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No. _____

Supreme Court of Illinois

Horner & Hypes

vs.

Adm'x. of Starkey

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Supreme Court of Illinois. 1st Division.

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Horner and Hypes }
vs. } Error to Monroe
Adm'x of Starkey }

Page 1. The plffs, in error filed two notes in the county court of Monroe county for allowance. They were disallowed. The plffs appealed to the circuit court of Monroe county where the cause was tried at its May term 1861 by the court and judgment given for the deft. Motion was made for a new Trial. Page 3. Overruled and exceptions filed. The bill of exception recites all the evidence.

Page 4. Plffs. introduced a promissory note under seal dated November 14, 1838 made by Wm. A. Strong and Wm. C. Starkey for the payment of fifty one dollars and seventeen cents one day after date with interest at twelve per cent from date and payable to Horner and Hypes. Also another promissory note under seal dated November 14, 1838 made by Wm. C. Starkey and Wm. A. Strong for the payment of twelve dollars and sixty eight cents with twelve per cent interest from date and payable one day after date to Horner and Hypes.

Henry Horner testified that he was collecting agent for plffs., and as such handed to or sent said notes to Thomas Quick, an Attorney of Monroe county, for collection in the year 1848 or 1849. That Starkey left Lebanon and removed to Waterioo in 1839 und Horner and Hypes dissolved partnership in 1840 and that in these notes were all their accounts against Starkey.

Page 5. Thomas Quick testified that Horner placed in his hands evidences of indebtedness against Starkey for collection in 1848 or 1849. Believed they were sent in a letter and are the ones now sued on. It was an old claim of about the amount of these notes, sixty dollars and interest. In 1848 witness went, saw Starkey and told him the notes were placed in witness hands for collection. Starkey said if Hypes would wait a while he would pay it to witness. He said I am not in a condition now to pay it, but say to Mr. Hypes, that when I make a raise I'll pay it. Witness thinks he was not at that time able to pay. Witness told Starkey at the time of conversation the amount and nature of the indebtedness. Witness afterwards sent the papers back to Hypes with a statement of what Starkey said. The reason why witness did not try to collect by law said claim was, Starkey was a warm personal friend of witness. This was all the evidence.

Plffs now assign for error:

- 1st. The court erred in finding for deft.
- 2d. In refusing to grant plffs. a new trial,

BRIEF:

1st. Suits on writings obligatory, are barred in 16 years. Purp, Statutes 729, sec's 4, 17, 20.

2d. A new promise to take a case out of the statute of limitation arises out of such facts as identify the debt and indicate a present, unqualified willingness and intention to pay it, at the time acted upon and acceded to by the creditor. 12 Ill. R. 146, Reeves vs. Krull et. al. 19 Id. 191. 15 Wend. R. 284—302.

3d. It is immaterial whether the new promise is made before or after the debt is barred by the statute of limitation. The new promise is an express recognition *de novo* of the debt and the statute commences to run from the time of such new promise. Ang. on L. Sec. 237. Dean vs. Heewett, 5 Wend. R. 257. Tompkins vs. Brown 1 Denio R. 247. 8 Mass. R. 133. Hazzlebacker vs. Reeves 9 Barr. (Pa.) R. 258, Stamp vs. Hughes 5 Haw R. 93. Saund, on Pl. and Ev. Vol. 2. Part 1. Page 312, 8 Wend. R. 600.

4th. The only condition of the promise of Starkey to pay, was that plffs. should "wait a while." The reason for non payment when demanded, was; that Starkey had not the money then. And he agreed to raise it soon and then pay it, which last promise he never performed, although plffs. complied with the condition, by waiting. Where a debtor promised to pay if allowed a little time a forbearance of two years is sufficient. Gray vs. Tanes 6 Gil. (Md.) R. 82. Watkins vs. Stephens 4th Barber's R. 168.

WM. H. UNDERWOOD,
Atty for plff in error.

Horner & Hayes
vs.
Admiral of Starkey

Abstract & Brief

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Filed Nov. 15. 1861.
A. Johnston Clk

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Page 4
Page 3
Page 1

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introduced and exceptions filed. The bill of exceptions recites all the evidence.
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Horner and Hayes }
Plaintiffs }
vs }
Admiral of Starkey }
Defendant }

Supreme Court of Illinois. 1st Division.

Stephan vs. Burtch, 2 R. 182.
since a forfeiture of two years is sufficient. Gray vs. Jones & Gil (M.) R. 22. Motion vs.
confined with the condition, by writing. Where a debt is promised to pay it allowed a jury
verdict to raise it soon and then pay it, which has been held to never constitute, although bills
arise for non payment when demanded, was that Starkey had not the money then. And the
The only condition of the promise of Starkey to pay, was that bills should "cut a wife." The

Group vs. Hayes & Hay, R. 83. Judgment on bill and bill of error. 1. Page 312. 2. W. and R. 600.
Lombard vs. Brown & Davis, R. 241. 3. M. & M. R. 133. H. and P. vs. H. and P. 140. R. 229.
to run from the time of such new promise. And on L. 2nd 224. Davis vs. Horner & Hayes, R. 224.
judgment. The new promise is an express recognition of the debt and the statute confers
It is immaterial whether the new promise is made before or after the date is passed by the statute of

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State of Illinois,
SUPREME COURT,
First Grand Division.

} SS

The People of the State of Illinois,
To the Sheriff of Monroe County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Monroe county, before the Judge thereof between

Nathan Homer & Benjamin Hypes
plaintiffs and

Mary A Starkey - Admrs. of
Mrs. C Starkey deceased

defendants it is said that manifest error hath intervened to the injury of said Nathan Homer and Benjamin Hypes as we are informed by this complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Courts of the State of Illinois, at Mount Vernon, 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 Mary A Starkey - Admrs. as aforesaid

that she be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if she shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Mary A Starkey notice together with this writ.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this first day of August in the year of our Lord one thousand eight hundred and Sixty-One.

Josh Johnston

Clerk of the Supreme Court.

SUPREME COURT.

First Grand Division.

Nathan Homer &
Benjamin Hayes
Plaintiffs in Error,

VS

Mary A. Starkey - Widow
of Mr. C. Starkey Deceased
Defendant in Error.

Executed the within by reading
the same to the within named
Mary A. Starkey.
August 21st 1861

J. T. Fletcher
Att. Gen. of Ill.
Per. of Ill.
Fifty

Scire Facias
Service 50
Mileage 5
Return 10
\$0-65

FILED -

1861



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Supreme Court of Illinois. 1st Division.

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BRIEF:

- 1st. Suits on writings obligatory, are barred in 16 years. Purp: Statutes 729, sec's 4, 17, 20.
- 2d. A new promise to take a case out of the statute of limitation arises out of such facts as identify the debt and indicate a present, unqualified willingness and intention to pay it, at the time acted upon and acceded to by the creditor. 12 Ill. R. 146, Reeves vs. Krull et. al. 19 Id. 191. 15 Wend. R. 284—302.
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vs
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Abstract & Brief

Filed Nov. 15. 1861
A. J. [Signature]

Yours of Starkey
Horner and Hoopes
Filed in Monroe

Supreme Court of Illinois, 1st Division.

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34. The only condition of the promise of Starkey to pay was that bills should "bear a date". The
fact of performance of two bills is sufficient. Gray vs Jones & Co. (Mo.) 11 53. Wilson vs
Crawford with the condition, by writing. Where a paper promised to pay is allowed a bill
affixed to raise it even so the bill is a bill and promise is never perfected although bills
are not for non payment when demanded, and that Starkey had not the money then. And so
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33. It is immaterial whether the non promise is made before or after the debt is incurred by the receipt of
the money. The non promise is an express acknowledgment of the debt and the statute commences
to run from the time of such non promise. And so L. 2nd 334. Dean vs Howard & Wood 11 324.
Lombard vs Brown & Davis 11 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

32. A new promise to make a case out of the return of limitation arises out of such facts as clearly the
receipt to by the creditor. 12 Ill. 11. 112. Brown vs Kraft et al. 10 Ill. 191. 12 West. 11 321. 322.

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