No. 8782

Supreme Court of Illinois

E. Z. Ryan

vs.

J.May

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State of Illinois Lawrence County ss.

Pleas held before the Hon Justin Harlan Judge of the Circuit Court of Lawrence County Illinois. at the Court House in Lawrenceville on the second Monday in September 1852.

Ebenezer Z Ryan Survivor of E Z Ryan and Albert G Caldwell Assignees of the President Directors and Company of the Bank of Illinois for the use of William Thomas, Trustee of the Bank of Illinois.

against. In a plea of debt.

Jacob May.

Be it Remembered. that on the Twentieth day of February AD 1852. a Summons. was Issued. in the above entitled cause in the words following.

State of Illinois Lawrence County ss.

The People of the State of Illinois.

To the Sheriff of Richland County Greeting

We command you that you Summon. Jacob May. if he shall be found in your County personally, to be and appear before Our Circuit Court. of said County of Lawrence on the first day of the next Term thereof to be holden at the Court House in Lawrenceville on the Eighth day of March next to answer. Ebenezer Z Ryan Survivor of Albert G Caldwell and Ebenezer Z Ryan, Assignees of the President Directors and Company of the Bank of Illinois. who sues. for the use of William Thomas Trustee of the Bank of the Bank of Illinois of a plea that he render to him Seven Hundred Dollars. which he owes to and unjustly detains from him. to his damage Five Hundred Dollars. as he saith.

And have you then and there this Writ, and make return thereon in what manner you execute the same,

Seal, Witness Frederick A Thomas Clerk of our said Circuit Court at Lawrenceville this 20th February AD 1852,

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upon which afterwards, the Sheriff made the following return,

Executed by reading February the 25th 1842.

R B Marney, Shff, R.C.

On the twenty third day of February AD 1842, the said plaintiff filed his declaration in said cause as follows.

State of Illinois Lawrence County ss.

Of the Lawrence Circuit Court.

Of the March Term AD 1842.

Ebenezer Z Ryan Survivor of Albert G Caldwell an Ebenezer Z Ryan assignee of the President Directors & Company of the Bank of Illinois, Who sues for the use of William Thomas Trustee of the Bank of Illinois, Complains of Jacob Ray Defendant, being summoned &c, of a plea that he render unto said Plaintiff the sum of Seven Hundred dollars which he owes & unjustly detains from him, For that whereas the said defendant on the 15th day of December AD 1842, at Lawrenceville to wit at the County aforesaid in consideration of his having subscribed for and taken Shares of the Capital Stock of the said Corporation and of his being credited on the Stock account, of said Bank, by the sum of Seven hundred Dollars, as being paid for, and upon the Stock aforesaid, made his certain promissory note the day and year last aforesaid and thereby then and there promised to pay to the said President Directors and Company, of the Bank of Illinois the said sum of seven hundred dollars, six months after the date of said note at their branch Bank in Lawrenceville to wit at & in the County aforesaid, being the debt above demanded; and then and there delivered the said note to the said President Directors & Company of the Bank of Illinois, which said note the said

President Directors and Company of the Bank of Illinois afterwards on the 10th day of April 1815, at the County aforesaid, under and in pursuance of the Statute in that case made and provided by their certain Instrument of writing called an assignment, assigned to the said, Caldwell & Ryan as assignees, as aforesaid, by means whereof a right accrued, to the said Caldwell & Ryan, which has survived to the said Ryan, whereupon and demand the debt aforesaid of which the Defendant, had notice & that at the County, aforesaid, yet the Plaintiff avers that the said Defendant, has not paid the said debt, either to the said President Directors and Company, of the Bank of Illinois, or to the said assignees, or either of them, or to the Plaintiff, but to pay the same, has hitherto wholly failed and refused, and yet fails and refuses, to the damage of the said Plaintiff of five Hundred dollars and, therefore he brings his suit &c.

H Bowman

Atty for Plff.

Copy of note sued on attached to declaration.

$700, Lawrenceville 15 Dec 1812,

Six months after date we or either of us promise to pay to the President Directors and Company of the Bank of Illinois Seven Hundred, dollars for value received, at their Branch Bank in Lawrenceville.

Jacob May,

And afterwards at the March Term AD 1852, of said Court, the Defendant filed his plea in abatement, as follows.

Lawrence Circuit Court.
March Term AD 1852

Jacob May
ats Plea in Abatement of the Writ,

E Z Ryan Survivor &c,

And the defendant comes into Court and prays Judgment of the Plaintiffs Writ, Because he says, that the said Plaintiff Ebenezer Z Ryan was not at the time of the institution of this suit, the assignee of the President, Directors & Company of the Bank of Illinois, nor had he any legal right, title or Interest in and to the subject matter of this suit. But the said Ebenezer Z Ryan did on the 19th day of October AD 1851, at the County aforesaid together with David Smith, & George Dunlap by their certain deed of Indenture or assignment, convey transfer & assign, all his right title and interest in and to the note sued on to One William Thomas, of Morgan County State of Illinois, which deed of conveyance or assignment was signed sealed & delivered to the said William Thomas to wit, at the County aforesaid. Wherefore the said defendant says that the said Ebenezer Z Ryan has no legal right to institute this suit. Wherefore the defendant prays judgment of said Writ and that the same may abate & be quashed.

Linder Ketchell & Bowman
Attys for Deft.

Subscribed & sworn to before me
this 12th day of March AD 1852.
E Z Ryan Dr. Jacob May.

And said Cause was continued.

And afterwards at the September term 1852, of said Court the plaintiff filed a replication to said plea, to which the defendant filed a Demurrer, which was joined by the plaintiff as follows.

In Lawrence Circuit Court.

Ebenezer Z Ryan Survivor of.

Replication of Ryan Assignee
vs Indebt.
Jacob May.

And the said plaintiff for replication to the defendants plea in abatement filed herein says, That the said plaintiff did not on the 19th day of October 1851, or at any other time by Endorsement, on the note in the declaration mentioned assign the said note to William Thomas, so as absolutely to transfer and vest the property thereof, and the right of action thereon in the said Thomas, as in said plea is alleged, and of this he prays an enquiry by the Country.

Harrison for plff.

State of Illinois Lawrence County ss.

Lawrence Circuit Court.

September Term AD 1852.

Jacob May.
vs Assumpsit &c.
Ebenezer Ely in assignee
of the Bank of Illinois &c.

Now at this day comes again the defendant by his Attorneys, and says, that the replication of the said plaintiff to the plea of the said defendant by him above pleaded, and the matters & things therein contained, and set forth, are not sufficient in law, nor is the said defendant bound, further to answer the same. Wherefore he prays judgment on his said plea, aforesaid, & that the said Writ may abate &c

Shaw Mitchell & Constable.
Attorneys &c,

And the said plaintiff says that the matters and things contained in his replication are good and sufficient in law & of this he prays.

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Judgement of the Court.

Thomas. pl'ff.

And at the Term last aforesaid, the following Judgement was Entered in the cause,

Ebenezer Z Ryan Surviving Assignee of the President Directors &c. of the Bank of Illinois.

Against In debt.

Jacob May.

This day come the parties by their attornies, and the defendant having at the last Term filed a plea in abatement, the plaintiff filed a replication to the same, to which the defendant filed a Demurrer, which was joined by the plaintiff and the Questions of law arising thereon being argued, the Court decides that the replication to the plea is insufficient, and doth therefore sustain the demurrer to the same. And the said plaintiff not further replying or answering to said plea. It is ordered by the Court, that the suit aforesaid be abated, and the writ quashed, and that said Defendant recover his Costs herein.

And on the prayer of the said William Thomas Trustee of the Bank of Illinois for whose use this suit is brought, an appeal is allowed him from the foregoing Judgement to the Supreme Court, upon his executing an appeal bond in his right as trustee and in his own right as security in the penalty of $100. conditioned according to Law within 10 days.

And on the 20th day of September A.D. 1852, an Appeal bond was executed and filed in my office in the words following.

Know all men by these presents that I, William Thomas Master of the Bank of Illinois in my right as such Master and in my individual and personal right, am held and firmly bound unto Jacob May, in the sum of One Hundred ~~Dollars~~, for the true payment thereof, I bind my self, as such Master, and personally, and my heirs, Executors &c, firmly by these presents, sealed with my seal and, dated this 20th day of September 1852.

The Conditions of the above obligation is such, that whereas at the September Term 1852, of the Circuit Court, of Lawrence County Illinois, in an action of debt, pending in said Court, between Ebenezer Z Ryan Survivor of E Z Ryan and Albert G Caldwell Assignees of the President, Directors and Company of the Bank of Illinois, for the use of the said William Thomas Master of the Bank of Illinois, as Plaintiff, and the said Jacob May as defendant, the said Court, entered a judgment, that said suit abate and the Defendant, recover his costs, therein, From which Judgment, the said William Thomas Master as aforesaid prayed an appeal, to the Supreme Court, of the State, which was allowed, upon his executing an appeal bond in his right as Master and in his own right as Security, Now if the said Thomas as Master as aforesaid, shall well and truly, prosecute the appeal aforesaid, and shall pay, the costs adjudged by the Circuit Court, aforesaid, against the plaintiff in said suit, and also all costs, which, may be recovered, in the Supreme Court, in case the judgment appealed from, is affirmed, or the appeal is dismissed then this bond to be void otherwise to remain in full force and effect,

Wm Thomas. (Seal)
Master of Bk of Ill,

Wm Thomas. Esq

State of Illinois Lawrence County ss.

I Jacob Young. Clerk of the Circuit Court of Lawrence County Illinois. do certify that the foregoing pages contain a full. true and perfect. transcript. and copy of the Record. and proceedings in said Court. in the cause therein stated

Given under my hand and the seal of said Court at Lawrenceville this. 21st day of September A.D. 1852,

Jacob Young Clerk

State of Illinois. In Supreme Court

First Grand Division
November Term 1852

Elsworth J. Ryan Receiver of E. J. Ryan and Allen G. Caldwell Assignees of Bank of Illinois, for the use of William Thomas Trustee of said Bank

against } Appeal from Judgment of Lawrence County circuit court.

Jacob May } of September Term 1852

And the said Elsworth J. Ryan comes and ~~says~~ files a transcript of the Record of the said circuit court, - and says, that in the Judgment and proceedings in said court, Manifest Errors have intervened to his prejudice, and he has sets down the

following. – The said circuit court erred in entering judgment in favor of the said defendant, and in not entering judgment in favor of the plaintiff. Wherefore the said Appellant prays that the judgment aforesaid be reversed &c

W M Thomas
for Appellant.

And the Defendant by his counsel says there is no error in the foregoing Record, and that the judgment below ought not to be reversed

Constable & Kilpatrick
for Deft in Error

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Ebenezer Z Ryan
Surviving Copartner
of Bank of Illinois
vs } copy
} Record on
} Appeal

Jacob May

Frans Lawrence

Repared

In the Supreme Court.
1 Grand Division

Ebenezer J. Ryan Surviving Assignee
of Bank of Illinois
against
Jacob May

} Appeal from Lawrence

Action of Debt upon a note payable to the President Directors &c of the Bank of Illinois
The declaration alleges, that on the 15th of December 1842, in consideration of his having subscribed for, and taken Shares, of the Capital Stock of the corporation, and of his being credited on the stock account of the Bank, by the sum of $100 as being paid for, and upon the stock aforesaid, the defendant made his certain promissory note, whereby he promised to pay to the President Directors & Company of the Bank of Illinois, the said sum of $100. Six months after date, – that afterwards on the 10th April 1845, the President Directors &c, under and in pursuance of the Statute, &c by their certain instrument of writing, called an assignment, assigned said note to Caldwell & Ryan as Assignees, – whereby a right of action accrued to them, which has devolved to said Ryan said Caldwell being dead. – and concludes with the usual averments of nonpayment.
The defendant appeared to the action, and plead in abatement, "That Ryan was not at the commencement of the suit, the Assignee of the Bank, – nor had he any legal title, or interest, in, and to the subject matter of the suit, – but the said Ryan on the 15th October 1851 together with David Smith and George Dunlap, by their certain deed of Indenture or assignment, did convey, transfer or assign, all his right, title and interest, in and to the note sued on, to one William Thomas, – Wherefore he says, that the suit

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Ryan has no legal right to institute this suit. Wherefore the deft prays judgment of the said Writ, and that the same may abate and be quashed"

The plaintiff replies "that he did not on the 19th October 1851, or at any other time, by Endorsement on the note in the declaration mentioned, assign the said note to William Thomas so as absolutely to transfer and vest the property thereof, and the right of action thereon, in the said Thomas, and of this he prays and Enquiry by the Country.

Demurrer to replication by defendant joinder by pltff.

The Court sustained the Demurrer, and the plaintiff not further answering the plea judgment was Entered, that the suit abate &c. From this judgment an Appeal was allowed to this court,

The Error Assigned is, that the judgment should have been Entered for plaintiff and not for defendant.-

62 Byron
to
Jeffrey

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