STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 35

Drew
vs
Drury

14440

253

No. 14440

Supreme Court of Illinois

Drew

vs.

Drury

71641 7

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

HARRISON DREW, impl'ded with WILLIAM GARRETT, *vs.* WILLIAM DRURY. } *Appeal from Mercer.*

ABSTRACT OF THE RECORD.

This was an action of assumpsit, brought by appellee against Harrison Drew and William Garrett, to the April Term of the Mercer Circuit Court, A. D. 1859, upon a promissory note as follows:

"$120.00.

"On or before the first day of January next we, or either of us, pro-
5 "mise to pay to the order of Thomas Green one hundred and twenty
"dollars, with ten per cent. interest from date, value received.

"March 8, 1857. "WILLIAM GARRETT.
"HARRISON DREW."

This note was assigned and the payment thereof at maturity guaranteed by Green to William Drury, plaintiff below, on the 25th March 1858.

On the back of the note was endorsed "Received the interest on this note till January 1, 1858."

8 No service was had on Garrett, one of defendants.

9 Drew was served, and filed the general issue. Jury waived. Trial by Court.

At the April Term, 1860, the Court rendered judgment for plaintiff for the amount of the note and interest, and defendant excepted and filed his bill of exceptions.

11 The bill of exceptions shows, that on the trial plaintiff introduced the note in evidence without objection.

Defendant then called Thomas Green, who testified: That he was the
11 payee of the note sued on; that he traded it to the plaintiff on the 25th March, 1856, and that Drew was only security on the note, Garrett being the principal; that he told plaintiff at that time that Drew was security on the note, and that it was given for a horse bought by Garret.

Defendant next called Welis Willets, who testified as follows: "In
12 "October, 1857, I paid, at Garrett's request, some money to plaintiff as "interest on a note at the rate of 20 per cent. *if plaintiff would wait*
13 "*with him a while longer.* I was to pay the interest then due and for "six or twelve months in advance. Plaintiff was to wait on Garrett till "the expiration of the time interest was advanced.

"The plaintiff called a few days after the conversation with Garrett, "and asked if Garrett had left any money with me. I told him he had. "I stated the arrangement. He made a calculation, and I paid him the "amount. Plaintiff said it was all right, and took it and went away."

On cross ex. this witness stated, "that he did not know that he saw "the note; did not have it in his hands; did not know the amount of the "note; does not know what note it was, whether by Garrett alone or "by Garrett & Drew; understood the amount to be about $125.00. *I* "*paid probably about* $37.50. *The payment was made to get time.* "Drew came a few days afterwards to know what had been done. When "informed, was dissatisfied; said he had given notice to plaintiff to sue "on it, and thought if plaintiff had given more time it would release him."

C. S. HARRIS,
H. M. WEAD,
For Appellant.

BRIEF AND AUTHORITIES.

There are but two points in this case.

1st. Drew was sued with Garrett on a note. Garrett was not served. Garrett was the principal in the note. Drew was surety only. The plaintiff knew all these facts when he purchased the note, which was before it became due. In consideration of $37.50 paid to him by Garrett in October, 1857, through Willetts, the witness, the plaintiff below in consideration of this payment, agreed to extend the time of payment for six or twelve months. The note was due when this agreement was made. The *agreement released the surety.*

Walters *vs.* Simpson *et al.*, 2 Gil. 574.
Davis *vs.* People, 1 Gil. 319.
Warner *vs.* Crane, 20 Ill. 151.

The defence is proper under the general issue.

20 Ill. Rep. 151.

2d. The judgment is too large. The $37.50 paid through Willetts is not deducted.

C. S. HARRIS,
H. M. WEAD,
For Appellant.

35

Drew
vs
Drewry

Abstract of Brief

Filed April 22-1863
L. Leland
Clerk

that this was the only note appellee held, to which appellant was a party. Taken all together this evidence is too weak to make out the defense, and the finding of the jury cannot be disturbed. The judgment of the court below, must be affirmed.

~~Judgment Aff'd.~~

~~In this opinion the whole court concurred.~~

Judgment affirmed.

H. Drew
35 vs 95

Ir Drewry

Opinion by
Wallace J.

Recorded
Page 700

~~Opinion of the Court delivered by~~
delivered the opinion of the Court.

Mr. Justice Walker. Appellant insists, that he was released from liability on the note, upon which this suit was brought, by the holder extending the time for its payment after its maturity. It appears from the evidence, that appellant is only security on the note. Willetts testified, that in October 1857, he paid some money on a note, being at the rate of twenty per cent, and upon the condition, that appellee would extend the time of payment. It was for interest already ~~accrued~~ due, as well as for interest still to accrue, for ~~six or~~ either six, or twelve months in advance. That at the time he made the payment, appellee agreed to extend the time of payment, until the ~~time the~~ expiration of the time, for which ~~the time for which~~ the interest was paid. That he did not remember to have seen the note; did not know the amount; to whom it was ~~pay~~ given; but understood it to be ~~ab~~ for about $125. He thinks he paid probably, about $37.50, which was made to obtain an extension of time of payment.

When ~~Appellee~~ appellant learned of the the transaction, a few days after it occurred, he expressed dissatisfaction, and said, that he had given appellee notice to sue upon the note, and if ~~he~~ appellee had given time, it would release him.

Whilst an extension of time, for the payment of a note, beyond its maturity, is clearly proved, yet the evidence fails to identify it as the note sued upon in this case. The witness did not see the note, and did not know that appellant's name was on it. He understood it to be for a different amount from the one in controversy. He does not give the date, state when it was due, the rate of interest it bore, to whom it was given, or any facts that identifies it with the note in controversy. The only evidence which might tend to prove it to be the same, is that it was held by appellee, but whether as payee or assignee does not appear, and if it did, the witness understood that he made payment on a ~~diff~~ note for a different amount. There was no evidence showing

Page of Record

Harrison Drew
William Garrett impleaded &c
vs
William Drury

In the Supreme Court
State of Illinois
Third Grand Division
April Term AD 1861

Error to Mercer County

Abstract of the Record

This was an action of Assumpsit brought by William Drury, Appellee against the Appellants at the April Term of the Mercer County Circuit Court AD 1859, upon a promissory note, of which the following is a copy

5 "$120 100 On or before the 1st day of January next we or
" either promise to pay to the order of Thomas Green
" one hundred & twenty dollars with ten per cent
" interest from date value Recd.
" March 8th 1856 William Garrett
Harrison Drew"

On Said note the following ~~March 25th 1856~~ endorsements appear "March 25th 1856"

5 "For value received I assign the within note to
" Wm Drury and ~~guarantee~~ the payment at maturity
"Thomas Green"

"Received the interest on this note till Jan 1st 1858

8 No Service was had on William Garrett defendant

Harrison Drew defendant Served with Summons
9 filed plea of general issue to Plaintiffs Declaration

At the December (Special) Term AD 1859 of Said
9 Court, the parties appeared by their attorneys. Jury
waived and the Cause tried by the Court.
Whereupon the Court took the Case under advisement

10 At the April Term 1860, to wit, May 4th 1860
the Court gave judgment for the plaintiff against
the defendant Harrison Drew for the Sum of
$148 10/100 and Costs of Suit

To all of which defendant excepted & asked leave
to file a Bill of Exceptions, which was allowed, the
Same to be filed within 60 days from that date

11 And also prayed an appeal to the Supreme
Court, appeal allowed, Defendant to give
Bond in Sum of $300 00 within 60 days,
by agreement the Security to be approved by the
Clerk

11 Bill of exceptions filed June 28th 1860, also
on Same day Bond filed & Security approved by the
Clerk

The Bill of Exceptions shows that on the trial of
11 Said Cause the plaintiff introduced in evidence Said
promissory note, which was admitted in evidence
without objection

To maintain the issue on the part of the defendant one Thomas Green was then Sworn who testified as follows, to wit,

12 Was the payee of the note on which this Suit was brought, that he traded it to the plaintiff 25th march 1856 and that Drew was only Security on the note Garrett being the principal, I told the plaintiff then that Drew was Security on note and that the note was given for a horse that Garrett bought

Defendant next introduced as a witness

12 Wells Willetts. who testified as follows, to wit,

In October 1857 I paid at Garretts request some money to plaintiff as interest on a note at the rate of twenty per cent, if plaintiff would wait with him a while longer

I was to pay the interest then due & for six or twelve months in advance, Plaintiff to wait on Garrett till

13 expiration of time interest was advanced

Plaintiff called a few days after this Conversation and asked if Garrett had left any money with me, I told him he had, I stated the arrangement he made a calculation & I paid him the amount Pltff, said it was all right & took it & went away

Cross Examination

13 Dont recollect that I took a receipt for the money.

Dont recollect that I saw the note. Cant say what note it was, whether Garretts alone or Garretts & Drews, I understood the amount to be about $125,00, I paid about $37.50

Re-Examined

13 The payment was made to get time

Drew came a few days afterwards to know what had been done, when informed was dissatisfied Said he had given notice to plaintiff to sue on it and thought if plaintiff had given more time it would release him, The notice was verbal

I got the impression that the note was $125,00

Plff. & I agreed upon the computation of interest

This was all the evidence in the case

The Court then gave judgment against Drew for $148 10/100

Bill of exceptions signed & sealed by the Hon. Johns S. Thompson

Corbin Harris &
H. M. Wead
Attys for Appellants

364

Supreme Court Illinois

~~84~~ 85

Harrison Drew
William Garrett impleaded &c
vs
William Drury

Abstract of Record

Filed May 16. 1861
L. Leland
Clerk

No fee Superseded

Supersedeas allowed
with Wells Willetts
as surety.
Bond $300,00

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

HARRISON DREW ET AL.
vs.
WILLIAM DREWRY.

This was an action on a note, dated March 8th, 1856, for $120, payable January 1st, 1857, made by William Garret and Harrison Drew to Thomas Green, endorsed by Green to plaintiff below.

Plea, general issue.

Green testified, that he had assigned it to plaintiff, March 25th, 1856. Plaintiff asked if it was good; he said yes; Drew was security; that the note was given for a horse Garret bought.

Willett testified that, in Oct, 1857, he paid some money to plaintiff, at Garret's request, as interest on a note, at 20 per cent., if plaintiff would not sue him for a while longer. I was to pay the interest then due, and for six or twelve months in advance, plaintiff to wait with Garret till expiration of time interest was advanced. I understood the amount of note to be about $125. I paid probably $37.50. On cross examination,—I did not have the note in my hands. I don't know what note it was; whether it was a note of Garret's alone, or Garret and Davis.

The first point we make is, that the note about which Willetts testified, is not shown to be this note. This appears from the following considerations:

The note sued on was for $120. The witness understood the note he paid on was for $125.

2. Witness paid the interest due on the note, and 20 per cent. for 6 or 12 months in advance. This was in October, 1857. The interest is endorsed on the note to January 1st, 1858, neither 6 nor 12 months.

3. The amount he paid he states at $37.50. The interest on this note from date, at 20 per cent., would be $43.60. The interest at 10 per cent. from date of note to October, and from then until Jan. 1st, 1858, at 20 per cent., would be $24.33.

The witness expressly says that he don't know that it was this note, or that it was a note of Garret and Drew's at all.

The burden of proof was on the defendant. He was bound to make out his case affirmatively. The Court, acting as a jury, might fairly find that he had not done so. Indeed, he could not find otherwise.

The facts of the case do not sustain the point made.

II.

But this note is a joint and several note; it is not the case of a surety at all. The language of the note is—"We jointly and severally promise to pay." Both makers contract with the payee as principals, and this contract cannot be varied by parol testimony.

Paine v. *Webster*, 19 *Ill.*, 104.

Whatever the rule in Equity may be the rule at law, we contend is, that as between the payee and the makers, of a note like this, both makers are principals; that where a party purchases a note of this sort, he is to look to the note itself, to ascertain what the liabilities of the parties are, and is not affected by any verbal statement of the contract, differing from that mentioned in the note. We recite the following English cases:

Strong v. *Foster*, 17 *C. B.*, 201.
Hollier v. *Eyre*, 9 *Clark and F.*, 45.
Ress v. *Barrington*, 2*d Ves. Jun.*, 542.
Pooley v. *Haridure*, 7*th Ellis and B.*, 40.
English Law and Eq., 96.
Manley v. *Baycott*, 2*d Ellis and B.*, 46.

In Ohio,

Farrington v. *Gallaway*, 10 *Ohio*, 543.
Slipper v. *Fisher*, 11 *Ohio*, 299.

In Maryland,

Yates v. *Donoldson*, 5 *Margland*, 389.

In Connecticut,

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directly in point.

In California,

Kriter v. *Mills*, 9 *Cal*, 21.

By the Supreme Court of the United States, this point has been directly decided, in

Sprigg v. *Bank of Mt. Pleasant*, 10 *Peters*, 257.

We submit that the case cited in 19 Ill., 104, can only be sustained upon the view which we take of the law.

GLOVER, COOK & CAMPBELL,
For Defendant in Error.

35c

Drain

v

Drury

Points for Deft

Filed May 16th 1863

S Selleck

Clk

Harrison Drew
William Garrett
vs
William Drury

In the Supreme Court
State of Illinois
Third Grand Division
April Term AD 1861

William B Johnson being duly sworn deposes & says that Wells Willetts of Mercer County, whom the Plff. in error proposes for security; as this affiant has been informed & believes is worth more than five thousand dollars, over & above all indebtedness. And further saith not

Subscribed & Sworn to before me this 16th day of May 1861
L. Leland
Clerk

William B Johnson

364 Supreme Court

Harrison Drew
William Garrett
vs
William Drury

Justification &c

Filed May 16. 1861
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

HARRISON DREW, impl'ded with WILLIAM GARRETT, *vs.* WILLIAM DRURY. } *Appeal from Mercer.*

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5 "mise to pay to the order of Thomas Green one hundred and twenty "dollars, with ten per cent. interest from date, value received.

"March 8, 1857. "WILLIAM GARRETT.
"HARRISON DREW."

This note was assigned and the payment thereof at maturity guaranteed by Green to William Drury, plaintiff below, on the 25th March 1857.

On the back of the note was endorsed "Received the interest on this note till January 1, 1858."

8 No service was had on Garrett, one of defendants.

9 Drew was served, and filed the general issue. Jury waived. Trial by Court.

At the April Term, 1860, the Court rendered judgment for plaintiff for the amount of the note and interest, and defendant excepted and filed his bill of exceptions.

11 The bill of exceptions shows, that on the trial plaintiff introduced the note in evidence without objection.

11 Defendant then called Thomas Green, who testified: That he was the payee of the note sued on; that he traded it to the plaintiff on the 25th March, 1856, and that Drew was only security on the note, Garrett being the principal; that he told plaintiff at that time that Drew was security on the note, and that it was given for a horse bought by Garret.

12 Defendant next called Welis Willets, who testified as follows: "In "October, 1857, I paid, at Garrett's request, some money to plaintiff as
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"The plaintiff called a few days after the conversation with Garrett, "and asked if Garrett had left any money with me. I told him he had. "I stated the arrangement. He made a calculation, and I paid him the "amount. Plaintiff said it was all right, and took it and went away."

On cross ex. this witness stated, "that he did not know that he saw "the note; did not have it in his hands; did not know the amount of the "note; does not know what note it was, whether by Garrett alone or "by Garrett & Drew; understood the amount to be about $125.00. *I* "*paid probably about* $37.50. *The payment was made to get time.* "Drew came a few days afterwards to know what had been done. When "informed, was dissatisfied; said he had given notice to plaintiff to sue "on it, and thought if plaintiff had given more time it would release him."

C. S. HARRIS,
H. M. WEAD,
For Appellant.

95-95

Harrison Drew
vs
William Drewry

Abstract of Brief

Filed April 22nd 1863
G. Leland
Clerk

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

HARRISON DREW ET AL.
vs.
WILLIAM DREWRY.

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The burden of proof was on the defendant. He was bound to make out his case affirmatively. The Court, acting as a jury, might fairly find that he had not done so. Indeed, he could not find otherwise.

The facts of the case do not sustain the point made.

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Hollier v. *Eyre*, 9 *Clark and F.*, 45.
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Pooley v. *Haridure*, 7*th Ellis and B.*, 40.
English Law and Eq., 96.
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In Ohio,

Farrington v. *Gallaway*, 10 *Ohio*, 543.
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directly in point.

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By the Supreme Court of the United States, this point has been directly decided, in

Sprigg v. *Bank of Mt. Pleasant*, 10 *Peters*, 257.

We submit that the case cited in 19 Ill., 104, can only be sustained upon the view which we take of the law.

GLOVER, COOK & CAMPBELL,
For Defendant in Error.

35-95

Drew

vs

Downing

Points for Deft.

Filed May 6th 1863

L. Leland

Clerk

8 1

Drew & Drew

[redacted]

vs

~~Wilcox~~

Praecipe

Filed April 24. 1862

L. Leland
Clerk

Harrison Drew
vs } In the Supreme Court
William Drury } April Term 1862

The Clerk will please issue a Summons to Mercer County for William Drury defendant & hand to H M Wead

Attorney for Plff

Know all Men by these Presents, That we Harrison Drew as principal, and Wells Willits as security, are held and firmly bound unto William Drury in the penal sum of three hundred dollars good and lawful money of the United States, for the payment of which, well and truly to be made, ~~the said~~ We bind ourselves our heirs, executors and administrators, jointly, severally and firmly by these Presents.

Witness, our hands & seals this day of May A. D. 1861

The Condition of the above Obligation is such, That, whereas the above named William Drury did, at the April Term of the Circuit Court, held in and for the County of Mercer in the State of Illinois, A. D. 1860 recover a judgment against the above bounden Harrison Drew for the sum of one hundred and forty eight dollars & ten cents and costs of suit to reverse which said judgment, the said Harrison Drew has sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the said Harrison Drew shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said judgment, and all judgments, costs, interest and damages which the said Supreme Court shall adjuge against him in case said judgment shall be affirmed and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Harrison Drew [SEAL.]

Wells Willits [SEAL.]

[SEAL.]

[SEAL.]

89

No. 364

SUPREME COURT,

THIRD GRAND DIVISION.

Harrison Drew in replevin

vs.

William Drury

SUPERSEDEAS BOND.

Filed May 9th 1862.

L. Leland Clerk.

Harrison Drew, impleaded &c
William Garrett
vs
William Drury

In the Supreme Court
of the State of Illinois
Third Grand Division
April Term AD 1861

Error to Mercer County

~~Appellants~~ Brief & Points for Plff in Error

This was an action of assumpsit brought by the plaintiff below upon a promissory note signed by William Garrett & Harrison Drew (Defendants below) made payable to the order of Thomas Green and indorsed by him over to the Plaintiff

No service was had upon William Garrett and the judgment was rendered against Harrison Drew

Two witnesses were introduced by Defendant Drew on the trial of said cause (Cause tried by the Court) and their testimony discloses the following fact.

Thomas Green who was the payee of said note testified that Harrison Drew signed the note as security that the consideration of the note went to Garrett and that he communicated this fact to the plaintiff when he sold him the note. (Page 12 of the Record & Page 3 of Abstract)

Wells Willetts testified that (after note became due) Plaintiff by agreement with Garrett extended the time of payment, the consideration of the agreement was

the payment of 20 per cent interest in advance which was paid in advance by Willetts at the request of Garnett. This was paid in October 1857

The note itself by the indorsement on the back shows that the interest was paid in advance up to Jan 1st 1858

Witness also states that Drew was dissatisfied with the extension of time & stated that he had requested the Plaintiff to sue on the note

(See page 12 & 13 of the record & page 3 & 4 of the abstract)

There is but one point in the Case

The ~~Appellant~~ Plff in error claims that the extension of time given by the Plaintiff below to Garrett releases him from liability on the note, the Plaintiff knowing all the time that he (Harrison Drew) was only security on the note

The agreement to extend the time of payment was founded on a good Consideration. Consideration was paid in advance & the right to sue on the note was suspended until the 1st Jan 1858 & it equally suspended the right of the surety to make payment & then resort to his principal for indemnity.

This case comes within the doctrine laid down in Watters et al vs Simpson et al ~~20 Ill~~ 2d Gilm. 574

Davis vs People 1 Gilm 319

This defense is proper under the general issue

See Warner et. vs Crane 20 Ill, Page 151 that case is ~~the same~~ similar to this in almost every respect

Evan Harris
H. M. Wead &
W. B. Johnson
attys for ~~Appellant~~ Plff in Error

35

Supreme Court Illinois

35

Harrison Greenupplaintiff
William Garrett
vs
William Drury

Appellants Brief &
Points

Filed May 16, 1861
L. Leland
Clerk

State of Illinois
Mercer County } ss

Pleas before the Honorable John S. Thompson Judge of the 10th Judicial Circuit of the State of Illinois at a Court began and held at the Court House in Aledo on the third Monday of the Month of April, in the year of our Lord One thousand Eight Hundred and fifty nine, it being the Eighteenth day of said Month in said year

Present Honorable John S. Thompson Judge
James A. Stewart States attorney
Harvey S. Senter Clerk
James M. Mannon Sheriff

William Drury
vs
William Garet
Harrison Drew } Assumpsit

Be it remembered that heretofore to wit: on the 10th day of March A.D. 1859 the Plaintiff in the above entitled cause by his attorneys filed in the Circuit Court of said County his precipe for summons in these words to wit:

State of Illinois
Mercer County } ss

Mercer County Circuit Court
To the April Term A.D. 1859

William Drury
vs
William Garrett
Harrison Drew } Trespass on the case upon Promises
Damages $200 —

The Clerk will issue summons for the above named Defendant, directed to the Sheriff of Mercer County returnable to the above term of Court

Ballett, Willitts & Bassett
Plaintiffs' Attorneys

Thereupon a summons issued in the words and figures following towit

State of Illinois } The People of the State of Illinois
Mercer County } ss. To the Sheriff of Mercer County Greeting

We command you to summon William Garet and Harrison Drew, if to be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be held at the Court House in Aledo, on the Third Monday of April next, then and there to answer unto William Drury of a plea of Trespass on the case upon promises to his damages in the sum of (200) two Hundred Dollars, as he says; and have you then and there this writ, and make return thereon in what manner you execute the same

Witness, Harvey S. Senter, Clerk of our Circuit Court, and the seal thereof at Aledo, this 10th day of March in the year of our Lord one thousand eight Hundred and fifty nine

(Seal)

H. S. Senter Clerk

On the back of which summons appears the following return made by the Sheriff of Mercer County, Towit:

I have served the within summons by reading the same to the within named Harrison Drew this 17 day of March AD. 1859

Jas. M. Mannon Sheriff

I cannot in my County find the within named William Garret James M. Mannon Sheriff

And on the 6th day of April A.D. 1859 Plaintiff filed in said Court his declaration in these words towit.

State of Illinois } In the Mercer County Circuit Court
Mercer County } of the April Term of the year Eighteen Hundred and fifty nine

William Drury Plaintiff

By Bassett Willits & Bassett his attorneys, comes and complains of William Garrett & Harrison Drew, Defendants who are summoned, &c, of a plea of Trespass on the case upon promises; for that whereas the said Defendants heretofore towit: on the Eighth day of March in the year of our Lord one thousand eight Hundred and fifty six, at towit. in the County of Mercer and State of Illinois, made their certain note in writing, commonly called a promissory note, bearing date the day and year last above mentioned, and then and there delivered the said note to Thomas Green and thereby then and there promised to pay the said Thomas Green or order on or before the first day of January next thereafter ensuing, One Hundred & Twenty Dollars with ten per cent. interest from date, and the said Thomas Green then and there

endorsed and delivered the said promissory note to the plaintiff of which the said Defendants then and there had notice, and in consideration of the premises the said Defendants then and there promised the Plaintiff to pay him the amount of said note according to the tenor and effect thereof. But although the said note hath become due, and the said Defendants have been requested to pay the same to the plaintiff, they have refused so to do.

And for that whereas also the said Defendants heretofore to wit: on the 24th day of February A.D. 1859 at in said County, was indebted to the said Plaintiff in the sum of Two Hundred Dollars for goods, wares, and merchandise sold and delivered by the said Plaintiff to the said Defendant at their request. And in Two Hundred Dollars for money before that time lent and advanced by Plaintiff to Defendants at their request And in Two Hundred Dollars for money then and there paid by Plaintiff for use of Defendants at their request. And in Two Hundred Dollars for money found to be due and owing from said Defendants to said Plaintiff on an account then and there had and stated between them. And the Defendants being so indebted, afterwards to-wit: on the day and year last aforesaid at the place aforesaid, in consideration of the premises respectively promised the said Plaintiff to pay to him the said several moneys afore mentioned, on request. Yet the Defendants, although often requested to wit: afterwards, on the day and year and at the place last aforesaid, have disregarded their promises, and have not paid said moneys above mentioned, or any or either of them, or any part thereof, to the damage

of the Plaintiff of Two Hundred Dollars, and thereupon he brings suit. &c.

Bassett, Willits & Bassett,
Plaintiffs attys

Copy of Note sued on

$120 00/100 On or before the 1st day of January next, we or either promise to pay to the order of Thomas Green One Hundred Twenty Dollars, with ten per. cent. interest from date, for value Rec'd

William Garrett,
Harrison Drew

March 8th 1856

On said Note is the following endorsement towit:

"March 25 1856"

"For value rec'd I assign the within note to Wm"
"Drury and guarantee the payment at maturity"

"Thomas Green"

"Received the interest on this Note till Jan. 1st 1856"

And afterwards towit: on the 20th day of April A.D. 1859 Defendant filed in said Court his Demurrer to first count in Plaintiff's Declaration, which Demurrer is in these words towit:

State of Illinois } April Term A.D. 1859 of the
County of Mercer } Circuit Court of said County

William Drury
vs } Trespass on the case on promises
William Garrett and
Harrison Drew

And said Defendant comes and defends, and for demurrer to the first Count in said Plaintiff's Declaration says, as to that count, that

said Plaintiff should be barred from recovering on said count because he says that it and the matter and things therein contained are not in law sufficient to entitle said Plaintiff to recover. Whereupon as to said count he prays judgment and that as to said count said Plaintiff may be barred in this action

C. M. Harris
atty for Deft.

And afterwards to wit: on the 7th day of May A.D. 1859 being one of the days of said Term the following order was made by the Court to wit:

It is ordered by the Court that all causes, not otherwise disposed of, be continued

State of Illinois
Mercer County } ss

Pleas before the Honorable John S. Thompson Judge of the tenth Judicial Circuit of the State of Illinois, at a Court began and held at the Court House in Aledo in said County of Mercer on the first Monday of the Month of September in the year of our Lord one Thousand Eight Hundred and fifty Nine, it being the fifth day of said Month in said year

Present Honorable John S. Thompson Judge
James H. Steward States attorney
Harry S. Senter Clerk
James M. Mannon Sheriff

And afterwards to wit: On the 24th day of September A.D. 1859 being one of the days of said Term the following order was made by the Court Towit:

It is ordered by the Court that a Special Term of this Court be held at the Court House in the Town of Aledo, in and for the County of Mercer for the trial of all causes, civil, criminal and chancery, commencing on the third Monday in month of December next ensuing, and that suits be instituted and process made returnable at said Special Term as at a regular Term of said Court

And afterwards towit: on the 24th day of September A.D. 1859 being one of the days of said Term the following order was made by the Court towit:

It is ordered by the Court that all causes, not otherwise disposed of, be continued

State of Illinois }
Mercer County } Pleas before the Honorable John E. Thompson Judge of the Tenth Judicial Circuit in the State of Illinois at a Special Term of the Circuit Court began and held at the Court House in the Town of Aledo in said County on the Tuesday after the third Monday in the Month of December in the year of our Lord one thousand Eight Hundred and fifty nine, being the ~~Twentieth~~ 27th day of said Month said Court being held for the trial

of all causes, civil, criminal & chancery.

When, Present, Honorable John S. Thompson Judge &c
James A. Stewart States Attorney
James W. Mannon Sheriff
Harvey S. Senter Clerk

And afterwards, to wit: On the 3rd day of January A.D. 1860, being one of the days of the Special December Term A.D. 1859, the following order was made by the Court to wit:

William Drury
vs
William Garrett &
Harrison Drew
} Assumpsit

This day this cause came on to be heard on the Defendants Demurrer to the 1st Count of the Declaration herein. Thereupon came Defendant by his Attorney and withdrew his Demurrer and on his motion leave is given to plead herein

Thereupon Defendant filed his plea of General Issue — Which Plea is in these words, to wit:

State of Illinois
County of Wayne
} Special December Term A.D. 1859 of the Circuit Court of said County

William Drury
vs
William Garrett &
Harrison Drew
} Trespass on the case on promises

9

And said Harrison Drew, one of said Defendants, comes and defends and says that he did not undertake or promise in manner or form as said Plaintiff hath above thereof complained against him and of this he puts himself upon the Country &c.

C. M. Harris Atty. for said Drew

And afterwards, to wit: On the 9th day of January A.D. 1860 being one of the days of said Special December Term A.D. 1859 the following proceedings were had in said cause, to wit:

William Drury
Vs
William Gard & Harrison Drew } Assumpsit

This day came Plaintiff by his Attorney, and Defendant Harrison Drew by his Attorney, and issue being joined between the said Plaintiff and the said Harrison Drew (the said Gard not having been served with process) for trial put themselves upon the Court, waiving a jury. And the Court, having heard the evidence, takes the same under advisement

State of Illinois
Mercer County } Pleas before the Honorable John S. Thompson Judge of the Tenth Judicial Circuit of the State of Illinois, at a Court began and held at the Court House in Aledo, in said County on the third Monday in the month of April in the year of our Lord one thousand eight

Hundred and Sixty, it being the Sixteenth day of said Month
Present Honorable John S. Thompson Judge &c.
James H. Stewart States Attorney
James M. Mannon Sheriff
Harvey S. Senter Clerk

And afterwards, to wit: On the 4th day of May A.D. 1860 being one of the days of said April Term 1860 the following order was made by the Court in said cause to wit:

William Drury
Vs
William Garet &
Harrison Drew
} Assumpsit.

This cause being called again for a hearing, the Court having heard the evidence herein at the last term of Court and having taken the same under advisement and being now fully satisfied in the premises, does consider that Plaintiff have judgment against the Defendant Harrison Drew for the amount of the note and interest herein. And that amount being unknown to the Court, the Clerk is ordered to assess the same, and having assessed and reported the same to the Court at the sum of One Hundred forty Eight Dollars and ten cents, the Court approves the same. It is therefore ordered by the Court that Plaintiff recover of the said Harrison Drew the said sum of One Hundred forty Eight Dollars and ten cents his damages together with his costs herein, and may have execution therefor.

Thereupon the Defendant excepted to the ruling of

the Court, and to the rendering of the judgment, and order for an execution, and asked leave to file a Bill of exceptions, which is allowed, the same to be filed within sixty days from the date hereof, and also prayed an appeal to the Supreme Court, which is allowed, the Defendant to give Bond in the sum of Three hundred Dollars, and by agreement to be approved by the Clerk: And it is ordered by the Court that said Bond be filed within sixty days from the date hereof.

And afterwards, to wit: on the 28th day of June A.D. 1860 came the Defendant herein by his attorney and filed in the Office of the Clerk of the Circuit Court of said County his Bill of exceptions herein which is in words and figures following to wit:

State of Illinois
County of Mercer } April Term 1860 of the Circuit Court of said County

William Drury
Vs } Trespass on the Case on promises
William Garrett &
Harrison Drury

Be it Remembered, that on the trial of this cause (Plff. Vs Deft. Drury, Garrett not having been served) the parties (Plff & Drury) waived a jury and for Trial put themselves upon the Court, that on the trial thereof at said term the Plff, to maintain the issue on his part, offered the note on which this action is brot, in evidence, in the words and figures following to wit:

$120.00 On or before the 1st day of January next

we or either promise to pay to the order of Thomas Green One Hundred & Twenty Dollars with ten per cent. Interest from date for value rec^d.

William Garrett.
Harrison Drew

March 8th 1856

On said note is the following endorsement to wit:

"March 25. 1856"

"For value rec^d I assign the within note to Wm Drew"
"and guarantee the payment at maturity"

"Thomas Green"

"Received the interest on this note till Jan. 1st 1858"
— and which said note was admitted in evidence on the part of plff. without objection.

To maintain the issue on the part of the Defendant, one Thomas Green was then sworn, who testified that he (Green) was the payee of the note on which this suit was brought, at least it looked like the note of which he was payee: that he traded it to plff. 25th March 1856, that Drew was only security on it. Garrett bring principal. Plff. asked if it was good, he replied yes; Drew is security. told him it was given for a horse Garrett bought. On cross examination he said that he could not say that he told plff. that he sold Garrett the horse because Drew signed the note: I think Garrett lived on the Brunson farm & Drew on the Wills Willits farm in the neighborhood of plff. Garrett & Drew had both lived on the Wills Willits farm. But I think I told plff. that Drew was security.

The Deft. next introduced as a witness Wills Willits who sworn that in Oct. 1857, I paid, at Garretts request, some Money to plff. as interest on a note at the rate of twenty per cent. if plff would wait with

him a while longer. I was to pay the interest then due and for six or twelve months in advance. – Plff. to wait with Garratt till expiration of time interest was advanced.

Plff. called a few days after this conversation & asked if Garratt had left any money with me. I told him he had. I stated the arrangement, he made a calculation & I paid him the Amount. Plff. said it was all right & took it & went away.

On cross examination witness stated that he did not know that he took receipt. probably did not. & do not know that he saw the note, did not have it in his hands, did not know the amount of the note I paid interest on & did not have it in my hands. do not know what note it was, whether it was a note of Garratt's alone or Garratt & Drew's. I understood the amount to be about $125 00/100. I paid probably about $37 50/100.

Re-examined – The payment was made to get time, Drew came a few days afterwards to know what had been done, when informed, was dissatisfied, said he had given notice to plff. to sue on it & tho't if Plff. had given more time it would release him. The notice was verbal. I got the impression some how that the note was $125 00. Plff and I agreed upon the computation of interest. This was all the evidence in the case. Whereupon the Court rendered judgt. for the plff. and against said Drew for one hundred and forty eight dollars and ten cents ($148 10/100).

Whereupon it is ordered that the matters aforesaid be made a part of the record in this case and that this Bill of exceptions be signed and sealed

Witness my hand and seal. John S. Thompson (Seal)

And afterwards, towit: on the day and year last aforesaid, came the Defendant herein, by his attorney, and filed, in the office of the Clerk of the Circuit Court of said County, his Bond, which is in words and figures following to wit:

Know all men by these presents, that we Harrison Drew and Wells Willits of the County of Henry and State of Illinois are held and firmly bound unto William Drury in the penal sum of Three Hundred Dollars, for the payment of which well and truly to be made, we do by these presents jointly and severally bind ourselves, our heirs, executors, and administrators, sealed with our seals and dated this 28th day of June A.D. 1860.

The condition of the above obligation is such, that whereas said Drew has obtained an allowance of an appeal, and an appeal to the Third Grand Division of the Supreme Court of the State aforesaid upon a certain judgment rendered in the Circuit Court in and for the County aforesaid at the April Term thereof A.D. 1860, in favor of said Drury for the sum of One Hundred and forty eight $\frac{10}{100}$ Dollars damages and also for Fourteen Dollars and fifty five cents costs of suit. Now if said Drew shall pay ~~all~~ the judgment, costs, interest, and damages in said suit in case said appeal shall be affirmed, and shall duly prosecute said appeal, this obligation will become void

Approved by me this 28th day of June A.D. 1860 — H. S. Senter Clerk, By N. P. Brown Deputy

Harrison Drew (Seal)
Wells Willits (Seal)

State of Illinois } 15
Mercer County } ss. I, Harvey S. Senter Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a true and perfect transcript of the Precipe, Summons, all the pleadings of the parties respectively, all the orders in the Cause made by the Court, the judgment, the Bill of Exceptions and the Appeal Bond in the case of William Drury Plaintiff vs William Garrett & Harrison Drew Defendants

In testimony whereof I hereto sign my name and affix the Seal of said Court at my office in Aledo this 4th day of August A.D. 1860.

Harvey S. Senter
Clerk

114

Harrison Drew
vs
William Drury

Record

Filed Sept. 29. 1860
L. Leland
Clerk

Harrison Drew William Garrett vs William Drury	In the Supreme Court of the State of Illinois Third Grand Division April Term AD 1861

And now comes the said Harrison Drew Plaintiff in Error by C. M. Harris, H. M. Wead & W. B. Johnson his attorneys & says that manifest error hath intervened to his injury in the said proceedings & doings of the said Circuit Court, ~~in this~~ as appears by the record & proceedings aforesaid, in this 1st The Court erred in rendering judgement against him the said Drew

2d The Court erred in not rendering judgment ~~in favor~~ against the said William Drury Plaintiff below

And other errors apparent on the face of the record

Therefore said Harrison Drew prays that said proceedings &c be set aside & for nought held &c

C. M. Harris
H. M. Wead
W. B. Johnson
Attys for Plff in Error

364

Supreme Court Illinois

Harrison Drew.
William Garrett
vs
William Drury

Record

Re filed May 16. 1861
L. Leland
Clerk