

13851

No. _____

Supreme Court of Illinois

Wilder

vs.

DeWolf et al

Supreme Court of the State of Illinois.

CHARLES J. WILDER, *Appellant*,

vs.

WILLIAM F. DEWOLF, *et. al.*, *Appellees*.

9 This is an action brought Oct. 15th, 1856, against the appellant as endorser of two promissory notes, payable to the order of the maker, by the holders, who derive their title by delivery merely, and without the endorsement of the party from whom they were received (vid. the agreed statement of facts hereinafter set forth, p. 35).

15 A demurrer was filed to the declaration, which said demurrer was
17 confessed, as to part of the objections alleged to said declaration. An
26 amended declaration was filed on Nov. 22d, 1856, to which said amended
28 declaration a demurrer was filed, on the ground that said plaintiffs had
29 not averred that notice of non-payment was given to said endorser, or
29 that said endorser had notice that a suit against the said maker would
35 have been unavailing. But said amended declaration was adjudged
sufficient, and said demurrer was overruled, with leave to said defendant
to plead. And afterward a plea was filed, denying that said notes were
in fact assigned to the plaintiff, which said plea was verified by affidavit.
And afterwards a motion was made to strike said plea from the files,
which said motion was granted. Whereupon a motion was made to
reinstate said plea on the files. And afterwards, and before said motion
was disposed of, it was agreed to submit the whole case, on an agreed
statement of facts, of which the following is a copy, to wit: This cause is
submitted to the court on the following agreed statement of facts:

The notes on which the action was brought were made payable to the order of the maker, and were endorsed in blank, and delivered by the maker to the defendant. The defendant then endorsed the notes in blank, without consideration, and delivered them to the maker, who then delivered the notes so endorsed to one Moss, and Moss transferred them by delivery, for a valuable consideration, but without his endorsement, to the plaintiffs. The plaintiffs had no knowledge that the endorsement of the defendant was without consideration, and all said transfers were made before the notes became due. When the notes became due, the maker was insolvent, and so continued to the time when the suit was instituted, so that during that time a suit against him would have been unavailing. The defendant had no notice of the non-payment of the notes when the said notes became due. It is further agreed that the defendant filed a plea authorized by the 59th section of the Practice Act

Rev. Stat., 1845, 2 Purple's ed., 821, and verified according to the provisions of that act.

If upon this statement of facts the court shall be of opinion that the plaintiffs are entitled to recover, judgment is to be entered in their favor for the amount due on the notes, otherwise judgment is to be entered for the defendant.

JOHN H. THOMPSON, *Plff's Atty.*

GEORGE D. NOYES, *Def't's Atty.*

37 And afterwards it was agreed that the following should be filed as a supplemental and further statement of facts, in the words following, to wit:

In addition to the agreed statement of facts upon which this cause is submitted, it is further agreed and admitted, that the said blank endorsement of the said defendant has been filled up by the said plaintiffs at the time of submitting this cause to the court, with a special endorsement, making the notes payable to them or their order, it being understood and agreed that the defendant does not admit the right of said plaintiffs to fill up said endorsement without the endorsement of an assignee intermediate between defendant and plaintiffs being proved.

JOHN H. THOMPSON, *Plff's Atty.*

GEORGE D. NOYES, *Def't's Atty.*

41 And afterward, to wit, on the 30th of May, A. D. 1857, the said Circuit Court of Cook County, on the above statement of facts, gave judgment for the plaintiffs, from which said judgment the defendant has appealed to this court that said judgment be reversed, because he says that on the said record and said agreed statement of facts judgment should have been for the defendant.

Supreme Court -
19

Charles J. Miller
Sollt.

Mr. F. De Wolf et al,
Sollt.

Abstract.

Filed Apr. 30. 1858

L. Leland
Clerk

13857

United States of America

STATE OF ILLINOIS, COUNTY OF COOK, S. S.

Pleas, before the Honorable George Manion

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Second Monday, (being the thirteenth day) of April in the year of our Lord one thousand eight hundred and fifty seven and of the Independence of the said United States the eighty sixth

Present, Honorable George Manion Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Aaron States Attorney.

John S. Wilson Sheriff of Cook County.

Attest; W. L. Church Clerk.

Be it remembered that on the 30th day of
May A.D. 1857, to wit: at the April Term of
said Court for said year, the following among
other proceedings in said Court were had and
entered of record, to wit:

William F. DeWolf
James G. McLay &
Benjamin C. Sumby } Apt
vs
Charles J. Wilder

This day come the said parties
by their attorneys, and this cause having been heretofore
submitted to Court, upon an agreed state of facts,
And the Court having had this cause under
advice and having carefully inspected
the papers herein, and due consideration being thereupon
had, finds for the plaintiffs, and awards their
damages herein to the sum of One Hundred
and fifty six dollars and fifty four cents.

Therefore it is considered, that said plaintiffs do
have and recover of said defendant their damages
of One hundred and fifty six dollars and fifty
four cents in form as aforesaid awarded, together
with their costs and charges by them in this behalf
expended and that they have execution therefor

Whereupon said defendant prays an appeal
to the Supreme Court of the State of Illinois, which
is granted, and until the first day of next term
given to file bond for

with

sureties conditioned according
to law

And afterwards, to wit: on the 10th day of October in the year last aforesaid the said defendant filed in the office of the Clerk of said Court his certain appeal bonds, which is in the words and figures following, to wit:

Know all men by these Presents that we Charles J. Hilder as principal and Robert Rae and George D. Hayes of the County of Cook and State of Illinois are held and firmly bound unto William F. DeWolf James G. McCay & Benjamin F. Quincy also of the same County and State in the penal sum of Two Hundred Dollars lawful money of the United States, for the payment of which well and truly to be made we bind ourselves our heirs, executors and administrators jointly severally and finally by these presents
Witness our hands and seals this 10th day of October
A.D. 1857

The Condition of the above obligation is such that whereas the said William F. DeWolf James G. McCay & Benjamin F. Quincy did on the 30th day of May A.D. 1857 in the Circuit Court in and for the County and State aforesaid and of the April Term thereof recover a judgment against the above bounden Charles J. Hilder for the sum of One Hundred and fifty six Dollars and fifty

four cents, besides costs of suit; from which said judgment of the Circuit Court the said Charles J. Hilder has prayed for and obtained an appeal to the Supreme Court of said State

Now Therefore if the said Charles J. Hilder shall duly prosecute his said appeal with effect and moreover pay the amount of the judgment, costs, interest and 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

Taken and entered into before me at my office in Chicago
 this 10th day of October @ 1857
 Wm L Church Clerk

Chas J Hilder (seal)
 Robert Rice (seal)
 Geo D Hayes (seal)

State of Illinois, }
 COUNTY OF COOK. } s. s.



I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the ~~Final Judgment, order granting an appeal & the appeal bond~~ in a certain cause lately pending in said Court on the ~~Common Law~~ side thereof, wherein William J. Wolf & Co were Plaintiffs and Charles J. Hilder was defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Tenth day of May A. D. 1858

July 1st 50

W. L. Church

Clerk.

Wittorf Etal

no 359

C. J. Wilder

Certificate

359

Filed May 17. 1858

S. Leland

Clk

Just \$158.54

Exp. \$7.82

pg 312

Just 50