

No. 12760

Supreme Court of Illinois

Moore

vs.

Diversey

71641  7

United States of America }
 State of Illinois . . . }
Cook County . . . }

Pleas before the Honorable John M. Wilson
 sole Judge of the Cook County Court of Common
 Pleas, within and for the County of Cook and
 State aforesaid at a special Term of said Cook
 County Court of Common Pleas; began and held
 at the Court house in the City of Chicago on the
 fifth Monday, being the twenty ninth day of
 November in the year of our Lord one thousand eight
 hundred and fifty eight, due Notice of the time and
 place of the holding said special term of Court,
 having been printed and published in the "Daily
 Democrat," the Corporation Newspaper of the City of
 Chicago, said Notice having been printed & published
 Twenty days previous to the holding of said special
 term of Court, in accordance with the Statute in such
 case made and provided, and in pursuance of an
 Order made by the Judge of said Court on the sixth
 day of November A. D., Eighteen hundred & fifty eight

Present

John M. Wilson Judge

Carlos Haven Prosecuting Attorney

John Gray Sheriff

Attest

Walter Kimball, Clerk.

Be it remembered that heretofore to wit on the Eighteenth
 day of May A. D. one thousand eight hundred and fifty
 Eight, there was filed in the Office of the Clerk of the said

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Said Cook County Court of Common Pleas, a precept for
 Summons, together with Bond for costs, by Daniel Moor
 Plaintiff against Michael Diversy, Defendant; Which said
 Precept & Bond for costs is in the words & figures following,
 that is to say.

"State of Illinois Cook County Court of Common
 Pleas.

Daniel Moor } June Special Term A.D. 1858

(vs)

Michael Diversy,

The Clerk of said Court will issue
 a Summons in the above Cause directed to the Sheriff of
 Cook County in a Plea of Trespass on the case upon
 promises returnable at the June Special Term of said
 Court A.D. 1858 to the damage of the Plaintiff of Three
 thousand dollars.

To William, Woodbridge & Grant
 Walter Kimball Esq. Clerk, Plaintiffs Attorneys"

"Daniel Moor }

(vs)

Cook County Court of Common Pleas
 Michael Diversy) 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 - W.C. Grant

Dated 17th day of May A.D. 1858.

And thereupon on the said Eighteenth day of May A. D. one thousand eight hundred and fifty eight, there accordingly, issued out of the Office of the Clerk of said Court, a summons in said suit; Which said summons is in the words and figures following, that is to say,

State of Illinois The People of the State of Illinois
County of Cook Es. To the Sheriff of said County Greeting
We command you that you summon Michael
Dunery, if he shall be found in your County, personally
to be and appear before the Cook County Court of
Common Pleas of said County on the first day of the
next Special Term thereof to be holden at the Court house
in the City of Chicago in said County on the second Tuesday
of June next to answer unto Daniel Moor in a plea of
Trespass on the Case on promises to the damage of the said
Plaintiff as he says in the sum of Three thousand dollars,
And have you there and there this Writ, with an
Endorsement thereon, in what manner you shall have
executed the same. Witness Walter Kimball Clerk of
our said Court and the Seal thereof in the City of Chicago
in said County this 18th day of May A. D. 1858.

Seal

Walter Kimball - Clerk

On which summons there was Endorsed the following Return
'Served by reading to the within named Defendant
this 26th day of May A. D. 1858.

John L. Wilson - Sheriff

by T. J. Holt Deputy Sheriff

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And also on the said twenty eighth day of May in the year last aforesaid, the said Plaintiff by his said Attorney, filed in the Office of the Clerk of said Court, his declaration in said suit; Which said Declaration is in the words and figures following, that is to say.

'State of Illinois, Cook County Court of Common
County of Cook, Pleas. June Special Term A.D.
1858.

Daniel Moor Plaintiff in this suit by Williams, Woodbridge & Grant his Attorneys, complains of Michael Diversy, Defendant herein of a Plea of Trespass on the case upon promises. For that whereas one Thomas M. Egan heretofore, to wit, on the Ninth day of July A.D. 1857, at Chicago, County of Cook aforesaid, made a certain Bill of Exchange in writing, bearing date the day and year aforesaid, and then and there directed the said Bill of Exchange to the said Defendant by the name and style of Michael Diversy of said Chicago, by which said Bill of Exchange, the said Thomas M. Egan, then & there requested the said Defendant ninety days after the date thereof, to pay to the Order of himself Two thousand dollars and the said Thomas M. Egan, to whom or to whose Order the payment of the sum of money in the said Bill of Exchange specified was to be made, after the making of the said Bill of Exchange & before the payment of said sum of money therein specified, to wit on the day & year aforesaid, at Chicago, aforesaid endorse the said Bill of Exchange, by which said endorsement

no, the said Thomas, W. Ogden, then & there ordered and appointed the said sum of money, in the said Bill of Exchange specified, to be paid to the said Plaintiff, and then & there delivered the said Bill of Exchange so indorsed as last aforesaid to the said Plaintiff, which said Bill of Exchange the said Defendant, to wit, on the ninth day of July aforesaid, at Cook County aforesaid, upon sight thereof accepted.

And the said Plaintiff avers that afterwards $\frac{1}{2}$ when the said Bill of Exchange became due & payable according to the tenor and effect thereof, to wit, on the ninth day of October A.D. 1857, at Cook County aforesaid the said Bill of Exchange so accept and indorsed as aforesaid was presented and shown to the said Defendant for payment thereof, who then & there was requested to pay the said sum of money therein specified, according to the tenor and effect of the said Bill of Exchange and of the said indorsement thereon made as aforesaid, but the said Defendant did not nor would at the said time, when the said Bill of Exchange was so presented and shown to the said Defendant for payment thereof as aforesaid or at any time afterwards pay the said sum of money therein specified or any part thereof, but wholly neglected and refused so to do, of all which said several premises the said defendant afterwards, to wit, on the day and year last aforesaid, and at the place aforesaid had notice.

By reason whereof and according to the usage and Custom of Merchants, the said defendant then & there became liable to pay to the said Plaintiff the said sum of money

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in the said Bill of Exchange specified, according to the tenor & effect of the said Bill of Exchange, and of the acceptance thereof & being so liable the said defendant in consideration thereof, afterwards to wit, on the same day & year last aforesaid, & at the place aforesaid, undertook & then and there faithfully promised the said plaintiff to pay unto the said Plaintiff the said sum of money in the said Bill of Exchange specified, according to the tenor & effect of the said Bill of Exchange, and of the acceptance thereof.

And whereas also the said Defendant afterwards to wit on the fifteenth day of October in the year of our Lord one thousand eight hundred and fifty seven at the place aforesaid, became indebted to the said Plaintiff in the sum of Three thousand dollars, lawful money of the United States of America, for so much money before that time lent & advanced by the said Plaintiff to the said defendant and at the special instance & request of the said defendant and for other money by the said Plaintiff before that time paid laid out & expended for the said Defendant and at the like request of the said Defendant. And for other money by the said Defendant before that time had & received to and for the use of the said Plaintiff. And being so indebted the said Defendant in consideration thereof, afterwards to wit on the same day & year last aforesaid at the place aforesaid, undertook and then & there faithfully promised the said Plaintiff, well & truly to pay unto the said Plaintiff the said sum of money in this Count mentioned, when the said defendant should be thereunto afterwards requested

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And whereas also the said Defendant afterwards to wit on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said Plaintiff of and concerning divers other sums of money before that time due & owing from the said Defendant to the said Plaintiff and then & there being in arrear & unpaid, and upon such accounting the said Defendant then & there was found to be in arrear & indebted to the said Plaintiff in the further sum of Three thousand dollars of like lawful money as aforesaid And being so found in arrear and indebted to the said Plaintiff the said Defendant, in consideration thereof afterwards, to wit on the same day and year last aforesaid, and at the place aforesaid, undertook & then and there faithfully promised the said Plaintiff, well & truly to pay unto the said Plaintiff the said sum of money last mentioned, when the said Defendant should be thereunto afterwards requested, Nevertheless the said Defendant (although often afterwards requested &c) has not yet paid the said several sums of money above mentioned or any or either of them, or any part thereof to the said Plaintiff, but to pay the same or any part thereof to the said Plaintiff, the said Defendant has hitherto altogether refused & still does refuse to the damage of the said Plaintiff of Three thousand dollars, and therefore the said Plaintiff brings suit &c

Williams, Woodward & Grant
Plaintiffs Attys."

Copy of instrument and account sued on.

\$200.

Chicago. July 9. 1857.

"Ninety days after date pay to the Order of myself. Two thousand dollars value received and charge the same to account of.

To Thomas M. Egan
Michael Duvrosy. Endorsed.
Chicago. Ills. "Thomas M. Egan"
Michael Duvrosy

1857
Oct 15th "In acc with Daniel Moor, Dr.
To Cash advanced to you \$3000.
" Cash paid laid out & expended . . . \$3000.
" Cash by you received for me \$3000.
" Balance due by you in arrears \$3000"

And thereafter to wit on the Ninth day of June in the year of our Lord one thousand eight hundred and fifty eight, the said defendant by L. M. Jewett his Attorney, filed in the Office of the Clerk of said Court his Plea & Affidavit of Merits in said Suit; which said Plea & Affidavit are in the words & figures following, that is to say.

"Michael Duvrosy & Cook County Court of Common Pleas.

Daniel Moor . . . June Term 1858.

And the said defendant by L. M. Jewett his Attorney comes & defends the wrong injury when & and says that he did not undertake or promise in manner & form as the said Plaintiff hath above thereof complained against him And of this the said

Defendant puts himself upon the Country.

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And for a further plea in this behalf as to the said first count in the aforesaid Declaration the said defendant says acti non because he says that in the drawing and accepting & delivering of the said Bill of Exchange in said Court mentioned the said Thomas M. Egan the drawer thereof was the principal debtor and this Defendant accepted the same without consideration as the mere Surety of the said Thomas M. Egan and for his accommodation, which was to wit at the time of the making of the same, to wit, at Chicago aforesaid well known to the said Plaintiff.

And the Defendant further says that after the said Bill became due, by the terms thereof he the said defendant on to wit, the 15th day of October 1857 to wit at Chicago aforesaid, apprehending that the said Thomas M. Egan the principal debtor as aforesaid was likely to become insolvent without previously discharging said bill, so that it would be impossible or extremely difficult for this defendant after having compelled to pay said bill to recover the same back of said Egan did, then & there by letter in writing sent to & received by said Plaintiff then holding said bill ~~and~~ thereby notify & require him said Plaintiff forthwith to put the said bill in suit And the said defendant further says that the said Plaintiff neglected & refused to put the said bill in suit as required by the said letter & failed to use due diligence to collect the same And that before the commencement of this suit, to wit on the first day of November 1857 to wit at Chicago aforesaid, the said Thomas M. Egan the principal debtor as aforesaid became and was wholly insolvent whereby

by virtue of the Statute in such case made and provided
the said Defendant is discharged from said bill and this
he is ready to verify Wherefore he prays Judgment if the
said Plaintiff ought to have or maintain his said action
against him &c."

"J. W. Jewett - Defts Atty."

"State of Illinois

County of Cook

Michael Quersy

vs

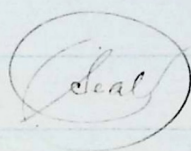
Daniel Mohr

In the Cook County Court of
Common Pleas.

Of the Special June Term

A. D. 1858,

Michael Quersy being first duly sworn
deposes and says that he is entitled the defendant in
the above entitled cause - And that he verily believes
that he has a good defence to said action upon the merits
Subscribed & sworn to before
me this 5th day of June 1858 M. Quersy.



John Forsythe

Notary Public

And thereafter to wit on the twenty second day of
June in the year of our Lord one thousand eight hundred
and fifty eight, the said Plaintiff filed in the Office of the
Clerk of said Court, a demurrer to said defendants plea
which said demurrer is in the words and figures
following, that is to say.

"Cook County Court of June Special Term A.D.
Common Pleas 1858."

Daniel Mow

And the said Plaintiff as to the Michael Dwyer said Plea of the said Defendant by him scandalously above pleaded, saith that the same and the matters therein contained, in manner & form as the same are above pleaded set forth, are insufficient in law to bar or preclude him the said Plaintiff from having or maintaining his aforesaid action thereof against the said Defendant, and that he the said Plaintiff is not bound by law to answer the same. And this the said Plaintiff is ready to verify. Wherefore by reason of the insufficiency of the said Plea in this behalf the said Plaintiff prays judgment & his damages by reason of the not performing of the said several promises and undertakings in the said Declaration mentioned to be adjudged to him &c.

And the said Plaintiff according to the form of the Statute, in such case made & provided, states and shews to the Court here the following Causes of demurrer to the said second Plea. That is to say. That the said Defendant in his said second Plea among other things alleges that he the said Defendant "Did then & there by letter in writing sent to said Plaintiff then holding said bill" &c. which the said Plaintiff avers is wholly insufficient in law as Notice to bar or preclude the said Plaintiff from recovering of the said Defendant upon said bill of Exchange; and also that the said second Plea is in other respects uncertain, informal & insufficient.

William Wordbridge & Grant. Attys for Plt.

12 And the said Defendant says that the said Plea in
Manner & form aforesaid is sufficient to bar & preclude
the said Plaintiff from having or maintaining the
said action &c.

J. W. Jewett.

Deft's Atty.

And afterwards to wit on the thirteenth day of July
(being one of the days of the June Special Term of
said Court) A. D. one thousand eight hundred &
fifty eight, the following among other proceedings
were had & entered of record in said Court, to wit,

" Daniel Moor &

@

Spumpston

Michael Diversen,

This day comes said Plaintiff by
William, Woodbridge & Grant his Attorneys and said
Defendant by J. W. Jewett his Attorney also comes and
the Court having heard the Demurrer of said Plaintiff
to the second Plea of said Defendant herein Pleaded,
sustains the said Demurrer. Wherefore said Defendant
elects to stand by his said second Plea

And afterwards to wit on the sixth day of November
(being one of the days of the November ^{Vacation} Special Term
of said Court) A. D. one thousand eight hundred
and fifty eight, the following among other proceedings
were had & entered of record in said Court, to wit,

Daniel Morr vs Michael Diversy. After

And now again comes the said Plaintiff by his Attorneys aforesaid and upon their Motion leave is given the said Plaintiff to file General Replications herein to the said Second Plea of the said Defendant herein Pleaded.

And thereupon accordingly on the said sixth day of November A. D. Eighteen hundred & fifty eight, the said Plaintiff filed in the Office of the Clerk of said Court his Replications to said Defendants Pleas; Which said Replications are in the words & figures following that is to say.

" Daniel Morr } Cook County Court of Common
vs } Pleas November Term A. D.
Michael Diversy } 1858.

And the said Plaintiff as to the said Plea of the said Defendant by him secondly above Pleaded, saith that the said Plaintiff by reason of any thing by the said Defendant in that Plea alleged, ought not to be barred from having & maintaining his aforesaid action thereof against the said Defendant, because he saith that the said Defendant did not by letter in writing notify or require the said Plaintiff forthwith

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to put the said bill in suit to wit on the said 15th day of October A. D. 1837, nor at any other time before said suit brought on said bill, to wit, at said Chicago or Elsewhere &c in manner and form as the said Defendant, hath above thereof in his said Plea in that behalf alleged And this the said Plaintiff prays may be inquired of by the Country &c

And the said Plaintiff for a further replication as to the said Plea of the said Defendant by him secondly above pleaded, saith that the said Plaintiff by reason of anything by the said Defendant in that Plea alleged, ought not to be barred from having maintaining his aforesaid action thereof against the said Defendant, because he saith, that the said Defendant was not the surety of the said Thomas W. Egan, but was the principal debtor in the drawing & accepting of the said Bill of Exchange, to wit, on the day and year and at the place in said Declaration mentioned. And this he prays may be inquired of by the Country &c

Williams, Woodbridge & Grant

Attys

And thereafter to wit on the tenth day of December A. D. one thousand eight hundred and fifty eight there was filed in the Office of the Clerk of this Court, the Original Bill of Exchange, upon which said action was brought; Which said Bill of Exchange with the Endorsements thereon, is in the words & figures

following, that is to pay.

\$2000.

Chicago July 9th 1857

15-

Ninety days after date pay to the Order of
Myself Two thousand dollars, Value received & charged
the same to account of.

To Michael Diversy Thomas St. Egan."

Chicago. " Accepted M. Diversy "

" Pay to the Order of David Moor Thomas St. Egan, "

And afterwards to wit on the tenth day of December
(being one of the days of the November Special Term
of said Court) A.D. one thousand eight hundred and
fifty eight, the following, among other, proceedings
were had, and entered of record in said Court, to wit,

" Daniel Moor }

(vs)

App^{ts}

Michael Diversy }

And now at this day comes the said
defendant by Mr. Allister his Attorney and withdraws
his Plea of the general issue herein, firstly pleaded to
the declaration of the said Plaintiff against him.

And thereupon the said Plaintiff by his Attorneys
withdraws his said general replications, herein pleaded to the
said second plea of the said defendant from the files of
this cause. And the said defendant upon the withdrawal
of his said plea of the general issue, being three times
solemnly called, in open Court, says nothing further in bar

or preclusion of the action of the said Plaintiff against him. Whereby the said defendant remains therein undefended against the said plaintiff. Therefore the said Plaintiff ought to have and recover of the said defendant his damages sustained herein by occasion of the premises. And the Court after hearing the allegations & proofs submitted by said Plaintiffs and being fully advised in the premises assessed his damages herein to the sum of Two thousand one hundred and thirty six dollars.

Therefore it is considered said Plaintiff do have & recover of the said Defendant his damages of Two thousand one hundred and thirty six dollars in form aforesaid by the Court assessed, and also his costs and charges in this behalf expended, and have Execution therefor.

And afterwards to wit on the eighteenth day of December (being another of the days of the said November Special Term) A. D. one thousand eight hundred and fifty eight, the following, among other proceedings, were had and entered of record in said Court, to wit:

"Daniel Morr

(vs)

Michael Demsey, And now at this day comes the said Defendant and prays an Appeal in this cause to the Supreme Court of the State of Illinois, which is allowed to him upon Condition that he file within five days from this day his Appeal Bond in the sum of Twenty five hundred dollars with

William Sill as his Security therein.

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And thereafter to wit on the twenty third day of December A.D. one thousand eight hundred and fifty, eight, the said Defendant accordingly filed in the office of the Clerk of said Court his Appeal Bond in said Cause; Which said Bond is in the words & figures following, that is to say,

"Know all Men by these Presents That we Michael Diversy and William Sill of the County of Cook and State of Illinois are held and firmly bound unto Daniel Moor in the penal sum of Twenty five hundred dollars (\$2500) lawful Money of the United States, for the payment of which well and truly to be made, we bind ourselves our heirs, Executors and administrators, jointly severally and firmly by these Presents. Witness our hands and seals this, the Eighteenth, day of December A. D. 1858..

The Condition of the above obligation is such that whereas the said Daniel Moor did on the 10th day of December A.D. 1858 in the Cook County Court of Common Pleas, in and for the County of Cook and State of Illinois, and of the Special November Term thereof A.D. 1858 recover a Judgment against the above bounden Michael Diversy for the sum of Twenty one hundred and thirty six dollars (\$2136) damages besides Costs of suit, from which said Judgment of the said Court, the said Michael Diversy has prayed for

18 and obtained an Appeal to the Supreme Court of said State.

Now therefore if the said Michael Diversy shall duly prosecute his said Appeal with effect, and moreover pay the amount of the judgment, costs, interest & damages rendered, and to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void; otherwise to remain in full force and effect

In presence of

A. N. Jewett

M. Diversy

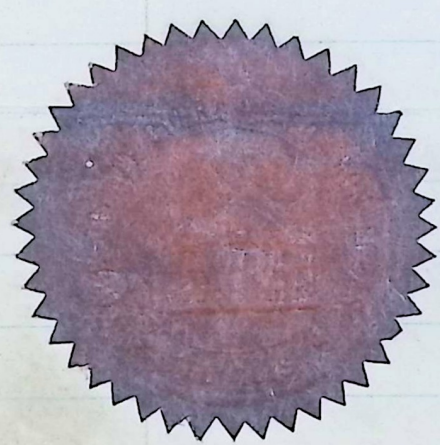
William Lill



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State of Illinois,
Cook County, ...

I Walter Kimball Clerk of the Cook County Court of Common Pleas in said County and State aforesaid Do hereby certify That the foregoing is a true and correct Transcript of the papers now on file in my office, and of all proceedings entered of record in said Court, in a certain Suit heretofore pending therein, wherein Daniel Moor is Plaintiff and Michael Diversy is Defendant.



In witness whereof I the said Walter Kimball, have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this twenty fifth day of January in the year of our Lord one thousand eight hundred and fifty nine.
Walter Kimball Clerk

Supreme Court

Michael Diverssey }
 vs. }
 Daniel Moor }
 appellee }

Afterwards to wit at the April Term of said Court
 1854 before the justice thereof at Ottawa Comes
 the said Michael Diverssey by Scates Mc
 Allister & Jewett his attorneys and says that in
 the record and proceedings aforesaid and in
 the giving of the judgment aforesaid there is
 manifest error to wit: The said
 Court of Common Pleas sustained the Dem
 urrer of the said Daniel Moor to the second plea
 of the said Diverssey.

Also the said Court rendered the judgment
 aforesaid in favor of said Moor against the said
 Diverssey whereas by the law of the land said
 judgment should have been in favor of the
 said Michael Diverssey against said Moor
 Wherefore for the reasons aforesaid and other reasons
 &c the said Michael Diverssey prays that the
 said judgment may be in all
 things reversed &c

Scates McAllister & Jewett
 Atty for appellant

Supreme Court

Daniel Moore
appellant
vs

State of Illinois

Michael Diversity
appellant

And now to wit at the

April Term A. D. 1859 Comes the said Defendant
Daniel Moore by Williams, Woodbridge & Grant
his Attorneys & says that in the record and
proceedings, & in the sustaining of the Verdict
& the rendition of judgment in this cause there
is no error & he prays that the judgment hereto-
fore rendered may be Affirmed —

Williams, Woodbridge & Grant
for appellant

223-10-6
State of Illinois
Cook County
Court of Common Pleas.

Daniel Moor
— atty. —

Michael Dwyer

Record.

Filed April 19, 1839
L. Leland
Clerk

Fees Transcript. \$6.00

Paid W. H. H. Clerk

SUPREME COURT.

MICHAEL DIVERSY,	}	APPEAL FROM Cook Common Pleas.
Appellant,		
vs.		
DANIEL MOOR,		
Appellee.		

ABSTRACT OF RECORD.

Rec. p. 3 This action, assumpsit, was brought to the June term, 1858, of the Cook County Court of Common Pleas.

4 The plaintiff, Daniel Moor, declared upon a certain bill of exchange, bearing date at Chicago, July 9, 1857, drawn by Thomas W. Egan upon
5 the defendant Michael Diversy, for two thousand dollars, at ninety days,
6 payable to the order of the drawer. The declaration also contained the
7 common money counts.

8 The defendant pleaded the general issue to the whole declaration, and to the special count upon said bill the following special plea.

9 And for a further plea in this behalf as to the said first count in the aforesaid declaration, the said defendant says *actio non*, because he says, that in the drawing, accepting and delivering of the said bill of exchange in said count mentioned, the said Thomas W. Egan the drawer thereof was the principal debtor, and this defendant accepted the same without consideration, as the mere surety of the said Thomas W. Egan, and for his accommodation which was, to-wit, at the time of the making of the same, to-wit: at Chicago aforesaid, well known to the said plaintiff; and the defendant further says that after the said bill became due, by the terms thereof, he the said defendant, on, to-wit, the 15th day of October, 1857, to-wit, at Chicago aforesaid, apprehending that the said Thomas W. Egan, the principal debtor as aforesaid, was likely to become insolvent, without previously discharging said bill, so that it would be impossible or extremely difficult for this defendant, after being compelled to pay said bill, to recover the same back of said Egan, did then and there

by letter in writing sent to and received by the said plaintiff, then holding said bill, thereby notify and require him, said plaintiff, forthwith to put the said bill in suit. And the said defendant further says that the said plaintiff neglected and refused to put the said bill in suit, as required by the said letter, and failed to use due diligence to collect the same, and that before the commencement of this suit, to wit, on the first day of November, 1857, to-wit, at Chicago aforesaid, the said Thomas W. Egan, the principal debtor as aforesaid, became and was wholly insolvent, whereby, by virtue of the statute in such case made and provided, the said defendant is discharged from said bill, and this he is ready to verify, &c.

11 To this plea the plaintiff demurred, specially assigning for cause that the allegation of notice by letter, in writing, &c., was insufficient, and assigning no other cause.

12 The defendant joined in demurrer.

The court sustained the demurrer and defendant elected to stand by his plea.

16 The court rendered judgment in favor of the plaintiff, against the defendant, for two thousand one hundred and thirty-six dollars.

16, 17 The defendant appealed.

20 The sustaining said demurrer to said second plea and giving the judgment aforesaid, is assigned for error.

SCATES, McALLISTER & JEWETT,

Attorneys for Appellant.

APPELLANTS' POINTS.

I.

Judgment is rendered in this case against defendants, with facts admitted upon the record which constitute a complete defence.

The plea alleges that the bill was made without any consideration and for the mere accommodation of the drawer, which was at the time of the making thereof well known to the plaintiff.

These facts, of themselves, constitute a good defence to the action upon the bill.

Bayley on Bills, 544.

Story on Bills, sec. 187.

Cooke's Stat. page 292, Sec. 10.

Elston vs. Blanchard, 2 Scam. 420.

It may be claimed that the plea is bad for duplicity.

To this we answer, that such objection can only be made by special demurrer.

The plaintiff not only failed to make that objection, by special demurrer, but assigned another cause, which excludes that of duplicity.

The only question for this court to determine is whether that plea contains sufficient facts, (they being admitted by the demurrer) to constitute a defence to the bill sued on.

~~VI.~~

The plea is good as a discharge under the statute of securities.

Payne vs. Webster, 19 Ill. 103.

McAlister vs Ely 18 Ill 249

The statute is "When any person or shall hereafter become bound as security or securities by bond, bill or note for the payment of money &c

223 - 106

Dorsey vs Moor

Wm D. Moore
of Appellate

Filed Apr 22

Leah
Clerk

IN THE SUPREME COURT.

THIRD GRAND DIVISION,

OF THE APRIL TERM, A. D. 1859.

DANIEL MOOR, Appellee,

ads.

MICHAEL DIVERSY, Appellant.

POINTS AND AUTHORITIES OF APPELLEE.

I.

A surety, or security, in the sense of the Statute, is one who undertakes to do some act, in the event of the failure of another, who is primarily liable.

Burrill's Law Dict.

II.

The acceptor of a bill of exchange is *primarily* and *originally* liable to the holder thereof for value, who is under no obligation to the acceptor to use any diligence or make any effort to collect it of any other person, whether it is accommodation paper or not.

Cronise vs. Kellogg, 20 Ill. R. 11.

Chitty on Bills, (marginal pp.) 304 and 305.

Parsons' Mercantile Law, 99.

3 *Kent's Com.* (marginal p.) 86 et sq. and 113.

Fentum vs. Pocock, 1 Eng. C. Law, (5 Taunton) 105.

Anderson vs. Anderson, 4 Dana, (Key) R. 352.

Townsley vs. Sumrall, 2 Peters' R., 183.

Murray et al. vs. Judah, 6 Cowen, 492.

Philpot vs. Briant, 13 Eng. C. Law, (4 Bingham) 708.

Dingwall vs. Dunster, 1 Dougl. R. 249.

Church vs. Barlow, 9 Pick. R. 547.

Grant et al. vs. Ellicott, 7 Wend. R., 227.

Wallace vs. McConnell, 13 Peters' R., 136.

Sprigg vs. Bank of Mount Pleasant, 10 Peters' R. 257.

III.

In order that the acceptor may bring himself within the statute concerning Securities, it must appear on the face of the bill that he accepted as security.

Payne vs. Webster, 19 Ill. R. 103.

IV.

The unconditional acceptor of a bill of exchange being the principal debtor, cannot bring himself within the statute concerning Securities.

2 *Purple's Statutes*, p. 1084, sec. 4.

WILLIAMS, WOODBRIDGE & GRANT,

ATTORNEYS FOR APPELLEE.

223-106

Supreme Court

Daniel Moore

Appellee

vs

Michael Sweeney

Appellant

Dist. v. Appellee

Filed Aug 16, 1859

L. Leland

Clerk

Supreme Court
State of Illinois,
Third Grand Division,
Of the April Term A.D. 1859.

Daniel Moor, appellee
vs.
Michael Diversy, Appellant

Argument for Appellee

This was an action of Assumpsit
brought by the appellee in the Cook County
Court of Common Pleas against the appellant
upon a bill of exchange whereof the following
is a copy, to wit:

\$2000.00 Chicago July 9th 1859
Ninety days after date, pay to the
order of myself Two Thousand Dollars
(Value received) and charge the same to
account of ~~myself~~ ^{Michael Diversy}
To Thomas H. Egan
Michael Diversy
Chicago Ills."

The above bill, having been endorsed by
the drawer, was placed in the market,
where it was purchased by appellee.
In which said action appellant pleaded

The general issue, and a Special plea under the Statute concerning Securities, in which it was alleged, among other things, that Appellant after the maturity of said bill did "by letter in writing sent to said plaintiff then holding said bill, thereby notify & require &c.

To which said Special plea the plaintiff below demurred, assigning two grounds, viz: That the acceptor of a bill of exchange was in no legal or proper sense, a surety but the principal debtor, and that the notice alleged to be "sent" was wholly insufficient, whereupon defendant below asked and obtained leave of the Court to amend his plea by inserting after the words "sent to," "and received by", when the demurrer was again sustained by the Court below.

The Court will observe that the sole case relied on by Appellant is *Payne vs Webster* 19 Ill. R. 103 which decides that

"In order to sustain a plea under the Statute concerning Securities to an action upon a promissory note, it must appear on the face of the note, that the party signed it as security."

Much more would this principle be true of ~~a~~ bills of Exchange

"which are the highest class of commercial paper known to the law"

Cronise vs. Kellogg 20. M. R. 11.

The Court will please further observe that Appellant did not accept said bill of exchange as security, but on the contrary he is an unconditional acceptor thereof.

Indeed it is difficult to perceive upon what ground the appellant has brought the case to this Court unless it be for the mere purpose of delay.

Respectfully Submitted
Williams, Woodbridge & Grant
Attorneys for Appellee.

223-106.
Supreme Court.

Sam'l Moor
vs

Michael Dwinny

Argument for Appellee

Filed May 20. 1839
L. Deland
clerk

IN THE SUPREME COURT.

THIRD GRAND DIVISION,

OF THE APRIL TERM, A. D. 1859.

DANIEL MOOR, Appellee,

ads.

MICHAEL DIVERSY, Appellant.

POINTS AND AUTHORITIES OF APPELLEE.

I.

A surety, or security, in the sense of the Statute, is one who undertakes to do some act, in the event of the failure of another, who is primarily liable.

Burrill's Law Dict.

II.

The acceptor of a bill of exchange is *primarily* and *originally* liable to the holder thereof for value, who is under no obligation to the acceptor to use any diligence or make any effort to collect it of any other person, whether it is accommodation paper or not.

- ✕ *Cronise vs. Kellogg*, 20 *Ill. R.* 11.
- Chitty on Bills*, (marginal pp.) 304 and 305.
- Parsons' Mercantile Law*, 99.
- 3 *Kent's Com.* (marginal p.) 86 et sq. and 113.
- † *Fentum vs. Pocock*, 1 *Eng. C. Law*, (5 *Taunton*) 105.
- ✕ *Anderson vs. Anderson*, 4 *Dana*, (Key) *R.* 352.
- Townsley vs. Sumrall*, 2 *Peters' R.*, 183.
- Murray et al. vs. Judah*, 6 *Cowen*, 492.
- Philpot vs. Briant*, 13 *Eng. C. Law*, (4 *Bingh.*) 708.
- Dingwall vs. Dunster*, 1 *Dougl. R.* 249.
- Church vs. Barlow*, 9 *Pick. R.* 547.
- Grant et al. vs. Ellicott*, 7 *Wend. R.*, 227.
- Wallace vs. McConnell*, 13 *Peters' R.*, 136.
- Sprigg vs. Bank of Mount Pleasant*, 10 *Peters' R.* 257.

III.

In order that the acceptor may bring himself within the statute concerning Securities, it must appear on the face of the bill that he accepted as security.

Payne vs. Webster, 19 Ill. R. 103.

IV.

The unconditional acceptor of a bill of exchange being the principal debtor, cannot bring himself within the statute concerning Securities.

2 *Purple's Statutes*, p. 1084, sec. 4.

WILLIAMS, WOODBRIDGE & GRANT,
ATTORNEYS FOR APPELLEE.

223-108

Supreme Court

Daniel Moon

Appellee

vs.

Michael Dickey

Appellant

Print &c. of Appellee

Filed May 16, 1859

L. H. Cland

Clerk