

No. 14641

Supreme Court of Illinois

Mason

vs.

Dousay

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 171

J. W. Middleton & Co. Stationers, 126 LaSalle St.

Appl. T. 1864

Refused

Mason

vs

Davis

1864

JOHN W. DEAN, PRINTER, 148 LAKE ST., CHICAGO.

RECORD
PAGE.

IN THE SUPREME COURT, AT OTTAWA,

APRIL TERM, A. D. 1864.

RICHARD MASON,

Appellant,

vs.

WILLIAM DOUSAY,

Appellee.

*Appeal from the Superior Court
of Chicago.*

ABSTRACT OF RECORD.

William Dousay, of Gena, Delta County, State of Michigan,
declared in *assumpsit* against Mason upon a Bill of Exchange,
of which the following is a copy, to wit:

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The declaration avers that said Inman, at Masonville, in
said county of Delta, to wit, in said county, made the Bill of
Exchange, which the said "Defendants afterwards, to wit, on
the first day of January, 1862, at Chicago, to wit, in the said
county, upon sight thereof accepted."

Avers demand of payment, and refusal, and concludes with the common counts.

6 Plea, *non assumpsit*.

7 Jury waived, and cause tried by the Court by agreement before his Hon. Judge Goodrich.

9 The Plaintiff introduced in evidence the Bill of Exchange, declared upon; also the Deposition of Lafayette Burgess, taken by commission on behalf of plaintiff in March, 1863, who testified that he resided at Oshkosh, Wisconsin; was a fur dealer by occupation. That he demanded payment of the said draft of Richard Mason, the defendant, at the plaintiff's request sometime in the summer of 1861, towards fall. That he made but one demand of payment on said draft. That Mason looked the draft over and said "it was all right, and said that he had told Mr. Dousay that he would pay it in the course of thirty or sixty days." That he, witness, had made this demand in Delta County, Michigan. That he first spoke to the clerk in the store, and he told him to wait till Mr. Mason came in. Can't say whether any one else heard the conversation. The defendant came out of the store and talked with me about the draft along the road.

13 H. Deal, sworn for plaintiff, testified that defendant resides in Chicago, and did in 1861, and kept a lumber yard on Market street in Chicago and still does.

13 Here plaintiff rested his case.

Defendant called Richard Mason, jr., son of defendant, who testified that he knew Nathan D. Inman, the plaintiff. They resided in Delta County, Michigan, in 1861, and have since and still reside in the State of Michigan. Defendant had a mill at Masonville, sometimes called Gena, in the State of Michigan, and a store there. I was there in Sept., 1861. I know Lafayette Burgess, and saw him at Gena two or three times that season of 1861. He was master of a trading boat, and traded in furs and whisky.

14 The defendant then offered in evidence a portion of the deposition of Charles McAllister, a witness examined on the part of the plaintiff in Nov. 1861, and filed in the cause, to wit, the 7th Direct Interrogatory put by plaintiff to said McAllister, and his answer thereto as follows:

14

"Interrogatory Seventh.—Did you ever present or see or know of the order or paper hereto attached being presented to the Defendant for payment or acceptance? If yea, state by whom the same was presented, when and at what time, and whether on more than one occasion, and what was said by the defendant or his agents on the subject. Whether the same was left in defendant's possession; if so, how long? Give full particulars in your answer.

15

"To the seventh Interrogatory deponent says, he remembers the note or draft being presented by the master of a trading boat, and that Mr. Mason informed the said master that as he had not settled with Nathan D. Inman he could not then pay it, as the said Inman's logs had not been turned in. This, to the best of my knowledge, was sometime in July. I was not present during said conversation, being told by the master of the boat; the said conversation taking place at Gena, and only on one occasion. The note was not left with the defendant."

To show that said Burgess had made a different statement to said McAllister regarding his interview with defendant, from that contained in his deposition, which offer was objected to by plaintiff on the ground that the answer of McAllister was not responsive to the said Interrogatory. 2d. No person is named by the witness. 3d. He was not interrogated as the rule requires to lay the foundation for contradiction.—4th. The witness Burgess has not been interrogated upon the subject.

And the objection was sustained by the Court, and defendant excepted.

15

16 The defendant continued the examination of R. Mason, jr.,
as witness. He testified :—Defendant was here from 30th

16 Defendant here offered to prove by this witness that Inman,
the drawer or maker of the draft sued upon was at the time,
the draft was made, and ever since has been, and still is,
indebted to the Defendant.

This evidence was excluded by the Court as immaterial.—
Defendant excepted.

The plaintiff then examined said Richard Mason, jr., who
16 further testified as follows :

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RECORD
PAGE.

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ASSIGNMENT OF ERRORS.

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1. The Court erred in excluding the evidence of the Laws of Michigan.
2. The Court erred in excluding competent evidence offered by defendant.
3. The Court erred in finding the issues for plaintiff, and also in rendering judgment for plaintiff.
4. The Court erred in overruling the defendant's motion for a new trial.
5. The judgment was against law and evidence.

BURNHAM & MARTIN,

Attorneys for Appellant.

171 75

R Mason
vs
W. Douday

Abstract

Filed Apr 19 1864
J. L. Mason MR

ABSTRACT OF ERRORS

1. The Court erred in excluding the evidence of the laws of Michigan.
2. The Court erred in excluding competent evidence offered by defendant.
3. The Court erred in finding the issue for plaintiff and also in rendering judgment for plaintiff.
4. The Court erred in overruling the defendant's motion for a new trial.
5. The judgment was against law and evidence.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the _____ day of _____ in the year of our Lord One Thousand Eight Hundred and Sixty _____ and of the Independence of the United States of America the Eighty _____

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

James H. Higgins }
Leont Gordon } Judges.

Joseph W. May Prosecuting Attorney.

David J. Hammond Sheriff of Cook County.

Attest, Thomas P. Carter Clerk.

Be it remembered that heretofore writ under my hand and seal of office in the year of our Lord one thousand Eight Hundred and Sixty _____ Mrs. William Dowsay by Allen C. Story her attorney filed in the Clerk's Office of the said Superior Court of Chicago, an exhibit declaration which is in words and figures following to-wit:

State of Illinois }
Cook County }

In the Superior Court of Chicago of the July Term 1866.
William Dowsay of Genesee County State of Michigan plaintiff in this suit by Allen C. Story his attorney Complainant of Richard Mason of the City of Chicago on the

County of Cook and State of Illinois Defendant who has been summoned &c on a plea of trespass on the case on promises for that whereas one Nathan D Roman heretofore known on the nineteenth day of May in the year of our Lord one thousand Eight Hundred, and thirty one. at Masonville in said County of Delta, Iowa in the said County made his certain & Bill of Exchange in writing bearing date the day and year last aforesaid and directed the same to the same defendant and thereby then and there requested the said defendant Richard Mason to pay to said plaintiff Melvin Dinsay the sum of one thousand & thirty Eight & 100 Dollars for value received and then and there delivering the said Bill of Exchange to the said Plaintiff the said Melvin Dinsay which said Bill of Exchange the said Defendant afterwards took on the first day of January 1882. at Chicago Iowa in the said County upon sight thereof accepted

By means whereof and by force of the statute to no such case made and provided the said defendant became liable to pay said plaintiff said sum of money mentioned in the said Bill of Exchange and being so liable in consideration thereof then and there undertook and promised to pay the same to the said plaintiff according,

to the tenor and effect of the said Bill of Exchange, and of the endorsement, and acceptance thereof as aforesaid to wit at the place aforesaid whenever payment of the same should be demanded of him, said Richard Mason by or on behalf of this plaintiff

That afterwards to wit on the day and year and at the place last of aforesaid payment of the said Bill was duly demanded of the said defendant Richard Mason by and on behalf of said plaintiff William Donay, yet, the said defendant Richard Mason disregarding his said several promises wholly and entirely failed neglected and refused to pay the said sum mentioned in said Bill of Exchange or any part thereof, and still so refused, and said Bill remains wholly unpaid to the damage of this plaintiff of Five hundred and fifty Dollars wherefore he brings suit.

And whereas also the said defendant afterwards to wit on the Eighteenth day of June in the year of our Lord one thousand eight hundred and sixty two to wit, at said County, became, and was indebted unto the said plaintiff in a large sum of money to wit Five hundred and fifty Dollars for money lent and also to wit and advanced to said Defendant by said plaintiff at said de-

fund out request, and also in the like sum for
 money before that time paid laid out, and ex-
 pended, for said defendant by said plaintiff
 at the like special request of the said de-
 fendant, and in the like sum for money be-
 fore that time had and received by said
 defendant to and for the use of said plaintiff
 and also in the like sum for goods wares
 and merchandise before that time sold and de-
 livered by said plaintiff to said defendant
 at the like special instance and request,
 and also in the like sum for the labor, care,
 and diligence of said plaintiff before that
 time done, and performed by said plaintiff
 for said Defendant, and at the like instance
 and request of said defendant and also in
 like sum for other money, before that time
 and then due, and owing the said plai-
 tiff, for interest upon, and for the forbearance
 of divers other sums of money, before that
 time and then due, and owing from ^{the} said
 defendant to the said plaintiff, and also in
 the like sum, then and there found to be due
 and owing from said defendant to said plai-
 tiff, on an account stated between them and
 being so indebted said defendant in consid-
 eration thereof then and there undertook, and pro-
 mised to pay said Plaintiff said several sums

5-

of money are mentioned when there unto
afterwards requested.

yet the said Defendant, notwithstanding his
said promise and undertakings but continuing
etc although often requested to do, has not
paid plaintiff either of said sum of money
above mentioned or any part thereof but
so to do has hitherto wholly neglected and
refused and still do neglect and refuse to
the damage of said plaintiff of \$50.00 and
and therefore he brings this
suit etc

Allen C. Story. Plffs Atty.

Copy of Instrument and account sued on.
Allen C. Story Plffs atty.

Masnoville 14th May 1861

\$128.00 R. Mason Esq. Please pay to William
Dowsey one hundred and twenty Eight Two Dollars & charge to
acct of.

Kathorn Dorman

Chicago & Co.

Richard Mason to William Dowsey	Dr.
To money lent and advanced	\$ 250.00
To money paid land mt and expenses	\$ 250.00
To money had received to and for the use of said plff.	\$ 250.00
To goods, wares, and merchandise sold & delivered	\$ 250.00
To Labor & Services	\$ 250.00
To balance on account stated	\$ 250.00

And afterwards - went on. the Thursday day
of July in the year of our said the said Richard
Mason. by Burnham & Marton his attorneys
filed in the Clerk's office of the said Court his
return plea much as in words & figures fol-
lowing writ.

Richard Mason
vs

Superior Court of Chicago
July Term A.D. 1862.

Mellau Dinsay

And the said defendant.
Richard Mason Defendant

in this writ. by Burnham and Marton his attorneys &
Counsel and defends the wrong and injury when &c.
and says. that he did not undertake, and promise
in manner and form as the said Mellau Dinsay
plaintiff in this writ. has above complained
against him as of this he puts himself upon the
Country. and the said plaintiff do the like,
Burnham & Marton,
Attys for Defendant

And afterwards - went on. the Eleventh day of
March in the year of our Lord one thousand
Eight Hundred and Sixty three the same being
one of the days of the March term of said Court
the following among other proceedings were had &c.
entered of record in said Court that

681
9571.

(7)

William Dunsay
vs
Richard Mason

assumpsit

This day comes said plaintiff by Allen C. Story, his attorney, and on his motion it is ordered that plaintiff have leave to withdraw draft, filed with deposition, and annex same to interrogatories in said cause.

And afterwards writ on the Trinity. From the day of June, in the year aforesaid, the same being one of the days of the Inner Term of said Court: the following among other proceedings were had, and entered of record in said Court Court

681
9571.

William Dunsay }
vs } Assumpsit
Richard Mason

This cause being this day called for trial comes said plaintiff by A. C. Story his attorney, and said defendant by Burnham & Martin his attorneys also comes, and upon agreement of parties made now here in open Court this cause is hereby submitted to the Court for trial upon the issues joined therein without interposition of a jury, and the Court now here after hearing evidence, and arguments of counsel, and being fully advised in the premises finds issues for said plaintiff and assesses his damages

herein, against said defendant to the sum of
one hundred, and forty Dollars.

8

And thereupon said defendant, submit his mo-
tion herein for a new trial in said Cause, which
is overruled by the Court, to which ruling of the
Court, ~~the~~ said defendant, then and there excepted

Therefore it is considered that said plaintiff
do have, and recover, of and from said defendant
his damages of one hundred, and forty dollars, in
form aforesaid by the Court. here found and
assessed together with his costs, and charges,
in this behalf expended, and have execution,

therefor And thereupon said defendant prays
an appeal herein to the Supreme Court of this
State, from the judgment of this Court, which
is allowed, to him on filing bond, in penalty
of one hundred, dollars, with Joseph Wilde
as surety, in thirty days and with Bill of
Exceptions to be filed in ten days from this
date

And afterwards to wit on the Thirtieth day of
July in the year aforesaid, the said Richard
Mason by Burkham & Martin his attorneys,
filed in the said Clerk's office of said Court
his Bill of Exceptions, which is in word
and figures following to wit,

9

Richard Mason
ad.
William Donsay.

Superior Court of Chicago

} Rule of Exceptions

Be it remembered that
afterwards, term, in the April Term of said
Court, the said parties appeared by their
counsel, whereupon a jury was waived and
the cause was by consent tried by the Court.
Hon Grant Goodrich presiding Court apt.
24. 1863.

The Plaintiff introduced in evidence
the draft, declared upon as follows

" \$128.⁰⁵/₁₀₀

Masonville 14th May 1861.

" R. Mason Esq. Please pay to Messrs.
" Donsay one hundred, and thirty Eight ⁵/₁₀₀.
" + charge to acct. of. Nathan D. Fuman
" Chicago Ill.

The Plaintiff then introduced the deposition
of Lafayette Burger taken by Commission on
behalf of Plaintiff on March 13th 1863, as
follows.

Interrogatory First. What is your name, age, occu-
pation and place of residence
Answer to First Interrogatory My name is Lafayette
Burger. My age is thirty Eight years. My occu-
pation is a fur dealer, and my place of residence
is Oak Grove Winnebago County Wisconsin

Interrogatory Second. Do you know the parties plain-
 tiff and defendant in the caption to these inter-
 rogatories mentioned or either and which of them and
 how long have you known them respectively?
 Answer to Second Interrogatory I know both the
 plaintiff and defendant mentioned and have
 known them for about four years.

Interrogatory Third Examine the Draft or order
 hereto annexed and state whether you have
 ever seen the same before. If yes state &
 whether you ever demanded payment of said
 draft or order from the defendant Richard &
 Mason, and if yes state when at whose re-
 quest. Whether more than once and what
 was paid by the defendant.

Answer to Third Interrogatory. I have seen the
 draft or order now shown me annexed to the Com-
 mission in this case before I demanded payment
 of the said draft or order of the defendant Rich-
 ard Mason. Some time in the Summer of 1861
 towards fall. I do not remember the exact time
 I made the demand at the request of William
 Donsay the plaintiff in this suit I made
 but one demand of payment on said draft.
 Richard Mason looked the draft or order over
 and said it was all right and said that he
 had told Mr Donsay that he would pay it
 in the course of thirty or forty days.

11

Interrogatory Fourth. Did you ever present the said draft or order for payment to Richard Mason of yca State when, where, and how answer:
Answer to Fourth Interrogatory. I did present the draft or order. Richard Mason Jr. in his store at Masonville some time in the summer of 1861. He said he could not pay it then but said he had told Dwyer that he would pay it in thirty or forty days. I don't know whether Mason's name is Richard Mason or Richard Mason Jr. but it was the old man, Mason who owns the mill and store at Masonville to whom I presented the draft and of whom I demanded payment thereon.

Interrogatory Fifth. Do you know of Richard Mason Jr. as acting as agent for the defendant during the year 1861 & 1862. of yca State in what capacity answer to Fifth Interrogatory. I know that the defendant had a son at Masonville during those years but I do not know what his business was.

Interrogatory Sixth. Do you know of any other matter or thing of benefit or advantage to the said plaintiff upon the trial of my cause. If yca state the same fully and particularly.

Answer to Sixth Interrogatory. I don't know of any other matter or thing that will be of any advantage. That ended the conversation between the defendant and myself.

Cross Interrogatories, and answers thereto, by the Metrop on the part of the defendant

First Crof Interrogatory. For answer to the third direct Interrogatory, you have stated, that you demanded payment of the said draft of the defendant Richard Mason. State particularly when it was, in what Town County and State and who else was present at the time and who else heard the conversation.

Answer to first Crof Interrogatory. It was in Delta County Michigan I do not know the name of the town. It was in the summer of 1861. but I can not state the month, as I made no memorandum of it. I do not remember whether defendant Clark was in the store at the time or not. but I think he was. I spoke to the clerk about the draft first and he told me to wait until Mr. Mason came in. I cannot say whether any one else was in the store. I cannot state positively whether any one else heard the conversation or not. The defendant came out of the store and talked with me about the draft along the Road.

Second Crof Interrogatory. Had you any interest or ownership in the said draft at the time you so presented it. If yes what was it and have you disposed of said interest and how and when and for what State particularly.

Answer to second Crof Interrogatory. I never had any interest in the draft of any kind or to any amount. I took the draft and presented it as a favor to the

plaintiff as I was going there
 Thud Crof Antinggalay. If you in answer to the
 fifth direct interrogatory have stated that Richard
 Mason Jr. acted as agent for Defendant in 1861
 and 1862 or at any time state your own knowledge
 if any of the capacity in which he then acted
 and all the means of such knowledge you
 have or had.

Answer. Thud Crof Antinggalay, I know nothing
 about it.

Lafayette Burgess.

A. De al. sworn for Plaintiff testified I am
 Defendant; he resides in Chicago & did in 1861.
 kept a Lumber yard on Market Street in Chi-
 cago & still does.

Then plaintiff rested his case.

Defendant called Richard Mason Jr. who testified
 I am son of Defendant. I am now in Kalamazoo, I
 know and the plaintiff they resided in Delta
 County, Michigan in 1861 & have since & still do
 reside in the State of Michigan Defendant had
 in 1861 and still has a mill at Masonville Mich-
 igan called Genoa in the State of Michigan and
 a stone drive, Charles Maccaulisto was for his
 book keeper there I was there in September 1861
 I am now Lafayette Burgess. He was master
 of a trading boat. I saw him at Genoa 2 or 3

times that season of 1861. He traded in furs and
whiskey I know of no other La Fayette Burger.
master of a trading Boat at that time

The Defendant then offered a portion of the deposition
of Charles Maccaulister a witness examined on the
part of plaintiff in Nov. 1862. That the 7th and
interrogatory to said Maccaulister and his answers &
depositions as follows

Interrogatory First. Did you ever present, or see,
or know of the ^{order of} paper notes attached being pre-
sented to the defendant for payment or acceptance. If
yes. State by whom, the same was presented, where
and at what time and whether on more than one
occasion and what was said by the defendant or his
agents on the subject whether the same was left in
defendant's possession if so how long, give full par-
ticulars, in your answer.

Answers.

To the seventh Interrogatory deponent says he
remembers the note or draft being presented by
the master of a trading Boat to the defendant and
that Mr Mason informed the said Master that he
he had not settled with Nathan D Jordan he &
could not then pay it as the said Jordan has
not been ~~seen~~ in ~~the~~ to the best of my know-
ledge some time in July. I was not present during
said conversation, being told by the master of the
Boat the said conversation taking place at Lema

57
and only on one occasion. The note was not left
with the defendant.

15-

To show that said Burgess
had made a different statement, to said Macaulay
regarding his interview with defendant from that
contained in his deposition, which offer was ob-
jected to by Plaintiff on the ground that the
answer of Mr. Allister was not responsive to the
said Subpoena. 2. No person is named by the
Witness, 3. he was not interrogated as the rule re-
quires to lay the foundation for contradiction 4.
The witness Burgess has not been interrogated upon
the subject.

And the objection was sustained by the
Court and defendant excepted.

The defendant then offered in evidence the Compiled
Laws of Michigan Vol 1. Page 408, Chapter 31.
Entitled "of Bills of Exchange & promissory notes"
published in 1857 by the authority of the State of
Michigan and proposed to read section 7
of said Chapter as follows. "No person within this
State shall be charged as an acceptor, on a Bill
of Exchange, unless his acceptance shall be in
writing signed by himself or his lawful agent"
The plaintiff objected to this evidence on the
ground that it should have been specially pleaded
that it was not competent under the general
law and is immaterial

The Court heard the statute above quoted read, subject to said objections, reserving the question of its admissibility by consent of both parties

The defendant.

Continued the examination of R. Mason Jr. as a witness he testified, Defendant was here from 30th May 1861 to 30th July 1861. he then came up to Michigan to the mill and returned here the 29th August 1861. I left him on the 31st August 1861 & went up to the mills. Deft. was never at defendant's office in Chicago while I was there & during the year 1861. I was there daily from 7 to 12 o'clock A.M. & from 1 to 6 P.M. Except some 3 weeks I was in Michigan.

Deft. here offered to prove by this ^{that} witness that from the Drawer or maker of the draft sued upon was at the time the draft was made & evidence has been & still admitted to the defendant.

This evidence was excluded by the Court as immaterial. Deft. excepted.

The Plaintiff then examined said Rich and Mason Jr. who further testified as follows.

I always paid orders if I knew them to be right and correct. I never took the responsibility of paying them unless I knew them to be correct. I paid expenses of business and bills in furtherance thereof and generally transacted the business of Defendant in Chicago to the best of my judgment.

in his absence. I paid part of a similar order
to Joseph Legare in 1861.

17

Re examined by Deft.
I was not authorized to accept Bills of Exchange,
or to draw, ~~nor~~ to sign checks and never did so
all. Men that we hired here we paid here.

It was proved that Deft resided in Chicago
where he kept a lumber yard that he spent
some of his time at the Mills at Masonville & was
admitted ^{that} the draft was drawn at Masonville Mich
19th Jan

The Plaintiff put in evidence the deposition of
Peter Murphy taken by Commissioner as follows.

Interrogatory First What is your name, age, occupation
and place of residence.

Interrogatory the first To the first interrogatory the
deponent says his name is Peter Murphy, age
47 years, and occupation a Lumberman, and place
of Residence Delta Mills in the Town of Varna,
County of Delta State of Michigan

Interrogatory Second Do you know the parties plaintiff
and defendant in the Caption to these interrogatories
mentioned or either and which of them, and how
long have you ^{known} them respectively?

Second. To the second Interrogatory the deponent says
he has been acquainted with the defendant Richard
Mason, about ten years, that he has been acquaint-
ed with the plaintiff William Dinsay about seven
years, to the best of his knowledge

Interrogatory Third. Do you know Nathan D. Fuman and did you know him in May. June. and July 1861. and what was his business during that time.

Third, To the Third interrogatory this deponent says. he saw Nathan D. Fuman. in the months of May June. & July 1861. at Mr. Mason's mill sometimes working and sometimes not. his business was getting logs to the mill but whether on his own account. or Mr. Mason. the deponent cannot say.

Interrogatory Fourth. Do you know whether said Fuman. and the defendant. had business transactions together previous to or during these months: If. yea. state. whether. you know or have the means of ascertaining in what condition the accounts of said Fuman. and said defendant. were. during said months and whether or not. the said defendant was during these months or prior to June. 25 1861. indebted to said Fuman. If yea state the time and amount. of such indebtedness fully and clearly. and your means of knowing.

Fourth, To the fourth Interrogatory, this deponent says he only supposes that Nathan D. Fuman. and Mr. Mason. had business transactions by knowing him getting logs to the mill. and the said Richard Mason previous to that time and Nathan D. Fuman. getting his logs to the mill about this indebtedness he does not know anything about it.

19

Interrogatory Fifth Examine the paper order or bill of Exchange, annexed to these interrogatories and say in whose handwriting it is Did you draw it or see it drawn. At whose request, was it drawn and where, and in what office and by whom was the same drawn. and was the defendant present at the time it was drawn.

Say the Sixth Interrogatory this deponent says, to the best of his knowledge the Bill is in the handwriting of Charles McAlister that deponent was not present or does he know of the deponent was present when the Bill was drawn.

Interrogatory Sixth Are you now, or were you during, said month of May, June, or July, 1861, in the employ of the defendant? If yes in what capacity are you employed. Do you now, or did you while in such employ. draw checks notes or bills, or drafts for the defendant, to or for his employes, or attend to paying the same, or promise or give directions in regard thereto, for or on behalf of the defendant, either by his direction or in his presence or by direction of others for him or on discharge of the duties of your employment. State fully, and particularly.

Say the Sixth Interrogatory this deponent says, he was never in the employ of the defendant, and consequently never drew any drafts &c.

(20)

Interrogatory Seventh. Did you ever present or see or know of the order or paper here attached being presented to the defendant for payment or acceptance of yea. state by whom the same was presented where and at what time, and whether on more than one occasion and what was said by the defendant or his agents on the subject whether the same was left in defendant's possession for how long, give full particulars in your answer.

Sworn to.

In the seventh interrogatory this deponent says, that he presented the note or draft, himself at the office of the defendant in Chicago, he thinks about the middle of June, that the draft was presented to Mr. Mason, son, who looked at it and handed it back again. That the note was good, saying the old man. (understood to mean Mr. & Mason) did not wish to pay the note then as money was scarce, that William was not suffering for the money, as he could get anything he wanted out of the place on it.

Interrogatory Eighth. If you have ever heard the defendant speak of the order or pay. herebefore spoken of, and annexed hereto, or the amount due to said person, from time during said months or months, or half year, or at any time prior to June 25, 1862, state what was said by him and where and when the said conversation took place.

Eighth To the Eighth interrogatory the deponent says he has no knowledge on the subject.

(21) Interrogatory Ninth Did you ever present the said order or paper to any agent of or person acting for the defendant for payment or acceptance? If yes to whom when and where how did you know him to be such agent and what was said by him or directions given upon the subject and was the defendant present? Please give your answer full and explicit.

Tenth To the Tenth interrogatory the deponent says he presented the note or Bill as stated by him in the Seventh interrogatory.

Interrogatory Tenth Do you know of any other matter conversation or thing of importance or interest to the said plaintiff in this suit if so state the same fully clearly and particularly.

Twelfth To the Twelfth Interrogatory the deponent says he does not know of any matter or conversation or thing of importance to the plaintiff.

Cross Interrogatories.

First If you answer to any of the direct interrogatories you have said that defendant was indebted in any sum to the said Nathan Dorman state particularly your means of knowing such indebtedness.

First To the first Cross Interrogatory the deponent says he has had no means of knowing of any indebtedness.

came between the parties.

(22)

Second. If you have stated in any of your answers to the direct Interrogatories that you know of said order having been presented, for acceptance or payment, state who was present, at the time and place. What conditions if any, were mentioned and all that was said and of said presentment was to any other person than defendant state how you know such person was authorized to act in that matter for the defendant.

Second, To the second cross Interrogatory the deponent says he presented the Bill or note at the office of Richard Mason in Chicago. The note was presented to his son, whom he believed to be acting for said defendant, that Mr Mason's son looked at the note and handed it back to deponent saying the note was good, but that the old man meaning his father did not wish to pay the note when as money was scarce that William was not suffering for money as he could get what he wanted out of the place with

Third.

Do you know any other matter or thing that may tend to the benefit or advantage of the defendant in this case. If you declare fully.

Third

To the third cross Interrogatory the deponent says he does not know of any matter or conversation of importance or benefit to the defendant.

Peter Murphy.

(23)

The foregoing was all the evidence in the case and the Court (affords on the 24th June, 1863,) ruled, that the defendant could not prove, or insist on the law of Michigan above mentioned requiring an acceptance, to be in writing in order to be valid under the plea of non assumpsit, but that to avail himself of that defence, the same should have been specially set up, in the pleadings.

And found the sum for the plaintiff and assessed his damages at \$140 to which rulings & findings the defendant then and there duly excepted and entered his motion to set aside the said finding & for new trial in said cause upon the grounds that:

1. The verdict or finding is erroneous and against the law & evidence
2. The Court erred in interpreting the evidence of the law of Michigan requiring acceptance, to be in writing
3. The Court erred in holding that the deft. could not avail himself of the defence, that the acceptance never upon being made in Michigan was not valid
4. There was no sufficient & valid acceptance proved
5. The finding should have been in favor of the Defendant.
6. The defence urged, and insisted upon, that the acceptance was invalid by the law of Michigan

(24)

was competent to be made. under the plea of
non assumpsit and the Court ended in holding
differently.)

Burnham & Martin

Attys for Deft-

But the Court overruled the said motion and
rendered judgment on the said finding for
the sum aforesaid. to all which the defendant;
thru and thro excepted. and Because the said
matters do not fully appear in the Records.
the said defendant tendered thru his Bill of
Exceptions & prays it may be signed & stated
by the Court which is done.

Done 24th 1863.

Grant. Goodrich *Deas*

And afterwards to wit on the nineteenth day of
July aforesaid. the said Richard Mason
by Burnham & Martin his attorneys filed
in the said Clerk's office of said Court his
Certain appeal Bond, which is in Words and
figures following to wit

I know all men by
these presents that we Richard Mason of
Chicago Illinois and Joseph Mide of the same
place of the County of Cook and State of
Illinois are held and firmly bound unto William
Dunsay of Delta County in the State of Michigan

in the penal sum. Three hundred dollars lawful money of the United States for the payment of which well and truly to be made. we find ourselves on this special and administrator jointly personally and jointly by these presents

Witness our hands and seals this sixth day of July. A.D. 1863.

The condition of the above obligation is such that whereas the said William Dowsay did on the twenty fourth day of June. A.D. 1863. in the Superior Court of Chicago in the state of said and of the term thereof A.D. 1863, recover a judgment against the above named Richard Mason for the sum of one hundred and forty Dollars. besides costs of suit from which said judgment of the said Superior Court the said Richard Mason has prayed for and obtained an appeal to the Supreme Court of said state

Now Therefore, if the said Richard Mason 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 14th day of
July A.D. 1863

J. B. Carter Clerk,

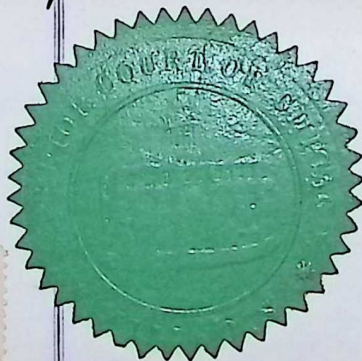
Richard Mason *Ed*
J. B. Carter *Ed*

State of Illinois }
County of Cook }

27 I Thomas P. Carter Clerk
of the Superior Court of Chicago witness and for
the County and State aforesaid do hereby certify
the above and foregoing to be a true perfect and
complete transcript of the declaration, plea, Bill
of Exceptions, and appeal. Bond, together with
all the orders and judgment made, and entered
of record in said Court in a certain cause
lately pending in said Court on the Common
Law side thereof, wherein William Dowsay was
plaintiff and Richard Mason was Defendant.
In Witness Whereof I have here-
unto set my hand, and affixed the
seal of said Court at the City
of Chicago this Thirtieth day
of March A.D. 1864

Thomas P. Carter

Clerk.



In Sup. Court

April Term 1864.

29 And now comes the said
appellant Richard Mason
by Brinkman & Martin his attys
and assigns the following errors
appearing in the foregoing Record
Trist.

- 1st The Court erred in excluding the
evidence of the Laws of Michigan
- 2nd The Court erred in excluding competent
evidence offered by Defendant
- 3rd The Court erred in finding the issues for
Plaintiff and also in rendering judgment
for Plaintiff.
- 4th The Court erred in overruling the Defendant
motion for a new trial
- 5th The judgment was against law and evidence

Brinkman & Martin

Attys for Appellant

State of Illinois
Third Grand Division

In Supreme Court
Do the April Term A.D. 1864

William Dousay
appellee
vs.
Richard Mason
appellant

Writter in Error

And the said William Dousay ap-
pellee as aforesaid now comes and says that
there is no error either in the record and proceedings
aforesaid, or in giving judgment as aforesaid in man-
ner and form as above assigned, and therefore he prays
that the said judgment may be affirmed and that
his costs may be adjudged to him &c

Haines & Story
attys for Appellee

Sub: 176-75-

Richard Mason

Appellant

Wm Dousay

Appellee

Record from

Supr. Co. of Ill. case

Filed Oct. 19. 1864.

L. Selous

Clk.

March 1864
attys for Mason