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No. _____

Supreme Court of Illinois

Pogue

vs.

Whitaker

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WILLIAM H. POGUE, JOSEPH
POGUE, HUGH C. POGUE and } APPELLANTS.
JOSEPHINE E. POGUE, }
VS. }
ISAAC WHITAKER, APPELLEE.

IN THE SUPREME COURT, ILLINOIS,
JANUARY TERM, 1861.

BRIEF AND POINTS MADE BY APPELLANT'S COUNSEL.

1st. The Court below erred in admitting the note to be read in evidence, under the 1st count in the declaration, because the note offered in evidence does not correspond with the note described in said 1st count.

Bayley on Bills, page 29, note 73. Idem page 233, note 53 & 54.
Smith *vs.* Kendall, 6 Term. Rep. 123.
Coleman *vs.* Sayer, 1 Barnard. B. R. 303.
Brown *vs.* Harradan, 4 Term. Rep. 148.
Dexlaux *vs.* Hood, Dougl. 62.
May *vs.* Cooper, Fort. 376.
Chitty on Bills, page 407, note (1.)
Bayley on Bills, page 237, note (B) Idem 238.
Savings' Bank of New Haven *vs.* Bates, 8 Conn. R. 505.
Ripley *vs.* Greenleaf, 2 Verm. R. 129.

2d. That the Court below erred in giving judgment for appellee, inasmuch as appellee did not show, upon the trial of the cause, legal title to said note offered in evidence, or that he was the holder of the same; and the appellants having objected to the introduction of the same in evidence, the Court should have excluded the same, and rendered judgment for the appellants for cost of suit.

Bayley on Bills, 105.
Day *vs.* Lyon, 6 Har. & John 140.
Hudson *vs.* Goodwin, 5 Har. & John 115.
Riker *vs.* Corby, 2 Penn. 911.
Kiersted *vs.* Rogers, 6 Har. & John 282.
Snyder *vs.* Satterly, 1 Penn. 87.
Brewster *vs.* Dana, 1 Root 266.
Menard *vs.* Wilkinson, 3 Mis. 92.
Chitty on Bills. Clark *vs.* Picot [cited] 256, 588.

3d. That the Court below admitted improper evidence on part of the appellee.

4th. That the Court below erred in overruling the motion for new trial.

W. H. POGUE, *Att'y for Appellants.*

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Joyne

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Whitaker

Appellants brief

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Filed Jan 8/61
W. A. Hurvey
clerk

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BRIEF AND POINTS MADE BY APPELLANTS COUNSEL.

The Court below erred in admitting the note to be read in evidence under

the law in the case of *Whitaker v. Joyne*, 1000.

In the Supreme Court of the State of Illinois.

JANUARY TERM, 1861.

WILLIAM H. POGUE, JOSEPH
POGUE, HUGH C. POGUE, and
JOSEPHINE E. POGUE, Appellants,
VS.
ISAAC WHITAKER, Appellee.

ABSTRACT OF RECORD.

ACTION--TRESPASS ON THE CASE UPON PROMISES.

Page of Record.
1. 2. 3

The first count in the declaration states that the appellants "on the ninth day of March, in the year of our Lord one thousand eight hundred and fifty-eight, at Bond County, Illinois, to-wit: at the city of Alton, in the county of Madison, and State of Illinois, made their certain joint note in writing, bearing date the day and year last aforesaid, and delivered the same to one Samuel F. Clark, by which said note appellants promise to pay on the ninth day of March, A. D. 1859, to the order of Samuel F. Clark, the sum of fourteen hundred and four dollars and four cents, with interest at the rate of ten per cent. per annum, payable in currency; and that the said Samuel F. Clark afterwards endorsed the same to the said appellee, Isaac Whitaker.

3. 4. 5. 12.

Declaration also contained the common counts, which were dismissed by appellee.

5.

Damages \$2,000 00.

12 4 13.

Plea, general issue--was filed by appellants.

13.

Tried by the Court.

15.

Upon the trial, the appellee offered in evidence the following note:

"BOND COUNTY, ILLINOIS, March 9, 1858.

10 4 15.

"\$1404 04-100

"Twelve months after date we, or either of us, promise to pay to the order of Samuel F. Clark, the sum of fourteen hundred and four dollars and four cents, with interest at the rate of ten per cent. per annum, for value received, payable in currency.

(Signed) W. H. POGUE,

(Signed) H. C. POGUE,

(Signed) JOS. POGUE,

(Signed) JOSEPHINE E. POGUE."

Endorsed "S. F. Clark."

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Which was the only evidence offered in the said suit.

16.

To the offering of which in evidence the said appellants, at the time, objected--which objection the Court overruled, and allowed the same to be read in evidence.

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To which overruling of said objection of said appellants to the introduction of said note in evidence, the said appellants, at the time, excepted.

16.

The Court found the issues for the appellee, and assessed his damages at the sum of one thousand seven hundred dollars and five cents.

16.

Appellants moved the Court for a new trial--which motion was overruled by the Court, and appellants, at the time, excepted.

16.

Appellants bring the cause to the Supreme Court, and assign the following errors:

1st. That the Court erred in admitting the note to be read in evidence under the 1st count of the declaration, because the note offered in evidence, does not correspond with the note described in said 1st count.

2d. That the Court below erred in giving judgment for appellee, inasmuch as appellee did not show, upon the trial of the cause, legal title to said note offered in evidence, or that he was the holder of the same; and the appellants having objected to

the introduction of the same in evidence, the Court should have excluded the same, and rendered judgment for the appellants for cost of suit.

3d. That the Court below admitted improper evidence on part of the appellee.

4th. That the Court below erred in overruling the motion of the appellants for a new trial.

W. H. POGUE, *Att'y for Appellants.*

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Pogue

or

Whitaker

Abstract

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Filed Jan 8/07
 W. A. Curney
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