

8542

No. \_\_\_\_\_

# Supreme Court of Illinois

N. S. Moore

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vs.

*Locality*  
George ~~Goritz~~

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**STATE OF ILLINOIS, ss.**

IN THE SUPREME COURT—1st Grand Divisin.

Ninian S. Moore }  
vs. } Error to Monroe.  
George Goelitz. }

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7 & 8.  
10 & 11.

This was an action of trespass by Goelitz against Moore for assault and battery, tried at the Monroe county circuit court. Pleas of the general issue and *son assault demesne* were filed by deft. and issue joined. At the October term, 1859 judgment was rendered in favor of Goelitz for \$600 and costs. The case is brought here by writ of error. Before the trial Moore applied for a continuance and filed an affidavit, setting forth, "That Jacob Lavo was a material witness for him on the trial of his suit; that said witness resided in Georgetown, St. Clair county in this State, and promised the affiant to be present at the term of court to testify in said case and said he was subpoenaed for pluff. and was absent against his (deft's) will and consent. That deft. expected to prove by said absent witness, who had testified before a justice of the peace in said case; that said witness was present at the time the supposed trespass, sued for was committed and that deft. at that time used no more force than was necessary in defence of his person, on that occasion. Affiant further swore that the witnesses, who saw the said supposed trespass, differ materially as to the circumstances attending the same and affiant could not safely proceed to trial in the absence of said witness and this affidavit was made to enable affiant to have a fair trial on the merits and that he expected to procure the attendance of said absent witness at the next term of said court.

12.  
13.

The court overruled the said motion for a continuance, to which Moore, the Deft. below at the time excepted, and assigns said decision for error.

(BRIEF.)

1. In this case the witness stated to Moore that he had been subpoenaed by the opposite party. He was bound to attend. 18 Ill. R. ~~497~~ and Moore was justified in believing the witness would obey the process of the court, and in addition the witness promised Moore to attend. 21 Ill. R. 89, 91.

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A failure to attend under such circumstances was good and sufficient ground for surprise and the court below ought to have granted a continuance.

In the case of Day et. al. vs. Gilston 22 Ill. R. 102 the witness had not been subpoenaed and the party applying for a continuance relied upon a promise of the witness alone.

2. Affidavit shows that there would be a contrariety of evidence. 21 Ill. R. 90, 22 Ill. R. 631.

W. H. UNDERWOOD,  
Atty. for Appellant.

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Ninian S. Moore

vs  
George Goetitz

Error to Monroe

Abstract & Brief

This affidavit was not  
sufficient for a continu-  
ance

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W. H. FERROD  
for Applicant

only below ought to give stated & continued  
A failure to attend upon such circumstances was good and sufficient ground for an objection and the

charges of the court, and in addition the witness examined Moore to stand. At Mr. R. 22, 21.  
In this case the witness stated to Moore that he had been subpoenaed by the opposite party. He  
(BRIEF.)

examined, and answers and decision for error.  
The court overruled the said motion for a continuance, to which Moore, the Def. below at the time

to have a fair trial on the merits and that he expected to have the substance of said report and  
and which occurred to him in the presence of said witness and the affidavit was made to create an illu-  
the only evidence produced after materiality as to the circumstances surrounding the same and against each  
momently in defense of his honor, on that occasion. When further asked that the witness above  
had testified before a Justice of the Peace in said case; that said witness was present at the time the  
said Justice, Mr. (Jury?) and himself. That said witness expected to have by said report witness, who  
present at the time of said affidavit, in said case and he was subpoenaed for said and was not  
that said witness testified to Goetitz, the Court records in this State, and having the right to be  
an affidavit sworn to by said Justice and a certain witness for him on the trial of the said  
The case is brought here by writ of error. Before the trial Moore applied for a continuance and filed  
said affidavit with the Justice of the Peace in said case and was sworn to by said Justice and was  
This case is an action of trespass in fee simple against Moore for trespass and injury, tried in the Justice  
George Goetitz  
vs  
Ninian S. Moore  
Error to Monroe

State of Illinois,  
SUPREME COURT,  
First Grand Division.

} SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Monroe Greeting:

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

Gring Gortitz

plaintiff and

Amian S. Moore

defendant it is said manifest

error hath intervened to the injury of the aforesaid Amian S. Moore

as we are informed by his complaint, and we being willing

that error, if any there be, should be corrected in due form and manner,

and that justice be done to the parties aforesaid, command you that

if judgment thereof be given, you distinctly and openly without delay

send to our Justices of our Supreme Court the record and proceedings

of the plaint aforesaid, with all things touching the same, under your seal,

so that we may have the same before our Justices aforesaid at

**Mount Vernon,** in the County of Jefferson, on the first Tuesday after

the 2<sup>nd</sup> Monday of November next, that the record and

proceedings, being inspected, we may cause to be done therein, to correct

the error, what of right ought to be done according to law.

WITNESS, the Hon. John D. Catow Chief

Justice of the Supreme Court and the seal

thereof, at MOUNT VERNON, this twelfth

day of October in the year of

our Lord one thousand eight hundred

and Sixty-One.

Noah Johnston

Clerk of the Supreme Court.



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IN THE SUPREME COURT—1st Grand Divisin.

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13. The court overruled the said motion for a continuance, to which Moore, the Deft. below at the time excepted, and assigns said decision for error.

### (BRIEF.)

1. In this case the witness stated to Moore that he had been subpoenaed by the opposite party. He was bound to attend. 18 Ill. R. 497 and Moore was justified in believing the witness would obey the process of the court, and in addition the witness promised Moore to attend. 21 Ill. R. 89, 91.

A failure to attend under such circumstances was good and sufficient ground for surprise and the court below ought to have granted a continuance.

In the case of Day et. al. vs. Gilston 22 Ill. R. 102 the witness had not been subpoenaed and the party applying for a continuance relied upon a promise of the witness alone.

2. Affidavit shows that there would be a contrariety of evidence. 21 Ill. R. 90. 22 Ill. R. 631.

W. H. UNDERWOOD,  
Atty. for Appellant.

Ninian S. Moore

vs.

George Goeltz

Error to Monroe

Abstract & Brief

Office

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W. H. L. BIRWOOD  
No. 51 N. W. 30 St. N. 301

court below, which is true, but not a circumstance.

A failure to attend under such circumstances was good and sufficient ground for exclusion and the

process of the court, and in addition the witness promised Moore to attend. 51 Ill. R. 20, 31.

(BRIEF)

12. The court overruled the said motion for a continuance, to which Moore, the Day before of the time

to have a fair trial on the merits and that he expected to procure the attendance of each agent with  
the said witnesses, (Moore's agent) and that the attendance of each agent was made to testify against  
the said witnesses, (Moore's agent) and that the attendance of each agent was made to testify against  
necessarily in defense of his business on that occasion. Although further aware that the witnesses who were  
subscribed to the bill of exchange were not present at the time the bill was presented to the bank, the  
said agent, his (Moore's) bill and account. That said agent expected to procure the attendance of each agent who  
was named in the bill of exchange to testify in and against Moore and said he was subpoenaed for bill and was not  
present at the time of court to testify in and against Moore, and promised the agent to be  
in court at the time of court to testify in and against Moore. Even was a material witness for him on the trial of his case.

13. The case is brought here by writ of error. Moore's agent applied for a continuance and that  
Moore. At the October term, 1859, judgment was rendered in favor of Goeltz for \$500 and costs  
against Moore's agent. Moore of the October term and was ordered to pay the said \$500 and costs.  
This was an action of assumpsit by Goeltz against Moore for assumpsit and breach of duty as the plaintiff  
George Goeltz.  
Moore's agent }  
Error to Monroe.

STATE OF ILLINOIS, ss.

IN THE SUPREME COURT—in Grand Division.

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A. S. Moore

By

Geo. Corlitz

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