

13274

No. _____

Supreme Court of Illinois

Chumasero

vs.

Gilbert

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 280.

Chinnery
vs
Gibert

1861

1861

Know all men by these presents, that we Edward P. Chumasson as principal and William Chumasson and Robin J. Park as securities are here and jointly bound unto Iteratio & Guilbert in the penal sum of ~~one~~ hundred Dollars (\$100⁰⁰) for which payment well and truly to be made we bind ourselves or heirs & jointly & severally, jointly by these presents sealed with our seals and dated this 26th day of April A.D. 1881.

Whereas the said Iteratio & Guilbert did at the December Term A.D. 1880 of the said Court recover a judgment against the above bounden Edward P. Chumasson for the sum of Seven hundred and fifty two Dollars and ~~eighty~~ seventy seven Cents besides costs from which judgment the said Edward P. Chumasson has taken an appeal to the Supreme Court of the State of Illinois and filed his appeal bond in said cause which said bond has been declared by said Supreme Court insufficient and a new & amended bond to be filed

Now therefore the covenants of this obligation is such that if the said Edward P. Chumasson shall duly prosecute his said appeal and shall pay the judgment and all costs entered and damages

in case the said proponent shall
be apprehended then this obligation
to be void otherwise to remain in force

E. J. Schumann Seal
Wm. Chumason Seal
A. H. Lark Seal

287

E. J. Schumann

1849. Guelph

Accused at the Court

Filed Apr 29 - 1861

L. J. Leland

Col. Leland

SUPREME COURT OF THE STATE OF ILLINOIS,
THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant,

vs.

HORATIO G. GUILBERT.

} April Term, A. D. 1861.

POINTS OF APPELLANT.

1st. The Court below should have excluded the note offered in evidence because of the variance between it and the note set out in the declaration and the copy filed.
16 Ill. 495, 1 Scam. 388.

2d. The Court erred in permitting the Endorsement to be read in evidence—no copy thereof having been filed, and no proof being made of the same.

~~3d. The Court erred in permitting the Endorsement to be read in evidence, on account of the variance between the endorsement set out in special count, the copy thereof filed, and the one offered in evidence.~~

4th. The Court erred in computing and allowing interest on the note for the following reasons:

I. The note was payable in New York, and is to be governed by the laws of New York.

2 Har. & J. 191 De Sobry vs. de Laistre, 1 Williams Vt. 8, 24 Barb. 68, 2 Bay 377, 4 Smede and Marshall 667, 17 John R. 5 11, 20 John R. 102, 14 Verm 33, 17 Ill. 328, and cases there cited.

4 Johns 285.

II. Where a note as in this case is made with a view to its payment in another State, the law of the place where it is to be paid regulates the allowance of interest and determines its rate.

17 Ill. 328, and cases there cited, 2 Watts & Serg. 327, 364, 24 Barb. 118, 10 Wheat. 367, 2 John R. 102, 4 Dessans S. C. 160, 4 Peters 111, 1 B. Monroe 34, 11 Met. 210, and cases above cited.

when
III. ~~While~~ as in this case no rate of interest is stipulated, the parties are presumed to have contracted in reference to the law of the place of performances.

See cases last cited.

4th. Interest is not recoverable at common law, but only by express statutory enactment.
It is not deemed necessary to cite any authority on this point.

5th. This being conceded, the Court cannot judicially know the rate of interest of a foreign State. That being regulated by the laws of such State, must be pleaded and proved.

4 Smede and Marshall 668, 5 Texas 87, 262, 14 Texas 351, Miner 387.

6th. If the Court cannot judicially know the rate, how can it presume that it is recoverable at all where there is no agreement to pay it. *5 Dec at 262*

WM. CHUMASERO, Attorney for Appellant.

SUPREME COURT OF THE STATE OF ILLINOIS, THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant,

vs.

April Term, A. D. 1861.

HORATIO G. GUILBERT.

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4 Smede and Marshall 668, 5 Texas 87, 262, 14 Texas 351, Miner 387.

6th. If the Court cannot judicially know the rate, how can it presume that it is recoverable at all where there is no agreement to pay it. *5 Tex 262 & cases above*

WM. CHUMASERO, Attorney for Appellant.

SUPREME COURT OF THE STATE OF ILLINOIS,
THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant,

vs.

HORATIO G. GILBERT, Appellee.

APRIL TERM, A. D. 1861.

APPEAL FROM LA SALLE.

ABSTRACT OF THE RECORD.

RECORD. This was an action of assumpsit commenced in the LaSalle County Court by the Appellee against the Appellant, and was tried at the December Term, A. D. 1860, before Champlin, judge, a jury having been waived by agreement of the parties, and judgment was rendered against the Appellant.

Page 3. The declaration contained a special count upon a note, which is in the words and figures following:

\$689.49.

LA SALLE, Nov. 25th, 1858.

Page 5. 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.

Page 6. The Appellant filed a plea of the General issue.

Page 9. The Appellee offered in evidence the note, a copy of which is above hereinbefore set forth, and an endorsement thereon.

Page 9, 10. The Appellant objected to the reading of the endorsement in evidence, on the ground that no copy of the same had been filed, which objection was overruled by the Court, and the note and endorsement were read in evidence. To which ruling of the Court Appellant then and there excepted. It was admitted that the Broadway Bank of New York City, where said note was payable, was located in the State of New York. The Appellant then objected to the allowance of any interest by the Court on said Note, which objection was overruled by the Court. To the overruling of the objection the Appellant then and there excepted. The Court computed the interest at \$63 18-100, and found the issues in favor of Appellee, and assessed his damages at \$752 67-100, being the amount of the note and interest.

This was all the evidence in the case. The Court then and there rendered judgment in favor of Appellee for \$752 67-100 and costs. The Appellant made a motion for new trial, which was overruled; to which Appellant then and there excepted.

WM. CHUMASERO,
Attorney for Appellant.

Charmers

25

Gilbert

Abstract

Filed Apr 18. 1861

L. Helms

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SUPREME COURT OF THE STATE OF ILLINOIS,
THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant,

VS.

HORATIO G. GUILBERT.

} April Term, A. D. 1861.

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6th. If the Court cannot judicially know the rate, how can it presume that it is recoverable at all where there is no agreement to pay it. *5 Tex. 262*

WM. CHUMASERO, Attorney for Appellant.

SUPREME COURT OF THE STATE OF ILLINOIS,
THIRD GRAND DIVISION.

EDWARD B. CHUMASERO, Appellant,

VS.

HORATIO G. GUILBERT.

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WM. CHUMASERO, Attorney for Appellant.

280-121
Chumasco
 vs
Guilbert 3

Partly of Appeal
Law

Filed May 7, 1881
 Leland
 Clerk

SUPREME COURT OF THE STATE OF CALIFORNIA

To the Honorable Justices of the Supreme Court of the State of California:

1. The undersigned, being a party to the within case, do hereby certify that the facts stated in the foregoing petition are true and correct.

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SUPREME COURT OF THE STATE OF ILLINOIS,
THIRD GRAND DIVISION.

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vs.

HORATIO G. GILBERT, Appellee.

} APRIL TERM, A. D. 1861.

APPEAL FROM LA SALLE.

ABSTRACT OF THE RECORD.

RECORD. This was an action of assumpsit commenced in the LaSalle County Court by the Appellee against the Appellant, and was tried at the December Term, A. D. 1860, before Champlin, judge, a jury having been waived by agreement of the parties, and judgment was rendered against the Appellant.

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This was all the evidence in the case. The Court then and there rendered judgment in favor of Appellee for \$752 67-100 and costs. The Appellant made a motion for new trial, which was overruled; to which Appellant then and there excepted.

WM. CHUMASERO,
Attorney for Appellant.

✓
Griest
Abstract

100
Pine
Pine

Filed Apr 18, 1861
A. Ireland
Clerk

Henry (Charles) Lincoln

GIOVANNI G. GARRINI, *Udinese*

ABEY MOLETTA

100

1
State of Illinois
LaSalle County ss

Pleas, Proceedings, Orders
Judgments and Decrees held and taken in
and before the LaSalle County Court at a regular
term thereof, commenced and held at the Court
House in Ottawo in said County, on the First
Monday, (being the Third day) of December, in
the year of Our Lord, one Thousand Eight
Hundred and Sixty, and of the Independence
of the United States of America the Eighty
fifth.

Present Hon John C. Champlin Judge
Philo Lindley Clerk
Eri L. Waterman Sheriff

Be it remembered that herebefore to wit
on the 26th day of August A.D. 1859, a certain
bond for costs was filed in the Clerk's Office
of said Court in the words and figures
following to wit:

Ladalle County Court. To September Term
A.D. 1859.

Horatio G. Gilbert

Edward B. Chumascro

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

Dated this 16th day of August 1859

B. C. Cook.

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

Declaration

3

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

Horatio G. Guilbert plaintiff in this suit, by
Glover Hook their attorneys, complain of Edward
B. Chumacero, 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. 1858 by his certain promissory note of
that date by him subscribed by the name
& style of E. B. Chumacero, for value received,
promised to pay W^m Chumacero & R. G. Parks
the sum of Six hundred and Eighty nine
& $\frac{49}{100}$ 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 W^m Chumacero
& R. G. Parks endorsed and delivered the
said note, then and still unpaid, to the
plaintiff, of all of which the said defendant
then and there had notice, and then and
there became liable; and in consideration
thereof, then and there promised the said
plaintiff to pay him the said sum of
money in said note mentioned, according
to the tenor and effect thereof, when the

same should become due and payable. And the plaintiff avers that the said 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 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

5 plaintiff for said defendant at his request:
in consideration thereof then and there
promised the said plaintiff to pay him
the said several sums of money when he
should be thereto afterwards 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 Atty

Copy of Note sued on.

\$689.49. LaSalle Nov 25th 1858.
Six months from date I promise to
pay to Wm Chumassero or R. G. Parks or order
Six hundred and Eighty nine $8\frac{49}{100}$ dollars
without defalcation, for value received at
The Broadway Bank of New York City.
C. C. Chumassero

Account sued on
Edward B. Chumassero

To H. L. Guilbert Jr.

June 10th 1889.

To money had received \$800.

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

LaSalle Co. Court. Sept Term 1859

Edward B. Chumaseo,

^{adv}
Noratio G. Gilbert

And now comes the defendant by Chumaseo & 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

Chumaseo & Eldridge
Left to act

And afterwards to wit on the 6th day of December A.D. 1860, being a day in the December Term A.D. 1860 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:

1 1 1 1
Horatio G. Gilbert

4
Edward B. Chumazero

Assumpsit

This day comes the plaintiff, by Glover, Cook and Campbell his attorneys, and the defendant also comes by William Chumazero his attorney, and by agreement of parties a jury is waived, and this cause is submitted to the court for trial, and after hearing the evidence the court finds the issues herein for the plaintiff and assesses his damages herein at the sum of Seven Hundred and Fifty two dollars, and Sixty seven cents.

Whereupon the defendant by his said attorney enters his motion for a new trial herein, and after hearing the arguments of counsel, said motion for a new trial is overruled by the court, to which ruling of the court in overruling said motion the defendant by his said attorney, then and there accepted.

It is therefore considered by the court that said plaintiff have and recover of said defendant said sum of Seven Hundred and fifty two dollars and Sixty seven cents, for his damages, herein, and also his costs and charges by him herein

8 expended, and that he have recoupment therefor.

And Thereupon the said defendant by his said attorney prays an appeal to the Supreme Court of this state, which is allowed upon his entering into an appeal bond in the sum of Five Hundred Dollars with William Chumazero and R. G. Park as security conditioned as the statute requires, and leave is given to file said bond within thirty days from the last day of the present term of this court.

And afterwards to wit on the 6th day of December A.D. 1860, during said December Term, a certain Bill of Exceptions was filed in the Clerk's office of said Court in the words and figures following to wit:

Lafayette County Court, December Term 1860

9
Noratio G. Gilbert

^{vs.}
Edward B. Chumasco

Be it remembered
that on the 6th day of December 1860. that being
one of the days of said December Term of said
Court, this cause was tried before the Hon
J. C. Champlin a jury having been waived
whereupon the plaintiff to sustain the
issues on his part offered in evidence the
note & endorsement of which the following
is a copy

\$689.49

Lafayette Nov 25th 1858

Six months from date I promise to
pay to Wm Chumasco & R. G. Parks or order
Six hundred and eighty nine & ⁴⁹/₁₀₀ dollars,
without deduction for value received at
the Broadway Bank of New York City.
E. B. Chumasco

Endorsed

"Pay to Noratio G. Gilbert

Wm Chumasco, Peru Ill. R. G. Parks, Lafayette Ill.

The defendant objected to the introduction and
reading the endorsement in evidence on the
ground that no copy of said endorsement had

been filed in said cause, which objection
 was overruled by the court & the note & endorse-
 ment thereon were read in evidence to
 which ruling of the court the defendant
 then and there excepted. It was admitted
 that the Broadway Bank of the City of
 New York, where said note was made
 payable was located in the State of
 New York. The defendant then objected
 to the allowance of any interest by the
 court on said note - which objection was
 overruled by the court. This was all the
 evidence offered in this cause. To the
 ruling of the court allowing interest the
 defendant then and there at the time of
 such decision excepted. The court then
 computed the interest on said note at the
 sum of \$63.18 and assessed the plaintiff's
 damages at the sum of \$752.67, where-
 upon the defendant entered a motion
 for a new trial, which motion was overruled
 by the court. & said court entered
 judgment against defendant for the sum
 of \$752.67, to which ruling of the court
 and rendering the judgment aforesaid
 the defendant then and there excepted
 and prays that this bill of exception
 may be signed and sealed and made

and fifty two dollars and fifty seven Cents.
besides Costs from which judgment the said
Edward B. Chumascero has taken an appeal
to the Supreme Court of the State of Illinois.

Now if the said Edward B. Chumascero
shall prosecute his appeal with effect
and pay whatever judgment shall be
rendered by the Court upon dismissal or
trial of said appeal then this obligation
to be void, otherwise to remain in force.

E. B. Chumascero Seal
Wm Chumascero Seal
R. G. Parke Seal

State of Illinois }
LaSalle County }

I. Philo Lindley Clerk
of the County Court in and for said County, do
hereby certify the above and foregoing to be
a true and complete Transcript of the
Bund for costs, Declaration, Plea, Judgment
Bill of Exceptions and Appeal Bond
in the case wherein Horatio G. Gilbert
is Plaintiff and Edward B. Chumasco is
defendant, as the same appear on file and
of record in my office.

Witness my hand and the seal
of said Court at Ottawa this
26th day of February A.D. 1861

Philo Lindley Clerk
Frank J. Crawford
Deputy



Clerk's fees on this Transcript \$3. 50

Edward Schumacher

14.9 Guilbert 3 And now comes the said
E Schumacher by William Schumacher his
attorney and says that in the record and proceedings aforesaid
+ also in giving the judgment aforesaid
said there is manifest error in this Court.

1st The Court below erred in permitting the
Endorsement of the note to be read in evidence
2. That the Court erred in computing
and allowing any interest on the
note.

3 That the judgment was given for
the plaintiff when in the Court below
whereby the law of the land it
should have been given for the
defendant.

and said Schumacher prays that
the judgment aforesaid
for the error aforesaid together with errors
in the record and proceedings aforesaid
may be removed annulled
and held for nothing &c.

W Schumacher

Attorney,

and now comes the appellee and
says that in the record and proceedings
aforesaid there is no error

B L. Leach

appellee

No 18. 280

Edward B. Chumasco

ⁱⁿ
Horatio G. Gilbert
~~~~~

Transcript  
~~~~~

Filed April 18. 1861

A. A. Bennett
Clerk