

No. 12757

Supreme Court of Illinois

Diversey

vs.

Loeb

71641  7

222.

Michael Diversy

vs

Adolph. Loeb

222

12757

1859

Page 1 United States of America
State of Illinois }
County of Cook }.

Met before the Honorable John M. Wilson, Judge of the Cook County Court of Common Pleas, within and for the County of Cook and State of Illinois at a Special term of said Cook County Court of Common Pleas, began and held at the Court house, in the City of Chicago, on the fifth Monday being the twenty ninth day of November in the year of our Lord one thousand eight hundred and fifty eight, due notice of the time and place of the holding said Special term of Court, having been printed and published in the "Daily Democrat", the Corporation Newspaper of the City of Chicago, said Notice having been printed and published Twenty days previous to the holding of said Special Term of Court, in accordance with the Statute in such case made and provided, and in pursuance of an order made by the Judge of said Court on the sixth day of November A.D. Eighteen hundred and fifty eight.

Present.

John M. Wilson Judge

Charles Haven Prosecuting Attorney

John Gray Sheriff

Attest, Walter Kimball, Clerk,

Be it remembered that heretofore to wit on the thirteenth day of May in the year of our Lord one thousand eight hundred and fifty eight there was filed in the office of

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The Clerk of the said Cook County Court of Common Pleas,
a Precept for Summons against Michael Duersey at the
suit of Adolph Loeb; Which said precept is in the
words and figures following, that is to say,

1. Norfolk Loc } Cook County Court of Common
(2) } Pleas. June Term 1858.

Michael Diversy } Ap: Dam: Stover

While the Clerk please issue Summons as
above - Barker & Hyatt.

Plaintiff's Atty's.

And thereupon accordingly on the said thirteenth day of May in the year last aforesaid there issued out of the Office of the Clerk of said Court a Summons in the words and figures following, that is to say,

" State of Illinois"

County of Cook ^{Ill.}. The People of the State of Illinois
To the Sheriff of said County, Greeting

We command you that you summon Michael Quinn if he shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said County, on the first day of the next term thereof to be holden at the Court house in the City of Chicago in said County on the first Monday of June next to answer unto Adolph Loeb in a Plea of Trespass on the case on promises, to the damage of the said Plaintiff as he says, in the sum of One thousand dollars, And have you then and there this Writ with an endorsement

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thereon, in what manner you shall have Executed the same
 Witness Walter Kimball Clerk of our said Court, and
 the Seal thereof, at the City of Chicago, in said County
 this 13th day of May A. D. 1858.

Sal.

Walter Kimball. Clerk.

On which said Summons there is the following
 Endorsement

"Served by reading to the within named
 Defendant this 28th day of May A. D. 1858

John L. Wilson, Sheriff

by Thos. J. Holt, Deputy."

And whereas also on the said thirteenth day of May
 A. D. one thousand eight hundred and fifty eight, the
 said Plaintiff filed in the Office of the Clerk of said
 Court his Declaration in said suit; Which said
 Declaration is in the words and figures following, that
 is to say.

"State of Illinois Cook County Court of Common
 Pleas. June Term 1858.

Adolph Loeb, Plaintiff in this suit, by
 Barker & Hyatt - Attorneys. Complain of Michael Quorsy
 Defendant, was summoned &c of a Plea of Trespass on the
 case on premises. For that whereas one S. D. Sakue
 heretofore to wit on the third day of December in the year
 of our Lord one thousand eight hundred and fifty seven
 at Chicago, that is to say, at said County of Cook, made

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his certain Bill of Exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day & year aforesaid, and thereby then and there requested the said Defendant, Three Months after the date thereof to pay to the Order of himself the sum of Five hundred dollars for value received, at the Office of Greenbaum Brothers. Which said Bill of Exchange, the said Defendant, afterwards to wit, on the day and year aforesaid at Chicago, to wit, at said County of Cook, upon sight thereof accepted.

And the said J. D. Latue to whom or to whose order said Bill of Exchange was payable, afterwards, to wit, on the day and year aforesaid, at Chicago, that is to say, at the County of Cook, aforesaid, endorsed said Bill of Exchange in writing. by which said endorsement the said J. D. Latue then and there ordered and appointed the sum of money in the said Bill of Exchange mentioned to be paid to said Plaintiff, and then and there delivered the said Bill of Exchange, so indorsed, to the said Plaintiff. By means whereof and by force of the Statute in such case made & provided the said Defendant became liable to pay said Plaintiff said sum of money as mentioned in said Bill of Exchange. and being so liable in consideration thereof, then and there undertook & promised to pay the same to the said Plaintiff according to the tenor and effect of the said Bill of Exchange and of the indorsement aforesaid, to wit at the place aforesaid. And whereas also the said Defendant afterwards to wit on the twentieth day of May, in the year of our Lord one

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thousand eight hundred and fifty eight, to wit, at said
 County, became and was indebted unto the Plaintiff in a
 large sum of money, to wit, one thousand dollars for
 money before that time lent and advanced to said Defendant
 by said Plaintiff at said Defendants request - And also
 in the like sum for money before that time paid laid
 out and expended for said Defendant by the said Plaintiff
 at the like special request of said Defendant - and in the
 like sum for money before that time had and received
 by said Defendant to and for the use of said Plaintiff,
 And also in the like sum for Goods, wares & merchandize
 before that time sold and delivered by said Plaintiff to
 said Defendant at the like special instance and request -
 And also in the like sum for the labor, care & diligence of
 said Plaintiff before that time done & performed by said
 Plaintiff for said Defendant, at the like instance and
 request of said Defendant, And also in the like sum
 then and there found to be due owing to said Plaintiff
 on an account stated between them - and being so indebted
 said Defendant in consideration thereof, then and there
 undertook and promised ^{to pay} said Plaintiff, said several sums
 of money above mentioned, when thereunto afterwards requested
 Yet the said Defendant, not regarding his said promises &
 undertakings - but contriving &c - altho' often requested so
 to do, has not paid said Plaintiff, either of said sums
 of money, above mentioned, or any part thereof, but still
 do has hitherto ^{wholly} neglected and refused - and still does
 neglect and refuse - To the damage of said Plaintiff of

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One thousand dollars, And therefore he brings this Suit vs.
Barker & Hyatt.

Plaintiff's Atty.

Copy of Instrument sued in...

\$500⁰⁰/₁₀₀.

Chicago Decr 3^d 1857

Three Months after date pay to the Order of
myself, at the Office of Spencebaum Bros. Five hundred
dollars, value received, and I charge the same to account
To Cash: M. Diversy } S. D. Latue.

Chicago ... }

Endorsed, S. D. Latue.

Endorsed, "For value received I do hereby guarantee
the payment of the within Note at maturity."

"C. S. Nichiff."

And thereafter to wit on the Ninth day of June in the
year of our Lord one thousand eight hundred and fifty
eight, the said Defendant, filed in the Office of the Clerk
of said Court his Pleas to said Declaration; which
said Pleas are in the words & figures following, that
is to say.

"Adolph Lieb } Cook County Court of Common Pleas
(in } June Special Term A.D. 1858.
Michael Diversy)"

And the said Defendant by Peter, Mc
Allister, Jewett & Peabody his Attorneys comes and defends
the wrong and injury when he says that he did not
undertake or promise in manner and form as the said

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Plaintiff hath alone thereof complained against him And of this he puts himself upon the Country - And Plaintiff doth the like.

And for a further Plea in this behalf as to the first Count in said declaration, said defendant says nothing because he says that he accepted the said bill of Exchange in said Count mentioned, without any good valuable or sufficient consideration therefor. Which was well known to the said Plaintiff, at the time he received the said bill to wit at Chicago aforesaid And this he is ready to verify Therefore he prays judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him &c

Scates, M^cA, Jewett & Teabody
Defts Attys.

State of Illinois
County of Cook
Adolph Loeb

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

Michael Diversy Michael Diversy being first duly sworn deposes and says, that he is the Defendant in the above entitled cause And that he verily believes that he has a defence to said action upon the merits

Subscribed and sworn to before
me this 5th day of June A.D. 1858, M. Diversy

John Forsythe
Notary Public

(Seal)

And thereafter to wit on the Ninth day of July in the year of our Lord one thousand eight hundred and fifty eight the said Plaintiff filed in the Office of the Clerk of said Court a Demurrer to defendant's said second Plea: Which said Demurrer is in the words & figures following, that is to say.

" Adolph Lock & Book County Court of Common
 vs Pleas. July Term 1858

Michael Quincey

And the said Plaintiff as to the said Plea of the said defendant, by him secondly above pleaded, saith that the same, and the matters therein contained, the manner and form as the same are above pleaded and set forth, are insufficient in law, to bar or preclude him the said Plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he the said Plaintiff is not bound by law to answer the same, and this he the said Plaintiff is ready to verify. Wherefore by reason of the insufficiency of the said Plea in this behalf, the said Plaintiff prays judgment and his damages by reason of the not performing of the said several promises and undertakings in the said declaration mentioned to be adjudged to him &c

Barker & Hyatt

Plaintiff's Attys.

And thereafter to wit on the Ninth day of December in the year of our Lord one thousand eight hundred and

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fifty eight, there was filed in the Office of the Clerk of said Court, the Original Bill of Exchange sued upon in this action; Which said Bill of Exchange is in the words & figures following, that is to say.

\$500.⁰⁰ Chicago. December 3. 1857.
Three Months after date pay to the Order of
Myself at the office of Greenbaum Bros. Five hundred
dollars, value received, and charge the same to account
of - S. D. Latner.

To Cash. Mr. Quincy

Chicago.

Endorsed S. D. Latner.

Endorsed, "For value received I do hereby guarantee
the payment of the within Note at Maturity."

"G. L. Nichoff"

And afterwards to wit on the said Ninth day of
December in the year of our Lord one thousand eight
hundred and fifty eight (being one of the days of the
November Special Term of said Court) the following
among other proceedings were had, and entered of
Record in said Court; to wit.

"Adolph Loeb

(vs)

Appt

Michael Quincy

And now comes as well the said
Plaintiff by Barker & Wyath his Attorneys as the said
Defendant by Scates, Mc Allister & Jewett his Attorneys,
and counsel being heard upon the demurrer of the

said Plaintiff to the second Plea of the said defendant, to the first count in the said Plaintiff's declaration in this cause, and mature deliberation being thereupon had, and the premises fully considered, it appears to the Court that the said plea of the said Defendant by him in bar to the said first count of the said Plaintiff's declaration herein pleaded is not sufficient in law to bar the said Plaintiff from having and maintaining the said action against the said Defendant; the demurrer is therefore sustained, with leave to the Defendant to plead over as to the said first count, and the said Defendant electing to stand by his said plea, and issue being joined on the remaining plea, it is ordered that a Jury come whereupon comes the Jury of good and lawful men, to wit,

A. Filkins. N. F. Hayes. Ira Misc. C. A. Morse. Joseph Webb. William Horner. John Brooks. John Kenney. A. W. Allen. A. W. Blackman. J. S. Adams & G. Delmatet. who being duly elected, tried and sworn to try the issues joined aforesaid; after hearing the evidence, arguments of Counsel and instructions of the Court retire to consider of their Verdict, and afterwards come into Court and say We the Jury find the issues for said Plaintiff & assess his damages to the sum of Five hundred & twenty three dollars and twenty five cents,

Therefore it is considered that said Plaintiff do have and recover of the said defendant his damages of Five hundred, twenty three dollars and twenty five cents in form

aforesaid by the Jury aforesaid assessed, together with his
Costs and charges in this behalf expended, and that he
have Execution therefor.

And afterwards to wit on the Eighteenth day of
December (being another of the days of the said November
Special term of said Court) in the year of our Lord one
thousand eight hundred and fifty eight, the following
further proceedings were had in said cause, and entered
of Record in said Court, to wit:

" Adolph Loeb

vs

Mps

Michael Quersy

And now again comes the said
Defendant, and prays an Appeal in this cause to the
Supreme Court of the State of Illinois; Which is allowed
to him upon Condition, that he file within five days
from this day, his Appeal Bond in the penal sum of
Seven hundred dollars, with William Lile as security
thereon.

And thereafter to wit on the twenty third day of
December A. D. one thousand eight hundred and fifty
eight the said defendant accordingly filed in the office of
the Clerk of said Court his Appeal Bond; which said
Bond is in the words and figures following; that is to say
" Know all Men by these presents That we Michael
Quersy and William Lile of the City of Chicago, County

12 of Cook and State of Illinois are held and firmly bound unto Adolph Loeb in the penal sum of Seven hundred dollars (\$700) lawful money of the United States, for the payment of which well and truly to be made we bind ourselves our heirs ex autors and administrators jointly severally and firmly by these presents.

Witness our hands and seals this Eighteenth day of December A.D. 1858.

The Condition of the above Obligation is such that whereas the said Adolph Loeb did on the Ninth day of December A.D. 1858 in the Cook County Court of Common Pleas in and for the County of Cook and State of Illinois and of the November Special Term thereof A.D. 1858 recover a Judgment against the above bound Michael Dwyer for the sum of Five hundred & twenty three dollars and twenty five cents, damages, besides Costs of Suit from which said Judgment of the said Cook County Court of Common Pleas the said Michael Dwyer has prayed for and obtained an Appeal to the Supreme Court of said State.

Now therefore if the said Michael Dwyer shall duly prosecute his said Appeal with effect and moreover pay the amount of the judgment, costs, interest & damages rendered, and to be rendered against him in case the said Judgment shall be affirmed in the said Supreme Court, then the above Obligation to be void; otherwise to remain in full force and virtue.

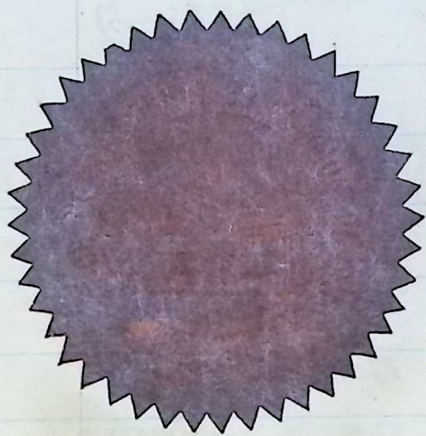
In presence of J. H. Smith.

M. Dwyer

Witness Site

State of Illinois
County of Cook } P

I Walter Kimball Clerk of the Cook
County Court of Common Pleas in said County and State
do hereby certify That the foregoing is a true and
correct copy of all papers now on file in my office,
and of all proceedings entered of Record in said Court
in a certain suit then pending therein, wherein Adolph
Leib is Plaintiff and Michael Dwinoy is Defendant.



In witness whereof I the said Walter
Kimball have hereunto set my hand
and affixed the Seal of said Court at
Chicago in said County this 25th
day of January. in the year of our Lord
one thousand eight hundred and fifty
eight. ^{nine.} Walter Kimball Clerk

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Supreme Court

Michael Diversay

vs Appel

Adolph Loeb
Appellee

Assignment of Errors

And Afterwards to wit at the April Term
 of 1839 of the said Court at ~~Ottawa~~
 before the Justices thereof at Ottawa with
 said State Census the said Michael Diversay
 by his Attorney Leath McAllister Jewett
 and says that in the record and proceedings
 aforesaid and in giving the judgment
 aforesaid there is manifest error
 in this to wit that the Court of
 Common Pleas aforesaid sustained the
 demurrer of the said Adolph Loeb to
 the second plea of the said Michael
 Diversay whereas the said Court should
 have overruled the said demurrer and
 decided that the matters and things in said
 plea contained were sufficient to bar the
 said plff from having or maintaining the
 said action. And also there is error in
 this to wit by the record and proceedings
 aforesaid it appears that said Court rendered
 judgment in favor of said Loeb against the
 said Diversay whereas by the law of the
 land the said judgment ought to have

been rendered in favor of the said Deversy
wherefore for the errors aforesaid and other
errors &c the said Michael Deversy
prays that the judgment aforesaid be
in all things reversed and he be restored
to all that he has lost by reason thereof
&c

Scates McAllister & Jewett

Attys for Appellant

And the Appellee Adolph Loeb comes
and for joinder says, that there is
~~no~~ no errors in the record and
proceeding in manner & form as above
alleged wherefore he prays
said Judgment be affirmed
with costs &c. by Morris his
attys.

222
State of Illinois
Cook County
Court of Common Pleas

Adolph Erb
— att. —

Michael Diversy

Record.

Filed April 18 1889
L. Leland
clerk

True Transcript. J. H. D.
Paid Marshall

SUPREME COURT--AT OTTAWA.

MICHAEL DIVERSEY,
Appellant,
vs
ADOLPH LOEB,
Appellee. } APPEAL FROM COOK COMMON PLEAS.

APPELLEE'S POINTS.

The authorities cited by appellant do not sustain him. Story on Bills, sec. 187, in stating between what parties the defence can be made, does not name endorsee or acceptor.

If the doctrine of appellant prevails, it would destroy all acceptances for accommodation. It does not negative the idea of *bona fide* holder to show that the maker's friend accepted for accomodation. That is a question between the maker and acceptor alone.

It is no defence to an action by an endorsee, for value against an acceptor or other person, who has received no consideration, that at the time the plaintiff took the bill he knew the defendant had received no value.—

Bigler on Bills, 98. — 20 Ill. 11.

B. S. MORRIS,

For Appellee.

222-98

Michael Diversey
vs

Adolph Loeb

Appellee Points

Filed May 4, 1859
L. Leland
Clerk

12757

S U P R E M E C O U R T .

MICHAEL DIVERSEY,

Appellant,

vs.

ADOLPH LOEB,

Appellee.

} Appeal from Cook
Common Pleas.

A B S T R A C T O F R E C O R D .

Rec. p. 2 This action was assumpsit, brought to the June Term, A. D. 1858, of
the Cook County Court of Common Pleas.

3 The plaintiff declared upon a bill of exchange, dated the 3d day of
4 December, A. D. 1857, for five hundred dollars, drawn by S. D. La Rue,
5 upon the defendant, Diversey, at three months, payable to the order of
the drawer, at the office of Greenebaum & Brothers, Chicago, and
also upon the common money counts.

The defendant pleaded to the declaration the general issue, and to the
count upon the said bill the following plea of want of consideration :

7 And for a further plea in this behalf, as to the first count in said decla-
ration, said defendant says *actio non*, because he says that he accepted
the said bill of exchange in said count mentioned, without any good,
valuable or sufficient consideration therefor, which was well known to
the said plaintiff at the time he received the said bill, to wit, at Chicago
aforesaid. And this he is ready to verify, wherefore he prays judgment,
&c.

8 To this plea the plaintiff demurred generally, and the Court sustained
the demurrer, and rendered judgment in favor of said Adolph Loeb,
against the said Michael Diversey, for the sum of five hundred and
twenty three dollars and twenty five cents.

11 The defendant prayed an appeal, which was allowed, and filed his
12 bond.

The decision of the Court in sustaining the said demurrer is assigned for error.

SCATES, McALLISTER & JEWETT,
Atty's for Appellant.

APPELLANT'S POINT.

The plea alleges that the bill sued on was accepted without any good, valuable or sufficient consideration therefor, and that this was well known to the plaintiff when he received the same.

This constitutes a good defence.

Cooke's Statutes, Page 292, Sec. 10.

Story on Bills, Sec. 187.

Elston vs. Blanchard, 2 Scam. 420.

See 3 Espinasse R 46
1 Limit 224 -

But when a bill is given under
no such restriction, but merely for
the accommodation of the drawer or
payee, and is put into the world
it is no answer to an action on that
bill, the defendant accepted it for the
accommodation of the drawer and that
fact was known to the holder, in
such cases if the holder gave a hand

side consideration for it. He is in
titled to receive the amount though
he had full knowledge of the trans-
action - Edwardes bills p 216 -
up to 2 Exp 02 46 -

22,2-1706
In diversity

by

Adolph Laeb

Abstract and
Appx. Brief

Filed Sept 20/1869

Attest
Clerk

Profered