No. 8784

Supreme Court of Illinois

E. Z. Ryan, et al,

vs.

Wm. L. Moberley

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State of Illinois Gallatin County
In the Gallatin Circuit Court
July Term 1852

Ebenezer Z Ryan Surviving Assignee of Bank of Illinois vs William S Mobley	Debt.

Ebenezer Z Ryan survivor of Albert G Caldwell and Ebenezer Z Ryan, assignees of the President, Directors and Company of the Bank of Illinois, appointed and qualified as such Assignees, and duly invested by assignment, with the personal estate, rights, credits and debts of said Bank, at Shawneetown, and the Branch at Lawrenceville, under and by virtue of an Act of the General Assembly of the State of Illinois, entitled "An act supplemental to an act entitled An Act to reduce the public debt one Million of dollars, and put the Bank of Illinois into liquidation", Approved 25th day of February 1845 and the statute in such case made and provided, Complaines of William S. Mobley defendant summoned &c, of a plea of debt; and the said plaintiff demands of the said defendant the sum of 150 dollars, which the said defendant owes to and unjustly detains from him as Assignee as aforesaid, For that whereas the said defendant by the name of Wm S Mobley heretofore and before the assignment, to wit, on the 28th day of October 1840 at Newhaven, ~~aforesaid County~~ aforesaid, by his certain writing obligatory the date whereof is the day and year last aforesaid, thereby then and there

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promised & bound himself to pay to Ephraim H Galewood by the name of E H Galewood on or before the first day of March 1842 one Hundred and fifty dollars for value received with Interest at the rate of twelve per cent per annum due untill paid. which said writing obligatory is here now to this Court shown. And afterwards on the day and year aforesaid at the County aforesaid, the said sum of money not being due or paid the said Ephraim H Galewood by the name of E H Galewood by his Endorsement on the back of said writing obligatory, assigned and Endorsed the same to the President Directors and Company of the Bank of Illinois for value received, And afterwards on the 10th day of April 1845 at the County aforesaid, the said President Directors and Company of the Bank of Illinois in pursuance of the Statute in such case made and provided, assigned the said writing obligatory, to the said Albert G Caldwell and Ebenezer Z Ryan, by means whereof a right accrued to the said Caldwell and Ryan which has survived to the Plaintiff, the said Caldwell being dead to have and demand of the defendant, the debts aforesaid, of which the defendant has had notice, to wit at done &c, yet the said defendant (although often requested so to do) has not as yet paid the sum of 150 dollars above demanded, or any part thereof, to the said President, Directors and Company of the Bank of Illinois, before their said assignment, or to the said Assignees as aforesaid

since the assignment of the said President, Directors and Company of the Bank of Illinois, But to pay the same or any part thereof to the said President, Directors and Company of the Bank of Illinois, before their assignment or to the said Assignees as aforesaid, since the assignment of the said President, Directors and Company of the Bank of Illinois, he the said defendant has wholly neglected and refused and still neglects and refuses to the damage of the said plaintiff as surviving assignee as aforesaid, of 200 Dollars, and therefore he brings suit &c

Wm Thomas
Atty for Pltff.

Copy Note &c

$150. On or before the first day of March 1842, I promise to pay E.H. Gatewood one Hundred and fifty Dollars, for value received witness my hand and seal, with Interest at the rate of twelve percent peranum. after due untill paid

Wm S. his x mark Mobley (Seal)

New Haven
28th October 1840

Witness
J Kirkham

Endorsed

For value received I assign this note to the President, Directors and Company of the Bank of Illinois

E.H. Gatewood

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Wm S Mobley
vs
E J. Ryan survivor
of Caldwell & Ryan
assignee &c

In the Gallatin
Circuit Court
July term 1852

And the said defendant
comes & defends the wrong and injury when
&c. and for plea in their behalf says
actio non. because he says he well and truly
paid the whole amount of the debt in the
said note sued on in this suit. on the
day the same became due & payable to
the said plaintiff. and this he is ready to
verify. wherefore &c.

Freeman atty
for Deft.

And the said plaintiff for replication
to the defendants said plea herein says
precludi non. because he says the deft.
did not pay the said debt. as by him
in his said plea alledged & of this he puts
himself upon the country

Wm Thomas atty
for pltff

And the defendant doth the like

Freeman
for deft.

Thursday 29th July 1852

Ebenezer L Ryan surviving assignee of Bank of Illinois vs Wm S Mobley } Debt

The said Plaintiff by William Thomas his attorney comes and files a declaration herein and the defendant in person and by Freeman his attorney appears waives the Sprin and service of process and files a plea of payment. being applied to by the plaintiff the defendant files his Joinder and parties agree that both matters of law and fact may be tried by the Court and that all special matter may be given in Evidence, under the Spre that would be admissable under any legal Spre or Spries that could be procured.

Whereupon the Cause being heard. It is considered by the Court that the plaintiffs recover of the defendant $150 the debt in the declaration mentioned and $180 the damages sustained by reason of the non payment of said debt also his costs herein expended. the defendant then moves the Court for new trial which was overruled the plaintiff in this cause agrees to stay execution until the next regular term of this Court, (Bill of Exceptions taken & filed by defendant)

Ebenezer L Ryan surviving assignee of the Bank of Illinois vs William S Mobley } In the Gallatin circuit Court at the July Term 1852 Action of debt on a promissory note

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Be it remembered that this day the above entitled cause came on to be heard upon an agreed state of facts hereinafter set forth, which together with the law were by consent of parties submitted to the court without the intervention of a Jury. The plaintiff introduced in evidence a note of which the following is a copy.

"$150. On or before the first day of March 1842 "I promise to pay E H Gatewood one Hundred & fifty "Dollars for value received witness my hand & seal "with interest at the rate of twelve per cent "per annum after due until paid

"New Haven 28th Oct. 1840

"Witness (Signed) Wm his H Mobley mark (Seal)
"J Kirkham"

upon the back of which note were the following words, "E H Gatewood" over which the Attorney wrote an assignment to the Bank before trial. and it was agreed between the parties that the Books of the Bank of Illinois showed that said note was discounted in said Bank by said E H Gatewood before the same became due. but the defendant objected to the competency of the Books of the Bank to prove that fact, the fact of the assignment by the Bank to Caldwell & Ryan being admitted. It was further agreed between the parties that the consideration for which said note was given, was a tract of land sold by said Gatewood to said defendant that the defendant before said note fell due, sold the same tract of land to one Eli Sanders - that Sanders agreed with Mobley to pay to said Gatewood

the sum of $133. on said note — that after said note became due, and before said Mobley had any notice of the assignment of said note by Gatewood to the Bank, said Gatewood applied to the defendant for the payment of the same, representing to the defendant that he, Gatewood had mislaid the said note, but would find it and give it to the defendant if he would pay it — that the defendant when the said application for payment was made, informed Gatewood that he had sold said land to Eli Sanders & that Sanders had agreed to pay to him Gatewood $133. on said note that Gatewood therefore agreed to receive the note of Eli Sanders, with said Mobley as security for $133. and the note of said Mobley with Sanders as security for the balance called for by said note which is sued on herein, in full, discharge payment & satisfaction thereof — that the said two notes which Gatewood agreed to receive as aforesaid, were then executed & delivered to said Gatewood — that said Gatewood placed the said two last mentioned notes in the hands of his agents that afterwards, & before said defendant had any notice of the assignment of the note sued on by Gatewood to the Bank, the said Sanders and Mobley paid the said two notes so given by them in discharge of the note sued on to the agent of Gatewood authorized by Gatewood to receive the same and this was all the evidence in the case whereupon the court upon condition of the evidence rendered a verdict and judgment, for the plaintiff for $150. debt & $180. damages and the costs of this suit. whereupon the defendant entered a motion for a new trial & in arrest

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of Judgment upon two grounds - 1st because the Judgment herein is contrary to law, 2nd because the Judgment herein is contrary to the Evidence - which motion the court overruled, to which opinion of the court in overruling said motion the defendant then & there excepted - and he prays that this his bill of Exceptions be signed & sealed by the court and incorporated in the Record - which is done

Samuel S Marshall (Seal)

State of Illinois
Gallatin County } S.S.
I P Hall Clerk of the circuit Court for said County do certify that the foregoing 8 pages contain a full true & perfect copy of the record and proceedings in the ~~at~~ before entitled cause as appears from the records and files of my office
Given under my hand & the Judicial Seal of said Court at Shawneetown this 14th day of October A D 1852.
P Hall Clerk

And the defendant in the foregoing cause assigns the following errors

1st The Court erred in allowing the Books of the Bank to prove any fact for the plff.

2nd The Court erred in rendering any judgment at all against the defts.

3rd The Court erred in overruling the defts motion for a new trial.

N. L. Freeman Atty
for Deft.

the Deft in Error says that there is no such error as is alleged

W. Thomas
for Deft.

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Ebenezer F. Ryan
Surviving assignee
of the Bank of Ills
vs
William S. Moberly

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copy of Record

N. L. Freeman
W. Thomas

clerks fee $2.41