyer
Def.
POINTS FOR DEFENDANT. *Opp. to error*

At common law a writ of error should be sued out by all the parties. If one of several parties refused to join in the assignment of errors, those wishing to prosecute it summoned him to join, and on his refusal, he obtained judgment of severance, and then prosecuted the writ by himself.

2 Tidd's Prac. 1136.

Yelv. 4 Cro. Eliz. 829.

Frescobalde v. Kingston, 2 Stra. 783.

To avoid the inconvenience of *summons and severance*, it is provided that one of several may remove the suit to the Supreme Court by appeal or writ of error, using, when necessary, the names of all the parties, but those not joining in the appeal or writ of error are not to be liable for costs.

R. S. 1845, p. 420, s. 51.

In this case, the writ of error was sued out by Farwell alone. The precipe directs the clerk to issue the writ at the suit of Farwell, *im-*

pleaded, etc., and the writ follows the precipe, and the supersedeas bond was executed by Farwell alone, which would be irregular if Zimmerman were a party to the writ.

R. S. 1845, p. 421, s. 54; *ibid.* 420, s. 47.

Farwell, who alone prosecutes the writ of error, which fact is alleged in the plea, and stands admitted on this issue, obtained an injunction against the judgment in this case, such injunction was, as to him, a release of all errors in the proceeding at law sought to be enjoined.

R. S. 1845, p. 382, s. 11.

In *McConnell v. Ayers*, 3 Scam. 210, the court say, *inter alia*, that the party shall not have the benefit of two remedies at once, that is by alleging error and at the same time enjoining the judgment; this shows that the statute should have a liberal construction for the attainment of justice. In this very case, the plaintiff is doing what it is said in the case of *McConnell v. Ayers*, *supra*, he shall not be permitted to do. He is pursuing two remedies at the same time, for number 84, the case succeeding this is the one in which he obtained the injunction. The attempt to make use of the names of some to save the case for others, was condemned in *Moore v. Capps*, 4 Gilm. 315, and the remarks of Mr. Justice TREAT, in that case, apply with equal force to this.

Under the statute, the writ of error, though in form joint, is substantially several, for any party may at his own option prosecute it whether his coparties will or no. It was therefore decided, in *Henrichson v. Van Winkle*, that the release need not be joint; indeed, it follows, as a logical consequence, that one who has a right that he may assert alone, may release it alone. We propose to carry the demurrer back and through it to attack the writ of error. The writ of error, it is true, describes the judgment as being in favor of Meyer against Zimmerman and Farwell, but it shows upon its face that it is prosecuted at the suit of Farwell alone, for the words "impleaded with" show that Zimmerman does not plead. In this, as before said, it follows the precipe Zimmerman did not appear, nor was he any party to the proceedings un-

til the assignment of errors which was not until January 13, 1864. This was a change of the action by introducing a new party, who, no doubt, was introduced for the purpose of avoiding the effect of the plea we have filed.

That this would be wrong and unjust to the defendant in error is manifest from this consideration; between the time of suing out the writ of error, and the time when Zimmerman became a party to it, the five years limitation expired. So the case would stand thus. The only party really complaining is barred by his release. But he seeks to avoid the effect of the release by bringing in another party, who, at the time he comes in, is barred by the lapse of time.]

Suppose the assignment of errors to be treated as in the nature of an amendment of the writ, or, as perfecting the writ it could not have relation to the suing out of the writ, for it is a settled principle of law, that an amendment has not relation back to save the case from the effect of the statute of limitation.

Holmes v. Trouts and his heirs, 1 McLean, 1, 11.

Miller v. McIntyre, 6 Pet., 61.

The attempt to avoid the operation of the statute of limitations as to Zimmerman, by entering his appearance in vacation after the issuance of the writ, without the leave of the court, or a judge, is vain. Zimmerman could not thus make himself a party. He could only be made so by formal application to the court by motion. This has been done. The following stipulation has been made a part of the record in this cause, to-wit:

It is agreed by the parties, for their mutual convenience, and to save the necessity of their personal attendance at court, that the order dismissing this cause shall be set aside; that the case shall stand submitted, first, upon the demurrer of the plaintiff in error to the defendant's plea, already filed; secondly, if the Supreme Court shall consider Henry W. Zimmerman as a party plaintiff in the cause, then the said plea shall

stand as a plea to the writ of error as to Farwell only, and this stipulation shall stand as and for a plea by the defendant in error of the statute of limitation as to said Zimmerman, and a replication thereto by the plaintiff in error; that the said Zimmerman became a party to the suit before the expiration of said five years, by entering his appearance in vacation without leave of court, and demurrer thereto by defendant in error, and a submission to the court of that issue of law; and, thirdly, if the issues of law shall be found for the plaintiff, or plaintiffs, this stipulation shall be taken as the defendant's joinder in error, and the cause shall stand submitted at the present term upon the issue so formed.

There is nothing in the point that the note was endorsed in blank. The holder of a bill or note endorsed in blank can sustain an action on it without filling up the blank.

Bayley on Bills, 106.

In an action by the endorsee of a promissory note in blank, it is not necessary either to fill up the blank, or to prove that the plaintiff is the legal holder of the note. The filling up of a blank endorsement is a mere matter of form, and may be dispensed with altogether.

Gillham v. The State Bank of Illinois, 2 Scam., 245.

GOOKINS, THOMAS & ROBERTS,

P. D.

84 154

Meyer
and
Garrett

Deft. Point

April May 7, 1864
S. L. Garrett

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

Charles B. Farwell,	}
Plaintiff in Error,	
V S.	
Max A. Meyer, et al.,	}
Defendants in Error.	

BRIEF AND POINTS BY DEFENDANTS IN ERROR.

THIS BILL was filed by plaintiff in error to enjoin the collection of a judgment rendered in the Cook County Court of Common Pleas, in favor of defendant Meyer, against plaintiff in error (Farwell), and one Zimmerman, by confession, on 22d of December, 1858.

Plaintiff in error alleges that he was the surety of Zimmerman on the note upon which judgment was rendered. That the time for the payment of the note was extended by Rosenfeld & Rosenberg, the real owners of the note, without the knowledge or consent of the surety, and he is therefore discharged.

1. We insist, for defendants, that the proof shows beyond any controversy, that the bill is untrue in alleging that Rosenfeld & Rosenberg were, at the time of the *extension*, the real owners of the note; but on the contrary, it clearly appears that they held the note simply for collection; that they bought the note of Greenebaum Bros., note brokers, in

the usual course of dealing. They bought it two or three days after its date, and sold it again within two or three days thereafter, and before its maturity, without any knowledge of the consideration moving from the payees to the makers (see Abs., p. 13). Their only connection, therefore, with it was as agents for the owners, to *collect* it, simply.

2. The bill is untrue in alleging that Rosenfeld & Rosenberg, being the owners of the note, "at various times and upon various valuable considerations by them received from Zimmerman, agreed with him to extend, and did in fact extend, the time of payment of said note, without the knowledge or consent of the surety, Farwell." But on the contrary, it appears from the testimony of Rosenfeld and Rosenberg, and also from that of Zimmerman, the witness of Farwell, that R. & R. held the note for collection as agents for the owner, they having no interest in it whatever. This is also shown by the entries in the books of R. & R.

3. From the testimony on all sides, then, it appears beyond question, that at the time of the maturity of the note, and of the extension, R. & R. held it for collection, as agents for the owner, B. Sondheim, to whom they sold it, and who placed it in their hands for collection, and to whom they paid the interest collected, there can be no doubt from the testimony, that up to within a short time before judgment was entered upon it in the name of Meyer, Sondheim was the owner thereof.

4. It is alleged, that Rosenfeld & Rosenberg being the owners of the note, after the note was due, agreed with Zimmerman, upon a valuable consideration, to extend the time of payment without the knowledge and consent of Farwell, the surety, and that Farwell is thereby discharged; and this is the ground of the relief sought.

5. The defendants in error concede that one extension was given, but deny that more than one was given; and we insist, first, that the extension was given with the knowledge and consent, and by the express request of Farwell. Let us examine the evidence.

Rosenfeld testifies (Abs., p. 14-16), that after the note was due, he called on Farwell and demanded payment, informing him that the note

belonged to another. Farwell said, if the owner gets good interest he had better extend it, and requested witness to extend it, which was accordingly done. Witness *believes* this conversation with Farwell was at the county clerk's (Farwell's) office, sometime in November, 1857, about the middle or latter part. But it is sought to impeach the witness Rosenfeld, on this point, and Farwell's clerks are introduced to prove that he was absent from Chicago at Kenosha, at the time when this interview is fixed by Rosenfeld. But the clerks admit that Farwell was at his office on the morning of the 24th of November, and transacted business there. One thinks he left on the morning train, and the other is in doubt whether he left on the morning or afternoon train. The *alibi*, therefore, fails, and the witness Rosenfeld is sustained by Farwell's clerks. But Rosenfeld & Rosenberg both testify that they repeatedly called on Farwell for payment previous to July, 1858, but at no time during that period did he pretend that the extension was without his knowledge and consent; on the other hand, he acknowledged his liability by saying that he was afraid he would yet have the note to pay, and said he had written to Zimmerman inquiring why he did not pay the note.

6. But, conceding for argument sake that the extension was made by Rosenfeld without Farwell's knowledge and consent, Rosenfeld & Rosenberg were agents for a special purpose, viz., to collect the note. Such an agent has no power to compromise, extend, or do anything else except collect the note and interest, and deliver it to the maker.

Corning v. Strong, 1 Ind. R., 329.

Russell v. Drummond, 6 ib., 218.

Miller v. Edmonston, 8 Blackf., 291.

If, therefore, Rosenfeld & Rosenberg made an agreement with Zimmerman to extend the time of the payment of the note, the plaintiff in error must show (and the onus is upon him) that they had authority from the owner to make the agreement. This is not shown; on the contrary, Rosenfeld says (Abs., p. 20-21), that he was empowered by Sondheim, the owner, to make the agreement for the extension, "by getting Mr. Farwell's consent." Rosenfeld swears that he informed both Zimmerman and Farwell when he first demanded payment that Rosenfeld & Rosenberg no longer owned the note, and that they were acting as agents for the owner. Zimmerman admits R. & R. so told him (p 8).

But it may be insisted that, although R. & R. had no authority to extend time of payment, yet Sondheim accepted the interest in advance, and thereby ratified the act and adopted it. But the answer to this is, that there is no evidence that Sondheim knew that the extension was given *without* Farwell's consent. The presumption would be, that he received the money under the belief that his agents had pursued the authority given, viz., to extend *without* Farwell's consent; and Rosenberg swears that Sondheim sent him to Farwell, "as he (S.) always looked to Farwell as the responsible party." But the onus is upon the plaintiff in error to prove affirmatively that Sondheim had full knowledge that the extension was made without Farwell's consent. For there can be no ratification by implication of the act of the agent who exceeds his authority, unless the principal had full knowledge of all the facts.

Copeland v. The Mer. Ins. Co., 6 Pick., 203.

Roach v. Coe, 1 E. D. Smith, 175.

Delafield v. The State of Illinois, 26 Wend., 227.

Nixon v. Palmer, 4 Seld., 398.

Seymour v. Wychoff, 6 ib., 213.

Therefore, if Rosenfeld be a credible witness, the extension was made with Farwell's consent. If he be successfully impeached, as he manifestly is not, then there is no evidence that R. & R. were authorized to extend, and the agreement was void, as made by an agent having only power to collect.

7. There was no error in refusing leave to file the proposed amendments to the bill.

The plaintiff in error asked the leave without opening the case for further proof. There was no error in refusing the leave, if, upon the proofs, the bill would have been dismissed notwithstanding.

But at that stage of the cause, it was a matter of discretion to permit the amendments, whose exercise will not be reviewed here. This court has said that, "After a cause is submitted, it should be a case of extra-ordinary necessity to allow amendments to the bill."

Jefferson Co. v. Ferguson, 13 Ill., 35.

McArtee v. Engart, ib., 249.

There was therefore no error in refusing the amendments and dismissing the bill.

GOOKINS, THOMAS & ROBERTS,
For Def'ts in Error.

Yarnwell

AS

Meyer et al

Defts Brief

Lived April 26, 1864
Leland CR

Chloride CR

Supreme Court of Illinois
April Term 1864.

No 83 Charles B. Farwell } Error to the Superior
impleaded &c } Court of Chicago
vs
Max A. Meyer }

It is agreed by the parties for their mutual convenience and to save the necessity of their personal attendance at court that the order dismissing this cause shall be set aside that the case shall stand submitted, first, upon the demurrer of the Plaintiff in error to the defendants plea, already filed. Secondly if the Supreme Court shall consider Henry W. Zimmerman as a party plaintiff in the cause then the said plea shall stand as a plea to the writ of error as to Farwell only, and this stipulation shall stand as and for a plea by the Defendant in error of the statute of limitations as to said Zimmerman and a replication thereto by the plaintiffs in error that the said Zimmerman became a party to the suit before the expiration of said five years by entering his appearance in vacation without leave of court and a demurrer thereto by Defendant in error and a submission to the court of that issue of law, and thirdly if the issue of law shall be found for the plaintiff or plaintiffs, this stipulation shall be taken as

the defendants joined in error and the cause shall also
be submitted at the present term upon the issue so
formed.

Supplement

W. F. Burges

W. F. Burges for Peffs -
Gookins Thomas and Roberts

P.O.

83
Tavell

Wages

John W. Smith
The State
G. W.

Supreme Court of Illinois,
April Term 1864.

Charles B. Farwell

impleaded to

Error to the Superior

Court of Chicago.

No 83.

vs

Max A Meyer

It is agreed by the parties for their mutual convenience and to save the necessity of their personal attendance at Court that the order dismissing this cause shall be set aside, that the case shall stand submitted, first, upon the demurrer of the plaintiff in error to the defendant's plea, already filed. Secondly if the Supreme Court shall consider Henry W Zimmerman as a party plaintiff in the cause then the said plea shall stand as a plea to the writ of error as to Farwell only, and this stipulation shall stand as and for a plea by the defendant in error of the statute of limitations as to said Zimmerman and a ^{application} ~~demurrer~~ there to, by that the said Zimmerman be a party to the suit upon the expiration of said term of years, or a ~~demurrer~~ ^{application} there to by him in error, and a submission to the Court of that issue of law, and thirdly, if the issues of law shall be found for the plaintiff or plaintiffs, this stipulation shall be taken as the defendant's joinder in error and the cause shall stand submitted at the present term upon the issue so formed.

* by entering his appearance in vacation without leave of Court

W. J. Burges
for offal

Looking Thos Robert

P D

83 134
Chas. B. Hamwell

vs
May A. Meyer

Stipulation

Filed May 4. 1864.
L. Veland
Clk.

Know all Men by these Presents, That we, Charles B. Farwell

as principal, and William S. Church as security, are held and firmly bound unto Max A. Meyer

in the penal sum of sixteen hundred dollars good and lawful money of the United States, for the payment of which, well and truly to be made, the said Farwell & Church

bind themselves, their heirs, executors and administrators, jointly, severally and firmly by these Presents.

Witness, the hands & seals of the said Farwell & Church

this day of January A. D. 1864.

The Condition of the above Obligation is such, That, whereas the above named Max A. Meyer

did, at the ~~Term~~ Special Term of the Cook County Court of Common Pleas held in and for the County of Cook in the State of Illinois, A. D. 1888 recover a judgment against the above bounden Charles B. Farwell & me Henry W. Zimmerman

for the sum of eight hundred & eighty five dollars & seventy five cents for his costs — to reverse which said judgment, the said Charles B. Farwell

has sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the said

Charles B. Farwell

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said judgment, and all judgments, costs, interest and damages which the said Supreme Court shall adjudge against him

and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

C. B. Farwell
W. S. Church

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

No. 83 139

SUPREME COURT,

THIRD GRAND DIVISION.

Charles B. Hawell *inft. &c.*

vs.

Max A. Meyer

SUPERSEDEAS BOND.

Filed Jan'y 13. 1864.

L. Seland Clerk.

State of Illinois
County of Cook }p: William L. Church of
said County being duly sworn says that he
Signed the annexed bond with Charles B.
Farwell & as his surety to Max A. Meyer -
And that this Deponent is worth the sum
of sixteen hundred dollars after all his
just debts are paid and independent of
any homestead exemption rights he
may have by the laws of said State -

Wm L. Church

Subscribed and sworn
before me this 22 day of Decr
1863 attest my hand & office
Deal,

L. H. Hilliard

Clerk of the County Court



Chas. B. Hawell⁸³

5

Max St. Meyer
affd. of justification

Filed Jan. 13. 1864
Leland
Clerk.

5 days no grace
when

in

will that

when Court

United States of America
State of Illinois, Cook County } S.S

Pleas before the Honorable John M. Wilson
sole Judge of the Cook County Court of Common
pleas, within and for the County of Cook, and
State of Illinois, at a second Special Term of
said Cook County Court of Common pleas, began
and held at the Courthouse in the City of Chicago
on the Tenth Monday, being the Twentieth ninth day
of November in the Year of our Lord One
Thousand Eight Hundred & fifty eighth due notice
of the time & place of holding said second Special Term
of Court having ~~not~~ been printed & published in
the "Chicago Daily Democrat" the Corporation news-
paper of the City of Chicago, said notice having
been printed and published Twenty days previous
to the Commencement of said Court in accordance
with the Statute in such case made & provided, and
in pursuance of an order ~~of~~ made by the Judge of
said Court on the 6th day of November A D Eighteen
hundred & fifty eighth. Present Hon John M
Wilson (Judge), Carlos Haven, Prosecuting Attorney
John Gray Sheriff of Cook County
Attest. Walter Kimball Clerk.

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Be it remembered that heretofore to wit on the
Twenty second day of December in the Year of our
Lord One thousand Eight hundred & fifty eighth
Max A Meyer by his attorneys Gookins, Thomas,
and Roberts filed in the Clerk's Office of the Cook
County Court of Common Pleas for Cook County
the following Declaration, Note, and affidavit
to wit, —

"State of Illinois
Cook County S S

Cook County Court of Common Pleas
November Special Term A D 1858

Max A Meyer Plaintiff in this suit by
Gookins, Thomas, and Roberts, attorneys complains
of Henry W Zimmerman and Charles B
Farwell Defendants in a plea of Trespass on
the case on promises. For that whereas the
said Defendants heretofore to wit on the sixteenth
day of October in the Year of our Lord One
thousand Eight hundred and fifty seven at
Chicago to wit at said County of Cook, made
their certain promissory note in writing, bearing date
the day and Year aforesaid, and then and there
delivered the same to Elias Grenebaum and
Henry Grenebaum composing the firm of
Grenebaum Brothers in and by which said
Note, said Defendants by the name style and
description of H. W. Zimmerman and Charles

B Farwell as security promised to pay to
 the order of the said Greenebaum Brothers,
 thirty days after the date of said note
 seven hundred and fifty Dollars with
 interest after due at ten per cent per annum
 for money borrowed payable at the Office
 of Greenebaum Brothers for value received,
 And the said Greenebaum Brothers to whom
 or to whose order said note was payable afterwa-
 rds to wit, on the day and year aforesaid
 at Chicago town in the County of Cook
 aforesaid, endorsed said note in writing, by
 which said endorsement the said Greenebaum
 Brothers, then and there ordered and appointed
 the said sum of money in said note mentioned
 to be paid to said Plaintiffs, and then & there
 delivered said note so endorsed to the said
 Plaintiffs, By means whereof, and by force
 of the Statute in such case made & provided the
 said Defendant became liable to pay said
 Plaintiffs 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, true intent & meaning
 of the said note, and of the endorsement aforesaid,
 town at the place aforesaid, Yet the Defend-
 ants although often requested to have not yet

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paid the said sum of money, or any part
thereof to the Plaintiffs, but so to do, that the
hitherto wholly refused and still do refuse to
the Damage of the Plaintiffs One Thousand
Dollars, and therefore he brings suit to

Lookins, Thomas & Roberts

Plaintiffs attorneys

\$750⁰⁰ Chicago October 16th 1857
Thirty days after date for value received
We promise to pay to Greenbaum Brothers
or order the sum of Seven hundred & fifty
Dollars with interest after due at ten per
cent per annum for money borrowed payable
at the Office of Greenbaum Brothers
Chicago

"M. W. Zimmerman"

"C. B. Farwell as security"

Upon which note are the following endorsements
to wit

M. W. Zimmerman, C. B. Farwell \$750⁰⁰ Nov
15/18 57-

Without recourse

"Greenbaum Bros"

to January 18/1858 interest paid up
to that date."

State of Illinois
Cook County ss

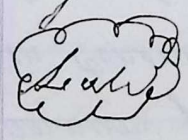
Elias Greenbaum being duly sworn deposes

and says, That he is acquainted with the hand writings and signatures of Henry W Zimmerman and Charles B Farwell respectively, That the signatures of the said Henry & Charles to the promissory note and Power of Attorney annexed hereto are the genuine signatures of said Henry and Charles respectively; That said note bears date Chicago October 16th 1857 payable thirty days after date to the order of Greenbaum Brothers or order for Seven hundred & fifty Dollars with interest after due at ten per cent per annum

That affiant has also heard the said Charles B Farwell and Henry W Zimmerman admit that their signatures to said note & power of Attorney were their genuine signatures. - And further affiant says not. -

"Elias Greenbaum"

Subscribed and sworn to before me the undersigned. -



Gerhard Foreman
"Notary Public"

And afterwards to wit on the day and year aforesaid, the Defendants Henry W Zimmerman and Charles B Farwell by G Morgan their Attorney produced & filed in this cause a certain Power of Attorney and Cognovit, which are in the following words & figures to wit. -

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Know all men by these presents, that whereas
the subscribers are justly indebted to Greenebaum
Brothers upon a certain promissory note bearing even
date herewith for the sum of Seven hundred and
fifty Dollars made payable to the said Greenebaum
Brothers or order, and due, thirty days after the
date thereof with interest at ten per cent per
annum for money borrowed. Now therefore
in consideration of the premises and of the sum of
One dollar to us in hand paid by the said
Greenebaum Brothers, the receipt whereof is hereby
acknowledged, We do hereby make, constitute, and
appoint Morath & Shumway or any Attorney in
any Court of record, to be our true and lawful
attorney irrevocably for us and in our names, place,
and stead, to appear in any Court of record in term
time or vacation, in any of the States or Territories
of the United States at any time after the date
hereof to waive service of process, and confess a
Judgment in favor of the said Greenebaum Brothers
or his or their assigns or assignees upon the said
note for the above sum or for as much as appears
to be due, according to the tenor and effect of
said note, with interest thereon, together with costs
also for usual attorneys fees, to be added to the
amount due on entering up Judgment, also to file a
cognovit for the amount that may be so due, with
an agreement therein that no writ of Error or

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Appeal shall be prosecuted on the Judgment entered
by virtue hereof, nor any Bill in Equity filed to
interfere in any manner with the operation of
such Judgment; and to release all errors that
may intervene in the entering up of such Judgment,
or issuing the execution thereon, and also to consent to
immediate execution upon said Judgment;—
Witness our hands and seals this sixteenth day
of October A.D. 1857.

H. W. Zimmerman *Seal*
C. B. Farwell *Seal*

Cook County Court of Common Pleas
In November Special Term A.D. 1858

Max A Meyer

vs

Verdict
Cognovit

Henry W. Zimmerman
Charles B. Farwell

And the said Henry W. Zimmerman & Charles B.
Farwell Defendants in the above entitled suit, by
Gilbert Morgan their Attorney come and defend the
wrong and injury where to and waive service of
process, and say they cannot deny the action of
the Plaintiff, nor but that the said Plaintiff has
sustained Damages on occasion of the nonperformance
of the several promises and undertakings in the said
Declaration mentioned including the sum of Twenty
five Dollars, for their reasonable Attorney fee for

entering up this Judgment over and above theirs
other costs and charges by them about this suit in this
behalf expended to Eight hundred and Eighteen Dollars
and Seventy five cents, And the said Defendant
further agree that no writ of Error or Appeal
shall be prosecuted on the Judgment entered by
virtue hereof, nor any Bill in Equity filed to interfere
in any manner with the operation of said Judgment
and that they hereby release all errors that may
intervene in entering up the same, or issuing the Execution
thereon, and consent to immediate Execution upon such
Judgment.

G. Morgan Defendants Attorney

And afterwards to wit on the day & year last
aforesaid, it being one of the days of the second
Special ^{November} term of said Court, the following amongst
other proceedings were had & entered of record
in this cause to wit, —

Mass. A. Meyer
vs
H. W. Gummert-
man, and
C. B. Farwell

"This day came the said Plaintiffs by Gookins,
Thomas, & Roberts his attorneys & filed therein his
certain Declaration on a plea of Trespass on
the case upon promises, — And thereupon came also
the said Defendants by their attorney in fact who
filed therein his warrant of attorney, the execution
of which being duly proved, and also their Cognovit
confessing the action of said Plaintiff against them,
and that he has sustained Damages herein to the

sum of Eight hundred and Eighteen Dollars and ⁹seventy five cents. —

Therefore it is considered that said Plaintiffs do have and recover of said Defendants his Damages of Eight hundred and Eighteen Dollars and seventy five cents on form as aforesaid confessed together with his costs and charges by him in this behalf expended, and have Execution therefor;

And afterwards to wit on the Twenty third day of November in the Year of our Lord one thousand Eight hundred and Sixty Three, said day being one of the days of the November term of the Superior Court of Chicago. The following among other proceedings were had and entered of record to wit, —

Max A Meyer

vs ^{and} Motion to set aside Judgement.

Henry W Zimmerman & Charles B Furwell

And now at this day comes said Plaintiffs by Gookins, Thomas, and Roberts his attorneys, and the said Henry W Zimmerman one of the Defendants in above stated cause by William Burgess his attorney also comes, and this cause coming on to be heard upon the motion of said Defendant Henry W Zimmerman heretofore submitted herein to set aside the Judgement heretofore entered therein on the Twenty second day of December A D 1858, and Counsel being heard, and the Court being fully

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advised in the premises, It is considered by
the Court, that the motion of said Defendant to
set aside the Judgement entered therein as aforesaid
be, and the same is hereby overruled, and the Court
refused to set aside said Judgement, to which ruling
of the Court in overruling his said motion to set aside
said Judgement, said Defendant Henry W. Zimmerman
then and there excepted, and it is ordered that he
be allowed from this day until the first day of
the next term of this Court in which to file his
Bill of Exceptions, —

And afterwards to wit on the Fourth day of
December in the year last aforesaid, the
following Bill of Exceptions was filed in
this cause to wit, —

In the Superior Court

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Max Myers

vs

November Term

A. D. 1863

Henry W Zimmerman

and Charles B Farwell

Before Joseph E Garry,

Judge &c

Be it remembered that on this day the 23rd day of November in the year of our Lord One thousand Eight hundred and sixty three being one of the days of the November Term of said Court in that year came the Plaintiff by his attorneys Gookins, Thomas & Roberts, and the Defendants by their attorney Burgess also came, and the motion of the Defendant Zimmerman to open and vacate the Judgement in this cause came on to be heard, which motion is in the words and figures following:-

In the Superior Court of Chicago.

Max A Meyer

vs

Charles B Farwell &

Henry Zimmerman

Judge on Warrant
of attorney

And now comes the said Zimmerman by his attorney W. J. Burgess, and moves the Court to open and set aside the Judgement in this cause, - 1st because the papers filed, do not show any authority for the entry of

Judgment in the name of Max A Meyer,
the note filed with the letters of attorney in this
case not being endorsed or assigned to him, -
And Because of the usage in the extension of the
payment of said note by the holders and
owners thereof, since the same was made & given
as shown by the Depositions & mentioned in
the notice, - Which motion is founded upon the
said papers in said cause, and the Depositions in
said Chancery suit, and being granted then for
leave to plead to the action, -

W. T. Burgess
for Zimmerman

I consent to the above motion being granted, -

C. B. Farwell by
W. T. Burgess

Additional reason

That there was no affidavit filed, that
the Defendants were living at the time of the
 rendition of the Judgment, the power of attorney,
having been executed, and note due more than
one year before Judgment entered

"W. T. Burgess for B"

And the said note on which Judgment was
rendered, The Power of attorney, attached thereto
the endorsement of said note, and the affidavit
filed with said Power of attorney, and which
was the only affidavit filed in the cause at or

before the entering of said Judgement, and as follows to-wit:-

"\$750⁰⁰ Chicago October 16th 1857

Thirty days after date for value received. We promise to pay to Greenbaum Brothers or order the sum of Seven hundred & fifty dollars with interest after due at ten per cent per annum for money borrowed payable at the office of Greenbaum Brothers Chicago. -

M. W. Zimmerman

"to. B. Farwell as security"

"Know all men by these presents, that whereas the subscribers are justly indebted to Greenbaum Brothers upon a certain promissory note bearing even date herewith for the sum of Seven hundred & fifty Dollars made payable to the said Greenbaum Brothers or order and due thirty days after the date thereof with interest at ten per cent per annum for money borrowed, - Now therefore in consideration of the premises and of the sum of one dollar to us in hand paid by the said Greenbaum Brothers the receipt of which is hereby acknowledged, we do hereby make constitute and appoint Horatio G. Shumway or any attorney in any Court of record to be our true and lawful attorney irrevocably for us and in our names place and stead to appear in any Court of record in term time or vacation in any of the States or Territories of

14

the United States at any time after the date
hereof to waive service of process, and confess a
Judgment in favor of the said Greenbaum Brothers
or his or their assigns or assignees upon the said note
for the above sum, or for as much as appears to be due
according to the tenor and effect of said note, with
interest thereon together with costs, also for usual attor-
neys fees to be added to the amount due, on entering
up Judgment, also to file a Cognovit for the amount
that may be so due, with an agreement therein, that
no writ of error or appeal shall be prosecuted upon
the Judgment entered by virtue thereof, nor any bill in
equity filed to interfere in any manner with the
operation of such Judgment, and to release all errors
that may intervene in the entering up of such
Judgment, or issuing the execution thereon, and also
to consent to immediate execution upon said Judgment.
Witness our hands and seals this sixteenth day of
October A.D. 1857.

M. W. Zimmerman (Seal)
to O. B. Farwell (Seal)

Endorsements
upon Note

"M. W. Zimmerman

"O. B. Farwell

"\$750 Nov 15/18 57"

"Without recourse

Greenbaum Bros

Renewed to January 18/1858; Interest paid up

to that date, —

affidavit State of Illinois
Cook County (Seal) ss

Elias Greenbaum being duly sworn, deposed and says, that he is acquainted with the hand writing and signatures of Henry W Zimmerman and Charles B Farwell respectively. — That the signatures of the said Henry and Charles to the promissory note and Power of Attorney annexed hereto are the genuine signatures of said Henry & Charles respectively, that said note bears date Chicago October 16th 1857, payable thirty days after date to the order of Greenbaum Brothers or order for Seven hundred & fifty dollars with interest after due at ten per cent per annum. —

That affiant has also heard the said Charles B Farwell and Henry W Zimmerman admit that their signatures to said note and Power of Attorney were their genuine signatures, and further affiant says not. —

Elias Greenbaum

Subscribed and sworn to before me the undersigned

(Seal)

Gerhard Foreman

Notary Public

And the Court having heard the papers read upon which said motion is based, overrules and denies the same, to which the Defendants then and there excepts, and renders this their Bill

of exceptions to be signed and sealed according
to the Statute, and it is accordingly so done in
open Court this 23rd day of November A.D. 1863

Joseph E. Garry Seal
Judge of the Superior
Court of Chicago,

State of Illinois County of Cook S.S.

I Thomas B. Carter Clerk of the Superior
Court of Chicago, formerly the Cook County Court
of Common Pleas within and for the County and
State aforesaid, do hereby Certify, that the above
and foregoing to be a full, true, and complete
transcript of all the papers on file in any Office
and of all orders and Judgments entered of Record
in a certain Cause lately pending in said Court,
on the law side thereof, wherein Max A. Meyer
was Plaintiff and Henry W. Zimmerman and
Charles B. Farwell were Defendants, —

In Witness whereof I have hereunto set
my hand, and affixed the seal of said Court
at Chicago this 7th day of December A.D. 1863.
Thomas B. Carter Clerk



In the Supreme Court of
the State of Illinois
of April Term A.D. 1864

Charles B. Farwell &
Henry W. Zimmerman
vs
Max A. Meyer

} Error to the Superior
Court of Chicago

And now at this day comes
the plaintiff in error by his attorneys
William J. Burges & C. M. Hawley and
says that in the record proceedings &
judgment aforesaid there is error in
this -

first That the endorsement of the note
being in blank conferred no authority upon
the attorney to confer judgment in favor
of the Plaintiff below.

second That twenty five dollars was
included in the judgment for attorneys
fee.

third Because the note and power
of attorney having been given & no other more
than one year upon judgment entered thereon
& thereunder no affidavit was filed that
the defendants were then living & debt unpaid
fourth Because the court divided

the motion made at the November Term
thereof A.D. 1863 -
for other errors & infirmities

Wherefore they pray that said
judgment be reversed & another
entered &c

W. J. Dwyer
C. M. Haulcy
for R & P

Let the said writ of error be made a
supersedeas upon plaintiff in error
entering into bond in the penal
sum of sixteen hundred dollars with
William S. Church as principal securi-
ty and conditions according to
law. Rushville Dec. 28 1863.

J. H. Walker

83 139
Sup. Court

Farwell vs

vs
Meyers

Transcript &
Errors

Filed Jan. 13. 1864.
L. Seland
Clk.

State of Illinois,
Supreme Court,
April Term 1864,

May A. Meyer { Error to the Superior
 at { Court of Chicago
Charles B. Farwell, }

The said defendant in error comes, by Hookins, Thomas & Roberts, his attorneys, and says the said plaintiff in error ought not to have and maintain his said writ of error, because he says, that after the rendering of the said judgement in the said writ of error mentioned, to wit, on the 30th day of December, A. D. 1858 the said plaintiff in error to wit the said Charles B. Farwell, who alone brings and prosecutes the said writ of error, filed in ~~the~~ and before the Cook County Court of Common Pleas, of the County of Cook a certain Bill in Chancery, against this defendant and one Levi Rosenfeld, one Joseph Rosenberg and one Henry W. Gummernan, in which he the said Charles B. Farwell alleged among other things the rendering and recovery of the said judgement in

the said writ of error mentioned, and in which he prayed, among other things that the said judgement might as to him the said Charles B. Farwell ^{be} vacated and set aside, and declared of no force and effect, and that this defendant (and the said Rosenfeld and Rosenberg) might be enjoined and restrained by an order of that Court in the meantime and until the further order of the said Court from the further prosecution of said judgement and from carrying an execution thereon upon the property of him the said Charles B. Farwell, and that such injunction be made perpetual, and thereupon the said Charles B. Farwell did then and there obtain an order and direction from the Honorable John M. Wilson, the Judge of the said Court that an injunction issue in conformity with the prayer of the said bill, and the said Charles B. Farwell did thereupon cause and obtain to be issued out of the said Court a writ of Supplication against this defendant, enjoining and restraining this defendant from enforcing the said judgement against the said

Charles D. Fairwell until the further
order of that Court, as by the re-
cord and proceedings of ~~said case~~ the
Superior Court of Chicago still in
said Court remaining will more
fully appear, and this the said defendant
in error is ready to verify by the record
aforesaid, wherefore he prays judg-
ment and that the said plaintiff in error
be barred his writ of error aforesaid
Gookin Thomas Roberts
Attys for acct in error,

84 83 139

May A. Meyer
at J. Plea,
Charles B. Farnell

Filed Apl. 23^d 1864.
L. Seland
Clerk.

Gorkin, Thomas, Nov. 1864

In the Supreme Court of the State of Illinois

Charles B. Farwell &

Henry W. Zimmerman

vs

Max A Meyer

}

error to Supreme
Court of Chicago -

And the said Henry W. Zimmerman appears by his Attorney Ruyter comes & joins in the prosecution of the writ of error above sought by said Farwell & in the assignment of error therein -

W. J. Ruyter

for Zimmerman

at Chicago

83 139

Supreme Court

Farwell vs

vs

Mayer

app. of Zimmerman

vs

Filed December 21st 1863

L. Deland

Clerk

In the Supreme Court
of the State of Illinois -

The clerk of said court will
issue a writ of error upon a judgment
rendered at the November Special
Term of the Cook County Court of
Common Pleas - A.D. 1858. in favor
of Max A. Meyn Plaintiff below &
against Henry W. Zimmerman
& Charles B. Farwell Defendants below.
at the suit of said Farwell implied
vs the Officer below against said
Max A. Meyn Defendant in error.
Dec 9 1863 -

W. J. Purvis

C. M. Hanly
off atty

Sup. Court
Farrell & al

vs

Meyers -

Onenps -

Filed Dec. 9. 1863.
L. Island
Clerk

express

Chicago Dec 8. 1863.
Chas. Sup. Court
Ottawa Ill

Begin with this
I send you Transcript Record
Assessmrs. per unit
of Error Thous. in Farwell &
vs Meyer - Error to Sup. Ct.

I have also written to Judge
Caton to inspect record and
allow supersedeas.

I also send receipts for
unit of Error in Farwell
vs Meyer & al - to same
court. and twenty three
dollars costs stamps &
in the two cases.

Send scin facias in
each case to the Sup. This Co.
Yours in
W. J. Burgep.

In the Supreme Court of the State of Illinois
Third Grand Division

April Term A.D. 1864 -

Charles B. Farwell &

Henry W. Zimmerman
vs

Max A. Meyer

} Error to Superior
Court of Chicago

And the said Plaintiffs ^{in error} by their
Attorneys W. J. Burge & C. M. Hawley come
and as to the said Plea by the said Meyer
alone pleaded say that the same and the
matters therein contained are not suf-
ficient in law to Bar them from having
~~presenting and~~ maintaining their aforesaid writ of error
against the said Max A. Meyer on the
judgment aforesaid. Wherefore for the in-
sufficiency of said Plea they pray judgment
etc. and for cause of Demurrer the
said Plaintiffs in error show that the
said bill of complaint was filed & prosecuted
by the said Charles B. Farwell alone - and
the said Zimmerman hath joined with
him in the prosecution of the writ of error
herein.

W. J. Burge

C. M. Hawley -

Attys for Rffs.

83 139

Sup. Court.

Farwell vs

vs

Meyer

~~~~~

Just. of the

Filed Apr. 28. 1864.  
L. Veland  
Clerk.



STATE OF ILLINOIS, }  
SUPREME COURT, }

ss. The People of the State of Illinois,

To the Clerk of the Superior Court for the County of Chicago Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Superior Court of Chicago County, before the Judge thereof, between

Max A. Meyer

Complainant, and Henry M. Zimmerman and  
Charles B. Farwell

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Charles B. Farwell impleaded as

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the complaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this ninth day of December in the Year of Our Lord One Thousand Eight Hundred and Sixty three.

S. Ireland  
Clerk of the Supreme Court.





83

139

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*Charles B. Farwell**imp'd. ce.*

No.

vs.

*Max A. Meyer*

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**WRIT OF ERROR.**

*This Writ of Error is made a  
Supersedeas, and as such is to be  
obeyed by all concerned.*

*L. Seland*  
Clerk.

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FILED

*Decr. 9<sup>th</sup>*

A. D. 1863.

*L. Seland*  
Clerk.

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IN THE  
SUPREME COURT OF THE STATE OF ILLINOIS.

FOR THE THIRD GRAND DIVISION.

April Term, 1864.

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CHARLES B. FARWELL, IMPEADED WITH  
HENRY W. ZIMMERMAN,

*Plaintiffs in Error,*

v.

MAX A. MEYER,

*Defendant in Error.*

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ERROR TO SUPERIOR COURT OF CHICAGO.

ABSTRACT OF RECORD AND POINTS.

NARR FILED DEC. 22, 1858,

- 2 By Meyer against Farwell and Zimmerman, upon a note  
made by Zimmerman as principal, and Farwell as surety, to  
Greenebaum Brothers, dated October 17, 1857, payable thirty  
3 days after date, for \$750, with interest after due at ten per  
cent per annum, and endorsed by them to the said plaintiff  
Meyer.

*Filed Apr. 26 1864*  
*L. Veland*  
*Clk.*



4 Following which is the note sued on, upon which are the following endorsements:

4 & 14 "Without recourse,  
Greenbaum Bros.,  
Extended to January 18, 1858. Interest paid up to that date."

5 Filed with said narr. is the affidavit of Elias Greenebaum that he is acquainted with the handwriting of Zimmerman and Farwell; that their signatures to the note and power of attorney attached are genuine, and has heard them admit such signatures to be theirs.

6 & 13 On the same day was filed with the note a power of attorney to confess judgment, for amount due thereon, and for usual attorney's fee to be added to the amount due on entering up judgment."

And a cognovit confessing amount due to be \$818.75, including \$25 for reasonable attorney's fee for entering up judgment.

8 And on the same day, being one of the days of the second special November term, A. D. 1858, of said court, judgment was rendered for \$818.75 and costs.

9 At the November term, 1863, the defendant's motion to set aside judgment came on to be heard, and was denied by the court and bill of exceptions taken and filed, setting out  
11 the motion to set aside judgment, for the following reasons:

1. Because the papers filed do not show any authority for the entry of judgment in the name of Max A. Meyer, the note filed with the letter of attorney not being endorsed to him.

12 2. Because of the usury in the extension of payment of note by holders, &c.

3. Because there was no affidavit that defendant was

308 25.00/10/1858



living at the time of rendition of judgment, the power of attorney having been executed and note due more than a year before judgment entered.

A copy of the note and its endorsements, power of attorney and affidavit, are set out same as above given, no other affidavit being filed at time of entry of judgment.

ERRORS ASSIGNED AND POINT MADE.

1st. The note not being endorsed in full, merely a blank endorsement did not under the power confer any authority upon the attorney who acted to confess a judgment in favor of Meyer more than any other person.

2d. Because twenty-five dollars, attorney's fee, is included in judgment.

3d. Because the note was due more than one year before judgment entered, and no affidavit or proof submitted that the parties defendant were living and debt unpaid.

4th. Because the court denied the motion heard at the November term, A. D. 1863.

Authorities referred to  
28 Ill., 350.

W. T. BURGESS, and  
C. M. HAWLEY,  
*Plaintiffs' Attorneys.*