

13682

No. _____

Supreme Court of Illinois

Heintz

vs.

A
~~C~~hn

71641  7

STATE OF ILLINOIS

SUPREME COURT,

Third Grand Division.

No. 266.

Huntz
vs

Cabry

1862

Prepared

13682

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Warner 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 Third day of September in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the said United States the Eighty Fifth

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

Charles Warren States Attorney. }

Anthony L. Keating Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered that heretofore to-wit, on the Twenty Eighth day of September in the year of our Lord One Thousand Eight Hundred and Sixty, there was filed in the Office of the Clerk of said Court a certain Process and Declaration, in words and figures following to-wit-

Process
State of Illinois }
Cook County }

In the Circuit Court
James Leahn and }
Joseph Leahn } Assumpsit
Louis Keintz }
Damages \$ 3000

Let it please your Honor as above
Sept-29, 1860 }
Joshua Thomas - Roberts, P. 25

Declaration,
State of Illinois }
Cook County }

In the Circuit Court

October Term 1860

2
Jacob Kahn and Joseph Kahn, partners in trade under
the style of J. Kahn & Co, plaintiffs complain of Louis
Beritz defendant, of a plea of Disparage on the case on promises
For that whereas heretofore to-wit
on the 8th day of December A. D. 1859 at Chicago to-wit, at
said County, certain persons to-wit William Waller
and S. Kusorsky by the same names and designations
aforesaid, made their certain promissory note in writing
bearing date the day and year aforesaid, and thereby
then and there five months after the date thereof promised
to pay to the order of the plaintiffs by the designation
of J. Kahn & Co Two hundred nineteen dollars and
Ninety Eight Cents, value received, and plaintiffs
say that the said defendant then and there guaranteed
the prompt payment of the said promissory note at the
maturity thereof by writing on the back thereof, and
the said promissory note so guaranteed by the said
defendant was then and there by said Waller
and Kusorsky delivered to the said plaintiffs
by means whereof the said defendant became then
and there liable to pay the said plaintiffs the
said promissory note at the maturity thereof, and
being so liable he the said defendant then and
there promised the plaintiffs to pay them the said

sum of money on request, and plaintiffs say that the said Muller and the said Kusovsky and the said defendant failed to pay said Note or any part thereof at maturity, nor has either of them paid the same since nor any part thereof, although often requested.

3
And whereas also the said defendant heretofore, do-wit, on the first day of September 1860 was indebted to the said plaintiff in the sum of three hundred dollars for money had and received by him for said plaintiff, and in the like sum for goods, wares and merchandises sold him by plaintiff, and in the like sum on an account then and there stated between them, and being so indebted the said defendant then and there promised to pay said several sums on request, but though often requested he has not paid the said sums, nor any part thereof. To the damage of said plaintiff of three hundred dollars,

Hookins Thomas & Roberts P. 2.

The following is a copy of the Note and account paid on

" \$ 219. ⁹⁸/₁₀₀

Chicago Decemb-8th 1859

" Six months after date we promise to pay
" to the order of A. Lehn-les Two hundred Nineteen ⁹⁸/₁₀₀
" dollars at _____ value received

" Jm Muller

" A. Kusovsky

And on the back thereof is the following endorsement or

or guaranty viz "I hereby guarantee the payment
of the within note at maturity

Louis Weintz

Received May 23rd \$ 8⁰⁰/₁₀₀

The defendant will take notice that under the Common
Counts, no other indebtedness will be proved than that
evidenced by the paid Note and guarantee

Deft	To. Plff	Dr
21 To money had & recd		\$ 100 c
" goods recd		\$ 100 c
" as stated		\$ 100 c

Hookins Thomas Roberts
Atty for Plaintiff

And afterwards do=mt: on the 14th day of January in
the year of Our Lord One thousand eight hundred and
fifty one, said defendant filed in said Court the
depositions of Frederick Kusnski and William Miller

Plff in words and figures following do=mt

~~Sam Cahn Etal~~

~~Louis Weintz
State of Illinois
Cook County~~

Cook Circuit Court

Deposition of Frederick Kusnski and

Superior Court of Chicago

Louis Weintz
ad
Aaron Cohen Etal

And now comes the paid defendant
by Garrison & Anderson his Attorneys, and defends the wrong
an injury when he and pays that he did not undertake and
promise in manner and form as the paid plaintiffs hath
above thereof complained against him, and of this he puts
himself upon the country &

Garrison & Anderson. Deft. Atty.

State of Illinois }
Cook County }

5-

Louis Weintz the above named defendant
being duly sworn says the above plea is true in substance
and in fact -

Subscribed & sworn to before me

Louis Weintz

this 14th day of October A.D. 1861.

My Comm. exp. 1862.
J. M. Church clk

And afterwards, Do-mit, at the November Term of said Court
Do-mit, on the Thirtieth day of December, in the year last afore
said, the following proceedings, among others, were had and
Entered of record. Do-mit!

Aaron Cohen and
Joseph Cohen

Louis Weintz

Attempted

This day come the said plaintiffs by Hookins Thomas and Roberts their attorneys, and the said defendant by Garrison and Anderson his attorneys also come, and by oral consent of said parties, now here given in open court said cause is submitted to court for trial upon the issue joined therein, and the intervention of a jury waived, and the court after hearing the evidence and arguments of counsel as well on the part of the plaintiffs as of the defendant, and not being sufficiently advised in the premises, takes said cause under advisement

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And afterwards, Do-mit, at the same term of said court: Do-mit; on the Nineteenth day of December in the year last aforesaid, the following proceedings among other, were had and entered of record. Do-mit-

Aaron Kahn and Joseph Kahn

Louis Weintz

} Assumpsit

This day again come the said parties by their attorneys, and the court having had said cause under advisement, and being now fully advised of and concerning the premises, doth find the issue for the plaintiffs and assess their damages herein by reason of the premises, to the sum of Three hundred and thirty dollars and fifty cents, to which decision of the court the said defendants by their counsel now here except -

Therefore it is considered that said

plaintiff do have and recover of the paid defendant their damages of Two hundred and thirty dollars and fifty cents in form aforesaid assessed, together with their costs and charges by them about their suit on the behalf Expended and have execution therefor.

And afterwards do mit. at the same term of paid Court last aforesaid. do mit. on the 31st day of December in the year last aforesaid, the following among other proceedings, were had and entered of record do mit.
 Abram Kahn and }
 Joseph Kahn } Assumpsit
 Louis Dunitz }

7

This day again come the paid defendant by his attorneys, and prays an appeal from the rulings and Judgment of this Court in paid Cause to the Supreme Court of the State of Illinois, which is granted by the Court upon Condition that the paid defendant shall by tomorrow morning execute and file his appeal Bond herein in the penal sum of Five hundred dollars, Conditioned according to law with Alvin Dalebury, as surety thereto and shall file his Bill of Exceptions in paid Cause within ten days from this date

And afterwards do mit. on the same day and year last aforesaid, paid defendant by Alvarison his attorney filed in paid Court his

Certain Bill of Exceptions, in words and figures
following To-wit;

Book County Circuit Court
Louis Weintz
ad
Hann Bahn and
Joseph Bahn

8. Afterwards To-wit; on the 13th day
of December A D 1861. in the November Term for A D 1861 of
the Book County Circuit Court, held at the Court
House in the City of Chicago in the County of Cook
and State of Illinois, Before the Honorable George
Wanewie Judge of said Circuit Court, the above
cause upon issues joined therein, came on for trial
and a jury trial being waived, the same was tried
by and before his Honor George Wanewie Judge
of said Court. — And the following is
a true and correct statement of all the evidence and
proceedings upon such trial, — Plffs first introduced
the note and endorsements thereon and upon
defendant admitting that the signatures to the note
was in the proper handwriting of A Kerensky and
William Mueller such note was read in Evidence and
defendant also admitted that the name Louis Weintz
written on the back of said note was in the handwriting
of said Louis Weintz the defendant but denied that
he ever made + executed such a guarantee as was
written over the same or had any consideration therefor

and such writing on the back must then read in Evidence
subject to the further proof to be introduced in Evidence
in regard thereto. so far as such proof could legally
affect the same

Chicago Decemr 8th 1859
\$ 219, 98 ¹⁰⁰ / 100
Six Months after date we promise to pay
to the order of A. Kahn & Co Two hundred nineteen
⁹⁸ / 100 dollars at value received
No — Due —
A. Keworsky
G. Mueller

Endorsed

9 " I hereby guarantee the payment of the
within Note at maturity Louis Weintz
" Received May 20th of 8 ⁶⁵ / 100

Plff then rested and
defendant read in Evidence the Deposition of
Frederick Keworsky and George Mueller

Book County Circuit Court
Louis Weintz }
ad }
Kahn Kahn & Co }
and their attorneys }
Do the above named defendants

Take notice that on the 1st day of
November A.D. 1860 at 2 O'clock P.M. of that day
at the Office of Calvin D. Wolf a Justice of the Peace

and before him, we will take the depositions of
William Keller and Frederick Kusmsky promises
then produced to be sworn on behalf of the defen-
dants in the above entitled cause

Yours or Garrison & Hudson
Chicago October 20, 1860 Atty for Deft

Haron Kahn Esq }
Louis Keintz } Cook Circuit-Court

State of Illinois }
Cook County }

10 Depositions of Frederick Kusmsky
and William Keller, taken by and before Galvin
D Wolf a Justice of the Peace in and for the County
of Cook and State of Illinois at his office in
Chicago on the first day of November 1860 at
2 O'clock P.M., to be used in a Cause pending in the
Circuit-Court of Cook County in which Haron
Kahn Esq are plaintiffs and Louis Keintz
is defendant, taken in pursuance of notice hereto
attached.

The said witness Frederick Kusmsky
being duly sworn depose and testify as follows in answer
to questions by Garrison Atty of deft -
Question 1.

Do you know the parties plaintiff and defendant in this suit -

and do you know Mr Mueller and where did you and said Mueller do business in this City, if you state the business and where done

Answer

I know the parties to this suit - Mr Mueller he + myself did business in Chicago at 36 W. Madison St. It was the Tailor business

Question 2

Was you and said Mueller engaged as copartners in said business in December last

Answer

We were

Question 3

State whether or not you and said Mueller purchased last December of plaintiff a Bill of goods to about the amount of \$ 219⁵⁰ if you state whether you gave a note for that amount, and to whom you delivered said note, also state as near as you can the date of said note, how long it had to run and to whom made payable

Answer

We did purchase a Bill of goods of plaintiff in Dec last of \$ 219⁹⁸ we gave our note for it, it is the note found on dated Dec 8, 1879 and becoming due 6 mo from date - payable to the order of H. Calver Co the note was signed by Mr Mueller and myself

Question 4th

State whether the note was made and executed

or not before the goods were delivered to you, state the facts in regard to the time of the delivery of the goods and the giving of the Note

Answer

The goods were delivered to us before we gave the note the goods were in our house on West Madison Street. The note was made about 2 days after we got the goods. Mr. Kahn the peff brought the note to us to be signed.

Question 5th

12 Do you know whether or not the defendant Louis Weintz endorsed or wrote his name on the back of the note, if you state if there was any other writing on the back of the note besides his name, and who was present at the time he signed his name

Answer

Defendant Weintz did write his name on it, I saw him write it. There was no other writing on it, it was all clean on the back side, myself and Mr. Mueller were the only persons present when he signed his name on it besides Louis

Question 6th

Did that note have any other writing or not on the back besides the name of the defendant, at the time it was delivered to the plaintiff, and state when it was delivered, to whom and whether or not defendant was present

Answer

No I was only Louis Weintz on that note on the back side. It may have been a day or two after it was signed by Louis. That we gave it to Peffer & handed it to Her Kahn. Weintz was not present when I gave the note to Peffer

Question 7th

State whether or not Louis Weintz the defendant received any consideration for forming his name on paid Note. If so what consideration

Answer

No Louis Weintz got nothing, not a cent. he got nothing at all

Question 8th

Who requested Her Weintz the defendant to sign paid note as aforesaid

Answer

Me and Her Mueller requested him

Question 9th (Objected to)

Do you remember in what way you asked him and what you paid to him to sign paid note. if so state it

Answer

I do. I told him if he will please and sign that note for me for five months & he pays he will do it

Question 10th

State the relation if any which exist between Her Weintz and Her Mueller

Answer

They are Brothers in Law. Mueller married Weinstz
juster

Question 11th

Do you remember about the time that note became
due, state whether or not about that time you
called on the plaintiffs with reference to payment
of paid note, + state what was paid + done with
reference thereto, and if any money was paid, how
paid and to whom, state all your knowledge
on that subject -

Answer

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I do I called on Baberles before it became due, first about
a month before it became due, he told me if you will settle
these small bills, I had some small bills then, very young,
I paid these bills altogether + after that Mrs. Lechu
told me if I got some more I may pay it on this note,
so I had some more one day + I paid it on that note
about \$ 8.00 + he said he would endorse it on the back
of the note, I did not see it, he told me you have about
\$ 200, trust any how if you pay \$ 50 you can get \$ 50 good
again, this was paid after the \$ 8. was to be endorsed
after that time about 6 weeks he told me he wanted
the whole money the next Monday it was about Tuesday
he was then I promised him about \$ 30 he told me he
wanted the whole of it - he told me if I paid my Cousin
to you he will see hell in your house so he told me
Question 12th

During the time the note had to run did you and paid

Howell make other purchase of plaintiffs, if so to what amount - as near as you can recollect - how much of the same was unpaid at the time the note became due in June last -

Answer.

We did buy some goods, small bills I think about \$100, month, before the note became due and after it was given - It was all paid ^{then} before the note became due in June last - + \$8 on the note besides,

Question 13th

Was there at any time any money offered by you to pay or paid Note, and what did the plaintiff pay at the time you so offered to pay if any thing in regard to not receiving the same or paid Note. state it fully

15.

(Objected to because it assumes a fact not previously stated + because it is leading)

Answer

I did offer to pay money on the note, two or three times before it became due. He told me it is not necessary to pay on the note. I will not trouble you or the Court with that note - you pay them small bill + you know that yourself, you have \$200 credit here any how, if you pay on this \$200 you can have some goods again

Question 14

Was anything paid to him about why you wanted to pay on that note, if you state what you paid, also the amount you so offered to pay

Answer

No only I took my money and go to the leather store to pay with that note. I paid to the leather that Knopfe paid that I should pay the note before I paid the small bills, that the note will be due pretty soon Knopfe is the man that made me acquainted with the leather. I offered to pay once before the note was due \$57. I have a receipt for it in my house. I offered him at three different times about \$1000. on the note I have got receipts for it.

Question 15th

Was anything paid by peffs at the time you paid the money about your having time to pay the note after it became due, if you state what was paid

Answer

16
17
Yes he told me I had time enough the whole year on the note, I mean that Kohn told me that. I was to have a whole year to pay the note if I paid the smaller bills —

Cross Examined by peffs Attorney

Question 1st

Where is the receipts of which you spoke

Answer

They are in my house

Question 2nd

Will you produce them and attach them to this deposition

Answer

Yes, I will (The witness goes and gets the papers here)

attached + returns them as the Exhibit referred to)

X Tues. 3^d

In whose hand money are the receipts

Answer

In Harun Bahus + his Cousin B. Ibrahim I think

X Tues 4

Was his Cousin always present when you paid money.

Answer

I don't know generally he was there

X Tues 5th

When did he tell you, you had the whole year to pay the Note

Answer

He told me that about 2 or 3 times

X Tues 6th

What amount of goods did you buy after the \$8 was to be endorsed on the note

Answer

About \$30 or \$40 worth I think

X Tues 7

Did you make any purchases in your own name

Answer

No

X Tues 8

Did you not make purchases in the month of April 1860 in your own name

Answer

I believe I did a bill of about \$40

x Ques 9

Was that paid

Answer

Not yet

x Ques 10

State whether after you bought goods in your own name you paid bills of the partnership

Answer

No Except the \$8 on the note that I know of I paid all the partnership bill in full the small bills

x Ques 11

Have you receipts for all the bills you paid

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Answer

May be I cant pay I will look for them when I get home

x Ques 12

1d

Did you give notes with security before for goods purchased for plaintiffs

Answer — Yes

(obj to by def)

x Ques 13

How much did you pay more than enough to satisfy the open accounts —

(obj to)

Answer

I paid \$8 Endorsed on the note that was to be

x Ques 14

Are you sure it was Mer leah the peff who brought the note to your house —

(obj to)

Answer

It was not the peff his cousin it was Mer leah

X Ques 15

(obj to)

You say that you gave other notes when you purchased goods of peff, were they endorsed as this one was
Answer — No —

X Ques 16 In what respect were they endorsed differently
(obj to)

Answer — The difference was Weintz wrote his name
clear on the back of the note + the others had something
written on them —

X Ques 17

Who Endorsed these notes.

(obj to)

Answer,

The Knafels name was on them —

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X Ques 18

Have you those notes and will you produce them and
hand them to the Exg —

Answer —

I have and will produce them,

They are here produced + attached. le DM of D^r.

Question by D^r Atty.

Have you contemplated leaving leave county and have
you so told the peff, if so state how it is —

Ans.

I am going away from here every from from this county +
I believe from this state to have settled Louis Weintz
Question by same

When did you & Miller dissolve partnership

Answer — About April 1859

Question by Peff's Attorney

Who was present when you received the check paid
you had a year to pay the note

Answer

We told that many times to me I don't know who was present

Question by Peff's Atty

Was it always when you paid him money

Answer

Yes he always told me so when I paid him money &
sometimes his Cousin told me so when I had him in
my shop
A. Kuzorsky

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The witness William Mueller being duly sworn deposes
and testifies as follows in answer to questions by
Deft's Attorney

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Question 1.

Do you know the parties to this paid

Answer I do

Question 2.

Do you know Frederick Kuzorsky the witness who has
just testified and were you you one of the makers of
paid note

Answer

I do know him and am one of the makers of paid note

Question 3

Was you present at the time the defendant wrote his name
of the back of paid note, if you state whether or not there
was any other writing on the back thereof - if so state what

11
Answer

Ques, there was nothing on the back till County put his name on it

Ques 4

Was anything written over his name at the time the note was handed to the plaintiffs - if so what

Ans. There was not.

Ques 5

State for what that note was given by you if for goods state whether or not the goods had been received by you if so when, with regard to the time of the giving of the note

Answer

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It was given for goods. The goods were received in the house + we gave the note about 2 days after we got the goods

Question 6

State of your knowledge whether at the time the paid defendant wrote his name on the back of paid note he received any consideration from you or from the plaintiffs in this cause, state how he came to sign paid note

Answer

No nothing, he got nothing from anybody - he was my brother in law and I asked him to do it - he did it

Question 7

When did your Kusos only dissolve partnership

Answer

In April 1860

Question 8

At the time you dissolved who took the stock and who
was to pay the partnership debts. (Obj to)

Answer

Kusorsky

Question 9.

State whether or not you intend to leave the County or State
Answer. Yes I do —

W. Mueller

State of Illinois }
Cook County }

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J. Calvin D. Wolfe Justice of the Peace
in and for said County and State, do hereby certify that
the foregoing deposition of William Mueller + Frederick
Kusorsky was taken by and before me at my office in
Chicago on the first day of November A D 1860 commencing
at the hour of two o'clock in the afternoon of said day
and concluding on the first day of November aforesaid
that prior to the examination of said Witnesses they was
sworn by me to testify the truth in relation to the matter
in controversy in the suit depending in the Circuit Court
of Cook County wherein Louis Weintz is defendant and
Amos E. Chad are plaintiffs so far they might interro-
gated, and that thereupon I did proceed to examine
the said witnesses upon all such interrogatories as were
directed to be put by either party litigous and did
cause such interrogatories together with the answers of
the said witnesses thereto, with the answers of the said

witnesses thereto to be reduced to writing in the order in which they were proposed and answered And I do hereby further Certify that said deposition was taken was thereupon sworn to, on the first day of November A D 1860 sworn to and signed by said witnesses in my presence at the place aforesaid

Witness my hand and seal this first day of November 1860
D. P. Jus & Co. Calvin D. Wolf & P. E. Ewing

2 Witnesses $\frac{2.00}{7.00}$ pd by deinty
to D. Wolf & P. E. Ewing

* was objected to on the ground account of being interested and his testimony was heard subject to the objection & done

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and defendant then called S. Keworsky who being duly sworn & paid that he knew the parties to this suit, was one of the makers of the note & the person whose deposition has been just read and that George Mueller the other of said witnesses was now in the Army in Missouri, that he would pay in addition to what was paid in the deposition by him (which deposition was read subject to the exceptions that the witness was in Court & that he was interested to have more time in Examining said witness again) that he requested the defendant to sign the note as security and at the bottom of the note when he & Mueller signed the same, but that the defendant refused to do & said he would only endorse it so that he would not have to pay unless they would not & it could not be collected of them (Keworsky & Mueller) And for defendant also by his Counsel stated that said witness was then to be cross Examined by plaintiff if they wished — Cross Examination —

Witness said to questions asked by the court - that the note was given for goods bought by witness Heller when they were in partnership + doing business together + that when he purchased the goods plaintiff asked him if he would give an endorsement or security - and that he told them he would but he did not pay who he would get - and he handed the note to the defendant - and he said he would put his name on the back, not on the face - and witness let him do so and then took the note to the plaintiffs and then delivered it to them, I did not mention to them that defendant said he would put his name on the back. They were satisfied with the note as it was drawn + made no objections, and at the time he signed, nothing was on the back but his name it was all blank paper on the back. I did not recall - Peff called Bernard Kahn who being sworn said that he knew the parties, was the Officer and Clerk of Peffs who done business on Lake Street in this City - that all the money of Kemsorsky + Heller paid was paid on their account the bills they bought + not up on the note except the endorsement of \$ 8 + some Cents, that when Kemsorsky paid any money he was credited on the Bill he owed that he did not hear nor did Kemsorsky ever pay money to apply on the note that he heard of - that the receipts to most of the Bill annexed to Kemsorsky deposition is in his hand writing, the hand writing

of witness, such money so paid or paid bills was paid before the note became due, and after the open accounts became due, they had credit for 4 months for two hundred dollars

Cross-Examined

The limit of Resorsky + Heuller credit was \$200 upon 4 months time without giving security, agreed upon when they first came to trade. Resorsky never insisted upon making the payments on the note, the Receipts were given to apply upon the account, the \$8 endorsed on note was the balance of amount after the bills were paid, the offer to pay on the note was before it became due. — Rep The guarantee was written on the note before it was signed

2^d §-

Were the Evidence closed — and afterwards do-mit, on the 19th day of December 1861. in said November Term. the said Court after deliberation did find for the plaintiff + did assess damages to the amount of \$200⁰⁰/₁₀₀, and defendant did then and there in due manner move for a new trial on the ground that such finding was contrary to the law and the evidence in the case + that such Court had erred in not finding for the defendant, which motion was overruled + defendant did then and there except — And defendant having prayed his appeal + the Bill of Exceptions + the same being granted the Bill of Exceptions is allowed
In witness whereof at the Court

Done in Chicago in the County of Cook - State of Illinois
the 31st day of December A.D. 1861. in Notable Term
A.D. 1861. of the Cook County - Circuit Court. I have hereunto
set my hand and seal

George Manure Seal
Judge of 7th Judicial Circuit Ill.

and afterwards to-wit on the 31st day of December
in the year last aforesaid. said defendant filed
in said Court - his certain Bill of Ex. Appeal
Bond in words and figures following. To-wit:

Know all Men by these Presents, That we, Louis Heintz and

Alvin Salisbury of Chicago Cook County of the County of Cook and State of Illinois,

are held and firmly bound unto Aaron Cahw & Joseph Cahw also of the same County and State,

in the penal sum of five 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 firmly, by these presents.

Witness, our hands and seals, this thirty first day of December A. D. 1861

The Condition of the above Obligation is such, That whereas, the said

Aaron Cahw & Joseph Cahw

did, on the 19th day of December A. D. 1861 in the Circuit

Court, in and for the County of Cook, and State aforesaid, and of the November

²⁵ Term thereof, A. D. 18 recover a judgment against the above bounden

Louis Heintz

for the sum of two hundred & thirty dollars

and fifty eight cents, besides costs of suit; from which said judgment of the said

Circuit Court, the said Louis Heintz ha prayed for, and obtained an appeal to the Supreme Court of said State.

Now, Therefore, if the said Louis Heintz

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 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 31st day of December A. D. 1861
Wm. W. Church CLERK.

Louis Heintz 

Alvin Salisbury 





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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 a Receipt declaration Bill of Exception and all proceedings entered of ^{record} in a certain cause between pending in said Court, on the Common Law side thereof, wherein Harold Lehm et al were plaintiffs and Louis Heintz was Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this Twenty third day of April A. D. 1862.

Wm L Church Clerk.



fee for Record
6.⁵⁶ Wm L Church

Supreme Court

Solis Heintz

vs

Aaron Baker

et al

Of April Term AD 1862

Afterwards to wit in said April Term & before
the judges now here of the Court aforesaid
comes the said Solis Heintz by Andrew Garrison
his Attorney and says in the preceding record
aforesaid & the matter therein contained there is
manifest error in this

The finding of the Court was contrary to the
Law and the Evidence in the case & should
have been for the defendant & judgment
thereon in his favor

2)

The Court erred in not requiring proof that
plaintiffs below were co-partners as alleged

There was no proof of consideration for
~~Defendants~~ promise

There was no proof that defendant ever agreed to
pay said note at maturity. It ^{had any} consideration
for such promise —

Defendant was but an accommodation
endorser & the parties to the note by an agreement
with Plaintiff after due the time without his consent

No proof defendant was indebted to plaintiff

And said ^{15th} defendant for the errors aforesaid
to be in the record & proceedings aforesaid prays
said judgment may be reversed annulled & held
for naught the record in all things which he
may have lost by occasion thereof

Affirmed

Atty for
Appellants

28

And the said Appellants say that in
the above assignment of error and in this
record in the said cause there is an
error. Wherefore

Goskins, Thomas J
Roberts Atty for
Appellants

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Georis Hrinty

vs

Aaron Kahn et al

Record

Filed Apr. 24 - 1862

S. Selama

Clk

Besides the presumption is that the name was endorsed at the time of the execution of the note.

Camden vs. McCoy, 3 Scam. 437.

Carroll vs. Weld, 13 Ills. 684.

This being the fact, no consideration was necessary, other than the consideration of the note itself.

Joslyn vs. Collinson, 26 Ills. 61.

Carroll vs. Weld, 13 Ills. 682.

Klein vs. Currier, 14 Ills. 237.

2. That we had full authority to write the words of guarantee over defendant's signature, needs not the many references to Illinois decisions to show.

In *Klein vs. Currier*, 14 Ills. 237, the words were written at the time of the trial.

3. It makes no difference what occurred between the defendant and the maker of the note when the former wrote his name on the back, as it was not communicated to the plaintiffs when the note so endorsed was delivered to them.

Klein vs. Currier, on p. 241, (14 Ills.) is very apposite to this point, and we beg the court to read it.

Page 24 of Record, states that Kusowsky, one of the makers of the note, on delivering it to the plaintiffs, said nothing about defendant's saying he would only put his name on the back.

The note endorsed, was handed to plaintiffs by the makers in pursuance of the original agreement at the time the goods were purchased, without any thing being said or done, to limit the liability of the guarantor.

Record p. 24, see amended Abstract. And all of the case of *Klein vs. Currier*, in reference to the effect of such a state of facts, is strictly applicable to the case.

4. It is immaterial whether the words over the signature of the defendant were written before or after the delivery of the note, as see *Klein vs. Currier* note. But the witness who placed it there, is positive in his statement, that it was there at the time.

See *Record* 25.

And,

5. Both Muller and Kusowsky were interested as being makers, and were objected to, as was the reading of their deposition.

Record. See amended Abstract.

As to interest, we refer to *Hubbly vs. Brown*, 16 John 70, that in suit against accommodation endorser, the maker is not a competent witness.
Bayley on Bills, 592, 594, old edition.
Ch. 13, Title Witnesses, Competency of.

The statement of the fact is immaterial, and the whole evidence was before the judge.

5. The principal question, we presume, relied on by appellant, is as to giving time to the guarantor.

The rule on that subject, is correctly stated in *Warner vs. Campbell*, 26 Ills. 285, that an agreement to extend time of payment, founded on a valuable consideration, and operative in point of law, between the maker and holder of the note will release.

In our case there was no such consideration.

The open accounts on which the payment was made were due, and the note itself was not due. So that it was the legal duty of the makers of

the note to pay the open accounts, and they had no right to pay the unmatured note.

The fact, both in regard to the open accounts being due, and the note not due, is expressly stated in the testimony of Bernhard Cahn.

Record page 24, *Corrected Abstract*.

Payment made after a demand becomes due, is no consideration for an extension.

Roberts vs. Stewart, 31 Miss. (2 George) 664.

There is another objection to the point, and that is that there was no certainty as to the agreement, nor definiteness as to when the year should begin or end.

Freeland vs. Compton, 30 Miss. (1 George) 424.

6. The proof of partnership is not necessary.

Rev. Stats. p 233, Sec. 7.

But it is expressly made in the oral testimony of Kusowsky and Passim. Kusowsky says "*plaintiffs*" asked him. Again, "I then took the note to "*plaintiffs*" and delivered it to them. The meaning of that language is of course plaintiffs on the Record.

GOOKINS, THOMAS & ROBERTS,

Counsel for Appellees.

SUPREME COURT.

Louis Heintz,
VS
Aaron Cahn,
ETAL.

POINTS OF APPELLANT.

The declaration was upon a Guarantee of note, note made payable to A. Cahn & Co., and the bill of expressly imports to give all the evidence.

1st Point.

There was no proof that plaintiffs were the persons to whom the note was made payable — no proof who composed the firm of A. Cahn & Co.

Woodworth vs. Fuller 24 Ill. 109 —

Besides the fact of partnership was expressly put in issue by the plea of Gen. issue sworn to.

2nd

The plaintiffs below, extended the time of payment of the note by a valid agreement with Kusowsky one of the makers, upon his paying \$150,00 ON SMALL BILLS NOT DUE, instead of on the note, and thereby discharged Appellant, who was at best only a surety.

20 Ill. 148

2 Swanst 539.

1 Gil. 409 —

4 Barn & Cress 506.

2 Vesey 540

10 J. R. 587 —

Theobolds Principal and argo. 86 —

8 Bingham 136.

The payment \$150,00 on account of the small bills not secured before they became due, was a sufficient consideration as between Kusowsky and plaintiffs, for the extension agreed upon.

see above authorities also — 8 Bing. 136. 1 John C. 22.

Clearly more consideration than appellant received for his endorsement, who only signed on request —

And it makes no odds whether from such extension appellant suffered or not —

1 Gil. 409.

11 Wen. 312.

And if the money had been applied, where offered to be paid, then appellant would have been discharged for so much, this act of diverting the money, was an injury to appellant and a benefit to the appellees.

3d

The appellant by signing his name in Blank on the back of the note, at the request of the makers, and without any consideration, and expressly stating at the time, that he would not sign on the face, and that he would only sign, so as to be liable in case the note could not be collected of the makers, clearly meant and thereby did limit his liability to that of an assignor or endorser under our statute, and the plaintiff had no right or authority to write over his name or charge him as a guarantor of payment at maturity.

3 Scam. 437. 497.

13 Ill. 682.

2 Hill R. 80

21. Ill. 636 —

The above facts are proved by the witnesses Kusowsky and Muller, who certainly were in a situation to know all the facts, they state when and how, at their request the note came to be endorsed in blank by Heintz — Cahn, the witness of plaintiff, says simply the guarantee was written on the note before Heintz signed it, states no circumstance of knowledge or corroborating fact—nor claims he was present when the same was signed.

4th

“The written guarantee not expressing a consideration is void”

2 Comstock 553 —

Upon the proposition of the guarantee being written on the note at the time the same was signed by Heintz, as stated by witness Cahn, then we say the goods the consideration of the note, had been sold and delivered to Kusowsky and Muller several days before and was in their possession and store, the note was only given by them for an existing debt

And the guarantee of Heintz not expressing a consideration is void.

2 Comstock 553 Hall vs. Farmer.

A guaranty of payment endorsed on note, though given at the time the note was made, is not a promissory note, it is a special promise for the debtor of an other, and to be valid must express the consideration.

5 Denio 484

A. GARRISON,

for Appellant.

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Supreme Court

Louis Heintz

vs

Aaron Cahn
et al

Plaintiff vs Appellant

A. Garrison

Filed May 15, 1842

J. Leland
clerk

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VS
Aaron Cahn,
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A. GARRISON,

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A. Garrison
Atty

Filed May 15, 1862

L. L. C. C.
C. M.