

No. 13358

# Supreme Court of Illinois

Beesley

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vs.

Spencer

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# Supreme Court---Second Grand Division.

JANUARY TERM, 1861.

## ABSTRACT.

B. & J. M. BEESLEY, }  
vs. } Error to Mason.  
AARON W. SPENCER. }

This was an action of assumpsit, commenced by attachment in the Mason County Circuit Court, at the August term, A. D. 1858, wherein B. & J. M. Beesley were the plaintiffs, and Aaron W. Spencer was the defendant.

On the 17th day of August, 1858, there was issued a writ of attachment out of the Circuit Court, which said writ of attachment was levied on the same day on Lots 7 and 8, in Block 2, in the town of Bath, Mason County, Illinois—Spencer not found—and returned by J. P. West, Sheriff.

Notice by publication to Spencer was then made, and afterwards on the 15th day of October, A. D. 1858, the plaintiffs in error, by Walker & Lacey, their Attorneys, filed their declaration in the cause, in the Clerk's office of the Circuit Court, which declaration contained one special count, as follows:

"B. & J. M. Beesley, plaintiffs in this cause, complain of Aaron W. Spencer, defendant in this cause, who is summoned to answer unto the said plaintiffs of a plea of trespass on the case on promises: For that whereas one Henderson Howard, heretofore to-wit: on the 23d day of January, in the year of our Lord one thousand eight hundred and forty-nine, at and within the County of Mason, and State of Illinois, made his certain promissory note in writing, and then and there delivered the same to the said defendant, and thereby then and there promised to pay to the said defendant, or order, the sum of one hundred and fifty dollars, with six per cent. interest from date, lawful money, for value received, on or before the first day of January, A. D. 1850, after the date thereof, which period has now elapsed, and the said Aaron W. Spencer then and there indorsed the said note to the said plaintiffs, and the said plaintiffs aver that at the time of the indorsement to the plaintiffs aforesaid, the said maker of said note was, and ever since has been, wholly insolvent, and at the time the said note became due, a suit against the maker would have been unavailing; that at the time the said note became due, the said maker had left this State, and has ever since been a non-resident, whereby the said defendant became liable to, and then and there promised to pay to the said plaintiffs the said sum of money according to the tenor and effect of said note."

Also, the said declaration contained the following common counts, to-wit:

- 1st. "For goods, wares and merchandise."
- 2d. "For money lent."
- 3d. "For money had and received for the use of the plaintiffs."
- 4th. For money found to be due on settlement—and assigning the common breach to the damage of the plaintiffs of 177 67-100 dollars.

And on the 8th day of March, A. D. 1859, the defendant (in error), by Dilworth & Roberts, his attorneys, filed the following plea, to-wit:

- 1st. "And now comes the said defendant, by Dilworth & Roberts, his attorneys, and says that he did not undertake and promise in manner and form as the said plaintiffs have thereof complained against him, and of this he puts himself upon the country, &c."

"DILWORTH & ROBERTS,  
"Defendant's Attorneys."

Upon which issue was joined.

And at the same time and place, the said defendants filed their second following plea, to-wit:

- 2d. "And for a further plea herein, defendant saith, *actio non*, &c., because he says that the said several supposed causes of action in said declaration mentioned (if any such there were, or still are), did not, nor did any or either of them, accrue to the said plaintiffs at any time within five years next before the commencement of this suit, in manner and form as the plaintiffs have above thereof complained against him, and this he is ready to testify, whereof he prays judgment, &c."

And on the 10th day of March, A. D. 1859, the said plaintiffs, by their attorneys, filed their demurrer to second plea of the said defendant.

And afterwards, to-wit: on the 11th day of March, A. D. 1859, the defendant filed his joinder in demurrer to the defendant's second plea.

- At the March term of the Mason County Circuit Court, on the 10th day of March, the court, after being advised, overruled the demurer.



At the March term, A. D. 1860, on the 5th day of the term in Mason County Circuit Court, the defendant (in error) came and asked that judgment be entered against the plaintiffs in error on their demurrer, and the plaintiffs standing on their demurrer, it was ordered by the court, that the defendant recover of the plaintiffs

11 his costs in this behalf expended, and that he have execution therefor.

And the plaintiffs (in error), now bring this cause to this court, and assign the following causes for error :

1st. The court erred in not sustaining the demurrer of the plaintiffs (in error) to the second plea of the defendant (in error).

12 2d. The court erred in rendering judgment against the plaintiffs in error for costs.

3d. The court erred in not giving judgment for the plaintiffs (in error).

LYMAN LACEY,  
*For Plaintiffs in Error.*

The said defendant in error joins in the above alleged errors.

C. J. DILWORTH,  
*For Defendant in Error.*

B. & J. M. BEESLEY, }  
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I. This action was commenced on an indorsement on a note, given by Henderson Howard to Aaron W. Spencer, and indorsed by the appellee to the appellants. The assessment bears no date, hence the presumption of law that it was assigned before it became due. The note bears date June 23d, 1849, payable the 1st day of January, A. D. 1850.

The cause of action accrued when the note was due on the 1st of January, A. D. 1850. "Bouvier's Institutes," Vol. I., 335. See Scates, Treat and Blackwell's Revised Statutes, chap. LXXIII., sec. 7, page 291.

II. The law that all actions founded on any promissory note, simple contract in writing, bond, judgment, or other evidence in writing, must be prosecuted within sixteen years from the time the cause of action accrued, was in force, and not the five years' Limitation law, when the cause of action in this case accrued: hence the plea that the action on which the suit was instituted, was not brought within five years after the action accrued, was not a good plea, and the demurrer should not have been sustained. See Scates, Treat and Blackwell's Revised Statute, chap. LXVI., and amendments thereto, dated February 10th, 1849, page 752; laws passed November 5th, 1849; laws passed February 17th, 1851.

III. The amendment to the Limitation law, dated February 10th, 1849, which could in any way relate to an action of this sort, provided that all actions founded on any promissory note, bill of exchange, book account, or simple contract, should be commenced within five years after the cause of action accrued, which act took effect April 13th, 1849.

On the 5th day of November, 1849, an amendment was made to said act, abolishing the former act, and extending the time in which actions should be brought on instruments in writing, to sixteen years after the cause of action accrued, and providing that, all causes of actions accruing, on written contracts, "during the period in which said laws are respectively in force," be the rule of limitation and adjudication in all such cases.

The note was made during the existence of the first law, and the right of action upon it, or the assignment, accrued during the existence of the latter law, which clearly brings it under the provisions of the amendment passed Nov. 5th, 1849.

IV. But had the cause of action accrued during the existence of the law passed February 10th, 1849, it would have been repealed, and made subject to the provisions of the act of November 5th, 1849, which extended the time of limitation to sixteen years, by the act of February 17th, 1851, which made all causes of actions accruing under the provisions of the first described act, and differing in regard to time from the provisions of the second act, subject to the provisions of the second act. See Revised Statutes of Scates, Treat and Blackwell, page 753.

Points made by

LYMAN LACEY,  
*For Plaintiff in Error.*



Bearley

Spencer

Abstract & brief

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Filed June 18-1861

L. Leland  
Leland

*John Dan 14-6*