

No. 14399

Supreme Court of Illinois

Waterman

vs.

Page

STATE OF ILLINOIS,
SUPREME COURT.
Third Grand Division.

No. 58.

*Waterman
vs
Page*

1862

14399

SUPREME COURT OF ILLINOIS.

OTTAWA.

APRIL TERM, 1862.

ZELOTUS B. MAYO ET AL., *Plaintiffs in Error*,
vs.
HORATIO F. PAGE, *Defendant in Error*.

Points and Argument for Defendant in Error.

1 The demurrer to the third plea was rightly sustained.

In *Hancock v. Hodgson*, 3 Scam. 333, this court say, the defense of usury "is in the nature of a penal action, and much strictness is required in pleading it." "We think the plea should state specifically the amount forborne, the time of forbearance and how much was paid, or agreed to be paid, by way of interest for the forbearance, so that the court could determine, from the face of the plea, the amount to be paid to the defendant and to the county."

The Statutes of 1845 and 1849, regulating interest, were in force at the time of making the note sued on.

Kinsey v. Nisley, 23 Ill. 506.

These required a forfeiture of three times the amount of interest reserved; one third to go to the defendant and two thirds to the county, in cases of money loaned for a higher rate of interest than ten per cent. per annum.

The plea, in its commencement and in the conclusion, claims to be in bar of \$138.75, whereas the body thereof, in its statement of the amount forborne and the time of forbearance, shows a bar of only \$4.40.

A plea professing to answer the whole, but answering only a part, is bad.

Nichols v. Stewart, 21 Ill. 106.

And a plea professing to answer a certain part, but answering less than such a part, is bad.

Wittick v. Traun, 27 Ala. 570-562.

The plea is uncertain in this, that in the beginning thereof, it claims a bar of \$138.75, and in the statement and body, a bar of \$4.40, and in or near the conclusion, it claims a forfeiture of "said interest so contracted to be secured."

2 The usury laws of 1847 and 1849, so far as they were applicable to notes bearing a higher rate of interest than ten per cent. for money loaned, were highly *penal*, requiring a forfeiture of three times the amount of interest reserved. These laws were repealed by the statutes of 1857. The note in suit bears date August 7, 1855. There, is therefore no law in force by which the defendants can sustain the defense sought to be made by said third plea. The reasoning of this court, as well as that of the dissenting judge, in the case of *Seegur v. Seegur*, 19 Ill. 121, amply sustains this view. As to the effect of the repeal of a penal statute, see also *Butler v. Palmer*, 1 Hill, 330, and cases there cited.

3 The note was properly admitted in evidence. The memorandum on the back of the note was no part thereof. It nowhere appears how it came there, nor that there was any consideration therefor.

Knoles v. Hill, 25 Ill. 288.

"If the memorandum is not contemporaneous, or if it is merely verbal, in each case, whatever may be its effect as a matter of defense between the original parties, it is not deemed a part of the instrument, and does not effect, much less invalidate, its original character."

Story Promissory Notes, Sec. 24.

The interest to June 1st, 1857, was not included in the judgment.

4 The judgment is correct in allowing the interest at twelve per cent. per annum after due.

Phinney v. Baldwin, 16 Ill. 108.

The transaction was open-handed and fair, free from subterfuge, and twelve per cent. interest was really much less than money has actually been worth ever since. The defendants are shrewd business men, and the court will not sanction *such* a defense unless compelled to by the strict rules of the law.

RUCKER & PAGE,

For Defendant in Error.

Dismissed for want of abstract

2 The usury laws of 1847 and 1849, so far as they were applicable to notes bearing a higher rate of interest than ten per cent. for money loaned, were highly *penal*, requiring a forfeiture of three times the amount of interest reserved. These laws were repealed by the statutes of 1857. The note in suit bears date August 7, 1855. There, is therefore no law in force by which the defendants can sustain the defense sought to be made by said third plea. The reasoning of this court, as well as that of the dissenting judge, in the case of *Seegur v. Seegur*, 19 Ill. 121, amply sustains this view. As to the effect of the repeal of a penal statute, see also *Butler v. Palmer*, 1 Hill, 330, and cases there cited.

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RUCKER & PAGE,

For Defendant in Error.

Dismissed for want of abstract

No 58

Waterman et al

v

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Points for
Defendant
in error

Filed Apr. 28. 1862
S. C. Clark.

Reuben Ellwood of the county of
DeKalb, Illinois being duly sworn doth on
oath say that he is the security upon the
Appeal bond filed in the above entitled
case and that he verily believes that he
is worth above all indebtedness, liabilities
and exemptions whatever more than
the amount of the Penal sum named
in said Appeal bond

Subscribed & sworn to }
before me this 6th day } Reuben Ellwood
of August A.D. 1862 }
Chas Kellum A. P. }



STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of De Kalb County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of De Kalb County, before the Judge thereof, between Moratis G. Paige

plaintiff, and John G. Waterman and
Julius B. Mayo

defendants, it is said that manifest error hath intervened, to the injury of the said John G. Waterman and
Julius B. Mayo

as we are informed by their complaint ~~the~~ the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Moratis G. Paige

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Moratis G. Paige

notice, together with this writ.

Witness, The Hon. John W. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 25th day of February in the year of our Lord One Thousand Eight Hundred and Sixty-two

J. Island
Clerk of the Supreme Court.



I have served the within writ of Scire Facias by reading the same to the within named Horatio F. Page this 21st day of March 1862

Service 50
Mileage 250
Return 10
Fees \$ 3.10

Baldwin Woodruff
Sheriff of Detroit Co

Dr. Ralph S. S.

John G. Mathews &
John B. Mays
No. 58 vs.
Horatio F. Page

SCIRE FACIAS.

FILED... March 24... A. D. 1862

A. S. Lawrence

SUPREME COURT OF ILLINOIS.

OTTAWA.

APRIL TERM, 1862.

ZELOTUS B. MAYO ET AL., Plaintiffs in Error, vs. HORATIO F. PAGE, Defendant in Error.

Points and Argument for Defendant in Error.

1 The demurrer to the third plea was rightly sustained.

In Hancock v. Hodgson, 3 Scam. 333, this court say, the defense of usury "is in the nature of a penal action, and much strictness is required in pleading it." "We think the plea should state specifically the amount forborne, the time of forbearance and how much was paid, or agreed to be paid, by way of interest for the forbearance, so that the court could determine, from the face of the plea, the amount to be paid to the defendant and to the county."

The Statutes of 1845 and 1849, regulating interest, were in force at the time of making the note sued on.

Kinsey v. Nisley, 23 Ill. 506.

These required a forfeiture of three times the amount of interest reserved; one third to go to the defendant and two thirds to the county, in cases of money loaned for a higher rate of interest than ten per cent. per annum.

The plea, in its commencement and in the conclusion, claims to be in bar of \$138.75, whereas the body thereof, in its statement of the amount forborne and the time of forbearance, shows a bar of only \$4.40.

A plea professing to answer the whole, but answering only a part, is bad.

Nichols v. Stewart, 21 Ill. 106.

And a plea professing to answer a certain part, but answering less than such a part, is bad.

Wittick v. Traun, 27 Ala. 570-562.

The plea is uncertain in this, that in the beginning thereof, it claims a bar of \$138.75, and in the statement and body, a bar of \$4.40, and in or near the conclusion, it claims a forfeiture of "said interest so contracted to be secured."

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RUCKER & PAGE,

For Defendant in Error.

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Waterman's

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Points & argument
for Dept in error

Filed April 28, 1862
S. L. and Co.

SUPREME COURT OF ILLINOIS.

OTTAWA.

APRIL TERM, 1862.

ZELOTUS B. MAYO ET AL., Plaintiffs in Error, vs. HORATIO F. PAGE, Defendant in Error.

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RUCKER & PAGE,

For Defendant in Error.

Waterman's

v

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Points & argument
for left in error

Filed April 28. 1862
Beland Ch.

SUPREME COURT OF ILLINOIS.

OTTAWA.

APRIL TERM, 1862.

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RUCKER & PAGE,

For Defendant in Error.

No. 58

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W. L. Garrison vol

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Points & arguments
for dependants in
error

Filed April 28, 1862
L. Island Ct.

APR 28 1862
L. Island Ct.

United States of America
State of Illinois De Kalb County ss.

Pleas before the Honorable Isaac G. Wilson Judge of the Thirteenth Judicial Circuit in the State of Illinois, at the September Term of the De Kalb County Circuit Court begun and held at the Court House in Sycamore in said County and State on the Fourth Monday, the same being the Twenty Fourth day of September in the Year of our Lord One Thousand and Eight Hundred ^{and Sixty and Ninety} of the ^{of the} United States the Eighty Fifth.

Present the Honorable Isaac G. Wilson, Judge.
" Henry Safford Sheriff
" (Sept 26) Chauncey Ellwood States Atty. Pro tem
Attest, James H. Beveridge Clerk,
Court opened by Proclamation.

Be it remembered that on the 24th day of March A.D. 1860, previous to the aforesaid Term of said Court, there was issued from the office of the Clerk of said Court, process of Summons, which said process of Summons is in words and figures

following, to wit:

" State of Illinois

De Kalb County of The People of the State of Illinois, to the Sheriff of said County - Greeting: We command You that you summon Zlotes B. Mayo & John C. Waterman if they shall be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next Term thereof, to be holden at the Court House in Sycamore, in said County on the Fourth Monday of September next to answer unto Horatio J. Page in a plea of Assumpsit to the damage of said Plaintiff as is said in the sum of Four Hundred Dollars, And have you then and there this writ, with an endorsement thereon, in what manner you executed the same.

James H. Beveridge
Clerk

Witness James H. Beveridge Clerk of said Court, and the seal thereof at Sycamore this 24th day of March A.D. 1860.

James H. Beveridge Clerk

On which is endorsed as follows, to wit:

" Served by reading to Zlotes B. Mayo the 30th day of March A.D. 1860. Served by reading to John C. Waterman the 2^d day of April A.D.

"1860 - Fees - 2 services 1.00 2 miles travel, 10
" return 10 = \$1.20 Henry Safford Sheriff"

"Filed Sept 24th 1860" "G. H. Beveridge Clerk"

And be it further remembered
that on the 13th day of September A.D. 1860
previous to the aforesaid Term of said Court,
there was filed in the office of the Clerk of
said Court a certain Declaration which
said Declaration is in words and figures as
follows, to wit:

"De Kalb County Circuit Court

"^{State of Illinois}
^{De Kalb County} Of the September Term A.D. 1860.

"Horatio Page Plaintiff in this suit by James
Sowell & Ellwood his Attorneys complain of
Zelotes B. Mayo and John C. Waterman late
partners doing business under the firm name
of Mayo & Waterman defendants, in an action
of Assumpsit For that whereas the said
Defendants as such partners, heretofore, to wit:
on the seventh day of August in the year of our
Lord One Thousand Eight Hundred and Fifty
five at Sycamore in said County of De Kalb
made their certain promissory Note and then
and then delivered the same to said plain-
tiff in and by which said note said defendants
by their partnership name, style and description

"of Mago & Waterman promised to pay to the said plaintiff or order by the name, style and description of St. J. Page on the first day of October next after the date thereof (which time has long since elapsed) the sum of Two hundred and fifty Dollars with interest thereon at the rate of Twelve per cent per annum it being for money loaned for value received. By means whereof, and by force of the statute in such case made and provided, the said Defendants became liable to pay said plaintiff said sum of money mentioned in said note, and being so liable, in consideration thereof, they and there undertook and promised to pay the same to this said plaintiff according to the tenor and effect, true intent and meaning of the said note, to wit, at the place aforesaid.

"And Whereas, also, the said Defendants, afterwards, to wit; on the Twenty third day of March in the year of our Lord One Thousand Eight Hundred and Sixty, to wit, at Sycamore in said County became and were indebted unto the Plaintiff in a large sum of money to wit, Four hundred Dollars, for money before that time lent and advanced to,

and paid, laid out and expended for said dependants by said Plaintiff at said Dependents' request; and for money before that time had and received by said Dependents to and for the use of said Plaintiff; And also in like sum for goods, wares and merchandize, before that time sold and delivered by said Plaintiff to said Dependents at like special instance and request; and also in like sum for the labor, care, and diligence of said Plaintiff, before that time done and performed by said Plaintiff, for said Dependents, and at the like instance and request of said Dependents, and being so indebted, said Dependents in consideration thereof then and there undertook and promised to pay said Plaintiff said last mentioned sum of money, when thereunto afterward requested.

Yet the said Dependents not regarding their said promises and undertakings but continuing, etc, although often requested to do have not paid said Plaintiff either of said sums of money or any part thereof, but so to do have hitherto wholly neglected and refused, and still do neglect and refuse to the damage of said Plaintiff of Four Hundred dollars and therefore bring ^{this} suit, etc.

James South & Edward
Hoff, Attys. "

"Copy of Instrument and Account sued upon."

"On or the first day of October next we promise
" to pay St. J. Page or order two Hundred & Fifty
" Dollars with interest at 12 per cent it being
" for money loaned
" Syracuse Aug 7th 1855
(Signed) "Mayo & Waterman"

" Mayo & Waterman To Noralis St. Page	Dr
" To Money lent and advanced	\$ 400. 00
" To Money expended and paid out for	\$ 400 00
" To Money received for use of	\$ 400 00
" To Goods Wares and Merchandize	\$ 400 00
" To Labor and Services	\$ 400 00
" To balance on account stated	\$ 400 00

Endorsed "Filed this 13th day of Sept. 1860"

"J. N. Beveridge, Clerk"

And afterwards, to wit, on Wednesday
the 26th day of September A.D. 1860, said day
being one of the days of the aforesaid Term of
the aforesaid Court, there was filed in said
Court a certain Plea which said Plea is
in words and figures, as follows, to wit:

"Zelotes B Mago &
John C Waterman
late partners &c under
the name of Mago & Waterman
at
Horatio F Page

De Kalb County Circuit
Court September Term
A.D. 1860.

And the said dependants
by Kellum & Webster their attorneys come and defend
the wrong and injury when &c and say that they
did not undertake and promise in manner and
form as the said plaintiff has above thereof
complained against them and of this they put
themselves upon the country &c

Kellum & Webster

Depts Atty's "

"And for further plea in this behalf the said
dependants say Actio non because they say
before and at the time of the commencement
of this suit to wit on the 20th day of March
AD 1860, at De Kalb County aforesaid. The said
plaintiff was and still is indebted to the
said dependant in a large sum of money,
to wit the sum of five hundred dollars, for
the work and labor care diligence and at-
tendance of the said dependant by the said
dependants and his servants before that time

done and performed and bestowed in and
about the business of the said plaintiff and for
the said plaintiff and for the said at his re-
quest, and for diverse materials and other
necessary things by the said dependant before that
time found and provided and used and ap-
plied in and about the said work and la-
bor for the said plaintiff and at his like
request, and for diverse goods wares and
merchandise sold and delivered by the said
dependants to the said plaintiff and at his like
request, and for money by the said dependants
before that time lent and advanced to and
paid laid out and expended for the said
plaintiff and at his like request and for money
before that time by the said plaintiff before
that time had and received to and for the use
of the said dependants and for money due and
owing from the said plaintiff to the said de-
pendants ^{for interest upon} and for the forbearance of diverse large sums of money due
and owing from the said plaintiff to the said dependants ^{and} and by the said dependants fore borne
to the said plaintiff for diverse long spaces
of time before then elapsed and for money
due and owing from the said plaintiff to the
said dependants upon an account stated
between them, which said sums of money

"so due and owing to the said dependants as aforesaid exceeds the damages sustained by the said plaintiff by reason of the non performance by the said dependants 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 from the said plaintiff to the said dependants, and the said dependants are ready and willing and hereby offer to set off and allow to the said plaintiff the full amount of said damages according to the form of the Statute made and provided, and this the said dependants are ready to verify, wherefore they pray judgment of the said plaintiff ought to have or maintain his aforesaid action thereof against them &c"

"And for further plea in this behalf the said dependants say actio non, as to the sum of One hundred and thirty eight dollars and seventy five cents because they say that before the making of the said promissory note in the said declaration mentioned, to wit. on the seventh day of August A.D. 1855 it was corruptly usurious and against the form of the Statute in such cases made and

provided agreed by and between, Horatio J. Page pages in the note mentioned in the plaintiffs declaration, and plaintiff in this suit, and these defendants that the said plaintiff should loan and advance unto the said defendants the sum of two hundred and fifty dollars, and that the said plaintiff should forbear and give day of payment thereof to the said defendants until the first day of October the next ensuing, and that the said defendants for the loan and forbearance thereof as aforesaid for the time aforesaid should give and pay to the said plaintiff on the said first day of October then next to ensue more than the legal rate of interest to wit the sum of four dollars and forty cents that is to say the sum of twelve per cent per annum, and in pursuance and in part performance of the said corrupt and usurious agreement the said plaintiff did then and there lend and advance to the said defendants the said sum of two hundred and fifty dollars, and the said defendants in the further performance of the said usurious agreement to secure the payment of the said sum of two hundred and

"and fifty dollars so lent and advanced to them as well as the said sum of four dollars and forty cents so corruptly and usuriously agreed to be paid, did then and there make execute and deliver to the said plaintiff the said promissory note in the said Declaration mentioned for the sum of two hundred and fifty dollars with interest at the rate of twelve per cent per annum as appears by the said declaration and copy of note endorsed thereon, — And the said dependents further say that the sum of four dollars and forty cents or twelve per cent per annum so agreed to be paid by the said dependants to the said plaintiff for such loan or forbearance and so secured as aforesaid exceeds the rate of ten dollars for the loan and forbearance of one hundred dollars for one year, contrary to the form of the Statute in such case made and provided — By reason whereof and by force of the Statute the said plaintiff has forfeited the whole of said interest so contracted to be received, and this the said dependants are ready to verify wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid

action against them as to the said interest
so claimed in the said plaintiffs said
Declaration, to wit, the sum of One hundred
and thirty eight dollars and seventy five
cents " " Kellum & Webster

Depts Atty"

On which is endorsed as follows, to wit:
" Filed Sept 26 1860, J. H. Beveridge CLK"
And afterwards, to wit, on
Friday the 5th day of October A.D. 1860
said day also being one of the days of the
September Term of the De Kalb County
Circuit Court for the year A.D. 1860, there
^{was filed}
~~following~~ among other proceedings in said
Court was had to a certain Replication to
the 1st & 2^d Pleas of the defendants, which
said Replication is in words and figures
following, to wit;

" Norah J. Page
" "
" Zebulon B. Mayo &
" John C. Waterman
" late Partners under
" the firm name of
" Mayo & Waterman

De Kalb County Circuit
Court September
A.D. 1860

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" And the said Plaintiff as to the plea
of the said Dependents by them first above
pleaded and whereof they have put them-
selves upon the Country, doth the like."

And as to the said plea of the said depen-
dents by them secondly above pleaded the
said Plaintiff saith that he by reason
of any thing by the said dependents in
that plea above alleged, ought not to be
barred from having and maintaining
his said action thereof against them; be-
cause he saith, that he was not nor is in-
debted to the said dependents in manner
and form as the said dependents have in
their second plea above alleged, and this
the said Plaintiff also prays may be in-
quired of by the Country &c."

James Lowell & Ellwood
Plffs Atty "

On which is endorsed as follows, to wit,
"Filed Oct. 5, 1860. J. St. Beveridge CLK"

And afterwards, to wit, on
Saturday the 6th day of October A.D.
1860, said day also being one of the days
of the September Term of the De Kalb

"County Circuit Court for the Year A.D. 1860,
there was filed in said court a certain
demurrer to the Defendants 3rd Plea, which
said Demurrer is in words and figures as
follows, to wit:

" State of Illinois } De Kalb County Circuit Court
" De Kalb County } September Term A.D. 1860.
" Horatio J. Page
" }
" Zolot B. Magot
" John C. Waterman
" Late partners under
" the firm name of
" Magot & Waterman }

And the said Plaintiff
as to the said plea of the said Defendants
by them thirdly above pleaded saith that the
same and the matters therein contained in
manner and form as the same are above
pleaded and set forth, are not sufficient
in law to bar or preclude him the said
Plaintiff from having or maintaining his
aforesaid action thereof, as to the said sum
of One hundred and thirty eight dollars
and seventy five cents or as to said interest

"or any part thereof; in said third plea mentioned against them, the said Dependents, and that be the said plaintiff is not bound by law to answer the same, And this be the said plaintiff is ready to verify; Wherefore by reason of the insufficiency of the said third plea in this behalf the said plaintiff prays judgment as to the said sum &c in said third plea mentioned &c"

"James Lowell & Ellwood
Plffs Atty's"

"And the said plaintiff according to the form of the Statute in such case made and provided, states and shows to the best here the following causes of demurred to the said third plea: that is to say"

"1st -

"That the said third plea in its commencement professes to be in bar of the specific sum of \$138⁷⁵/₁₀₀ (the interest on the note mentioned therein up to the date of the summons in this cause as appears by computation) and not in bar of the whole interest on said note or of all but the principal sum of said note as it should be

"2^d

That said 3^d plea in its conclusion is not in bar of the whole interest on said note

"or of all except the principal thereof but is in bar only of the said specific sum of \$138.75 as interest."

3d "That said note in the Declaration and said 3d plea mentioned was executed August 7th 1855 as appears and is set forth in said Declaration and 3d plea, and therefore the contract cannot be affected by the laws enacted in A.D. 1857 regulating Interest, and that the penal usury laws in force at the time of its execution having been repealed by act of A.D. 1857 there is no law in force which allows or by virtue of which the Defendants can set up the defence by said plea sought to be made to said note at the time & ceased as aforesaid"

4th "And also that the said third plea is in other respects uncertain informal and insufficient &c."

"James Lowell & Ellwood
Plffs Atlys"

On which is endorsed as follows, to wit;

"Filed Oct 6th 1860" "J. A. Beveridge Clerk"

"And afterwards, to wit, on the Saturday the 6th day of October A.D. 1860, said day also being one of the days of

of the September Term of the De Kalb County Circuit Court for the Year A.D. 1860. The following among other proceedings in said Court was had and entered of Record in said Court in words and figures as follows to wit:

"Horatio H. Page	} Asst.
"	
"Zelotes B Mayo &	
John C Waterman	
Partners &c.	
Mayo & Waterman	

"This day came the plaintiff by James Lovell & Ellwood his attorneys, and the defendants by Kellum & Webster their attorneys also come, and the parties join issue on the demurres to the 3^d Plea; And the Court after remarks of Counsel being fully advised, orders that said demurres be sustained, to which ruling of the Court in sustaining said demurres the defendants except which is allowed and here noted of record. And hereupon the defendants move the Court for leave to amend said 3^d Plea, and the Court being fully advised denies said motion and considers that the plaintiff

"be not barred by said third plea, to which ruling of the Court in denying said motion the dependents except which is also allowed and entered of record: It is therefore considered by the Court that the plaintiff have and recover of the dependents his costs of demurrer sustained and that he have execution therefor: And thereupon issue being joined, the parties waive a jury and submit this cause to the Court for trial, after which the defendants come and withdraw their plea of set-off: And the Court after hearing the proofs and allegations of the parties and remarks of Counsel finds the issue for the plaintiff and assesses his damages at the sum of Three Hundred and fifty dollars and forty cents;

It is therefore considered by the Court that the plaintiff have and recover of the dependents Three hundred and fifty dollars and forty cents his damages in form as aforesaid assessed together with his costs herein expended, and that he have execution therefor, to which judgment of the Court the dependents except which is allowed and now noted of Record: Whereupon the dependents "

"prayed an appeal to the Supreme Court which is allowed on condition that the defendants file their bond in thirty days in the sum of six hundred dollars with surety to be approved by the Clerk and afterwards the Hon. Isaac G. Wilson, Judge of said Court, who presided at said term of said Court, allowed, signed and sealed the following bill of Exceptions - that is to say -

State of Illinois }
DeKalb County }^{ss}

Horatio F. Page } DeKalb County
vs. } Circuit Court
Gelotes B. Mayo. } September Term
John C. Waterman } A.D. 1860.
late co-partners doing business
under the firm name of Mayo & Waterman

Be it remembered that on the sixth day of October, in the year of our Lord one thousand Eight hundred and sixty, which was one of the days of the September term of said DeKalb County Circuit Court, held in the County of DeKalb in the thirteenth Judicial Circuit in the State of Illinois, said cause was submitted to the Court for trial, without the

intervention of a jury. whereupon the plaintiff in this suit, in order to sustain the issue on his part, offered in evidence a certain promissory note bearing date the seventh day of August A.D. 1855, signed by Olney & Waterman which said note, is in words and figures following to wit:

"On or the first day of October
 "next we promise to Gary H. F.
 "Page, or order, two hundred &
 "fifty dollars, with interest at
 "12 per cent. it being for money
 "loaned

"Sycamore Aug. 7, 1855,

"(Signed) Olney & Waterman"
 on which is indorsed as follows:

"Olney & Waterman = 250" - "Recd.
 "interest to June 1, 1857. time extended
 "to Dec. next." "Filed Oct. 6, 1860. & Judgt
 "\$ 350. ⁴⁰" "J. H. Beveridge clk"

To the reading and receiving of which, in evidence, the defendants objected, which objection was overruled by the Court, and the same was received as evidence, to which decision of the Court overruling said objection, and receiving in evidence the said note, the said defendants at the time accepted - the foregoing was all the evidence either offered or given upon the trial or hearing of said cause, whereupon the

Court found the issue for the plaintiff and assessed his damages at the sum of three hundred and fifty dollars and forty cents. To which finding and judgment of the Court, the defendants at the time accepted, and there and there prayed that this their bill of exceptions, be signed and sealed, and made a part and parcel of the record and proceedings in said cause, which is accordingly done.

~~Attest~~ Isaac G. Wilson (Seal)

And afterwards to wit, on the first day of November A. D. 1860, there was filed in the Clerk's office of the aforesaid Court a certain appeal bond, which said appeal bond, is in words and figures as follows to wit:

"Know all men by these presents, that we, John C. Waterman, Gelotes B. Mayo, and Rebecca Elwood, all of the town of Sycamore, county of De Kalb, State of Illinois, are held and firmly bound unto Horatio F. Page, of the same place, in the penal sum of five hundred dollars to be paid to the said Horatio F. Page, his certain attorney, executors, administrators or assigns, to whose payment, well and

truly to be made. we bind ourselves
and each of us, our heirs, executors
and administrators firmly by
these presents
Sealed with our seals and dated
this first day of November A.D. 1860.

The condition of the above ob-
ligation, is such, that whereas the
said Horatio S. Page, heretore to
wit, on the sixth day of October
A.D. 1860, by the consideration of
the circuit Court of De Kalb
County, in the state of Illinois,
received a judgment against
the above bondsmen John C.
Waterson and Zebulon B. Mayo,
for the sum of three hundred
and fifty dollars and $\frac{40}{100}$ dollars,
and costs of suit, from which
said judgment the said John C.
Waterson and Zebulon B.
Mayo, have taken an appeal to
the Supreme Court of the State
of Illinois, now if the said
John C. Waterson and Zebulon
B. Mayo, shall duly prosecute
their said appeal, and in case
the judgment of ^{the} Circuit Court be
affirmed, shall pay ^{the} said judgment
and all costs, interest, and dam-
ages adjudged against them,
then this obligation to be void,
otherwise to remain in full force and effect.

(Signed) John C. Waterson (seal)

Felotes B. Mays, Seal
Reuben Ellwood Seal

On which is enclosed as follows
"Unit." Approved by me and
filed this November 1st 1860 -
J. H. Beveridge clk.

State of Illinois }
De Kalb County }
I Caleb M. Brown,
Clerk of the Circuit
Court, in and for said county, do
hereby certify that the foregoing is
a true, full, and complete transcript
of the record of said Court in the
above entitled cause, now remain-
ing in the office of said Clerk,
and a true, full, and correct
copy of the appeal bond filed
in said cause, and of the
enclosures thereto.



Given under my
hand and the seal
of said Court at
Sycamore, in said County
this 29th day of
March, A. D. 1861

Caleb M. Brown
Clerk

Henri F. Page
vs.
Pelotes B. Mayo &
John C. Waterman

Transcript of Record



Supreme Court - Ap. Term 1861 -

John C Waterman &
Jelotus Mayo

vs
Horatio F Page

} appeal from De Kalb

And now comes the said appellant
by J. Lyle Diekey their attorney & says
that in the foregoing record - judgment
& proceedings there is manifest error
& prays that said judgment & proceedings
may be reversed & for nought held -
- & assigns specially ~~the~~ grounds of error

1st - The court erred in ~~overruling~~ the sus-
taining demurrer to their third plea -

2nd - The court erred in admitting said
note to be read in evidence

3rd - The court erred in finding for the
plaintiff & in assessing his damages at
\$350 -

4th - The court erred in rendering judgment in
favor of the plaintiff -

J. Lyle Diekey
for appellants

~~153,~~ 58

John C. Waterman
& Felstius B. Mayo
vs
Horatio F. Paige

Filed March 30. 1881
L. Leland
Clerk

Supreme Court of Illinois
Ottawa April Term
1862

Zelotus B. Mayo
J. C. Waterman
Plaintiffs in error
v
H. J. Page def. in error

And the said Justice
J. Page defendant in error now comes and
says that there is no error either in
the records and proceedings aforesaid
or in giving the judgment aforesaid
and therefore he prays that the
said judgment may be affirmed
and that his costs may be adjudged
to him

By Rankin & Page
his attys.

Submitted to the Court on the part
of the Defendant in error on written ar-
guments to be filed.

Rankin & Page
his attys

Suprem Court
58

J. B. Mayo & Co
2

H. N. Page

~~~~~  
Goulden & Erwin

Filed April 26 1852  
L. Leland  
Clerk

58 13

Waterman & Mayo

2

Faige