

No. 14634

Supreme Court of Illinois

Lawrence

vs.

Schmidt

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 237 186

J. W. Middleton & Co., Stationers, 196 Lake St.

Appl. T. May

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SUPREME COURT OF ILLINOIS.

APRIL TERM, 1864.

JOACHIM LAWRENCE,
for the use of

CALVIN DEWOLF,

Plaintiff in Error;

vs.

JOHN SCHMIDT,

Defendant in Error.

Points and Brief of Defendant in Error.

This suit is brought against the *drawer* of a bank-check, drawn in the usual form, dated May 16th, 1861, for \$25 00.

The defendant rests his defence on the fact that notice of presentment and non-payment was not given to defendant, and no opportunity afforded him to take up the check

and recover the same of the banker, who at the time was solvent and had funds of the defendant in his hands more than sufficient to pay the check.



The usual bank relations existed between the *drawer* of the check and the banker on whom the check was drawn—the banker holding the funds of the drawer, at that time, more than sufficient to pay the check, and therefore was under obligation to honor the check on presentation.

From May 16th (the date of the check) to June 3rd, the banker was solvent, and defendant, during that time, could not, and did not, withdraw his funds against which and for which this check was drawn. Having issued the check, defendant was honestly obliged to leave that amount with the banker, and he had a right to believe, in the absence of notice, that the check had been duly presented and paid by the bank.

It appears from the evidence that the check passed through several hands before presentation at the bank, and after payment was refused, (except in depreciated paper,) it came into the hands of the plaintiff, the present holder, who was satisfied to hold the check against the bank and the funds deposited therein, without returning the check or giving notice to the defendant of non-payment; and having so elected and

allowed the funds to remain in the hands of the bank until its failure, and by his own negligence having prevented the defendant from taking any steps to recover the amount of the bank while solvent, he is estopped from asking the defendant to pay the check a second time.

The defendant claims that his deposits at the bank entitled him to draw current money without depreciation or discount, and had the check, which by the action of the holders thereof, had passed beyond the knowledge and control of defendant, been returned to him in due time, he could have taken up the same and recovered the amount of his banker: all of which was prevented by the election of the plaintiff to hold the check against the bank.

The testimony of Mr. Meyer, clerk for the banking-house, shows that the defendant had sufficient money on deposit to pay said check; and the testimony that "Illinois Currency" was below par and at a discount, only proves that a large amount of bills in circulation at the time, were below par and at a discount, but does not show that there were no current bills in circulation, or that the defendant or the holders of his checks were under obligation to take uncurrent money at par, of the bank, in payment of his checks or of his deposits at the bank.

ANDREW J. BROWN, *for Defendant.*

237. 186

J. Lawrence West
as
John Schmidt

Depts. Print & Bind

Filed April 25, 1864
J. Lawrence West

Supreme Court

So a chain Laurence

vs for the use }
Isaac Smith } for Appellant

The Appellant's pretence and statement that the check in question is sued upon in the name of D. Wolf is calculated to mislead it is sued upon in the name of the payee

And the only question in this cause lays between the payee and maker And the question is whether a maker of a check who promises to pay lawful money And who draws his check for money upon a Bank or Banker, when he has or had nothing but a sum of money on deposit, is entitled to notice of its dishonor; By every decision or instruction that we have seen, the giving of the check by the maker is evidence that he gave the same for full value received - this check was given and presented the same day & payment refused in money as the check called for - but the Banker offered to pay it in just such funds as defendant had on deposit with

them - the Reputation Evidence is that
he had stump tail on deposit, not
lawful money And the maker well
knew at the time "And he had no
reasonable expectation that it would
be paid" - In fact it is patent
that he knew it would not be
paid - And can it be possible
that ~~that~~ a man making a purchase
for money gives his check ^{for} money
when he has none in Bank - such
as his check calls for - is entitled
to notice, that check was taken as
cash it was an imposition to
give it - it was a wrong to oblige
the payee to go to the bank for his
money when he knew it would not
be paid And it would still ~~be~~ be
another wrong to oblige the payee
to chase him about town to
give him notice - of that he
well knew - he had our property
he was not paid for it - and
a check is no payment unless the
check is honored ~~and~~ paid, is every
authority, unless we were guilty of neglig.
in presenting the same & giving notice of
nonpayment - our acts could never have
hurt him - whether he got his ~~money~~
stump tail out of the Bank is not a question

of ours - he knew it would be paid
when he gave it - The proof is that
all he had on deposit was such
depreciated currency - Not money
The stipulation containing all the facts and
it even cannot be inferred from that
the Debt lost any of his stump tail

Yours &c
Wm Garrison
att'y

237 186

Supreme Court

Joachim Lawrence
vs for the use

John Schmidt

Argument for Appellee

Garrison & Blumenthal
Attys
J

Filed May 13. 1864
L. L. Leland M

SUPREME COURT.

JOACHIM LAWRENCE,

FOR THE USE OF CALVIN DEWOLF,

VS.

JOHN SCHMIDT.

Points of Pl'ff in Error.

This is an action of assumpsit—on a check made by defendant Schmidt, dated May 16, 1861 for \$25, payable to plaintiff or bearer at E. I. Tinkham & Co., on demand.

Which on the same day it bears date was duly presented, and payment refused; the defendant having no money in bank—but the bank offered to pay in Illinois Currency, which defendant had there on deposit, and which was then only worth, about sixty cents on the dollar. Pl'ff refused to receive said currency at par in payment of said check.

The only objection made to plaintiff's rights of recovery in the courts below, was, that no notice was proved to have been given to the defendant, of the non-payment of said check—that he was not in fact notified, the same was not paid after the said presentation.

I.

It was a fraud upon plaintiff to give such check. He knew at the time it would not be paid. A person cannot take advantage of his own wrong and FRAUD. He was not entitled to notice. His check called for lawful money and he had none in bank.

28 Ill 332. 335-

29 Ill 248. 267

24 Ill 182

2 Hill 425

7 Hill 359

1 E. Smith 400

1 Hall 78

6 Cowen 490

Story on Pro. notes see 489. 493. 498

2 1 Pickering 327

2 Story R 502

4 Duer 122

overruling the case cited
by appellee—wherein it states
there no difference between
a Bill of exchange & check

II.

The defendant having no money in bank such as his check called for, was not entitled to notice of its dishonor.

I am, anthony

GARRISON & BLANCHARD,

Att'ys. for Pl'ff.

237 186
Supreme Court

Josiah Lawrence
vs

vs
John Schmidt

Plffs Points

Filed April 21, 1864
Leland MR

SUPREME COURT.

JOACHIM LAWRENCE,

FOR THE USE OF CALVIN DEWOLF,

VS.

JOHN SCHMIDT.

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I.

28 Ill 332, 335

29 Ill 248, 267

24 Ill 182

2 Hill 425
affirma
7 Hill 359

2 Story CC 502

18 D Smith 400

18 Hall 78

6 Cowen 490

Story on Promissory notes, sections 489, 493, 498

21 Pickering 327

4 Duer 122

7 Hart & Wile 386

overruling the case of 21 Wm 372
cited by Appellee, wherein it
states there is no difference
between a Bill of Exchange & check

II.

The defendant having no money in bank such as his check called for, was not entitled to notice of its dishonor.

James Anthony

GARRISON & BLANCHARD,

Att'ys. for Pl'ff.

237 186
Supreme Court

Josiah Lawrence
vs

John Schmidt

Plffs vs

Filed April 21, 1864
Leland W. M.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO. }

PLEAS

BEFORE THE

HONORABLE EVERT VAN BUREN,

Recorder of the City of Chicago, and Presiding Judge of the Recorder's Court of said City, at a term thereof begun and held at the Court House in the City of Chicago, in the County and State aforesaid, on the first Monday, (being the Second day) of November in the year of our Lord one thousand eight hundred and fifty three and of the Independence of the said United States the eighty eighth.

Present, Honorable EVERT VAN BUREN, Recorder of the City of Chicago.

Joseph Knoll States Attorney.

D. J. Hammond Sheriff of Cook County.

Attest, DANIEL O'HARA, Clerk of said Court.

Be it remembered, that heretofore to wit, that on the third day of August A. D. 1863. there was filed in the Office of the Clerk of the Recorders Court, a certain transcript from Justice Court, Appeal Bond and Affidavit of Merits, which are respectively in the words and figures following to wit;

1732

Joachim Lawrence, for
the use of Calvin D'Wolf

Demand \$100⁰⁰

John Schmitt.

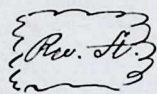
June 29th 1863. Sum. ip.
returnable July 6th 1863. 4. p. m. June 30th 1863
Sum. ret. by Const. John P. Reip, served by reading
to the within named Defendant. July 6th 1863. Suit called
at 5. p. m. C. G. Asay sworn, also Joachim Lawrence,
Mooses Leeb, John B. Meyer, Ira Lawson. After hearing
the evidence, suit cont. by agreement to July 7th 1863. 10
A. M. July 7th 1863. Suit called at 11. A. M. Counsel
on both sides terminate their argument, after the argu-
ments, Judgment is rendered in favor of said Plaintiff
and against said defendant for the sum of \$28¹⁵/₁₀₀ and
costs of suit.

July 15th 1863 Def. appears with Henry Lombard as
Surety and files Bond and takes an appeal to Recor-
ders Court of the City of Chicago

State of Illinois }
Cook County } cs.

J. Thomas B. Brown, a Justice
of the Peace, in and for said County aforesaid do hereby

"certify that the above transcript is a true copy from my
"docket of all the proceedings had before me in the above
"entitled cause.

""
"Rev. St."

Witness my hand this 15th day of July
A. D. 1863.

T. B. Brown
Justice of the Peace.

"Know All Men By These Presents, That we John
"Schmidt and Henry Lombard of the County of Cook
"in the State of Illinois, are held and firmly bound
"unto Joachim Lawrence, who sued for use of Calvin D'Wolf
"in the penal sum of Fifty five dollars lawful money of the
"United States, for the payment of which, well and truly to
"be made, we bind ourselves, our heirs, executors and admin-
"istrators, jointly, severally and firmly by these presents.

"Witness our hands and seals, this 15th day of July A. D. 1863

"The condition of the above Obligation is such, That
"whereas the said Joachim Lawrence, who sued for use of
"Calvin D'Wolf did on the 7th day of July A. D. 1863
"before Thomas B. Brown, a Justice of the Peace for the
"said County of Cook, recover a judgment against the
"above bounden John Schmidt, for the sum of twenty eight
"— and fifteen cents and costs, from which judgment
"the said John Schmidt has taken appeal to the Recorder

" Court of the City of Chicago in the County of Cook afore
" said and State of Illinois. Now, if the said John
" Schmidt shall prosecute his Appeal with effect, and shall
" pay whatever judgment may be rendered by the Court
" upon dismissal or trial of said appeal, then the above obliga-
" tion to be void, otherwise to remain in full force and
" effect.

John Schmidt *Esq.*
Henry Lombard *Esq.*

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" Approved by me at my office
" this 15th day of July 1863
" J. B. Brown

Justice of the Peace

"
" Recorder's Court of the City of Chicago

" John Schmidt

adv.

Appeal

" Joachim Lawrence
" who sues for the use
" of Calvin D'Wolf.

" State of Illinois (
" County of Cook) 95.
" City of Chicago)

John Schmitt defendant and appellant in the above
entitled cause being duly sworn doeth depose and say
that said defendant and appellant has a good defense
to said suit upon the merits as he is informed by Coun-
sel and verily believes.

John Schmitt.

Subscribed and sworn to
before me this 3^d day of
August A. D. 1863.

Daniel O'Hara
Clerk

Be it Remembered, to wit,
on the thirtieth day of November in the year last
aforesaid, it being the term of Court aforesaid, the
following among the proceedings were had and entered
of Record in said Court, which proceedings are in
the words and figures following, to wit;

Joaquim Lawrence, for the use of Calvin D. Wolf
1906. Appeal.

John Schmitt.

This day come
the said Plaintiff by Garrison and Jinks his Attor-

neys, and the said Defendant by J. M. Brown his Attorney also come and by oral consent of said parties now here given in open Court, said cause is submitted to the Court, for trial upon the issues joined therein, and the intervention of a jury waived and the Court after hearing the evidence and arguments of Counsel as well on the part of the Plaintiff as of the defendant doeth find the issue for the defendant.

And afterwards, to wit, on the same day and year last aforesaid, come the said Plaintiff and files his motion for a new trial in this cause, which said motion is in the words and figures following to wit;

Recorders Court of the City of Chicago
Joachim Lawrence
use of C. D. Wolf
John Schmitt.

And now comes the said Plaintiff by Garrison and Jenks his Attorneys, and moves for a new trial herein for the following reasons
1st The finding of the Court is contrary to the Law and the evidence
2nd The Court should have found due the Plaintiff

the amount of the Check and interest.

N. Garrison & C. L. Jenks

Attys for Plff.

And afterwards, to wit, on the same day and year last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit;

Joachim Lawrence, for the use of Calvin D. Wolf
1906. Appeal.

John Schmidt.

And now come the said Plaintiff by his attorneys and moves the Court for a new trial, and the Court hearing Counsel as well in support of said motion as in opposition thereto, and being fully advised in the premises, doeth overrule said motion and orders that said motion for a new trial be and the same hereby is overruled accordingly, to which ruling of the Court in overruling said motion for a new trial, the said Plaintiff by his Counsel then and there excepts, and on his motion twenty days are allowed in which to file his bill of exceptions

Wherefore, it is ordered and considered by the Court that the said defendant do have and recover of the said Plaintiff all his costs and charges about his defense in this behalf expended, and have execution therefor.

Whereupon the Plaintiff by his Counsel excepts to the ruling and judgment of this Court in said cause and prays an appeal therefrom to the Supreme Court of the State of Illinois, which is granted by the Court, upon condition that said Plaintiff shall within twenty days from the date, execute and file with the Clerk of this Court his Appeal Bond herein in the penal sum of One Hundred Dollars with good and sufficient Surety thereto to be approved by the Court.

And thereupon to wit, on the same day and year last aforesaid, there was filed in the Office of the Clerk of the Records Court, by the said Plaintiff his bill of exception in this cause, which said bill of exception is in the words and figures following to wit;

Recorders Court of the City of Chicago
November Term A. D. 1863.

Joachim Lawrence, for the
use of Calvin D'Wolf.

John Schmidt.

Afterwards, to wit on 13th
day of November in the November Term A. D. 1863 at
the Court House in the City of Chicago, Cook County
Illinois, before the Honorable C. Van Buren, Judge
of said Court the above named parties and their attor-
neys being present the above named cause came on for
trial and the same was tried before said Judge, a
jury being waived.

Evidence

Plaintiff introduced and read in evidence without ob-
jection the check made by defendant and filed in this
cause the signature being admitted, which is in the words
and figures following, viz:

No. 47.

Chicago, May 16. 1861.

Edward J. Tinkham & Co
Pay Joachim Lawrence or Bearer
Twenty five Dollars
and charge the same to account of
\$25 John Schmidt.

" Then said parties read in evidence the stipulation
" filed in this cause in the words and figures following
" viz;

" Joachim Lawrence who
" sues for use of Calvin D'Wolf
" " Appeal from Brown & P.
" John Schmidt, Appellant.

" This was an action of Assumpsit
" brought against Schmidt on a Bank Check in the
" following form

10 " N^o. 47. Chicago May 16. 1864.
" Edward J. Tinkham & Co.
" Pay Joachim Lawrence or bearer Twenty
" five dollars and charge the same to account of
" \$ 25⁰⁰ John Schmidt
" Indorsed " Without recourse C. G. Asay
" ~~C. D. Wolf~~ scratched off.

" Plaintiff presented above check in evidence. C. G. Asay
" for Plaintiff. Testifies; he received said check on the
" day it bears date - and same day presented it at the
" Banking office of E. J. Tinkham & Co. and they only
" offered to pay it in Illinois Currency that at that time
" was at a discount of thirty or forty per cent which
" he would not receive and afterwards he assigned the

check to Calvin D'Wolf and had no knowledge of the
 drawer of the check (John Schmidt) having any notice
 that the check was unpaid

For defence

Joachim Lawrence - Testifies that he received the
 check on the day it bears date and before noon trans-
 ferred it by delivery to Mr. Loeb and until this suit
 was brought did not know that the check was not
 paid

Mr. Loeb - Testifies That he received the check of Joa-
 chim Lawrence before noon on the day it bears date
 and some time in the afternoon, should think as
 late as three o'clock and perhaps four o'clock transferred
 it by delivery to J. W. Lawson - and had no knowledge
 afterwards until this suit was brought, but that
 the check was paid.

J. W. Lawson - Testifies that he does not distinctly re-
 member about the check, but may have received it, and
 if so transferred it again to a person whose name he

does not now know or can not recall at the present time

John B. Meyer, says, he is clerk for C. J. Tinkham & Co. and says Smith had money in Illinois currency on deposit, sufficient to pay the check, and Bank was always ready to pay his check in that currency, Tinkham & Co. failed in business June 3. 1861. - the Illinois currency was below par -

The parties agree to submit this cause on the facts as above

C. D. Wolff plaintiff

November 4 1863

A. J. Brown for deft

the above is all the evidence in this cause and upon the above evidence said cause was submitted to said Judge, who upon such evidence did find in favor of defendant, to which finding and decision Plaintiff did except - and Plaintiff did thereupon enter a motion for a new trial in writing in the following words and figures, viz;

Records Court of the City of Chicago
Joachim Lawrence use of C. D. Wolf

John Schmidt.

And now come the said

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Plaintiff by Garrison and Jenks his attorney and
moves for new trial herein for the following reasons,
1st The finding of the Court is contrary to the law and
the evidence.
2nd The Court should have found due the plaintiff
the amount of the check and interest.

A. Garrison, C. L. Jenks
Attys for Plff.

13
and said Court after hearing the argument of Counsel
thereon, did overrule said motion for new trial and
order judgment for defendant, to which decision of
said Court plaintiff did then and there except - and
Plaintiff prayed an Appeal and this his bill of
exceptions both which was granted.

In Witness whereof to the above bill
of exceptions at the Court House at Chicago aforesaid
I have hereunto set my hand and seal this 13th
day of November A. D. 1863

C. Van Buren Esq
Recorder of the City of Chicago.

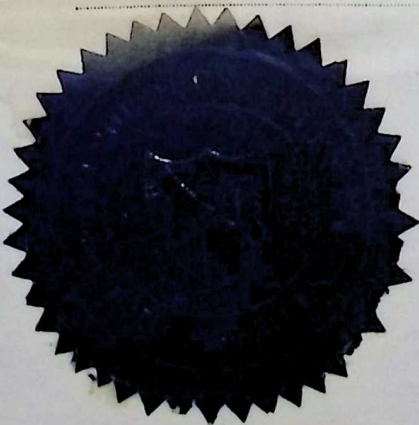
14

STATE OF ILLINOIS, }
COUNTY OF COOK, } SS.
CITY OF CHICAGO. }

I, DANIEL O'HARA, Clerk of the Recorder's Court of the City of Chicago, in the County and State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all the papers on file and proceedings had and entered of Record in a certain cause formerly pending in said Court, on the Law side thereof, wherein Joseph Lawrence who was the use of Calvin D. Wells and James Schmidt was Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this Eighteenth day of February A.D. 1864.

Daniel O'Hara Clerk.



John Schmitt
for the defendant

John Schmitt

Record

Filed April 21st 1864

Of April Term 1864

Supreme Court

for the use of Calvin D. Wolf

John Schmitt ^{vs} Plaintiff in Error
Defendant in Error

And now comes the above plaintiff in Error by
A. Garrison his Attorney and says in the record and
proceedings aforesaid and also in giving the judgment
aforesaid there is manifest Error in this to wit

- 1 The Court Erred in not giving judgment upon the facts aforesaid in favor of Plaintiff in Error
- 2 The Court Erred in finding for and rendering judgment for Defendant
- 3 The Court Erred in holding that before plaintiff could recover on the check in question he must show notice was served on Defendant before the demand was made thereon and payment. That the same was dispensed with. That such notice must be given before defendant knew he had no longer money in bank.
- 4 The Court Erred in overruling the motion for new trial and the said motion for remission of the judgment and costs and that he be restored in all things which he hath lost by occasion of said error throughout judgment.

A. Garrison
Att. for Plff.
in Error

And now comes the
defendant in Error and
says in Error and says
said judgment should be affirmed
a. D. Brown for Def. in Error

SUPREME COURT OF ILLINOIS.

APRIL TERM, 1864.

JOACHIM LAWRENCE,
for the use of

CALVIN DEWOLF,

Plaintiff in Error;

vs.

JOHN SCHMIDT,

Defendant in Error.

Points and Brief of Defendant in Error.

This suit is brought against the *drawer* of a bank-check, drawn in the usual form, dated May 16th, 1861, for \$25 00.

The defendant rests his defence on the fact that notice of presentment and non-payment was not given to defendant, and no opportunity afforded him to take up the check

and recover the same of the banker, who at the time was solvent and had funds of the defendant in his hands more than sufficient to pay the check.

An action does not lie on a bank-check against the drawer until after notice of presentment and non-payment, and due diligence on the part of the holder in giving notice of presentment and non-payment. 21 Wendell, p. 372.

The usual bank relations existed between the *drawer* of the check and the banker on whom the check was drawn—the banker holding the funds of the drawer, at that time, more than sufficient to pay the check, and therefore was under obligation to honor the check on presentation.

From May 16th (the date of the check) to June 3rd, the banker was solvent, and defendant, during that time, could not, and did not, withdraw his funds against which and for which this check was drawn. Having issued the check, defendant was honestly obliged to leave that amount with the banker, and he had a right to believe, in the absence of notice, that the check had been duly presented and paid by the bank.

It appears from the evidence that the check passed through several hands before presentation at the bank, and after payment was refused, (except in depreciated paper,) it came into the hands of the plaintiff, the present holder, who was satisfied to hold the check against the bank and the funds deposited therein, without returning the check or giving notice to the defendant of non-payment; and having so elected and

allowed the funds to remain in the hands of the bank until its failure, and by his own negligence having prevented the defendant from taking any steps to recover the amount of the bank while solvent, he is estopped from asking the defendant to pay the check a second time.

The defendant claims that his deposits at the bank entitled him to draw current money without depreciation or discount, and had the check, which by the action of the holders thereof, had passed beyond the knowledge and control of defendant, been returned to him in due time, he could have taken up the same and recovered the amount of his banker: all of which was prevented by the election of the plaintiff to hold the check against the bank.

The defendant claims that his deposits at the bank were in current and par funds, and there is no evidence or pretence that he had made any contract or agreement, or was under any obligation to receive depreciated bank bills in payment of his checks; and the attempt or offer of the bank to pay this check in depreciated bank-bills was in wrong of the defendant, for which he had a legal remedy, which he could have enforced but for the election of the plaintiff to hold the check without using due diligence to collect the same.

If there was any question between the banker and the drawer of the check as to what kind of money or bills should be paid out on this check, whether par or depreciated funds, the defendant claiming the right to draw par funds as he did by issuing such a check, the defendant was entitled to notice, that he might protect his own interest.

The testimony of Mr. Meyer, clerk for the banking-house, shows that the defendant had sufficient money on deposit to pay said check; and the testimony that "Illinois Currency" was below par and at a discount, only proves that a large amount of bills in circulation at the time, were below par and at a discount, but does not show that there were no current bills in circulation, or that the defendant or the holders of his checks were under obligation to take uncurrent money at par, of the bank, in payment of his checks or of his deposits at the bank.

ANDREW J. BROWN, *for Defendant.*

237 186

J. Sawmce use to
as
John Schmidt-

Depts Print & Bisp

Filed April 25, 1864

L. H. and O. R.