No. 12965

Supreme Court of Illinois

Chumasero

vs.

Gilbert

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 176.

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 heretofore to wit on The 26th 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:

Horatio G. Gilbert
vs.
Edward B. Chumasero

LaSalle County
Court To September
Term A.D. 1859

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 the Sheriff or any of the officers of this court in pursuance of the laws of this State.

Dated this 16th day of August 1859

E. C. Cook

And afterwards to wit on the said 26th day of August A.D. 1859 a declaration was filed in the clerk's office of said court in the words and figures following to wit:

State of Illinois } ss. And Cannty Court thereof
LaSalle County } To September Term A.D. 1859.

Horatio G. Gilbert Plaintiff in this suit by Glover & Cook their attorneys complain of Edward B. Chumasero 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 25th day of November A.D.

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1858, by his certain promissory note of that date by him subscribed by the name & style of E. P. Chumasero, for value received promised to pay Wm Chumasero & R. G. Parks the sum of Six Hundred and Eighty nine & 29/100 dollars at the Broadway Bank of New York City six months after the date of said note. And afterwards, to wit, on the day and year aforesaid the said Wm Chumasero & R. G. Parks endosed 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 had notice~~, and then and there ~~became~~ 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 six months the time limited in said note for the payment 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, on the 10th day of June A.D. 1859 being justly indebted to the plaintiff in the sum of Eight Hundred dollars for so much money before that time had

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and received by said defendant 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 his 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 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 Eight hundred dollars, and therefore he brings his suit

Glover & Cook Plffs att'ys

Copy of Note sued on.

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$689.49 LaSalle Nov 25th 1858

Six months from date I promise to pay to Wm Chumasero & P. G. Parks or order Six hundred and Eighty nine $\frac{49}{100}$ dollars without defalcation for value received at the Broadway Bank of New York city

E. B. Chumasero

Account sued on
Edward B Chumasero

To H. G. Gilbert Dr

June 10th 1859. To money had & received $800

And afterwards, to wit on the 5th day of September A.D. 1859. The same being one of the days of said September 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:

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Horatio G. Gilbert
vs.
Edward P. Chumasero
} Assumpsit

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

And afterwards to wit on the 8th day of September 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
vs.
Edward P. Chumasero
} Assumpsit

This day comes the defendant by Chumasero & Bull 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.

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Horatio G. Gilbert
vs.
Edward P. Chumasero
} Assumpsit

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

And afterwards to wit on the 8th day of September 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
vs.
Edward P. Chumasero
} Assumpsit

This day comes the defendant by Chumasero & Bull 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.D. 1859, a certain plea was filed in the clerk's office of said Court in said cause in the words and figures following to wit:

Edward P. Chumasero
ads
Horatio G. Gilbert

LaSalle C. Court
Sept Term 1859
And now comes the defendant by Chumasero & Eldridge his attorneys comes &c when &c says that he did not undertake & 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

And afterwards to wit on the 10th day of September 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 figures following to wit:

Horatio G. Gilbert
vs.
Edward P. Chumasero

Assumpsit

This day comes the plaintiff by Glover & Cook his attorneys and the defendant by Chumasero & Bull

And afterwards to wit on said 8th day of September A.D. 1859, a certain plea was filed in the clerk's office of said Court in said cause in the words and figures following to wit:

Edward P. Chumasero
ads
Horatio G. Gilbert

LaSalle C. Court
Sept Term 1859
And now comes the defendant by Chumasero & Eldridge his attorneys comes &c when &c says that he did not undertake & 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

And afterwards to wit on the 10th day of September 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 figures following to wit:

Horatio G. Gilbert
vs.
Edward P. Chumasero

Assumpsit

This day comes the plaintiff by Glover & Cook his attorneys and the defendant by Chumasero & Bull

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Horatio G. Gilbert
vs.
Edward P. Chumasero
Assumpsit

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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 herein at Seven Hundred and Eleven dollars and Eighty nine cents.

Whereupon the defendant enters his motion for a new trial herein, which motion is overruled by the court, to which ruling of the court the defendants attorneys then and there excepted.

It is therefore considered by the court that said plaintiff have and recover of said defendant said sum of Seven Hundred and Eleven dollars, and Eighty nine cents for his damages and also his costs and charges by him herein expended and that have execution therefor.

Whereupon the defendant prays an appeal herein which is allowed upon his entering into an appeal bond in the sum of Twelve Hundred dollars, with William Chumasero and Rollin G. Parks as security said bond to be filed within thirty days from the rising of this term of Court and leave is given to file a bill of exceptions herein within thirty days and leave is given plaintiff to withdraw the note.

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Horatio G. Gilbert
vs.
Edward P. Chumasero
Assumpsit

8

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 herein at Seven Hundred and Eleven dollars and Eighty nine cents.

Whereupon the defendant enters his motion for a new trial herein, which motion is overruled by the court, to which ruling of the court the defendants attorneys then and there excepted.

It is therefore considered by the court that said plaintiff have and recover of said defendant said sum of Seven Hundred and Eleven dollars, and Eighty nine cents for his damages and also his costs and charges by him herein expended and that have execution therefor.

Whereupon the defendant prays an appeal herein which is allowed upon his entering into an appeal bond in the sum of Twelve Hundred dollars, with William Chumasero and Rollin G. Parks as security said bond to be filed within thirty days from the rising of this term of Court and leave is given to file a bill of exceptions herein within thirty days and leave is given plaintiff to withdraw the note.

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And afterwards to wit on the 8th day of October 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 F Chumasero, William Chumasero and Rollin G. Parks are held and firmly bound unto Horatio G. Gilbert in the penal sum of One Thousand two hundred dollars ($1200)- 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.

The condition of the above obligation is such that whereas the above named Horatio G. Gilbert did at the September term A.D. 1859, of the County Court in for LaSalle County recover a judgment against the above bounden Edward F. Chumasero for the sum of Seven hundred and Eleven 89/100 Dollars 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 said appeal with effect and shall pay

9

And afterwards to wit on the 8th day of October 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 F Chumasero, William Chumasero and Rollin G. Parks are held and firmly bound unto Horatio G. Gilbert in the penal sum of One Thousand two hundred dollars ($1200)- 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.

The condition of the above obligation is such that whereas the above named Horatio G. Gilbert did at the September term A.D. 1859, of the County Court in for LaSalle County recover a judgment against the above bounden Edward F. Chumasero for the sum of Seven hundred and Eleven 89/100 Dollars 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 said appeal with effect and shall pay

6

10. 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 B. 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 court, as of September 13th 1859 by the order of the Judge of said Court, in the words, and figures following to wit:

State of Illinois } 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 in the
11 words & figures following to wit

"$189.49 LaSalle Nov 25th 1858

Six months from date I promise
to pay to Wm Chumasero & R. G. Parks
or order Six hundred and eighty nine
& 49/100 dollars without defalcation for
value received at the Broadway
Bank of New York city

E. B. Chumasero"

To the reading of which note in evidence
the defendant by Bull his attorney then
& there objected which objection was
overruled by the court 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
read in evidence the defendant
then & there excepted. The plaintiff
then offered to prove that exchange
on New York city was one & a half
per cent at the time said note
became due, whereupon the defend-
ant admitted that at the time
said note fell due exchange on
New York city was one & a half
per cent but said defendant
at the same time objected to the introduc
tion of said testimony which objection
was overruled by the court and
said evidence was received by

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The court, and 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 found the issues joined in favor of the plaintiff and assessed his damages at Seven Hundred & Eleven Dollars and Eighty nine cents, whereupon said defendant by his attorney made a motion for a new trial which motion was overruled by the court and judgment rendered in favor of the plaintiff for the sum of $711.89 to the decision of the court in overruling said motion & in rendering the judgment aforesaid the said defendant by his attorney then & there excepted, and prays that this his bill of exceptions may be signed & sealed and made part of the record which is done.

J. C. Champlin (Seal)

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State of Illinois } ss
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 compleate Transcript of the Record and proceedings in the cause wherein Horatio G. Gilbert is plaintiff and Edward F. Shumaker is defendant as the same appears 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.
L. Hamrick Dep

Clks fees for Record $3.00

Supreme Court of the State of Illinois

Edward B Chumasero. } Grand Division

vs

Horatio G. Gibson } Assignments 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 the 1st Count to be read in Evidence—

3 The Court erred in receiving Evidence showing the rate of exchange on New York City, there being no averment of any rate of exchange in the declaration.

4 The Court erred in awarding Exchange on the note

5th The Court erred in overruling the Motion for New trial

6 The Court erred in rendering judgment in favor of the appellee

Chumasero & Hand
Pltffs Attys.

And now comes the dfdt in error & says that in the record aforesaid is no Error

Error

B. C. Cook for dfdt

Joinder in Error

Filed June 17 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.

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Chumasero
v
Gerhard

Points of Appeals

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.

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 September Term A. D. 1859, before Champlin, judge, a jury having been waived by agreement of the parties, and judgment was rendered against the Appellant.

Page 2. The declaration contained a special count upon a note which is in the words and figures following:

Page 5. $689 49 LA SALLE, Nov. 25th, 1858.

Six months from date I promise to pay to Wm. Chumasero and R. G. Parks, or order, six hundred and eighty-nine and 49-100 dollars, without defalcation, for value received, at the Broadway Bank of New York City.

E. B. CHUMASERO.

The declaration contained the common counts also.

No copy of the endorsement was filed, nor is there any averment relative to exchange.

Page 6. The Appellant moved the Court for a continuance, for want of copy of the note declared on, which motion was over-ruled by the Court.

Page 7. The Appellant then filed a plea of the General issue.

Page 10. The Appellee offered in evidence the note, a copy of which is above hereinbefore set forth. To the reading of which note in evidence, the Appellant objected. The objection was over-ruled by the Court and the note read, to which decision of the Court in over-ruling said objection and permitting said note to be read, the Appellant then and there excepted.

Page 11. The Appellee then offered to prove, and the Appellant admitted the fact to be that at the time the note became due, exchange on New York City was one and a-half per cent., but said Appellant at the same time objected to the introduction of said testimony, which objection was over-ruled by the Court, and said evidence was received by the Court. To the decision of the Court in overruling said objection and receiving said evidence, the Appellant then and there excepted. This was all the testimony in the case.

Page 12. The Court found for the Appellee, and assessed his damages at $711 89, whereupon the Appellant moved for a new trial, which was over-ruled by the Court, and judgment rendered for the Appellee for $711 89. To which decision of the Court in over-ruling said motion and rendering judgement the Appellant then and there excepted.

CHUMASERO & ELDREDGE.

Attorneys for Appellant.

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Chumasero

vs.

Abstract

Filed April 17th 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.

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 September Term A. D. 1859, before Champlin, judge, a jury having been waived by agreement of the parties, and judgment was rendered against the Appellant.

Page 2. The declaration contained a special count upon a note which is in the words and figures following:

Page 5.

$689 49 LA SALLE, Nov. 25th, 1858.

Six months from date I promise to pay to Wm. Chumasero and R. G. Parks, or order, six hundred and eighty-nine and 49-100 dollars, without defalcation, for value received, at the Broadway Bank of New York City.

E. B. CHUMASERO.

The declaration contained the common counts also.

No copy of the endorsement was filed, nor is there any averment relative to exchange.

Page 6. The Appellant moved the Court for a continuance, for want of copy of the note declared on, which motion was over-ruled by the Court.

Page 7. The Appellant then filed a plea of the General issue.

Page 10. The Appellee offered in evidence the note, a copy of which is above hereinbefore set forth. To the reading of which note in evidence, the Appellant objected. The objection was over-ruled by the Court and the note read, to which decision of the Court in over-ruling said objection and permitting said note to be read, the Appellant then and there excepted.

Page 11. The Appellee then offered to prove, and the Appellant admitted the fact to be that at the time the note became due, exchange on New York City was one and a-half per cent., but said Appellant at the same time objected to the introduction of said testimony, which objection was over-ruled by the Court, and said evidence was received by the Court. To the decision of the Court in overruling said objection and receiving said evidence, the Appellant then and there excepted. This was all the testimony in the case.

Page 12. The Court found for the Appellee, and assessed his damages at $711 89, whereupon the Appellant moved for a new trial, which was over-ruled by the Court, and judgment rendered for the Appellee for $711 89. To which decision of the Court in over-ruling said motion and rendering judgment the Appellant then and there excepted.

CHUMASERO & ELDREDGE.

Attorneys for Appellant.

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Thomasero

vs.

H. G. Gilbert

Abstract

Filed April 17. 1860

L. Leland

Clerk.

Edward B. Chumasero

vs

Horatio G. Gilbert } Supreme Court
} 3d Grand Division

State of Illinois
LaSalle County ss. William Chumasero
being duly sworn says that he is one
of the attorneys of appellant and
that within the time allowed
by the Court below in this cause
(and some days before the expiration of said time.)
he tendered and delivered to the
Judge of the LaSalle County Court
in which Court this cause was
originally tried a bill of exceptions
in this cause which the said Judge
took and stated that he believed
it to be correct but would submit
the same to the opposite party
before signing and affiant says
that said bill of exceptions
was not marked by the Clerk of
said Court filed in the time allowed
for filing the same but neglect
was not the fault of appellant
or of his attorneys

Subscd. & sworn to before me this 18th Apl. 1860
L. Wilson Clk.

Wm Chumasero

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 September Term A. D. 1859, before Champlin, judge, a jury having been waived by agreement of the parties, and judgment was rendered in favor of Appellee.

Page 2. The declaration contained a special count upon a promissory note which is in the words and figures following:

Page 4. $786 72 LA SALLE, January 20th, 1859.

Four months after date I promise to pay to the order of R. G. Parks and Wm. Chumasero, seven hundred and eighty-six and 72-100 dollars, at the Broadway Bank, New York City, value received.

E. B. CHUMASERO.

Page 5. The declaration also contained the common counts.

No copy of the endorsement was filed, nor is there any averment relative to exchange.

Page 6. The Appellant entered a motion for a continuance, for want of a copy of note declared on, which motion was over-ruled by the Court.

The Appellant filed a plea of General issue.

Page 10. The Appellee offered in evidence the note, a copy of which is above hereinbefore set forth. To the reading of which note in evidence, the Defendant then and there objected; which objection was over-ruled by the Court and the Appellee was permitted to read said note in evidence, to which ruling of the Court in over-ruling said objection and in permitting said note to be read in evidence, the Defendant then and there excepted.

Page 11. The Appellee then offered to prove, that exchange on New York at the time said note fell due, was one and a-half per cent., whereupon the Appellant admitted that at the time said note fell due, exchange was one and a-half per cent., but at the same time objected to the introduction of said testimony, which objection was over-ruled by the Court, and the evidence received. To which decision of the Court in over-ruling said objection and receiving said testimony, the Appellant then and there objected. This was all the evidence in the case.

Page 12. The Court found the issues in favor of the Appellee, and assessed his damages at $812,83. The Appellant then moved for a new trial, which motion was over-ruled by the Court, and judgment rendered in favor of Appellee for $812,83. To the over-ruling of which motion for new trial and rendering judgment the Appellant then and there excepted.

CHUMASERO & ELDREDGE.

Attorneys for Appellant.

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Schumacher

to

Gilbert

Abstract

Filed Apr 17. 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.

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 September Term A. D. 1859, before Champlin, judge, a jury having been waived by agreement of the parties, and judgment was rendered in favor of Appellee.

Page 2. The declaration contained a special count upon a promissory note which is in the words and figures following:

Page 4. $786 72 LA SALLE, January 20th, 1859.

Four months after date I promise to pay to the order of R. G. Parks and Wm. Chumasero, seven hundred and eighty-six and 72-100 dollars, at the Broadway Bank, New York City, value received.

E. B. CHUMASERO.

Page 5. The declaration also contained the common counts.

No copy of the endorsement was filed, nor is there any averment relative to exchange.

Page 6. The Appellant entered a motion for a continuance, for want of a copy of note declared on, which motion was over-ruled by the Court.

The Appellant filed a plea of General issue.

Page 10. The Appellee offered in evidence the note, a copy of which is above hereinbefore set forth. To the reading of which note in evidence, the Defendant then and there objected; which objection was over-ruled by the Court and the Appellee was permitted to read said note in evidence, to which ruling of the Court in over-ruling said objection and in permitting said note to be read in evidence, the Defendant then and there excepted.

Page 11. The Appellee then offered to prove, that exchange on New York at the time said note fell due, was one and a-half per cent., whereupon the Appellant admitted that at the time said note fell due, exchange was one and a-half per cent., but at the same time objected to the introduction of said testimony, which objection was over-ruled by the Court, and the evidence received. To which decision of the Court in over-ruling said objection and receiving said testimony, the Appellant then and there objected. This was all the evidence in the case.

Page 12. The Court found the issues in favor of the Appellee, and assessed his damages at $812,83. The Appellant then moved for a new trial, which motion was over-ruled by the Court, and judgment rendered in favor of Appellee for $812,83. To the over-ruling of which motion for new trial and rendering judgment the Appellant then and there excepted.

CHUMASERO & ELDREDGE.

Attorneys for Appellant.

174.

Commissioners

vs

Gilbert

Abstract

Filed Apr 17, 1860

L. L. Leland

Clerk

12965

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 State p 254 Dec 59.

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Okumasco

v.

Gelbert