

U. S. Rep.]

MAYFIELD V. MOORE.

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do so. If it were true, as the evidence tended to show, that the bank, before the check came to the plaintiff's hands, paid it on a forged indorsement of his signature, to a person not authorized to receive the money, it does not follow that the bank promised the plaintiff to pay the money again to him, on the presentation of the check by him for payment.

It may be, if it could be shown that the bank had charged the check on its books against the drawer, and settled with him on that basis, that the plaintiff could recover on the count for money had and received, on the ground that the rule *ex equo et bono* would be applicable, as the bank, having assented to the order and communicated its assent to the paymaster, would be considered as holding the money thus appropriated for the plaintiff's use, and, therefore, under the implied promise to him to pay it on demand.

It is hardly necessary to say, that the check in question having been drawn on a public depository, by an officer of the government, in favor of a public creditor, cannot change the rights of the parties to this suit. The check was commercial paper, and subject to the laws which govern such paper, and it can make no difference whether the parties to it are private persons or public agents—(*The U. S. v. Bank of Metropolis*, 155 Peters, 377.)

As soon as the deposit was made to the credit of Lawler as paymaster, the bank was authorized to deal with it as its own, and became answerable to Lawler for the debt in the same manner that it would have been had the deposit been placed to his personal credit.

As this case will be remanded for a new trial, it is not necessary to notice the exceptions taken to the charge of the court on the evidence introduced by the defendant.

Judgment reversed and a venire de novo awarded.
—*Chicago Legal News*.

SUPREME COURT OF ILLINOIS.

MAYFIELD V. MOORE.

Intending officer—liability of, for fees of office.

Held, that the legal right to an office confers the right to receive and appropriate the fees and emoluments legally incident to the place.

That where a person has usurped a place belonging to another, and received the accustomed fees of the office, an action for money had and received will be sustained at the suit of the person entitled to the office against the intruder.

That an officer's commission is evidence of the title, but not the title; that the title is conferred by the people, but the evidence of the right by the law.

That the appellee having received his commission as sheriff without a resort to fraud, he should be required to account only for the fees and emoluments of the office received by him after deducting the reasonable expenses incurred therein, and that if he had intruded without pretence of legal right, then a different rule should be applied.

That he should be charged from the time of entering upon the duties of the office, and not from the time the justices of the circuit court found him not entitled to the office.

That this being an equitable action, it should be governed in this respect by the same rules that would have obtained, had this been a bill for an account instead of an action for money had and received.

(Springfield, Sept., 1870.)

Opinion of the Court by Mr. Justice Walker:
This was an action of assumpsit, brought by

appellant in the Morgan Circuit Court against appellee, to recover fees received by the latter as sheriff and collector of the State, County, and other revenue. It appears that on the 6th of November, 1866, appellant and appellee were opposing candidates for the sheriff of Morgan county, in this State. On a canvass of the vote of the county, a certificate of election was given to appellee, who afterwards received a commission and entered upon and discharged the duties of the office, from the 17th day of November, 1866, till the 13th day of January, 1868. Soon after the canvass of the vote was had, appellant gave appellee notice that he should contest the election, upon the grounds that illegal votes were cast for appellee—more than sufficient to change the result and give appellant the office.

Justices of the peace were selected, in the mode pointed out by the statute, a trial was had, which resulted in favor of appellant, and finding him, on the evidence adduced, to be entitled to the office. From this decision appellee removed the case to the Circuit Court of Morgan County by appeal. A trial was there had, with a similar result. To reverse the judgment of the Circuit Court, appellee sued out a writ of error to the Supreme Court, which was subsequently dismissed by the Court, and appellant was duly commissioned, and entered upon the duties of the office. He then brought this suit to recover the fees and emoluments of the office received by appellee whilst acting as sheriff. A trial was had in the court below, where appellant recovered a judgment for \$84.65, the amount of fees received after the rendition of the judgment by the Circuit Court, and before the office was surrendered to appellant.

On the trial below, appellant offered to prove to the jury the sum of money received by appellee whilst he exercised the office, as fees, allowances and emoluments, but on the objection of the attorneys for appellee, the Court refused to permit the proof to be made, and confined him to the receipt of fees, commissions and profits, which were received after the decision of the case by the Circuit Court. This ruling of the Circuit Court is urged as ground of reversal, and is the point upon which the whole controversy turns.

It is urged by appellant that he being entitled in law to the office, the fees and emoluments incident to it followed the title and were vested in him. And on the familiar rule that where one person has received the money which in equity and good conscience belongs to another, he may sue for and recover the same, in an action for money had and received.

We presume that it will not be questioned that the legal right to an office confers the right to receive and appropriate the fees and emoluments legally incident to the place. That where such an officer performs the duties of the office, that he may demand and receive the compensation allowed by the law. It cannot be, that in such a case another person can legally claim such compensation. An officer, having rendered services, is as fully entitled to the compensation fixed by law, as is any other individual entitled to a reasonable compensation for labor and skill rendered for an individual. The fees and emoluments are legally his.