

14308


No. _____

Supreme Court of Illinois

Mayo

vs.

Moore

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 214

14308

1862

Supreme Court of Illinois

Simon Mayo

Plff in Error

vs

Henry Moore

Def't in Error

April Term 1862

appeal.

We hereby stipulate
"of course"
and agree that the words in the 4th
line of the 1st instruction given for plff
below were inadvertently inserted in the
bill of exceptions and ~~record~~ ~~there~~
copied into the record in this cause, instead
of the word "then" which appears
in the original instruction -

A. D. Rich

Chicago May 2nd 1862

for plff in error -
Neill & Horton
for Def't in Error

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the First day of July in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the United States of America the Eighty Fifth.

Present, The Honorable John W. Wilson Chief Justice of the Superior Court of Chicago.

Saml. Higgins
Grant. Goodrich } Judges.

Charles Carey Prosecuting Attorney.

McBain Sheriff of Cook County.

Attest, Walter Humball Clerk.

Be it Remembered, that herefore to wit on the Nineteenth day of April, in the year of our Lord one thousand, Eight hundred and Sixty, Henry Morse by Hill and Norton his Attorney, filed in the office of the Clerk of the Superior Court of Chicago his certain Declaration, in words and figures following, to wit:

Superior Court of Chicago.
of the May Term AD 1860.

State of Illinois }
County of Cook } S.S.

Henry Moore, Plaintiff in this
suit, by Hill & Boston his Attorneys complains of
Simon Mayo Defendant, who was summoned
&c of a plea of trespass on the case on premises:

For that whereas said defendant,
heretofore, to wit, on the thirteenth day of September, in
the year one thousand eight hundred and fifty
seven, at Chicago, to wit, at said County of Cook,
made his certain promissory note in writing, bearing
date the day and year aforesaid, and then and there
delivered the same, to F. A. Stevens, in and by which
said note said defendant by the name, style
and description of Simon Mayo, promised to pay
to the order of said F. A. Stevens, six months after
the date thereof, One hundred and five dollars,
and ninety seven cents, for value received, and
said F. A. Stevens, to whom, or to whose order said
note was payable, afterwards to wit on the day
and year aforesaid at said County of Cook
endorsed said note in writing, by which said
endorsement said F. A. Stevens then and there
ordered and appointed said sum of money
in said note mentioned to be paid to said plaintiff,
and then and there delivered said note so endorsed
to said plaintiff.

By means whereof, and by force of the

Statute in such case made and provided. the said defendant became liable to pay said plaintiff said sum of money mentioned in said Note, and being so liable in consideration thereof then and there undertook and promised to pay the same to said plaintiff according to the tenor and effect of said Note, and of the endorsement aforesaid to wit, at the place aforesaid.

Yet said Defendant not regarding his said promise and undertaking, but contriving & although often requested so to do, has not paid said plaintiff said sum of money above mentioned, or any part thereof, but so to do hath hitherto wholly neglected and refused, and still does neglect and refuse to the damage of said plaintiff of Fifteen hundred dollars, and therefore he brings this suit &c.

Hill & Norton

Plff's Atty.

Copy of Note sued on.
 \$1105^{7/100} Chicago Sept 30th 1854
 Six Months after date, I promise to pay to the order of F. A. Stevens Eleven hundred five & 7/100 dollars at.

"Value received"

Signed "Simon Mayo"

(Endorsed)

" F. A. Stevens

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And afterwards, to wit on the twenty ninth day
of October in the year aforesaid, there issued
out of the office of the Clerk of said Court. The
Proper Writ of Summons. which said Writ with the
Sheriff return thereon endorsed, is in the words and
figures, as follows, to wit

7 State of Illinois }
County of Cook } S.S.

The People of the State of Illinois, to the
Sheriff of said County Greeting:

We Command You, as we have before com-
manded you that you summon Simon Mayo
if he shall be found in your County, personally to be
and appear before the Superior Court of Chicago, of
said Cook County, on the first day of the term thereof,
to be holden at the Court House in Chicago, in said
Cook County on the first Monday of December next,
to answer unto Henry Moore, in a plea of Trespass
on the case upon promises, to the damage of the said
Plaintiff as is said in the sum of Fifteen Hundred
Dollars,

And have you then and there this writ,
with an endowment thereon, in what manner
you shall have executed the same.

Witness, Walter Kimball Clerk of
our said Court, and the Seal
thereof, at Chicago aforesaid, this
29th day of October AD 1860

Walter Kimball Clerk

Served by reading this writ to the within named Deft
23rd day of Nov 1860. A. C. Hessing Shff.

B. H. Lombard Deputy

Served

And afterwards to wit on the fourth day
of December, in the year aforesaid, Simon
Mays, by Rich and Thomas his Attorneys, filed
in the office of the Clerk of said Court, his certain
Mens, in words and figures, as follows, to wit,

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Superior Court of Chicago
of the December Term A.D. 1869.

Simon Mayo.
vs
Henry Moore. } J.

1 General Issue.

And now comes the said defendant by Rich and Thomas his Attorneys, and defends the wrong and injury whereto. And says that he did not undertake and promise in manner and form as the said plaintiff has above thereof complained against him, and of this he puts himself upon the Country.

2 payt And for a further plea in this behalf, said defendant by leave of the Court first had and obtained, according to the Statute in such case provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that after the maturity of the said promissory note and before the commencement of this Suit to wit on the first day of March in the year one thousand eight hundred and fifty nine, at the County aforesaid, he the said defendant fully paid to the said plaintiff the said sum of money in said promissory note specified together with all interest then due thereon - and that the said defendant is ready to verify, wherefore he

prayer judgment &c.

3 Pgt. to Payer & Notice &c

And for a further plea in this behalf the said defendant by like leave of the Court &c. says that the said defendant, after the maturity of said note and before the commencement of this suit, to wit on the first day of April in the year One thousand eight hundred and fifty eight, at the County aforesaid fully paid to the said F. A. Stevens the payer of said promissory note, the said sum of money specified together with all interest then due thereon of all which the said plaintiff had notice, and the said defendant avers that at the time of payment thereof as aforesaid, to wit on the first day of April last aforesaid and for a long time thereafter he the said F. A. Stevens held, owned, controlled and had possession of said promissory note, and that he the said Stevens did not assign or transfer the same to said plaintiff at the time alleged in said declaration, nor (if at all) until long after the maturity of said note, and the said defendant further avers that said transfer and assignment (if any at all) was merely colorable and without consideration and in fraud of him the said defendant, and that the ^{plaintiff} Plaintiff is not, nor ever has been the bona fide assignee, holder or owner of said promissory note but that said Stevens was at the maturity thereof and

still is the beneficial owner & holder thereof, and further avers that he the said defendant had no notice or knowledge, of any assignment or transfer of said promissory note or that said plaintiff held or claimed any interest therein before the commencement of this suit and this the said defendant is ready to verify, wherefore he prays judgment &c.

4 Accord & Sat. &c.

And for a further plea in this behalf the said defendant by like leave of the Court &c says Actio non. because he says that he the said defendant after the making of the said general promises and undertakings in the said declaration mentioned and before the commencement of this suit, to wit on the twenty fourth day of March, in the year one thousand eight hundred fifty nine. at the County aforesaid delivered to the said F. A. Stevens the payee of said promissory note, a large quantity of lumber and building materials of great value to wit of the value of fifteen hundred dollars in full satisfaction and discharge of said general promises and undertakings, and of all sums of money in said declaration mentioned, and which said lumber he the said Stevens then and there accepted and received of and from the said defendant in full satisfaction and discharge of said general promises and undertakings and of all the sums

of money in said declaration mentioned of all which the said plaintiff had notice, and the said defendant further says and avers that at the time of the delivery of said lumber building materials in payment. Satisfaction and discharge of said promissory note as aforesaid, to wit on the twenty fourth day of March in the year last aforesaid, and for a long time thereafter, he the said F. A. Stevens held owned controlled, and had possession of said promissory note, and that he the said Stevens did not assign and transfer the same to said plaintiff at the time alleged in said declaration and (if at all) until long after the maturity of said promissory note, and the said defendant further avers that the said transfer and assignment of said note to said plaintiff (if made at all) was merely colorable and without consideration, and in fraud of him the said defendant, and that said plaintiff is not, nor ever has been, the bona fide assignee owner or holder of said promissory note, but that the said Stevens was at the maturity thereof, and still is the beneficial owner and holder thereof, and further avers that he the said defendant had no notice or knowledge of any assignment or transfer of said promissory note, or that said plaintiff held or pretended to hold the same, or claimed any interest therein before the commencement

of this suit, and this the said defendant is ready to verify, wherefore he prays judgment &

offset & note &c.

And for a further plea in this behalf he the said defendant by like leave of the Court &c says Actio Non because he says that he the said Stevens payer of said promissory note as aforesaid, before and at the time of the commencement of this suit, to wit at the County aforesaid was and still is indebted to the said defendant in a large sum of money to wit in the sum of fifteen hundred dollars lawful money for divers goods, Wares and Merchandize Lumber and building material sold and delivered to said Stevens and at his request; and for money by the said defendant before that time lent and advanced to and paid laid out and expended for said Stevens at his like request; and for money by the said Stevens before that time had and received to and for the use of the said defendant; and for money due and owing from the said Stevens to the said defendant for interest upon and for the forbearance of divers large sums of money due and owing from the said Stevens to the said defendant; and for money due and owing from the said Stevens to the said defendant upon an account stated between them - of all which the said plaintiff had notice before the assignment

or transfer of said promissory note to him by
 said Stevens - which said several sums so
 due and owing to the said defendant as
 aforesaid exceed the damages sustained by
 the said plaintiff or said Stevens by reason of
 the non performance by the said defendant of
 the said several supposed promises and undertakings
 in the said declaration mentioned, and out
 of which said sums of money so due and
 owing the said defendant is ready & willing
 and hereby offers to pay off and allow to the
 said plaintiff the full amount of said damages
 according to the Statute in such case made and
 provided. And the said defendant further
 says and avers that the said Stevens did not
 assign or transfer the said promissory note in
 said declaration mentioned to said plaintiff
 before the maturity thereof, but long after the
 maturity thereof, to wit, on the 29th day of
 December in the year one thousand eight hundred
 fifty nine, and that said Stevens long after
 the maturity of said note and prior to said
 29th day of December held, owned, controlled and
 had possession of said promissory note, and said
 defendant further avers that the pretended transfer
 and assignment thereof to said plaintiff was
 merely colorable and without consideration, and
 that said plaintiff is not, nor ever has been
 the bona fide holder owner or assignee of said
 promissory note, and that said Stevens was

at the maturity thereof and still is the beneficial owner and holder thereof. and said defendant further avers that prior to said 29th day of December he had no notice or knowledge of any assignment or transfer of said promissory note, or that said plaintiff held or claimed any interest therein - of all which said plaintiff had notice & that the said defendant is ready to verify. Therefore he prays judgment &c.

Rich & Thomas

Atty for deft.

Superior Court of Chicago
of the December Term 1860.

Simon Mayo
adv. }
Henry Moore }

State of Illinois
County of Cook } S.S.

Simon Mayo being duly sworn says that he is the defendant in the above entitled suit, and further says that he has a good defence to said suit upon the merits thereof.

Simon Mayo
Sworn and Subscribed
before me this 4th day of
December 1860
Walter Kimball Clk.

Bill of particulars
F. A. Stevens

In ar. with Simeon Mayo Sr.

1858

Aug 1	To Cash rec ^d for lumber on & prior to date	\$1500.00
Nov. 3	" pd order in favor Warren	240.00
4	" do. do.	14.06
1859. Feby 1	" Cash rec ^d for lumber on & prior to date.	400.00
March 24	" Cash	114.64

And afterwards, to wit on the fifteenth day of March in the year of our Lord one thousand eight hundred and sixty one the plaintiff filed herein his replications, in words and figures as follows, to wit

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Superior Court of Chicago of
the May Term AD 1866.

Henry Moore

vs.
Simeon Mayo & Co.

And the said plaintiff, as
the plea of said defendant by him first above
pleaded and whereof he has put himself upon
the Country, does the like,

And said plaintiff, as to said plea
of said defendant by him secondly above pleaded,
says that said plaintiff by reason of anything
by said defendant in that plea alleged, ought
not to be barred from having and maintaining
his aforesaid action thereof against him said
defendant, because he says that said defendant
did not pay to said plaintiff said sum of
money in said promissory note specified, with
all interest due thereon, in manner and form
as said defendant has above in said second
plea in that behalf alleged, and the said
plaintiff prays may be enquired of by the
Country.

And said plaintiff, as to the pleas of said
defendant by him thirdly, fourthly & fifthly above
pleaded, says that said plaintiff by reason of
anything by said defendant, in those pleas alleged,
ought not to be barred from having and maintaining
his aforesaid action thereof against him, because
he says that, within on the first day of April 1866

nor at any time after the maturity of said note, did
 or has said Sterens held, owned, controlled or had
 possession of said note. And said plaintiff says
 that said Sterens did assign and transfer said note
 to said plaintiff before the maturity thereof, to wit
 at the time alleged in said declaration and not
 after the maturity thereof; and that said transfer
 and assignment were made in good faith and for
 a valuable consideration, and were not merely
 colorable and without consideration, nor in fraud
 of said defendant; and that said plaintiff is,
 and since the maturity of said note, ever has
 been the bona fide assignee, holder and owner of
 said note, and that said Sterens was not, at the
 time of the maturity thereof, nor has he since
 been the bona fide owner and holder thereof.
 And this said plaintiff prays may be inquired
 of by the Country,

And said plaintiff, as to the plea of
 said defendant by him thirdly above pleaded,
 says that said plaintiff, by reason of any thing
 by said defendant in that plea alleged, ought
 not to be barred from having and maintaining his
 aforesaid action thereof against him, because
 he says that said defendant, after the maturity
 of said note, and before the commencement of this
 suit, did not pay to said F. A. Sterens, the payee
 of said note, the sum of money specified in
 said note together with the interest thereon,
 any part thereof, in manner and form as said

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And afterwards to wit on the nineteenth day of April in the year aforesaid, said day being one of the days of the April Term of said Court, the following among other proceedings was had and intent of record in said Court to wit.

Henry Moore
vs.
Simon Mayo } Aft.

This day comes said plaintiff by Will & Norton his Attorneys, and the said defendant by Rich his Attorney also comes and on motion plaintiffs Attorney, it is ordered that the said defendant rejoin to plaintiffs replication by coming in of the Court on Monday the 22nd day of April instant,

And afterwards to wit on the twentieth day of April in the year aforesaid, the defendant filed herein his Rejoinder, in words and figures as follows, to wit

Superior Court of Chicago
April Term 1854

Simon Mays.
vs
Henry Moore }
}

And the said defendant
as to said applications and each of them of the
said plaintiff to the said first, second, third
fourth and fifth pleas of said defendant and
which said plaintiff has prayed may be
enquired of by the country, doth the like
Rich & Thomas.

Atty for deft.

And afterwards to wit, on the twentieth day of June
in the year aforesaid, said day being of the June
term of said Court, the following among other pro-
ceedings was had and entered of record of said
Court.

Henry Moore
vs
Simon Mays } Assumpsit

This day came the said
plaintiff by Bill & Boston his Attorneys and the
said defendant by Rich & Thomas his Attorneys
also came, and issues being joined herein, it
is ordered that a jury come. Whereupon comes
the jury of good and lawful men to wit, Hugh
Brannigan, A. G. Lamb, Chas. Hall, G. T. Pogue, &
Londdegan, J. Keitt, Richard Griffith, Tho. Ball,
George E. Gerts, J. M. Bissell, C. W. Shain & D. McElroy.

who being duly elected tried and sworn to try the issues joined as aforesaid after hearing part of the testimony, and the hour of adjournment having arrived it is ordered that the jury separate and meet the court, on coming in and opening thereof to morrow morning.

And afterwards to wit on the thirteenth day of June in the year aforesaid, said day still being of the June term of said Court, the following and any other proceedings was had and entered of Record in said Court to wit.

Henry Moore

v.
Simon Mayo }.

This day again comes the said plaintiff by Hill & Koston his Attorneys and the said defendant by Rich & Thomas his Attorney also comes, and the jury empanelled herein as yesterday for the trial of this cause also come and having heard all the testimony, Arguments of Counsel and instructions of the Court, retire to consider of their Verdict, and the hour of adjournment having arrived it is ordered upon agreement of ^{the} parties that when the jury shall have agreed upon a Verdict they shall reduce the same to writing sign and seal the same and afterwards separate and meet the court on coming in and opening thereof to morrow morning.

who being duly elected tried and sworn to try the issues joined as aforesaid after hearing part of the testimony, and the hour of adjournment having arrived it is ordered that the jury separate and meet the court, on coming in and opening thereof to morrow morning.

And afterwards to wit on the thirteenth day of June in the year aforesaid, said day still being of the June term of said Court, the following among other proceedings was had and entered of Record in said Court to wit.

Henry Moore

v.

Simon Mayo }.

This day again comes the said plaintiff by Hill & Koston his Attorneys and the said defendant by Rich & Thomas his Attorney also comes, and the jury impeached herein as yesterday for the trial of this cause also come and having heard all the testimony, Arguments of Counsel and instructions of the Court, retire to consider of their Verdict, and the hour of adjournment having arrived it is ordered upon agreement of ^{the} parties that when the jury shall have agreed upon a Verdict they shall reduce the same to writing sign and seal the same and afterwards separate and meet the court on coming in and opening thereof to morrow morning.

And afterwards to wit on the fourteenth day of June, in the year aforesaid, said day still being of the June term of said Court, the following among other proceedings, was had and entered of Record in said Court to wit.

Henry Moore
 vs.
 Simon Mayo. } *Specie*

This day again comes the said plaintiff by Hill & Norton his Attorneys, and the said defendant by Rich & Thomas his Attorneys also come and the jury also impanelled herein for the trial of said cause as on yesterday also come and submit their Verdict and say that the jury find issues for the said plaintiff and assess his damages herein to the sum of eight hundred and twenty two dollars and sixty seven cents. And thereupon the said defendant submits his Motion herein for a New Trial in said cause, and in arrest in judgment on said Verdict of the jury as aforesaid

And afterwards to wit on the twenty fifth day of July in the year aforesaid, said day being one of the days of the July term of said Court. The following among other proceedings was had and entered of Record in said Court to wit

Henry Moore

vs.
Simon Mayo

Assumpsit

This day again comes the said plaintiff by Hill & Moore his attorneys and the said defendant by Rich & Thomas his attorneys also come, and this cause coming on now to be heard upon the defendants motion heretofore submitted herein for a new trial in said cause, the plaintiff permits the sum of seventy eight dollars and ninety seven cents on the verdict rendered by the jury for damages. Whereupon the Court overrules the motion for said new trial, Wherefore the said plaintiff ought to have judgment entered on the verdict of the jury rendered herein and for his damages assessed therein for the sum of Eight hundred and twenty two dollars and ninety seven cents less the sum of seventy eight dollars and ninety seven cents. Being the sum of seven hundred and forty four dollars.

Therefore it is considered that the said plaintiff do have and recover of and from the said defendant his damages of seven hundred and forty four dollars, in full aforesaid found and assessed by the jury and remitted by said plaintiff on said verdict together with his costs and charges in this behalf expended, and thereof have execution.

And thereupon the said defendant having entered his exceptions prays an appeal to the Supreme Court, of this State from the judgment of this Court, which is allowed upon his filing his appeal bond in the penalty of One thousand dollars, with security to be approved by a judge of this

Court. and to be filed within ten days from this day, and that he have forty days in which to file his bill of exceptions herein.

And afterwards to wit, on the second day of August, in the year aforesaid Simon Mayo filed herein his Appeal Bond. in words and figures as follows. to wit.

Know all Men by these presents, That we Simon Mayo and Charles R. Barton of the County of Cook and State of Illinois, are held and firmly bound unto Henry Moore also of the same County and State, in the penal sum of One thousand dollars, lawful money of the United States, for the payment of which, or the 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 25th day of July A.D. 1861.

The condition of the above obligation is such, That whereas, the said Henry Moore did, on the 25th day of July A.D. 1861 in the Superior Court of Chicago in the County of Cook, and State aforesaid, and of the July Term thereof A.D. 1861, render a judgment against the above bounden Simon Mayo for the sum of Seven hundred & forty four dollars besides costs of suit; from which said judgment of the said Court the said Simon Mayo has prayed for, and obtained an appeal

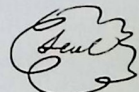
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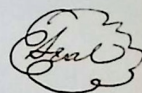
to the Supreme Court of said State.

Now Therefore if the said Simon Mayo shall duly prosecute his said appeal with effect, and moreover, pay the amount of the judgment, costs, interest and damages rendered, and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

Taken and entered into before me, at
Chicago this 2nd day of August
A.D. 1841.

Approved Grant Goodrich
Judge of the Superior
Court of Chicago

Simon Mayo 

Chas R Barton 

And afterwards, to wit on the nineteenth day of
October, in the year aforesaid, the defendant
filed in the office of the Clerk of said Court
his bill of Exceptions. in words and figures as
follows to wit.

Superior Court of Chicago.

Simon Mayo
 vs
 Henry Moore } Assumpsit

Be it remembered that afterwards to wit. on the fourteenth day of June, being at the June Term of said Court A.D. 1851. before the Hon Grant Goodrich, one of the Judges of said Court, the aforesaid issue so joined between the said parties came on to be tried by a jury of the County of Cook aforesaid for that purpose empannelled, and upon the trial of said issue the counsel for said plaintiff to maintain and prove said issue on his part gave in evidence to the jury aforesaid a promissory which was read as follows to wit

\$105 $\frac{92}{100}$

Chicago Sept 30th 1854

" Six months after date I promise to pay to the order of F. A Stevens. Eleven hundred five $\frac{92}{100}$ dollars at — Value received

Simon Mayo

which was indorsed in blank "F. A Stevens"

And the counsel for the plaintiff here rested his case.

Defense

And thereupon counsel for defendant to maintain and prove said issue on his part called as a witness the said plaintiff Henry

Moore who being duly sworn without objection on his part testified as follows. to wit:

X I am not acquainted with the defendant - (the note sued upon, of which the foregoing is a copy, shown to witness) have seen this Note before - I claim to be the owner of it - received it from F A Stevens as collateral security for money loaned to him, I made a loan to him in August 1857 - think it was the 19th day - took his note for \$903¹² at nine months - did not receive the note sued on at that time - had security by another note against Mayo for some \$1400 of same date (Note shown to witness of which the following is a copy to wit:

\$1490.⁶³/₁₀₀ Chicago Sept 30th 1857
 Nine Months After date I promise to pay to the order of F A Stevens fourteen hundred ninety 63/100 dollars with interest at ten per cent per annum after two months Value received
 Simeon Mayo "

Note endorsed) this is the note I had of Stevens as collateral security for the loan - I had the impression it was endorsed to me. but I see it is not. there is no endorsement upon it by Stevens. I am sure this is the note - am sure I took it as collateral

I made him another loan of \$220. and he gave me the \$1105²⁷ note in suit. as additional security for the \$903.12 loan & the loan of \$220.

He gave me his note at three months for the \$220.
 That \$220 loan was paid, paid at maturity I suppose,
 think I took the note in suit as collateral at the
 time I made the \$220 loan - or about that time,
 I gave up the \$490. after I made the \$220 loan.
 I can tell you when I made the \$220 loan if you will
 allow me to look at a memorandum I have - I made
 the memorandum to day - I see from this that it
 was February 25th 1858. that I made the \$220 loan
 I think the note in suit was given to me about
 that time it might have been afterwards - a few
 days afterwards. can't be positive - have no papers or
 memorandum to show the precise time. I keep
 no record of collateral notes which shows the time
 they come into my possession. I make a memo-
 randum of notes taken for money loaned, but not
 of notes or securities taken as collateral - I lay
 them away in my safe. Stevens gave me at the
 same time the Chattel Mortgage securing the two
 notes of \$1105. & \$1490. I never loaned Stevens
 money except twice as stated. - I never called
 on Mayo. for payment of the note in suit - never
 notified him that I held it. never looked after the
 property named in the Chattel Mortgage securing
 his notes - a few months ago - I think in January
 1860. I handed this note in suit to Hill & Norton
 and told them to sue it if they thought it could
 be collected. I do not know W. Mayo - never saw
 him until to day as I remember any business
 is the land and broker business.

Mayo

Stevens now only owes me a balance on the first loan - the \$903 note. He paid part September 26 1858. there is \$349. indorsed as paid at that time on his note.

And thereupon Counsel for the defendant proposed to the witness the following interrogatories to wit:

What was the actual amount of money advanced by you to Stevens. at that time he gave you the note for \$903.12

Question objected to by plaintiff Counsel, objection sustained and the evidence excluded by the Court and to the ruling of the Court rejecting the evidence offered, defendant then and there excepted.

And thereupon defendant's Counsel proposed to the witness the following interrogatory to wit:

What was the actual amount of money loaned by you to Stevens for which his note was for \$903 ¹² was given?

Question objected to by plaintiff Counsel, objection sustained and the evidence excluded by the Court, and to the ruling of the Court excluding the evidence offered, defendant then and there excepted.

I think I gave up to Sterrus, the Mayo note of \$1490 at the time of this payment ^{and indorsement} - I am sure I took this Mayo note of \$1490. August 19th 1857. I may be mistaken as to the time of taking the other note of \$1105. (Witness is asked to look at the date of the \$1490 note) I see by its date I am mistaken think I must have taken it afterwards - after the 19th of August 1857 - two or three months - do not think it was more than three months.

Cross examination of the Witness raised by plaintiffs Counsel -

The said defendant further to maintain and prove said issue on his part called W E Frost, who being sworn testified that he, the witness had been foreman and bookkeeper for Mr Mayo, the defendant, since the year 1857; that defendant runs a planing mill and keeps a lumber yard on 12th Street in Chicago. that he the witness was acquainted with F. A Sterrus, the payee of the note in suit; that Sterrus called at Mayo's office frequently during the Spring and Summer of the year 1858; that in conversation with Mayo about the time of the maturity of the note in suit, or soon after, Sterrus admitted and acknowledged it had been fully paid to him by Mayo, that afterwards - he thought in the Spring of 1859 - Sterrus presented at Mayo's office an account current between him and Mayo, which account witness examined,

in business in the year 1858. I never entered up
 judgment against him on his note to me,
 because I generally succeed better without - have
 asked him Stevens a good many times for pay
 and he has promised to pay it. I think I made
 the first loan to Stevens August 19th 1857. He did
 not give me the \$1490. note as collateral at that
 time. Can't tell when I got it - it might have
 been one two or three months after the loan
 that the \$1490. collateral note was given me,
 I made the second loan of \$220. in September
 the same year 1857. I think it may have
 been the ~~same year~~ ^{same year} and it may have been ~~the same~~
 more than a year after the first loan that I
 made the second ^{loan} of \$220. I received the first
 note in February 1858 - It was probably in
 September 1858 that I made the second loan of
 \$220. - or in September 1857. Stevens came to me
 and said he wanted to borrow \$220 - I told him
 he could have it by putting up security - he said
 he would put up security - I requested him to
 put it up as security. security for this and
 additional security for the other note of \$903
 which he did. There is \$349. indorsed as paid
 on the note of \$903. September 20th 1858. I can't
 tell when I gave up the \$1490. note - presume I
 gave it up in 1858. September 20th when the
 indorsement of \$349. was made. I see the
 paper pledging me the \$1490. note as collateral
 is dated January 7th 1858. that must be

the time I received that Note. I now swear that the \$1490. note was received January 7th 1858. it was after May 1858 it was given up to Stevens. I have no memorandum or paper showing when the \$1165 note in suit was pledged to me as collateral security. I generally keep a memorandum of my collaterals (From his note book produced) The first loan of \$903¹² was made August 19th 1857. at nine months. The second loan of \$220. was made February 25th 1858 at three months and is marked "paid". I presume it was paid May 25th 1858. These two loans were all I ever made to Stevens

And the Counsel of said defendant further to maintain and prove said issue on his part recalled the Witness H E Frost. and put to him the following interrogatory.

What conversation if any occurred between Stevens and Mayo in reference to this note in suit at the time of its payment, or at the time of or soon after its maturity?

Question objected to by plaintiffs Counsel, objection sustained and evidence excluded by the Court, and exceptions there and there taken by defendant to the ruling of the Court. excluding the evidence and thereupon Counsel for defendant then & there proposed to prove by

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this witness, that Stercus the payee of the note in suit came to Mayo's office at its maturity and repeatedly afterwards and stated that he had lost or mislaid Mayo's Note of 1105. now sued on, but that he had not then transferred it, or negotiated it. that his name was not endorsed on it, that it would be unavailing in any third parties hands, and that he Stercus thought it must still be somewhere among his papers, and that he would give it up to Mayo as soon as he could find it, that it was fully paid and he would discharge the Mortgage securing it, and Mayo need not give himself any uneasiness about it, & further that since the commencement of this suit Stercus had offered to compromise the suit, and surrender the note on payment of \$300.

This evidence was objected to by plaintiff Counsel, objections sustained by the Court. defendant's Counsel did then & there except to the ruling of the Court excluding it.

Counsel for defendant further to maintain and prove the issue on his part introduced in evidence the record of the chattel Mortgage executed by defendant to F. A. Stercus dated October 9th 1854. in book 8 of Chattel Mortgage records of said Cook County conveying to said Stercus the following described personal property. to wit "said Mayo's Leasehold interest in and to lot number thirteen (13) and fourteen (14) in Block

two (2) in the Canal addition to Chicago. which I hold under and by virtue of a lease dated June 27th 1857. from Samuel Russell, the buildings situated on said Lots now used for a planing mill, One Engine & Boiler now used in said mill, One large Woodworth Planer, One Circular Saw and Bench. a Line of 3-inch Shafting and Pulleys about 30 feet long. Counter Shafting and all the belting belonging thereto, One of Farns Improved Surface planers, One Re-sawing Mill. Poncey's Patent, for the purpose of securing the payment of two certain promissory notes executed by said Mayo. bearing date at Chicago. September 30th 1857. payable to the order of Francis A Sterens the first for \$1105 ⁷⁰/₁₀₀ and due six months after the date thereof, the second for \$1490. ¹³/₁₀₀ with interest at ten per cent per Annum after two months from the date thereof, which said Chattel Mortgage is released and discharged on the margin of the record thereof as follows "I hereby release and discharge this Mortgage March 1st 1859 Francis A Sterens .. (Sd)

Counsel for defendant here rested his case, and thereupon Counsel for the plaintiff called as a witness Daniel Eaton. who being sworn testified as follows

" I was doing business in 1857 & 1858 in the Machinery business with F. A Sterens, Sterens put into the concern the Mayo note of between \$1400

& \$1500. February 1858. Mayor, Stercus and I had a settlement in the fall of 1858. and we found Mayo had paid this note in lumber, Mayo had been credited more than enough to pay the \$1490 note and it was agreed that the balance of something more than \$100. due him should apply on Stercus individual account. I have no interest in the Mayo note of \$1105.

Counsel for the plaintiff also offered in evidence an instrument of writing in words and figures following to wit

"Chicago Aug 7th 1858 this is to certify that I have left with Henry Moore as collateral security a certain note dated Sept 30th 1857. due nine months from the date thereof, payable to F. A. Stercus or order. amount of said note \$1490 ⁴³/₁₀₀ and to draw interest after two months, at the rate ten per cent per annum, now therefore if the said F. A. Stercus does well and truly pay Henry Moore \$913 ¹²/₁₀₀ which will be due on a certain note signed by the said Stercus Aug the 19th 1857. and due the 19th day of May 1858 then this collateral note is to be given up, if not then the said Moore has full power to sell the same with or without notice, the said collateral note is secured by a certain Bond signed by Lincoln Mayo bearing date Sept 30th 1857 to secure this and one other note of some date for \$1105 ⁷/₁₀₀ dollars and due in six months from the date thereof but the said Stercus agrees if he has to sell on the bond to secure the payment

of the first Note he will also protect the payment of the second Note at the same time without fail, or allow the said Moore to sell the collateral Note at the same time F. A. Stevens "

So the introduction of which said writing in evidence Counsel for defendant objected, Objection overruled, the paper admitted in evidence, and defendant then & there excepted.

Counsel for the plaintiff also introduced in evidence a promissory note in the words & figures following.

\$943 $\frac{12}{100}$ Chicago Aug 19th 1857.

Five months after date I promise to pay to the order of Henry Moore Nine hundred and three $\frac{12}{100}$ dollars at my office with interest after due at ten per cent per annum.

F. A. Stevens.

Which Note has the following endorsement
Chicago Sept. 20th 1858. Rec'd on this note three hundred and forty nine dollars - pay \$349 "

Counsel for the plaintiff here rested his case -
The foregoing being all the evidence and testimony given and produced by the respective parties plaintiff and defendant on the trial of said issue,

And thereupon the Court did then and there at the request of plaintiff Counsel instruct the said jury as follows.

Plff. Instructions

- 1 If the jury believe from the evidence that the Note sued upon was endorsed to the plaintiff before its maturity and without notice or knowledge of any defenses against it as between Stevens & Mayo, and that it was received as collateral security for a loan of money made to Stevens by the plaintiff and as additional security for money previously loaned and ~~un~~paid, then the jury must find for the plaintiff, but if the jury further believe that the Note sued upon has been paid by Mayo to Stevens then the plaintiff can only recover the amount due to him from Stevens for which the note sued upon was collateral security.
- 2 If the jury believe from the evidence that the pl^{tt} Moore is the bona fide holder of the Note in suit, they must find for the pl^{tt}, unless they also find that said Moore received said Note after its maturity, or that he at the time of its receipt had notice of equities between the original parties thereto, or received it as collateral security for a pre-existing debt that is a debt contracted previously to the receipt of such security.
- 3 In this cause the presumption of law is that the note sued upon was endorsed before it became due, and the burden is upon the defendant to show

by satisfactory evidence that it was endorsed after it became due, and so also as to the question in case the proof shows the endorsement of the Note to the plaintiff to have taken place before its maturity, whether the plaintiff had any knowledge or reasonable notice of any equitable defence against the note as between the defendant and Sterens, such knowledge or notice must be satisfactorily shown by the proof in the case.

If the jury believe from the evidence that any of the set offs or payments were made by Mays to Sterens after the endorsement of the note, paid upon to the plaintiff & notice of such transfer to Mays, then such set offs or payments should not be allowed against the note.

So the giving of which said several instructions and to the giving of each of them separately as the same were given Counsel for defendant did them and then on behalf of said defendant except. And thereupon the Court did them and then at the request of defendant's Counsel instruct said jury as follows to wit,

Defendants Instructions given

1 If the jury believe from the evidence that Sterens (the payee of the Note sued on) did not transfer

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the same to the plaintiff unless after the maturity thereof, or that such transfer (even if before maturity) was merely collateral and without consideration or in fraud of defendant, or if at the time of such transfer the plaintiff had notice of any equities existing between the parties to the note, then the plaintiff took the note subject to such equities; and if they further believe that payment has been made to Stevens or that defendant has proved set off to the amount of the note against him the verdict should be for defendant.

2 The mere pledge of a note as collateral security for a preexisting debt and for no other consideration, is not such a transfer as will protect the holder of the collateral note against the equities existing between the parties to the note so pledged; and if the jury believe from the evidence, the Note offered in evidence by the plaintiff was so pledged to, and held by him for a preexisting debt, and that the same has been paid to Stevens, or an off set to the amount thereof against him proved, the defendant is entitled to a verdict

3 If the jury believe from the evidence that Stevens has, since the maturity of the note said on, held, owned or controlled the same, then payment to Stevens or an offset against him is good as against the plaintiff, and the defendant is entitled to a verdict, if the jury further find

that such payment or offset has been proved

4 If the Jury believe from the evidence that Stevens transferred the note sued on to the plaintiff even before the maturity thereof, merely for the security of a preexisting debt, not maturing until after the maturity of the collateral note and without any other consideration, then the effect of such transfer would be simply to make the plaintiff the agent of Stevens for the collection of such note, and not a bona fide holder for value, and any defence to said note as against Stevens, holds good as against the plaintiff

5 The jury are instructed that proof of the release and discharge of the chattel mortgage securing the note sued on is prima facie evidence of the payment of such note & in the absence of rebutting evidence conclusive as against Stevens

N^o. 5 Refused as drawn, but modified & given as follows.

5 (as modified by Court.)

The jury are instructed that proof of the release and discharge of the Chattel Mortgage securing the Note sued on is evidence tending to show the payment of such note

To the refusal by the Court to give said

fifth instruction as drawn. Counsel for defendant did then and there except.

The foregoing instructions are all that were given by the Court on behalf of the respective parties plaintiff and defendant.

And thereupon Counsel for defendant requested the Court to give the jury the following instructions to wit:

Defendants Instructions refused

- 6 If the jury believe from the evidence that Stevens has at any time acted for or on behalf of the plaintiff under express or implied authority from him or that Stevens was in any way authorized by plaintiff to act for him in the collection of the note sued on, and further believe that payment was made to Stevens, then such payment is binding on the plaintiff, and defendant is entitled to a verdict.

Which said 6th instruction the Court refused to give and marked it "refused" to the refusal to give the same. Counsel for defendant did then & there except.

And thereupon the said issues were submitted to the said jury, who found a verdict for the plaintiff, and assessed the damages at eight

hundred and twenty two dollars and ninety four cents.

And thereupon the Counsel for said defendant did then and there enter a Motion for a New trial in said Cause on the following grounds to wit

- 1 The Verdict is against the Law.
- 2 And against the Evidence
- 3 The Court gave improper instructions on the part of the plaintiff - each and every instruction of plaintiff improper -
- 4 The Court refused ^{to admit} proper instructions on the part of defendant.
- 5 The Court refused to admit proper evidence on the part of defendant.
- 6 And Admitted improper evidence on the part of plaintiff
- 7 The Court improperly modified instructions offered on the part of defendant
- 8 The Damages found by the jury are excessive

Which said Motion for a New trial the said Court did afterwards to wit on the 25th day of

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July 11 1861 overrule. to the overruling of which
and the decision of said Court thereon. Counsel
for defendant, on behalf of said defendant
did then and there except.

And because none of the said exceptions so
offered and made to the opinion of said Court
do appear upon the record of said trial
therefore on the prayer of said defendant by
his counsel the said Court has to this bill of
exceptions put his hand and Seal according to
the Statute in such case provided
Grant Goodrich. Seal

Superior Court of Chicago

Henry Moore
vs.
Simon Mayo.

The undersigned Attorneys
for the parties above named hereby stipulate
and agree that the time for filing a Bill of
Exceptions in above case may be extended to the
ninth day of October 1861 thirty two days from
the date hereof.

Chicago 7th Sept 1861.

Rich & Thomas
Attys for Defendants
Hill & Norton
Attys for Plaintiff

State of Illinois }
County of Cook & Ss.

I, Thomas. B. Carter Clerk of
the Superior Court of Chicago. in and for said
County. do hereby certify that the foregoing is a
full true and complete transcript of all the plead-
ings on file in my office, and of all orders &
Judgment entered of Record in said Court.
together with the Appeal Bond and Bill of
Exceptions, in the case wherein Henry Moore
is plaintiff and Simon Mayo defendant.

In testimony whereof. I hereunto
subscribe my name, and affix
the seal of said Court, at the
City of Chicago. in said County
This 11th day of February A.D.
1862. Thomas. B. Carter Clerk



Supreme Court of the State of Illinois
Of the April Term A.D. 1862
Simon Mayo

Plaintiff in error } Appeal from
vs } ~~error to the Superior~~
Henry Moore } Court of Chicago
Defendants in error }

And the said
Simon Mayo by A. D. Rich his
Attorney now comes and says
that in the record and proceedings
aforesaid there is manifest error
in this to-wit:

1. The Court erred in admitting
in evidence the Contract of F. A.
Stroms pledging to said Moore the
note of \$1490⁶³/₁₀₀
2. The Court erred in excluding
the evidence offered by said Mayo
as to the actual amount of money
loaned by said Moore to said Stroms
for which the note ~~in suit~~ for \$903¹²/₁₀₀
was given, and as to the statements
and admissions of said Strom in reference to the
note in suit at the time of its payment to him or
at the time of or soon after its maturity

3 The Court erred in permitting his counsel to recall the said Moore as a witness after waiving his cross-examination and other evidence had been introduced.

4 The Court erred in giving the first, second and third instructions asked by said Moore.

5. The Court erred in refusing to give the sixth instruction asked by said Mayo plain & below

6 The court erred in overruling the said Mayo's motion for a new trial

7 The said judgment was given in favor of said Moore whereas by law it ought to have been given for said Mayo. Wherefore the said Mayo prays that the said judgment may be reversed annulled and held for nothing and that he may be restored to all things he has lost by reason thereof

A. D. Rich.
atty for plff in error
Selma, Tenn.

Att'y for J. J. W. Moore
Sedney Smith
Counsel

And hereupon comes the said
Henry Moore by his attorneys
and says that ~~in~~ there is
no error, either in the record
and proceedings aforesaid or
in the rendition of the judgment
aforesaid; and the said
Henry Moore prays that the
judgment aforesaid, in form
aforesaid given, may be in
all things affirmed &c.

Hill & Norton
attorneys for
appellee
Charles C. Bonney
counsel

Supreme Court
State of Illinois

vs
John Mayo
Plff in error

vs

Jerry Moore
Def't in error

vs
Assignment of Error

D. Rich
vs Plff in error

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Sup Court
Simeon Mayo

vs
Henry Moore
Receiv & Exors.

Filed Apr. 22, 1862.
L. Veland
Clerk.

Fees \$10.00

Paid by H. B. Parks

J. B. Carter Clerk