

No. 13344

# Supreme Court of Illinois

Schwarz

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vs.

Mace, Admr.

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164

John Schwarz

vs

Jean A Mace

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

Filed Apr 20, 1838

John J. Schwarz, Appellant,

vs.

Jean Andre Mace, Administrator of Adeline Mace, deceased, Appellee.

Appeal from Cook County Circuit Court.

L. Leland  
Clerk

This was an action of debt brought by the appellee against the appellant, upon three promissory notes, made in France, in the French language. The debt demanded is \$198 75.

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The first count is upon a promissory note, dated 23d June, 1841, for two hundred francs, payable 25th November, 1841, and averring the value of the francs to be thirty-seven dollars and twenty cents.

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The second count is upon a promissory note, of like date, for the like sum, payable the 25th of January, 1842, and averring the value to be thirty-seven dollars and twenty cents.

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O. R. W. LULL,  
Attorney for Appellant

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O. R. W. LULL,

Attorney for Appellant

164  
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*Filed Apr 24, 1858*

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*To Leonard  
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164

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*Filed Apr 20, 1858*  
*L. S. Daniel*  
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L. L. Linnell  
Clerk

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164

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Filed Apr 26. 1853

L. Belmont  
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12

p. 13 The case was tried by a jury, on the 7th of January, 1858; on which day the jury rendered the following verdict: "We, the jury, find the said defendant to owe, and be indebted to the said plaintiff in the sum of one hundred and ninety-eight dollars and seventy-five cents;" and defendant moved for a new trial.

p. 14 On the 9th January, 1858, the plaintiff moved the Court to correct the verdict of the jury, "so as to distinguish the debt in the judgment to be entered thereon from the damages;" which motion the Court granted, and corrected the verdict "from the evidence at the trial," and put the verdict in the following form: "We, the jury, find the defendant to owe and be indebted unto the said plaintiff in the sum of one hundred and sixteen dollars and twenty-five cents, and assess his damages on occasion of the detention of said debt to the sum of eighty-two dollars and fifty cents;" to which correction the defendant then and there excepted.

p. 15 The Court then overruled the defendant's motion (formerly entered) for a new trial; and defendant then and there excepted.

p. 15 The Court then rendered a judgment upon the corrected verdict;

and the defendant appealed to this Court; and filed Bond and Bill of Exceptions.

It appeared from the Bill of Exceptions that the notes were translated into the English language; that a franc was worth  $18\frac{3}{4}$  or 19 p. 19 cents; that all the notes, exclusive of interest, amounted to six hundred and twenty francs; and the amount of interest was proven to the jury. p. 20

The defendant asked these instructions: "This being an action of p. 20  
"debt, unless the jury shall find that the plaintiff has specifically claim-  
"ed interest in his declaration, they will not find it as part of the dam-  
"ages of plaintiff; but will find only for the debt, being the principal p. 21  
"of the notes declared on."

"If the plaintiff shall fail to prove the exact amount claimed in an  
"action of debt, where the suit is upon an instrument in writing, the p. 21  
"jury will find for the defendant," which the Court refused; and de-  
fendant excepted.

It also appears that on the jury rendering their verdict the defendant moved in arrest of judgment; and that the Court some days after the p. 21 trial, and after the jury were discharged, ordered the Clerk to amend the verdict, as amended, and then overruled the motion in arrest;—to p. 22 all which defendant excepted.

*Errors Assigned.*

1. The Court erred in admitting each of the promissory notes in evidence.

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2. The Court erred in refusing each of the defendant's instructions.
3. The Court erred in receiving the verdict for \$198 75 debt only and entering it of record.
4. The Court erred, after the jury had been some days discharged, in finding from the evidence on the trial, how much of that verdict ought to have been debt; and how much damages.
5. The Court erred in finding and deciding what evidence was given and what facts were proven on the trial.
6. The Court erred in finding any fact testified to on the trial.
7. The verdict, as amended by the Court, was not approved by the jury.
8. The verdict as amended was not the verdict of the jury, in fact, nor in law.
9. The Court erred in rendering judgment on the amended verdict.
10. The Court erred in overruling the motion for a new trial.
11. The Court erred in overruling the motion in arrest of judgment.

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