No. 12970

Supreme Court of Illinois

Chumasero

vs.

Gilbert

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 175.

1860

Summers

12470

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

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175. E. B. CHUMASERO *vs.* HORATIO G. GILBERT.

---

1. There was no cause for a continuance, and in this case there was no exception to the decision overruling the motion for continuance.

2. The note sued on was made in La Salle and payable in New York City. Of course it could not express that it was to be paid with exchange. The true measure of damages for non-payment was the actual damage sustained by the payee in not having his money in New York City at the time of payment.

Story on Promissory Notes, page 525, § 397.
Cash vs. *Rennion*, 11 Vesey R. 314.
Scott vs. *Bevan*, 2 Barn. & Adolph. 78.

3. As to plaintiff's 3d point, it was not necessary for plaintiff to prove the assignment of the note. That fact was properly averred in the declaration, and was not denied by plea, verified by affidavit.

Scates Stat. page 254, § 59.

There was no question raised in the Court below as to any variance between the note and 1st count, and it is too late to raise it here.

Conway vs. *Case*, 22 Ill. 127.

The note also was properly received under the common count. Offering the note in evidence was equivalent to a formal offering of the endorsements upon it.

B. C. COOK.

1782

Cherrasco

Gilbert

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant

vs.

HORATIO G. GILBERT, Appellee.

APRIL TERM, A. D. 1860.

POINTS OF APPELLANT.

1. The Court below should have continued this cause on motion of the Appellant, no account having been filed with the declaration, and no copy of the endorsement of the note declared, on having been filed.

2. The note sued on was not payable with exchange; nor was there any averment in the declaration relative to exchange, and the Court erred in receiving evidence of the value of exchange, and allowing the same.

3. The Court should have excluded the note offered in evidence, for the reason that no copy of the endorsement was filed; nor was there any proof of the hand writing of the endorsees.

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

Chumasero 17
&
Gilbert &
Points of
Appellants

Filed Apr 24, 1860
A. Lincoln
Clerk

12970

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

---

175. E. B. CHUMASERO *vs.* HORATIO G. GILBERT.

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1. There was no cause for a continuance, and in this case there was no exception to the decision overruling the motion for continuance.

2. The note sued on was made in La Salle and payable in New York City. Of course it could not express that it was to be paid with exchange. The true measure of damages for non-payment was the actual damage sustained by the payee in not having his money in New York City at the time of payment.

Story on Promissory Notes, page 525, § 397.
Cash vs. *Rennion*, 11 Vesey R. 314.
Scott vs. *Bevan*, 2 Barn. & Adolph. 78.

3. As to plaintiff's 3d point, it was not necessary for plaintiff to prove the assignment of the note. That fact was properly averred in the declaration, and was not denied by plea, verified by affidavit.

Scates Stat. page 254, § 59.

There was no question raised in the Court below as to any variance between the note and 1st count, and it is too late to raise it here.

Conway vs. *Case*, 22 Ill. 127.

The note also was properly received under the common count. Offering the note in evidence was equivalent to a formal offering of the endorsements upon it.

B. C. COOK.

1750

Chennaseo

Gilbert

12970

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant

vs.

HORATIO G. GILBERT, Appellee.

APRIL TERM, A. D. 1860.

POINTS OF APPELLANT.

1. The Court below should have continued this cause on motion of the Appellant, no account having been filed with the declaration, and no copy of the endorsement of the note declared, on having been filed.

2. The note sued on was not payable with exchange; nor was there any averment in the declaration relative to exchange, and the Court erred in receiving evidence of the value of exchange, and allowing the same.

3. The Court should have excluded the note offered in evidence, for the reason that no copy of the endorsement was filed; nor was there any proof of the hand writing of the endorsees.

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

175
Chumasero
v
Gilbert

175
Applts Points

Filed Apr 24, 1860
L. Leland
Clerk

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant

vs.

HORATIO G. GILBERT, Appellee.

APRIL TERM, A. D. 1860.

POINTS OF APPELLANT.

1. The Court below should have continued this cause on motion of the Appellant, no account having been filed with the declaration, and no copy of the endorsement of the note declared, on having been filed.

2. The note sued on was not payable with exchange; nor was there any averment in the declaration relative to exchange, and the Court erred in receiving evidence of the value of exchange, and allowing the same.

3. The Court should have excluded the note offered in evidence, for the reason that no copy of the endorsement was filed; nor was there any proof of the hand writing of the endorsees.

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

175

Chumasero
vs
Gebert

Appeals Points

Filed Apr 24, 1865
L. Leland
Clerk

12970

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

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175. E. B. CHUMASERO *vs.* HORATIO G. GILBERT.

---

1. There was no cause for a continuance, and in this case there was no exception to the decision overruling the motion for continuance.

2. The note sued on was made in La Salle and payable in New York City. Of course it could not express that it was to be paid with exchange. The true measure of damages for non-payment was the actual damage sustained by the payee in not having his money in New York City at the time of payment.

Story on Promissory Notes, page 525, § 397.
Cash vs. *Rennion*, 11 Vesey R. 314.
Scott vs. *Bevan*, 2 Barn. & Adolph. 78.

3. As to plaintiff's 3d point, it was not necessary for plaintiff to prove the assignment of the note. That fact was properly averred in the declaration, and was not denied by plea, verified by affidavit.

Scates Stat. page 254, § 59.

There was no question raised in the Court below as to any variance between the note and 1st count, and it is too late to raise it here.

Conway vs. *Case*, 22 Ill. 127.

The note also was properly received under the common count. Offering the note in evidence was equivalent to a formal offering of the endorsements upon it.

B. C. COOK.

175 152

Chenneaux

v.

Gilbert

Defendants Points

Filed May 11. 1860

L. Leland

Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

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

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. *Neil*, 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 endorsment 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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Chimasero

vs

Gilbert

Deft Points

Filed May 11, 1866
L. Leland
Clerk

No 175

E B. Chamasen

vs

Horatio G. Gillett

Appeal from LaSalle Co Cons.

The appellee moves to strike the 2 bills of exceptions from the files record for the following reason

The Co Court of LaSalle Co can hold its sessions by law only two weeks in each term

1 Purples Stat page 354 Sec 3

This case was tried and Judgt rendered on the 8th day of June 1859 page 11 & 12 of record

This bill of exceptions was filed July 11th 1859 a month after the term expired when by law there could be no term & was filed without notice to appellee

Hane vs Miller 21 Ills 636

B. C. Cook

for appellee

175

Chumasero

vs

Guilbert

Mo to Strike bill of Exceptions from Record

Edward B Chumasero. Supreme court.
vs 3d Grand Division
Horatio G Gilbert
State of Illinois
LaSalle County ss: William Chumasero.
being duly sworn deposes and says.
that he is one of the attorneys of
appellant and that within the
time allowed by the Court below.
and some days upon the adjustment of said time.
in this cause, he tendered and
delivered to the prop of the LaSalle
County court in which Court this
cause was originally tried a bill
of exceptions in this cause which
the said prop took & stated that
he believed it to be correct but
would submit the same to the
opposite party upon signing the
and affiant says that if said
bill of exceptions was not marked
by the Clerk of said Court filed
in the time allowed for filing the
same such neglect was not
the fault of appellant or of
his attorneys

Subscribed. sworn to W.W. Chumasero.
before me Apl. 18. 1860,
L. Leland Clk.

SUPREME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant

vs.

HORATIO G. GILBERT, Appellee.

APRIL TERM, A. D. 1860.

APPEAL FROM LA SALLE.

ABSTRACT OF THE RECORD.

RECORD.

This was an action of assumpsit commenced in the La Salle County Court by the Appellee against the Appellant, and was tried at the June Term A. D. 1859, before Champlin, judge, a jury having been waived by agreement of the parties, and a judgment found for Appellee.

Page 4. The declaration contained a special count upon a promissory note which is in the words and figures following:

$397,69 LA SALLE, October 11th, 1858.

Eighty days from date I promise to pay to Wm. Chumasero and R. G. Parks, or order, three hundred and ninety-seven and 69-100 dollars, without defalcation, for value received at the Broadway Bank of New York City.

E. B. CHUMASERO.

Page 6. The declaration also contained the common counts—but no bill of particulars was filed.

Page 8. The Appellant moved to continue the cause for want of a bill of particulars, which motion was over-ruled by the Court.

Page 9. The Appellant filed a plea of the General issue.

Page 10. Appellee applied for leave to file a copy of the note sued on, which was granted, and the cause continued.

Page 15. The Appellee offered in evidence the note, of which a copy is above set out. To the reading of which note in evidence, the Appellant then and there objected; which objection was over-ruled by the Court and the Appellant then and there excepted; the note was read in evidence.

Page 16. The Appellant then 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. per annum was the lawful interest of the State of New York. To the reading of which book in evidence, the Appellant then and there objected. The Court over-ruled the objection and said book was read in evidence, to which ruling and the reading of said book in evidence, the Appellant then and there excepted.

Page 16 & 17. The Appellee called as a witness George Campbell, who testified that he he had computed the interest on said note at seven per cent., and found it to be twelve 37-100 dollars, and the amount of the note and said interest to be $410,06-100.

This was all the evidence introduced on the trial of said cause.

The Court then and there rendered judgment for the Appellee, for $410,-06, besides costs. The Appellant made a motion for a new trial, which was over-ruled by the Court. To the over-ruling of which motion the Appellant then and there excepted.

CHUMASERO & ELDREDGE.

Attorneys for Appellant.

177

177

Chamasero

vs

Gilbert

Abstract

Filed Apr. 17. 1860

L. Leland

Clerk

Chicago Ill

Summers

176 "

Gualdent

Motion to strike bill of exceptions from file record.

The trial was sept 10th 1859 record page 2. The court could make but two rules (see brief on Motion in 175)

The record does not show when the bill of exception was filed. The record shows page 2 that on 8th day of October 1859 an appeal bond was filed and afterwards a bill of exceptions was filed as of Sept 13. 1859 by order of the Judge of said court

It appears therefore that the bill of exceptions was not filed until October 8th 1859. The Judge of the court out of term had no right in the absence of appellee & without notice to direct the filing of the bill as of a prior date to the time it was filed

B. C. Cook

176

Clemmens

v

Guilbert

No D Strike bill

of Ex from files

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant

vs.

HORATIO G. GILBERT, Appellee.

APRIL TERM, A. D. 1860.

POINTS OF APPELLANT.

1. The Court below should have continued this cause on motion of the Appellant, no account having been filed with the declaration, and no copy of the endorsement of the note declared, on having been filed.

2. The note sued on was not payable with exchange; nor was there any averment in the declaration relative to exchange, and the Court erred in receiving evidence of the value of exchange, and allowing the same.

3. The Court should have excluded the note offered in evidence, for the reason that no copy of the endorsement was filed; nor was there any proof of the hand writing of the endorsees.

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

176-152-153

Chumasero

v

Seibert

Points of Appeals

Filed Apr 24, 1860

A. Leonard

Clerk

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant

vs.

HORATIO G. GILBERT, Appellee.

APRIL TERM, A. D. 1860.

POINTS OF APPELLANT.

1. The Court below should have continued this cause on motion of the Appellant, no account having been filed with the declaration, and no copy of the endorsement of the note declared, on having been filed.

2. The note sued on was not payable with exchange; nor was there any averment in the declaration relative to exchange, and the Court erred in receiving evidence of the value of exchange, and allowing the same.

3. The Court should have excluded the note offered in evidence, for the reason that no copy of the endorsement was filed; nor was there any proof of the hand writing of the endorsees.

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

176

Chumasero

v

Gilbert

Brief of Appeals

Filed Apr 24, 1860

A. Leland

Clerk

Edward B Chumasero
vs
Horatio G Gilbert
appellee

} Supreme Court
} State of Illinois
} 3d Grand Division
} appellant

Argument. on part of appellant

The questions raised in this cause are identical with those presented in No 175 between the same parties & as to the amount of the note and judgment rendered by the Court below and a determination of that case settles the present one The Note in this cause was for the sum of $689.49 and became due on 25 May 1859. — viz Note $689.49
Int to date of trial 10 Sept. 59. 3 m 12 days 12.19
actual amount of Prin & Int — $701.68
The Court below in this case allowed by change. and rendered judgment for sum of $711.89
10.21

No copy of the Endorsement was filed — ~~the~~ nor was it proved or read in Evidence

For the reasons given in 175. we ask this cause be reversed

Chumasero & Edwards
Att'ys for appellant

Chumasero
v
Gibert } 176

Argument
of
appellant

Filed May 2. 1860
L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

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176. E. B. CHUMASERO *vs.* HORATIO G. GILBERT. } *Appeal from La Salle.*

I. The motion for continuance was properly overruled. The motion to continue was in terms, for the reason that no copy of the note was given. A copy of the note was given. He cannot be permitted to move for a continuance in the Court below for a given reason, and then assign a different reason here.

Conway vs. *Case*, 22 Ill. 127.

Besides, the endorsement was no part of the note, and

In this case no exception was taken in the Court below to the overruling of the motion.

II. The note sued on was made in La Salle and payable in New York City. Of course it could not express that it was to be paid with exchange. The true measure of damages for non-payment was the actual damage sustained by the payee in not having his money in New York City at the time of payment.

Story on Promissory Notes, p. 525, § 397.
Cash vs. *Rennion*, 11 Vesey R. 314.
Scott vs. *Bevan*, 2 Barn. & Adolph. 78.

III. As to plaintiff's 3d point, it was not necessary to prove the assignment. It was averred in the declaration, and was not denied by plea, verified by affidavit.

B. C. COOK.

Scates Stat 254 Sec 59

175 ~~176~~ 152

Chumasero

vs

Gilbert

Defts Points

Filed May 11, 1860
L. Leland
Clerk

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant

vs.

HORATIO G. GILBERT, Appellee.

APRIL TERM, A. D. 1860.

POINTS OF APPELLANT.

1. The Court below should have continued this cause on motion of the Appellant, no account having been filed with the declaration, and no copy of the endorsement of the note declared, on having been filed.

2. The note sued on was not payable with exchange; nor was there any averment in the declaration relative to exchange, and the Court erred in receiving evidence of the value of exchange, and allowing the same.

3. The Court should have excluded the note offered in evidence, for the reason that no copy of the endorsement was filed; nor was there any proof of the hand writing of the endorsees.

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

175

Chumasero

&

Siebert

Appellants Brief

Filed Apr 24, 1860

A. Leland

Clerk

Edward B Chumasero

vs

Horatio G. Gibert } Point in argument on part of appellant.

This was an action commenced by the appellee on a promissory note the point presented are only two one either of which we think this cause must be reversed.

1st. There was no copy of any account filed with the common counts. The only claim of Indebtedness was a Note Executed by the appellant and payable to parties other than the plaintiff a copy of the note was filed. but there was no copy of the Endorsement given. The appellant made a motion in the Court below to continue the cause for the above reasons but the Court as we contend Erroneously overruled the motion and compelled the appellant to go to trial. and for this reason we say the judgment of the Court below should be reversed

again the bill of exceptions shows that the note was read in Evidence after objection Made and received by the Court as Evidence in

the cause without the Endorse=
ment by the ~~Major~~ payees of the
Note having been Even read
in Evidence much less proved
as we contend it was necessary
the appellee should have done
no copy having as we have stated
been filed with the ~~suit~~ declaration
The bill of exception shows that
the only Evidence offered was
the note. Except the testimony
offered in relation to exchange
- Now the note being payable to other
parties than the plaintiff ~~in~~ below in order
to Entitle ~~him~~ him to recover he
should have ~~proved~~ shown an Endorsement of
the Note sued on to himself - This
he failed to do. and for this reason
also we say the judgment should
be reversed

Again the declaration in this Cause
Contained no averment whatever
that any thing More was owed
Claimed from the defendant below
to plaintiff than the note itself
The note was not made payable
with Exchange if it had been

we should have presented the ques
tion whether an action could have
been maintained on it as a promis
sory note - but the Court below in this
cause received evidence of the
rate of exchange between Salem
and New York and rendered judgment
for the amount of the note with
interest at six per cent and in addi
tion thereto one and a half per cent
for Exchange when there was no contract
of any kind to pay exchange nor any
averment in the declaration relative
thereto The amount of the note in this
cause was on 20th may 57 when
it became due $786.72
Int at 6 p cent 11 56 to date of Judgt
This int was allowable upon
the note as all was all that the
appellee was entitled to making $801.28
In addition to this Exchange was allowed
making the amount for which judg
ment was rendered $812.23 - $11.05
more than the appellee was clearly
entitled
We also contend that no interest
should have been allowed as
at Common law interest is not
recoverable - it is only recoverable

when there is an Express Contract to pay it or when by Express enactment of law it becomes an incident to the debt.

The Contract in this Cause being made payable in New York is governed by the laws of that State and the Court in this will not take notice of the laws of a foreign State unless they are pleaded and proved they were not pleaded in this Case nor proved and in which the Judgment was wholly for $25.57 too much see upon on this point to 5 Texas, 87 Ibid 262, 2 Texas 348, 26 189 — and 2 Scammon 12.

For the reasons above urged we ask a reversal of the Judgment

Timmins & Elmendorf
for Appellant.

Chumasero
vs
Gilbert

argument of
appellants

Filed May 2. 1860
L. Leland
Clerk

1

Lasalle County Court September Term 1859

State of Illinois ss
Lasalle County

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 Fifth day of September A.D. 1859 and of The Independence of the United States of America The Eighty fourth.

Present Hon John C. Champlin Judge
Phile Lindley Clerk
Francis Hamer Sheriff

Be it remembered That on The Twenty Sixth day of August A.D. 1859 a certain bond for costs was filed in The office of The clerk of said Court in The words and figures following to wit,

2

LaSalle County County Court To
September Term thereof A.D. 1859

Horatio G. Gilbert

vs

Edward B. Chumasero

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this court in pursuance of the laws of this State

Dated this 16th day of August 1859

B. C. Cook

And afterwards to wit on the 26th day of August 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 ss. And County Court
LaSalle County } thereof September Term
A.D. 1859

Horatio G. Gilbert plaintiff in this suit by Glover & Cook his Attorneys complains of Edward B. Chumasero defendant summoned &c of a plea of

3

Assumpsit. For That The said defendant at LaSalle, to wit at The county of LaSalle, heretofore, to wit on The 20th day of January A.D. 1859 by his certain promissory note of That date by him subscribed, for value received promised to pay Rollin G. Parks & William Chumasero by The names of R. G. Parks & Wm Chumasero The sum of Seven Hundred & eighty six dollars and seventy two cents. Four months after The date of said note. And afterwards, to wit, on The same day The said William Chumasero and Rollin G. Parks endorsed and delivered The said note. Then and still unpaid, to The Plaintiff of all of which The said defendant 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 Four months The time limited, in said note for The payment of said sum of money Thereof had long since elapsed, yet though often requested, The said defendant has never paid The same nor any part Thereof.

And for That The said defendant at The county aforesaid, heretofore, to wit

4

on the 10th day of June A.D. 1859
being justly indebted to the plaintiff
in the sum of Nine hundred dollars,
for so much money before that time
had and received by said defend-
ant to and for the use of the said
plaintiff and in the like sum for
so much money before that time
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 request, and in the like sum for
goods, wares and merchandise 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
performed 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 afterwards reques-
ted. 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 Nine hundred
dollars, and therefore he brings his suit.

Glover & Cook
Plffs Attys

Copy of note sued on

186. 72. Sabadell January 20th 1859

Four months after date I promise to pay to the order of P. G. Parks & Wm Chumasero Seven hundred & Eighty Six 72/100 Dollars at the Broadway Bank New York City value received

E. F. Chumasero

5

And afterwards to wit on the 5th day of September A.D. 1859 The same being one of the days of the said September Term of said Court the following Proceedings in said Cause were had and entered of record in said Court in these words and figures.

Horatio G. Gilbert
vs. Assumpsit
Edward B. Chumasero

This day comes the Plaintiff by Glover & Cook his attorneys, and William Chumasero also comes and waives service of process herein and enters the appearance of the defendant herein - and on his motion leave is given to file his plea herein by Thursday morning.

And afterwards to wit on the 8th day of September A.D. 1859, another of the days of said September Term, certain further Proceedings in said Cause were had and entered of record in said Court in the words and figures following to wit:

6 Horatio G. Gilbert

vs. Assumpsit

Edward B. Chumasero

This day comes the defendant by Chumasero & Buck his attorneys and enters his motion for a continuance herein for want of a copy of note declared on, which motion is overruled by the court.

And afterwards to wit on said 8th day of September, a certain plea was filed in the office of the clerk of said court, in said cause in the words and figures following to wit.

Edward B. Chumasero } La Salle Co Court
ads } Sept Term 1859
Horatio G. Gilbert }

And now comes the defendant by Chumasero & Eldridge his attorneys comes &c when &c & says that he did not undertake and promise &c in manner & form as the plaintiff hath declared against him and of this he puts himself upon the country

Chumasero & Eldridge
Defts attys

7

And afterwards to wit on the 10th day of September A.D. 1859, another of the days of said September Term 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

vs. Assumpsit

Edward F. Chumasero

This day comes the plaintiff by Glover & Cook his attorneys and the defendant by Chumasero & Bull his attorneys, and by agreement of parties a jury is waived and this cause submitted to the court for trial, and after hearing the evidence and due deliberation thereon had, the court finds the issues herein for the plaintiff and assesses his damages at Eight Hundred and twelve dollars and eighty three cents. Whereupon the defendant enters his motion for a new trial, which motion is overruled by the court, to which the defendant excepted.

It is therefore considered by the court that said plaintiff have and recover of said defendant said sum of Eight Hundred and twelve dollars and Eighty three cents for his damages and also his costs and charges, and that he have execution therefor

Whereupon the defendant prays

an appeal herein, which is allowed upon his entering into an appeal bond in the penal sum of Twelve hundred Dollars with William Chumasero and Rollin G. Parks as security ~~thereof~~ said bond to be filed within thirty days from rising of court, and also leave is given to tender bill of exceptions herein within thirty days. And also leave given plaintiff to withdraw the notes from the files by leaving copies.

And afterwards to wit on the 8th day of October A.D. 1859. an appeal bond was filed in the clerk's office of said court in the words and figures following to wit.

Know all men by these presents that we Edward B. Chumasero, William Chumasero and Rollin G. Parks are held and firmly bound unto Horatio G. Gilbert in the penal sum of One Thousand and two hundred ($1200) Dollars. For which payment well and truly to be made we bind ourselves our heirs, executors and administrators jointly and severally firmly by these presents Sealed with our seals and dated This 1st day of October A.D. 1859

an appeal herein, which is allowed upon his entering into an appeal bond in the penal sum of Twelve hundred Dollars with William Chumasero and Rollin G. Parks as security ~~thereof~~ said bond to be filed within thirty days from rising of court, and also leave is given to tender bill of exceptions herein within thirty days. And also leave given plaintiff to withdraw the notes from the files by leaving copies.

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The Condition of the above obligation is such that whereas the above named Horatio G. Gilbert did at the September term A.D. 1869. of the County Court in for the County of LaSalle recover a judgment against the above bounden Edward F. Chumasero for the sum of Eight Hundred and twelve dollars and Eighty three cents ($812.83) besides costs. From which judgment the said Edward F. Chumasero has taken an appeal to the Supreme Court of the State of Illinois. Now if the said Edward F. Chumasero 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.

Edwd F. Chumasero (Seal)
Wm Chumasero (Seal)
R. G. Parks (Seal)

And afterwards a certain Bill of Exceptions was filed in the office of the clerk of said LaSalle County Court as of September 13th 1869. by order of the Judge of said court, in the words and figures following to wit:

State of Illinois ss. County Court for said
LaSalle County } County September Term 1859

Horatio G. Gilbert

vs. Assumpsit.

Edward B. Chumasero

Be it remembered That on the
Tenth day of September A.D. 1859. The same
being one of the days of said Term of said
Court. This cause came on for Trial, and
by agreement of parties a jury was
waived and the cause was submitted
To the Court for Trial, whereupon the
Plaintiff by Glover & Cook his attorneys to
maintain the issues on his part offered
To read in evidence a promissory note
The words and figures following to wit:
"$786.72. LaSalle January 20th 1859
Four months after date I promise
To pay To the order of R. G. Parks & Wm
Chumasero Seven Hundred & Eighty six &
72/100 Dollars at The Broadway Bank
New York City. value received
E. B. Chumasero"
To the reading of which note in evidence
The defendant by Bull his attorney then
and there objected, which objection was
by the Court overruled and said
Plaintiff was permitted To read said
note in evidence, to which ruling of
The Court in overruling said objection
and in permitting said note to be

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read in evidence said defendant by his attorney then and there excepted. And be it further remembered that the plaintiff further to maintain the issues on his part offered to prove that exchange on New York at the time said note fell due was one and a half per cent, whereupon the defendant admitted that at the time said note fell due exchange on New York city was one and a half per cent, but said defendant at the same time objected to the introduction of said testimony, which objection was by the court overruled, and said evidence was received by the court & to the decision of the court in overruling said objection and in receiving said evidence said defendant by his attorney then and there excepted. No other or further testimony was offered or produced by either party, whereupon the court then and there found the issues joined in favor of the plaintiff and assessed his damages at Eight Hundred and twelve dollars and Eighty three cents, and the defendant by his attorneys then & there made a motion for a new trial, which motion was by the court overruled and judgment rendered in favor of the plaintiff for the sum of Eight Hundred and Twelve dollars and Eighty three cents. to the decision of the

12 court in overruling said motion
said defendant by his attorney then
& there excepted - and prays that
this his bill of exceptions may be
signed sealed and made a part
of the records of this court which is
accordingly done.

S. C. Champlin (Seal)

State of Illinois } ss

13 LaSalle County }

I Philo Lindley 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 B. Chumasero is defendant as the same appear of record and on file in my office.

In Testimony whereof I have hereunto set my hand and the seal of said Court at Ottawa this 21st day of February A.D. 1860

Philo Lindley Clk

E. L. Hendrickson Depy.

Clks. fees for Record $3.00

Edward B. Chumasero vs. Horatio G. Gilbert } Supreme Court Of the State of Illinois 3 Grand Division

Assignment of errors

1st The Court Erred in not granting the continuance asked for by the 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 Evidence to be given showing the rate of exchange ~~between~~ on New York, without any averment of such rate of exchange in ~~the~~ declaration.

4 The Court erred in allowing exchange upon the note

5. The court erred in overruling the motion for new trial

6 The Court erred in rendering judgment against the appellant

Chumasero & Elicott
attys for appellant.

And now comes the deft in error and says that in the record aforesaid is no Error

B. C. Cook
for deft in error

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Edward B. Chumasero

vs

Horatio G. Gilbert

Record

Filed April 19, 1860
L. Leland
Clerk

Joinder in Error
filed April 19, 1860
L. Leland
Clerk