

No. 12986

Supreme Court of Illinois

Chumasero

vs.

Gilbert

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 177.

Lehman

Chumars

CU

Frederick

Reaper

12986

STATE OF ILLINOIS, SUPREME COURT,
THIRD GRAND DIVISION,
APRIL TERM, 1860.

177. CHUMASERO }
vs. } Appeal from La Salle.
GILBERT.

I. THE 1st assignment of error is not well taken, because the cause was continued at the March term, 1859. Pages 7 and 8 of Record. The cause was not tried at the March term. Record, page 11.

II. As to 2d error, no reason is given why the note should not have been read in evidence, and I can see none. The reason should have been pointed out.

Conway vs. Case, 22 Ill. 139.
Peoria & Oquawka R. R. vs. Niel, 16 Ill. 276.
Russell vs. Whitesides, 4 Scam. R. 11.
Gilman vs. State Bank, 2 Scam. R. 247.
Harmon vs. Thornton, 2 Scam. 355.

It is said now that the Court should have excluded the note because the endorsements were not read in evidence. The assignment of the note was distinctly alleged in the declaration, and was not denied by plea, verified by affidavit, and, therefore, need not be proven. Scates Stat. page 254, Sec. 59.

III. The Statute book of New York was proper evidence.

Charlesworth vs. Williams, 16 Ill. 338,
Scates Stat. page 254, Sec. 1.

IV. As to last point of plaintiff in error, I reply, we had a right to collect that interest under the common count. The note and the interest upon it could be recovered under the common count.

Lane vs. Adams, 19 Ill. R. 167.

That when he contracted to pay in New York City, contracted to pay 7 per cent. interest, and it is precisely the same as if the note read with 7 per cent. interest.

If it be objected that we did not prove the execution of note and endorsement under the common count, I reply, we would, if that objection had been raised; as it was not, it was waived.

Charlesworth vs. Williams, 16 Ill. 338.
R. R. vs. Neil, 16 Ill. 276.
Conway vs. Case, 22 Ill. 139.

GLOVER, COOK & CAMPBELL,

For Defendant.

17 McAlister v. Smith

177-154
Chumassero

v3

Gilbert

Deft's, points

Filed May 11. 1880
L. Heland
Clerk

E B Chumars

149. ⁴ Gibut } 179.

In this case as in 175 + 176 the question is one of ~~pleading~~ arising on the pleading -

The statute book of New York if properly proved was undoubtedly competent evidence if the foundation had been laid by the pleading for its introduction -

and it is not denied but that on a rate payable in New York - New York interest is recoverable - but will this Court take judicial notice that any interest is recoverable by the laws of New York unless those laws are pleaded and proved, at any rate that more than Illinois interest is recoverable. =

It is also true that interest is recoverable under the Common Count. but what interest clearly interest of the Country

when the recovery is had.

I have never understood it to be law - certainly it has not been the practice in this State to permit a party to recover greater interest than allowed by the laws of this State without an express averment that a greater interest was allowable by the laws of the Country where the Contract is made payable here there is no such averment. - Mr Cook in this point has not preserved the distinction between the question arising under the pleading in the Case and the question that might arise ^{of the materiality} ~~under a question~~ of proof which might be applicable to a given state of facts when properly pleaded.

Yrs Chumasee
for appellant

1771 = 154

Chumaseo

3

Gilbert

Argument
pappellants,

Edward B. Chumaseo
appellant
2
Horatio S. Gibbet
appellee
Supreme Court
3^d Grand Division

Agreement for applicant.

The questions in this case are nearly identical with those presented in Nos 175 & 176. Between the same parties and for the reasons there given as well as those presented herein ask the reversal of this judgment.

The main point of difference between this case and the others shows a little experiment that the plaintiff below appears to have been trying - to ascertain whether they ~~he~~ might not recover either foreign interest or exchange on notes identical in terms. It will be observed that neither interest nor exchange are mentioned in any of the notes. In this case the appellee without any thing being said about interest in the note or in the declaration - procured and received a greater rate of interest than is allowed by the laws of this state.

We raise the question in this

case - Whether the plaintiff below was entitled to recover any interest at all under the declaration filed in the Court below.

We contend that interest is only recoverable by Express Contract to pay it - or when by Express enactment it follows as an incident to a debt. -

That interest is not recoverable at Common law and if by Statute of a foreign State which is to govern on a contract payable in a foreign State the laws regulating and allowing it must be averred in the declaration and proved on the trial.

5 Texas 87. - 5 Id. 262. 2 Texas. 348. H. 189.
2 Common 12.

The proof in this case was attempted to be made but there was no averment in the declaration which would authorize the introduction and reception of the Evidence. and the Court below erred in receiving it and in allowing it.

If we contend no interest

est should have been allowed in
this case then the Court reduced
judgment for \$12.37. too much.
If intent was allowable as all
It could under the agreement in
the declaration have been allowed
only at six per cent and not
at seven per cent which was
done by the Court below.

The judgment was for \$410.06
The note was due 30 Dec 58 = \$397.69
Int at 6 per cent to 8 June 59
3 mos & 9 days - would be — 10 55
\$408.24

and in that case the judgment
was for \$1.82 too much.

We understand this Court
to hold that a rescriptum
can not be entered in that
Court where the judgment
in the Court below is for more
than the plaintiff was entitled
to

Chas. H. H. H. H.
Atty. for appellants

Chumaseo 154

Gibbert 147

Argument
of appellant

Filed May 2. 1880
L. Leland
Clerk

Edward B. Churnassee

vs. } In Supreme Court
Heratio G. Gilbert } 3^d Grand Division

State of Illinois

Sasale County, p.

E. Follett Bell
~~William Churnassee~~

assess one of the claims, for the
appellant being first duly sworn
he tried this cause in the court below and that
disposes and says that at the time
the appeal was prayed for in the
Court below. The Court on motion
of appellant granted to him
thirty days ^{from the rising of the Court} within which to file
his appeal bond and bill of
exceptions - and affiant fur-
ther says that such order of
said Court appearing upon
the Docket of the Clerk of said
Court. but was omitted to be
entered by him of records.
and he further says that said
Bell on exceptions was returned
and as he believes filed within
said thirty days. and affiant
says this Court that a Certificate
may issue to the Clerk of the
County Court of Sasale to send
up a copy of said order and
that this cause may be continued

for the purpose of giving time
to appellant to move the Court
below to amend its record
in said cause said Court
not being now in session

Subscribed & sworn to

E. F. Bull

This 18 April 1860

L. Deland Clerk of Sup. Court
by J. B. R. Deputy

Chumasee vs. Gilbert

State of Illinois

LaSalle County, p. William Chumasee
being duly sworn says that he has
Examined the original Record of the
LaSalle County Court in above entitled
Case & that said Record does not show
that leave was given to file the bill of
exceptions within 30 days. but affiant
also says that he has examined the
Docket of the Clerk of said Court
& upon his docket it does in fact
appear that such time was given
& he further says that said
bill of exceptions was tendered
to the prop of said Court within
the time required by said order
viz within the said thirty days.

Wm Chumasee

Subscribed & sworn to

This 18 April 1860.

L. Deland Clerk of Sup. Court
by J. B. R. Deputy

Edward B. Chumasee

Horatio B. Gilbert

17th

Amurao

Gilbert
afford

Edmund B. Chumacee of the State of Illinois
vs
Norton & Greber } Supreme Court
of the State of Illinois
3^d Grand Division

State of Illinois
Lisane County, ss. Edmund L. Herick
being duly sworn says that he
is Deputy Clerk of the Lisane
County Court in which Court
the above cause was tried originally
that he was such Deputy Clerk
of said Court at the June Term
thereof 1859. - and as such
Deputy Clerk attended the
sitting of said Court at said
Term. That on the check
Docket of said Term - and
on the Docket kept by him
and in his hand writing it
appears that thirty days
was given to file appeal and
bill of exceptions from
the rising of the Court -
That such order was not
so far as bill of exceptions
is concerned entered on the
Record

Subscribed & sworn before me
on April 19, 1860

Frederick Co. Clerk

E. L. Herick

177
Chumarsen

vs
Guebert

affor

1
1
LaSalle County Court March Term 1859

State of Illinois
LaSalle County ss.

3 Pleas. Proceedings, and
Judgments held and taken in and before
The LaSalle County Court in The State of
Illinois at a regular term thereof commenced
and held at The Court House in Ottawa
in said county on The Seventh day of
March A.D. 1859, and of The Independence
of The United States of America The
Eighty Third -

Present Hon John A. Champlin Judge
Phil Lindley Clerk
Francis James Sheriff

Be it remembered That heretofore to wit
on The Twenty Second day of February
A.D. 1859 a Petition and Bond for costs
were filed in The office of The clerk of
said court in the words and figures
following to wit:

2

State of Illinois } And County Court Thereof
 LaSalle County } To March Term A.D. 1859

Noratio G. Gilbert

vs. ^{or.} Edward P. Chumasco } Assumpsit
 Damages \$500. -

Clerk will please issue summons as above
 and oblige
 Glover & Cook
 Plffs atty

We do hereby enter ourselves security for
 costs in the above entitled cause, and
 acknowledge ourselves bound to pay or
 cause to be paid all costs that may
 accrue in said cause, either to the opposite
 party or to any of the officers of this Court
 in pursuance of the laws of this State
 J. C. Glover.

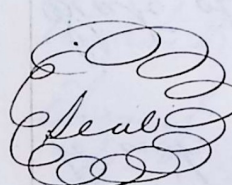
And afterwards to wit in the said
 Twenty second day of February A.D. 1859
 a certain writ of summons issued out
 of the office of the Clerk of said Court
 in the words and figures following to wit

The People of the State of Illinois,

3

To the Sheriff of our County of LaSalle, Greeting:

We Command you, that you Summons Edward P. Chumazero, if he shall be found in your County, personally to be and appear in our LaSalle County Court, before our Judge Thereof, on the first day of the next Term of said Court, to be held at the Court-House in Ottawa, on the first Monday in March next, at ten o'clock in the forenoon, There and There to answer unto Horatio G. Gilbert in a plea of Assumpsit to his damage of Five Hundred Dollars. And have you There and There This writ, and the manner in which you shall have executed the same.

In Witness whereof. We have caused
 The Seal of our said Court to be hereunto affixed and attested by Philo Lindley, our Clerk Thereof, at Ottawa. This 22nd day of February 1859
P. Lindley Clerk

And afterwards to wit on the 7th day of March A.D. 1859 said summons was returned to and filed in the office of the clerk of said Court, having an endorsement thereon in the words and figures following to wit: "Served to within Summons by reading

To the within Edward P. Chumascero This 24th
 day Feb A.D. 1859. J. Warner Sheriff
 Sec & Ret. 60 by C. J. P. Buck Deputy
 15 miles 75
 \$1.35

And on the said 22nd day
 of February A.D. 1859 a declaration was
 filed in the office of the Clerk of said
 Court in the words and figures following
 to wit:

State of Illinois }
 LaSalle County } And County Court thereof,
 To March Term A.D. 1859

Norath's G. Gilbert. Plaintiff in this suit by
 Glover Hook his attorney complains of
 Edward P. Chumascero Defendant, summoned
 &c. of a plea of Assumpsit: For that the said
 defendant at LaSalle to wit, at the County
 of LaSalle, heretofore, to wit on the 11th day
 of October A.D. 1858, by his certain promissory
 note of that date by him subscribed by
 the name & style of E. P. Chumascero, for
 value received promised to pay Wm Chumascero
 & R. G. Parks or order the sum of Three
 Hundred & ninety seven & ⁶⁹/₁₀₀ dollars, with

defalcation at the Broadway Bank of New York fifty Eighty days from date of said note. And afterwards, to wit, on the said 11th day of October A.D. 1859 The said Wm Chumassers & R G Parks endorsed and delivered the said note, then and there still unpaid to the Plaintiff, of all of which the said defendants then and there had notice, and then and there became liable; and in consideration thereof, then and there promised the said plaintiff to pay him the said sum of money in said note mentioned, according to the tenor and effect thereof, when the same should become due and payable. And the plaintiff avers that the said Eighty days the time limited in said note for the payment thereof, had long since elapsed, yet though often requested, the said defendants has never paid the same nor any part thereof.

And for that the said defendants at the County aforesaid, heretofore, to wit on the 1st day of February A.D. 1859, being justly indebted to the plaintiff in the sum of Five hundred Dollars for so much money before that time had and received by said defendants to and for the use of

said plaintiff, and in the like sum for
 so much money before that time loaned
 and received by said defendant to and
 for the ~~now~~ laid out and expended by
 said plaintiff to and for the use of the
 said defendant at his special instance
 and request; and in the like sum for so
 much money loaned by said plaintiff to
 said defendant at his request; and in
 the like sum for goods, wares and merchan-
 dis before that time sold and delivered
 by said plaintiff to said defendant at
 his request; and in the like sum for work
 and labor before that time done and perfor-
 med by said plaintiff for said defendant
 at his request; in consideration thereof
 then and there promised the said
 plaintiff to pay him the said several sums
 of money when he should be thereto
 afterward requested. Yet though often
 requested, the said defendant has never
 paid the same nor any part thereof.

Whereby the plaintiff has suffered damage
 in the sum of Five Hundred \$500-
 dollars, and therefore he brings his suit

Glover & Cook

Pliff's Att'y

Copy of note sued on.
\$ 397 '9.

Saballs Oct 11th 1858

Eighty days from date I promise
to pay ^{for} Chumazero & R. G. Parks or order
Three hundred & ninety seven & 69/100 dollars
without defalcation for value received
at The Broadway Bank of New York
City
Signed O. P. Chumazero

Endorsements on said notes

^{for} Chumazero R. G. Parks

Said note will also be introduced
under the common count

And afterwards to wit on the 9th day
of March A.D. 1859. The same being one
of the days of said March Term A.D.
1859, of said court, certain proceedings
in said cause were had and entered
of record in said court in the words
and figures following to wit.

Horatio G. Gilbert

^{n.}
Edward B. Chumason

Assumpsit

This day comes the defendant by Chumason & Eldridge his attorneys, and enters his motion to continue this suit for want of bill of particulars herein

And afterwards to wit on the 10th day of March A.D. 1859 another of the days of said term of said court, certain other proceedings in said cause were had and entered of Record in said court in the words and figures following to wit:

Horatio G. Gilbert

^{n.}
Edward B. Chumason

Assumpsit

This day again comes the defendant by his said attorneys and the plaintiff by Glover & Cook his attorney and after hearing the arguments of counsel said motion to continue entered herein is overruled.

March A.D. 1859 a certain Plea was filed
in the office of the Clerk of said Court
in the words and figures following, to wit

Lafayette County Court March Term
Thereof A.D. 1859

Edward J. Chumassero

vs

Horatio G. Gilbert

And now comes
The said Defendant
Edward J. Chumassero by Chumassero &
Eldridge his attys and defends &c when &c
& says That he did not assume &c in
manner &c as the said Plaintiff in his
said declaration hath above thereof
complained against him, and of this
The said Defendant puts himself upon
the Country

Chumassero & Eldridge
Defts attys

And afterwards to wit on the 15th day of
March A.D. 1859 another of the days
of said term of said Court, certain
further proceedings in said cause were
had and entered of record in said
Court in the words and following to wit

Noratio G. Gilbert }
 Edward B. Chumason } Assumpsit

This day comes
 The plaintiff by Glover & Cook his attorneys
 and on their motion ~~the~~ leave is given
 to file copy note sued on, and cause
 continued.

And on the 10th day of March A.D.
 1859 one of the days of said Term of said
 Court, a certain Bill of Exceptions
 in said cause was filed in the office
 of the Clerk of said Court, in the words
 and figures following to wit:

State of Illinois, } County Court & March
 LaSalle County } Term thereof A.D. 1859

Noratio G. Gilbert }
 Edward B. Chumason } Before Hon J. F. Champ
 lin Judge

It is remembered that on this
 10th day of March A.D. 1859 the same
 being one of the days of said Term of
 said Court, came the said Defendant

by his attorneys and moved the Court to continue this cause for want of a copy of the account &c sued on, whereupon the plaintiffs counsel stipulated that he would only introduce in evidence on the trial of this cause the note a copy of which is filed with the declaration in this cause, and thereupon said motion was overruled by the Court, & to which decision of the Court overruling said motion the said defendant by his counsel then & there excepted and then and there requested this Bill of Exceptions to be signed and sealed which is done in open Court on the day & year last aforesaid

John C. Champlin *Seal*

And afterwards, to wit on the 8th day of June A.D. 1859, the same being one of the days of the Term Term A.D. 1859 of said Court further proceedings in said cause were had and entered of record in said Court in the words and figures following to wit:

Horatio G. Gilbert

Assumpsit

Edward F. Chumason

This day comes the plaintiff by Glover & Cook his attorneys and the defendant by Chumason & Eldridge his attorneys, whereupon by agreement of parties a jury is waived and this cause submitted to the court for trial, who after hearing the evidence, and due deliberation thereon had, finds the issues for the plaintiff and assess his damages at Four Hundred and Ten dollars and Six cents.

Whereupon the defendant by his said attorneys enters his motion herein for a new trial, which motion is overruled by the Court.

It is therefore considered by the Court that said plaintiff have and recover of said defendant said sum of Four Hundred and ten dollars and Six cents for his damages and also his charges by him herein expended and that he have execution therefor.

Whereupon the defendant prays an appeal herein which is allowed

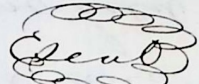
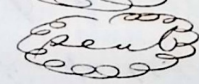
upon his entering into a bond in the penal sum of One Thousand dollars with William Chumassers as security - said bond to be filed in thirty days from the last day of this term ^{of this} court.

And afterwards to wit on the 13th day of July A.D. 1859, an appeal Bond was filed in the office of the clerk of said court in the words and figures following to wit

Know all men by these presents that we Edward J. Chumassers as principal and William Chumassers as security are held and firmly bound unto Horatio C. Gilbert in the penal sum of One Thousand Dollars for which payment well and truly to be made we bind ourselves our heirs and Executors to jointly and severally firmly by these presents, sealed with our seals and dated this twelfth day of July A.D. 1859.

The condition of the above obligation is such that whereas the above Horatio C. Gilbert did at the June Term A.D. 1859 of the LaSalle County Court in the state of Illinois receive a judgment

14 against the above bounden Edward P.
Chumarsen for the sum of Four Hundred
fifty dollars & six cents, beside costs, from
which judgment the said Edward P.
Chumarsen has taken an appeal to the
Supreme Court of the State of Illinois,
Now if the said Edward P. Chumarsen
shall prosecute his appeal with effect
and shall pay whatever judgment
shall be rendered by the Court upon
dismissal or trial of said appeal
Then this obligation to be void, otherwise
to remain in force

E. P. Chumarsen 
H^m Chumarsen 

And on the 11th day of July A.D. 1859
a Bill of Exceptions was filed in the
office of the clerk of said Court, in the
words and figures following to wit.

State of Illinois } County Court } said
LaSalle County } County Clerk }
A.D. 1859

15
Horatio G. Gilbert
vs.
Edward P. Chumason

Be it remembered
That on the eighth day of June A.D. 1859,
the same being one of the days of said
term of said Court, this cause came on
for trial, and the plaintiff to maintain
the issues on his part offered in evidence
a promissory note in the words and
figures following to wit:
\$397. ⁶⁹/₁₀₀ LaSalle Oct 11th 1858

Eighty days from date I promise to
pay to H^m Chumason & B. G. Parks or order
Three hundred & ninety seven & ⁶⁹/₁₀₀ dollars
without defalcation for value received,
at The Broadway Bank New York City
E. P. Chumason "

to the reading of which note in evidence
the defendant by his counsel then &
there objected, which objection was by
said Court then & there overruled
and said plaintiff was by said Court
then & there permitted to read said

note in evidence, to which ruling of the Court, and permitting said note to be read in evidence the defendant by his counsel then & there excepted, and the said plaintiff further to maintain the issues on his part offered in evidence a book purporting to be a Statute Book of the State of New York, in which book was a law purporting to be a law of the State of New York, the purport of which was that seven per cent interest per annum should be the lawful interest of the State of New York, to the reading of which book as evidence the defendant by his counsel then & there objected, which objection was by the Court then and there overruled and said plaintiff was then and there permitted to read said book in evidence to which ruling of the Court & permitting said book to be read in evidence the defendant by his counsel then & there excepted.

And the plaintiff further to maintain the issues on his part produced George Campbell, who being duly sworn testified in substance as follows; That he had computed the

17
interest on the note sued on at seven
per cent, that he found the interest
on the said note at seven per cent to
be Twelve ³/₁₀ dollars, and the amount
of the note with said interest to be
Four hundred & ten ⁶/₁₀ dollars. Be it
further remembered that no other
or further testimony was produced
by either party on the trial of said
cause, Be it further remembered that
the Court then & there rendered judgment
in favor of the plaintiff for the sum of
Four hundred and ten dollars & six
cents besides costs. Be it further
remembered that the defendant by
his counsel then & there made a
motion for a new trial which
motion was by the Court then & there
overruled. to the overruling of which
motion the defendant by his counsel
then & there excepted, and prays that
this his bill of exceptions may be
signed and sealed and made a
part of the records of said cause

J. C. Champlin *Seal*
Judge of the County Court

State of Illinois
LaSalle County

I Phil Grindley
Clerk of the County Court of said County
do hereby certify that the above and
foregoing is a true full and complete
Transcript of the Record and proceedings
in the cause wherein Horatio G. Gilbert
is plaintiff and Edward F. Chumason
is defendant as the same appears of
Record and on file in my office

In Testimony whereof I have
herewith set my hand and
The seal of said Court at Ottumwa
This 12th day of March A.D. 1860

Phil Grindley, Clerk
E. A. Smith, Secy

Chas. Rogers for Record \$4.00

Supreme Court of the State of Illinois
 3 Grand Division

Edward B. Charnasco

¹⁰ Horatio G. Gilbert ³ Assignment of Errors

- 1st The Court erred in not continuing the cause on motion of appellant.
2. The Court erred in permitting the note set out in first count to be read in evidence.
- 3 The Court erred in permitting the book purporting to be a statute book of the State of Illinois to be read in evidence to show the rate of Interest in New York. There being no ^{in documentation} government, that the rate in New York was greater than in Illinois is different.
- 4 The Court in receiving the testimony of Campbell on the question of Interest.
- 5 The Court erred in allowing seven per cent interest on the note read on.
- 6 The Court erred in overruling the motion for new trial.
- 7 The Court erred in rendering judgment against appellant.

And now comes the ~~appeal~~ ^{Charnasco Edward} ^{attys for appellant} ^{by} ^{Blower, Cook & Campbell} ^{their attys} ^{and} ^{there is no} ^{error} ^{wherefor} ^{they pray} ^{Blower, Cook & Campbell} ^{replear}

Filed May 8, 1860

Edward
 Clark

Edward B. Charnasco

18. G. Gilbert
 V. Revere
 Errors

Filed April 17, 1860
 T. Delaney
 Clerk

E. B. Chumasco

Case No 117

vs

Horatio B. Gullent

Mo to Strike from record. The 2^d bill of
exceptions.

The trial was on the 8th day of June 1859
Record page 11 & 12

The term could last but two weeks
see brief in case 125

On July 11th 1859 bill of exceptions
filed. Record page 15

See Brief filed with motion in
Case 125

177

Chunners

11

Muller

Mr to Mr. C. C.
of Pa from ~~John~~

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

Edward B. CHUMASERO, Appellant

APRIL TERM, A. D. 1860.

HORATIO G. GILBERT, Appellee

POINTS OF APPELLANT.

1. The Court below should have continued this cause on motion of Appellant, no Bill of particulars having been filed with the declaration.

2. The Court should have excluded the note, because the endorsement thereof was not read in evidence.

3. The Court below should not have allowed evidence of the rate of interest in New York, at any greater rate than allowed by the laws of this State, and should not have allowed and rendered judgment for such greater rate, there being no averment in the declaration that the rate of interest was greater in New York than in this State.

Hill vs. George, 5 Texas 87. Wheeler vs. Pope, 5 Texas 262. 2 Scam. 12, Forsyth vs. Baxter.

CHUMASERO & ELDREDGE, Att'ys for Pl'ffs.

177-154

Chumareo

as
Geibert }

Points of Appeal

Filed Apr 24, 1860

L. Deland
Clerk

THE COURT OF THE JUDICIAL DISTRICT OF THE STATE OF ILLINOIS

POINTS OF APPEAL

OF THE COURT OF THE JUDICIAL DISTRICT OF THE STATE OF ILLINOIS

IN THE COURT OF THE JUDICIAL DISTRICT OF THE STATE OF ILLINOIS
IN THE MATTER OF THE ESTATE OF JAMES M. DELAND
DECEASED
vs
JAMES M. DELAND
ADMINISTRATOR

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

CHUMASERO }
177. vs. } *Appeal from La Salle.*
GILBERT. }

I. THE 1st assignment of error is not well taken, because the cause was continued at the March term, 1859. Pages 7 and 8 of Record. The cause was not tried at the March term. Record, page 11.

II. As to 2d error, no reason is given why the note should not have been read in evidence, and I can see none. The reason should have been pointed out.

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Peoria & Oquawka R. R. vs. Neil, 16 Ill. 276.

Russell vs. Whitesides, 4 Scam. R. 11.

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It is said now that the Court should have excluded the note because the endorsements were not read in evidence. The assignment of the note was distinctly alleged in the declaration, and was not denied by plea, verified by affidavit, and, therefore, need not be proven. Scates Stat. page 254, Sec. 59.

III. The Statute book of New York was proper evidence.

Charlesworth vs. Williams, 16 Ill. 338.

Scates Stat. page 254, Sec. 1.

IV. As to last point of plaintiff in error, I reply, we had a right to collect that interest under the common count. The note and the interest upon it could be recovered under the common count.

Jane vs. Adams, 19 Ill. R. 167.

That when he contracted to pay in New York City, contracted to pay 7 per cent. interest, and it is precisely the same as if the note read with 7 per cent. interest.

If it be objected that we did not prove the execution of note and endorsement under the common count, I reply, we would, if that objection had been raised; as it was not, it was waived.

Charlesworth vs. Williams, 16 Ill. 338.

R. R. vs. Neil, 16 Ill. 271.

Conway vs. Case, 22 Ill. 139.

GLOVER, COOK & CAMPBELL,

For Defendant.

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Chumasco

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G. Albert

Depot's Points

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Leland
Clare