

No. 2100

Supreme Court of Illinois

Pashael Magee

vs.

J.C.D. Carmick

(379)  7

Monday April 21st AD 1851

State of Illinois } ss
McDonough County }

Pleas before the Honorable William
A Minshall Judge of the 14th
Judicial Circuit of the State of Illinois
at a circuit Court begun and held at
the Court House in Macomb on
the third Monday in the month
of April in the year of our Lord
one thousand eight hundred and
fifty one

Present the Hon

William A Minshall Judge
Robert S Blackwell State Attorney
William Mc Randolph Clerk
William T Heald Sheriff

Tuesday April 22^d 1851

C. C. D. Carmack }

Paschal Ma Gee } Appeal

This day came the Parties
by their Attorneys and issue being joined
herein for trial they put themselves upon
the country. Whereupon came the Jurors of
a Jury to wit Nelson Mc Campbell Charles Chandler
William Putnam Andrew Allison Gulletton Mc Lane
Mc Patman William S Hale Willis Mayland
William Mc Carver W. C. Camp & M. L. Archer
who being elected tried and sworn well
and truly to try the issue lawfully herein
And after hearing of the evidence and
argument of Counsel, retired to consider

of their verdict, and after a short absence
returned to court, the following verdict
we the Jury find for the plaintiff the sum
of Ten dollars. Whereupon it is considered by
the court, that the said Plaintiff have and
recover of the defendant the sum of Ten
dollars, his debt so assessed by the Jury
aforesaid, together with his costs by him
paid out and expensed and may have
Execution thereon. Whereupon came the
defendant by his attorney and filed his
motion for a new trial herein.

Wednesday April 23rd 1851

I. C. D. Hamack

vs
Paschal M^cLee

Appeal

And now on this day came
on to be heard the motion for a new trial
filed herein, and after hearing the
Argument of counsel, it is ordered that said
motion be over ruled.

Whereupon came the defendant by his Attorney
and filed his bill of Exceptions, as filed
herein.

M^cDonough Circuit Court

I. C. D. Hamack

vs
Paschal M^cLee

Appeal

Be it Remembered that
this cause coming on for trial before a
Jury. The plaintiff called one Welch who
testified that he was the Miller in the
plaintiff's mill, that defendant came to the

mill and bought some flour and meal and
 paid him a ten dollar bill therefore and
 he paid him the difference of Change between
 the price of the flour & meal and the ten
 dollars, and which was about six dollars
 and sixty cents, that he put the ten
 dollar bill in the plaintiff's pocket book
 that this was on Monday or Tuesday
 that on Saturday next there after one
 Hicks was at the mill, and some money
 was to be paid him by plaintiff, that
 Plaintiff then went to his house where
 his pocket book was, and got a bill
 which witness thought was the bill before
 mentioned and offered it to said Hicks,
 that Hicks refused to take the bill for
 the reasons that he feared it was not
 good, that Plaintiff on the next Monday
 took the bill to town and found it
 was not good, the bill shown the
 witness is as follows

X State of Michigan
 THE BANK OF ST. CLAIR
 Will pay TO THE Bearer on demand to
 \$1000 or bearer St. Clair Dec 26 1836
 W. Luresail Cash John Hays Pres 10

Witness further stated that this bill he believed
 was the same bill he got of defendant that
 at the time he took the bill he thought
 it was any other bill and remembers
 seeing the word St. Clair on the bill
 that this is the only thing except general
 appearance of the bill he remembers it by

That if he was shown a bill with the word Stillansville on it he might take it for the same bill he took of defendant, if it had same general appearance, but that he believes and has no doubt that this is the same bill from its appearance that the bill was taken by plaintiff the last of April or first of May 1850 and was taken for the meal and flour before mentioned, that he never stated that the bill was a Virginia bill, that defendant and plaintiff then lived and now live in McDougal's County about seven miles apart. That some two or three months after the taking of the bill he saw the bill ~~exhibited~~ at Esquire Mornings, that the plaintiff then wanted the defendant to take the bill back and he refused to do so.

The Plaintiff then called on Linsley who testified that he was a merchant and had lived in Macomb for fifteen years that this bill was on a broken bank, that the bank had been broken ten or twelve years that the bill had not been current for some years and was quoted in detectors no sale, which was understood to mean not good or valueless, that this bill was at a discount more or less and he could not state what it was worth, nor what the discount was on the bill, that it would not pass in business for any thing in this country.

The defendant then called one Stephens who testified, that he was present when the flour & meal was bought, and saw the bill given by defendant to Welch, that Welch then said it was a Virginia bill and good, that he Stephens looked at the bill he then saw did not look like this bill, that that bill was not so ragged, that he could not swear it was not the same bill, it might be, but he did not think it was.

This was all the evidence. The Court then instructed the Jury on the proof of the plaintiff as follows

Verdict upon an appeal
The Court

The court instruct the Jury on Motion of Defendant That if the Jury believe from the evidence that the defendant gave the plaintiff the bank bill in question in payment of Flour and meal, and the plaintiff gave the defendant the change, and the Bank bill when so passed to plaintiff was an insolvent bank not current and worthless in Onondaga County they should find for plaintiff the amount he gave for the same.

That if they believe from evidence that plaintiff did sue defendant before Esquire Mourning for the same Cause of action but if there was a Verdict in the case before Mourning is no bar to plaintiff's recovery in this suit.

As the giving of which instructions respectfully

the defendant, at the time excepted. The
defendant also asked the Court to give
the following instructions to the Jury
That if they believe from the evidence
that the bill is the same passed by
the plaintiff to the defendant, and that
it was at the time a bill of a Bank
then not paying specie, and the bill
therefore not current and at a discount
more or less, that even in this case if
the defendant did not at the time know
the facts they will find for the defendant
unless they further believe from the
evidence, that the plaintiff in a
reasonable time after he ascertains
the bill to be on a broken Bank
tendered or offered to return the bill to
the defendant —

That if the bill was on a broken
bank the plaintiff can not recover
the amount of the same nor for the
value of the things given therefore
unless the plaintiff in a reasonable
time offered to return the bill
to the defendant

As to which decisions of the Court in
refusing to give said instructions

the defendant at the time excepted
The Jury having returned a verdict for the
plaintiff the defendant entered his motion
for a new trial upon the following
grounds

J. C. L. Barnack } April Term McGough
at Circuit Court 1851
Paschal McQueen }

5 The Defendant by his
Attorneys Moves the Court to set aside
the Verdict rendered by the Jury in
this Cause and grant a New trial
1st

Because the Court misdirected the Jury

2 Because the Court refused to give the
defendants instructions.

Became the finding of the Jury was
Contrary to law and the evidence in the
case Skinner Walker & Hampton
Supts. Attorneys

But the Court overruled said Motion and entered Judgment upon said Verdict to which said decision in overruling said Motion for a new trial the Defendant at the time excepted, And at the several times at which said several decisions were made respecting the Defendant, excepted and herein excepts, and prays that this his bill may be signed and sealed which is accordingly done

Wm A Marshall Secy

State of Illinois }
McDonough County } Set

I William H Randolph
Clerk of the Circuit Court of said County, and
State do hereby certify that the foregoing
contains a true & perfect copy of the
Orders and proceedings in the foregoing
case as appears from the papers
& Records on file in my office

In Witness whereof I have hereunto
set my hand and affixed the
Seal of said Court at my office in
Macomb this 21st day of May
A.D. 1851.

W H Randolph
Clerk,

W. A. McCormack
as J. McDonough
(Maggell)

Filed Dec. 1. 1857.

W. J. Hanson
Clerk

Paschal Mace
vs.
J. L. D. Carmack } Error to W. D. Donough

And the said plaintiff in Error assigns for
error the following writ;

1st That said Judgment is Contrary to evidence - And
Contrary to Law -

2^d That the Court erred in giving the instructions asked
by the plaintiff -

3^d That the Court erred in Refusing the instructions asked
by the defendant -

4th The Court erred in Overruling the defendant's
motion for new trial And in rendering judgment
against the defendant -

Therefore the defendant prays this Court to reverse
said judgment and remand said Cause for trial to

Warren & Edmunds
for Plaintiff in Error -

And said Carmack says that there
is no any error in the record & proceedings
afore said in manner & form &c.

W. Blackwell
for deft in error

Paschal Magee

vs. { Error to McDougall

J. C. S. Carnoch

Recd. A. present of 10m to

W. & C. for P. M.

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