9/2

No 951

F. J. Langham for use of Frederick Ortley

vs

Joseph Labarge

March 1840

St Louis - #10

Debt - $152.37

Elias T. Langham
to the use of Frederick D. Oetty, } Notice.
vs.
Joseph Lebarge.

Sir:

Please take notice that a writ of error has been sued out of the Clerk's Office of the Supreme Court, in the above cause, returnable to the next term of the said Court, to be holden at the city of Saint Louis, within and for the Third Judicial District, on the third Monday of May next — Dated S. Louis, Feby 24, 1840.

Alex. Hamilton,
Atty. of Pltf.

I do hereby acknowledge service of the above notice,
Feby. 24, 1840.

John Bent
Atty. of Deft.

Langham, to use of
Ortley vs. Ξ.
Lebarge.-

Notice,

STATE OF MISSOURI, } ss.
Third Judicial District,

The State of Missouri, to the Honorable the Circuit Court of St. Louis County,
GREETING:

FOR AS MUCH as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of Saint Louis *before our Judge thereof, between* Elias T. Langham (Who sues to the use of Frederick D. Ortley

Plaintiff, and Joseph Labarge

Defendant,

in a ~~plea of~~ certain motion *as it is said, manifest error hath happened, to the great damage of the said* Elias T. Langham, Who sues to use of &c. *as by* his *complaint we are informed:* WE, *being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf,* COMMAND YOU, *that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the City of St. Louis, within and for the Third Judicial District, on the* third Monday *of* May *next, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done* ~~the said error, wh~~ *to them of right, and according to law, shall seem meet to be done.*

Witness, JOHN RULAND, *Clerk of our said Court, and the seal of office hereunto affixed, at the City of St. Louis, this* twentieth *day of* March *in the year of our Lord, one thousand eight hundred and* ~~thirty~~ forty. *and of the Independence of the United States of America, the* Sixty-fourth.

J. W. Ruland Clerk

No 10 2

Supreme Court 3rd Jud: Dist:

May Term 1840.

E. T. Langham (to use &c.

vs } error to St. Louis

951

Joseph Labarge

$1.50

951

Filed March 30. 1841

J. W. Ruland Clerk

S. C.

State of Missouri
County of St. Louis } ss

In Obedience to the within Writ, I herewith return the same Executed.

Given under my hand and official Seal at Office in the City of St. Louis this thirtieth day of March 1840.

J. W. Ruland Clerk

St. Louis Circuit Court

State of Missouri County of Saint Louis Set

Be it remembered that heretofore that is to say on the sixteenth day of March one thousand eight hundred and thirty nine, An appeal was filed in the Office of the Clerk of the Circuit Court of said County, from a Judgment rendered by Justice McKinney, which is in the following words and figures towit —

S. Louis June 15. 1838

Mr J. LeBarge To H. K. Ortley, & Co.

1837 Aug. 20 To amt note $152:37. Protest 2:25. $154:62

Interest 8:94 $163.56

Cr

1837 Sep. 16 By Cash $60.00

Interest 3.05 $63.05

Octo 18. " Cash 20.00

Interest 0.91 20.91

Novem 10. " Cash 20.

Interest 0.70 20.70 $104.66

Benami Garland Bal O. & Co. $58.90

which said note mentioned above is in the words and figures following $152 $\frac{37}{100}$ — St Louis 20th August 1836. Twelve months after date I promise to pay to the order of Elias T. Langham, one hundred and fifty two dollars and thirty seven cents, without offset or defalcation for value recieved — Joseph his + Labarge — Witnesses Irene Sanford. Isabella Cresap — On the face mark of which note is the following protest Protested for Non payment. St Louis 23d August 1837 — P. Walsh Noty public — Fees $2.25 — And on the said note are the following endorsements towit — Joseph LaBarge Note $152 $\frac{37}{100}$ due 20 August 1837 — Pay contents to H. K. Ortley & Co. — E. T. Langham — Pay to F. D. Ortley — H. K. Ortley & Co — Recd Sep. 16. 1837 sixty dollars on a/c H. K. Ortley & Co — Octo 18. 1837. Recd twenty dollars H. K. O & Co — Nov. 10. 1837 Recd Twenty dolls $20 — H. K. O & Co — and the summons issued by the said Justice McKinney upon the same is in the words and figures following towit — The State of Missouri to

Louis Dubreuil Constable of St Louis Township in St Louis County Greeting - We Command you to summon Joseph Labarge to appear before the undersigned one of the Justices of the peace of St Louis Township in St Louis County on the Second day of February 1839, at ten of the Clock in the forenoon at his Office in the same Township, to answer the Complaint of Elias T. Langham who sues to the use of Frederick D. Ortley for $57.86. and $6.09 damages, and summon Benami Garland as a witness for the plaintiff - Given under my hand this 19 day of January 1839 - Benj. F. McKenny Justice - On which said summons the Constable endorsed his return in the words and figures following towit - Executed this writ by reading to Joseph Labarge this Jan 21. 1839. in the Township of St Louis - Louis DuBreuil Constable by Chas Chesley D.C. - And afterwards towit on the Seventh day of February in the year one thousand eight hundred and thirty nine, the said Justice issued a Venire which is in the words and figures following towit - State of Missouri County of St Louis ss. The State of Missouri to the Constable of St Louis Township in said County Greeting - You are hereby Commanded that you Cause to Come before me Benj. F. McKenny a Justice of the Peace within and for said Township at my Office in the City of St Louis, six good and lawful men of the Township aforesaid, by whom the truth of the matter may be the better known, to make a Jury between E. Langham (use of F. D. Ortley) plaintiff, and Joseph Labarge is defendant in an action of assumpsit, because as well the said defendant, as the said plaintiff, between whom the Controversy is, have put themselves upon a Jury, and have you then there this writ - Given under my hand this 7th day of Feby A.D. 1839 - Benj. F. McKenny Justice of the Peace.

Here follows the Transcript from the Justice

February Returns 1839

1839 January 19	No. 101.	Elias T Langham use of	assumpsit on promissory note $152.37	Judgment default February 16th 1839 for	Debt $57	86
appealed February 18th	Feb. 1839	F. D. Ortley	Cr = demand $57.86	Damages	6	09
J. B. Lebeau Security		vs Joseph Labarge	damages $6.09	Summons & 2 subpœnas	"	56
				5 subpœnas	"	93¾
				Affidavit for continuance		50
				2 subpœnas		37½
				Venire 25 3 subpœnas 56		81¼
				Judgment & oath & fifa		68¾
				Appeal bond & transcript	1	25
					$5	12½
				Constable Du Breuil	$3	50

Returnable February 2d 1839 at which time Constable returns summons "executed" and on this the return day, the parties came & by consent this cause is continued to 7th Inst., at which time they again appear & the defendant makes affidavit & moves for a continuance of this suit to the 12th Inst. which motion is granted — afterwards towit on 12th Feby 1839 the parties appear, and the defendant not being ready for the trial, makes affidavit for a continuance, which is granted to the 16th February 1839 at which time the plaintiff appears, and the defendant comes not but makes default, and it appearing that this suit is founded upon an Instrument of writing ~~founded~~ executed by the defendant to the plaintiff, which has been regularly protested for nonpayment, and there is due thereon fifty seven dollars and eighty six cents for his debt, and also six dollars and nine cents for damages, whereupon it is adjudged by the Justice that Elias T. Langham, (who sues to the use of Frederick D Ortley) recover against Joseph Labarge, fifty seven dollars, and eighty six cents for his debt, six dollars and nine cents for his damages, and also his costs herein expended, and that he have thereof execution — Afterwards towit on the 18th February 1839 the defendant applies to the Justice for a new trial herein, which motion was heard and overruled; he thereupon tendered his appeal bond with J. B. Lebeau Security — approved and appeal granted to the Circuit Court. I certify that the foregoing is a full, true, and perfect transcript of all the entries made in my docket relating to the above entitled cause. Given under my hand March 16th 1839. — Benj. F. McKenney Justice of the Peace St. Louis County —

which said motion for a ~~new trial~~ continuance is in the words and figures following to wit – Vaughan vs Joseph Sabarge – The said defendant applies for a continuance & for that purpose makes affidavit according to law, & on oath states that he cannot safely proceed to trial for want of some material testimony & witness, that he has used due diligence to obtain the same, and that if a continuance be allowed, he will be able to procure such testimony & witness to be used upon the trial, and further affiant states that one Joseph Sabarge Junr. is the material witness referred to, that to the great surprise of affiant said witness left this City on this morning for the mouth of Missouri, on some sudden business, without consent or connivance of affiant, that affiant had no time to take his affidavit, expecting that he would attend at the trial of above suit; that he knows of no other witness by whom he can prove same facts, and that he expects said witness to return at soonest, tomorrow or next day, that he expects to prove by said witness utter failure of consideration for subject matter of said suit, affiant therefore ask for a continuance for a reasonable time, to obtain testimony of said witness – This application is not made for purpose of vexation or delay, but that Justice may be obtained –

Sworn to & subscribed before me — Joseph his + mark Sabarge

Feby 12 1839 – Benj F. McKenney J.P.

The appeal bond referred to in the foregoing Transcript is in the words and figures following – Elias T. Vaughan (use of F. D. Cutley) pltff vs Joseph Sabarge Deft – Before Justice McKenney

We the undersigned Joseph Sabarge principal, and John Baptiste Sebean security, acknowledge ourselves indebted to Frederick D. Cutley in the sum of One hundred and thirty dollars to be void upon this condition – Whereas Joseph Sabarge has appealed from the judgement of Benjamin F. McKenney, a Justice of the peace, in an action between the above named parties – Now if on such appeal, the Judgment of the Justice

be affirmed, or if on the trial anew in the Circuit Court, judgment be given against the appellant, and he shall satisfy such judgment, or if his appeal shall be dismissed, and he shall pay the judgment of the Justice, together with the costs of the appeal the recognizance shall be void - This 18th day of Februy 1839 - Attest Benj. F. McKenney Justice - Joseph his + Labarge - J. Bte. Lebeau.

at the November Term of our said Circuit Court mark

And afterwards towit on the twentieth day of February in the year one thousand eight hundred and forty The following proceedings were had towit - Elias T. Langham to use &c. vs Joseph Lebarge Now at this day Comes the said defendant by his attorney, and the said plaintiff although solemnly called, comes not but makes default, nor hath he prosecuted his suit with effect, It is therefore Considered by the Court that the said plaintiff take nothing by his said suit, but that said defendant go thereof without day, and recover of said plaintiff his costs and charges in this behalf expended and have thereof execution - And afterwards towit on the same day and year, the following further proceedings were had towit - Elias T. Langham to use &c. vs Joseph Lebarge - Now at this day Comes the said plaintiff by his attorney, and moves the Court to set aside the Nonsuit entered in this Cause, which being seen and heard, and by the Court here fully understood, It is Considered that the same be overruled - which said motion is in the words and figures following towit - In the Saint Louis Circuit Court Nov Tm 1839. Elias T. Langham to the use of Frederick D. Ortley vs Joseph Lebarge - Motion to set aside Nonsuit &c.

And now at this day Comes the said plaintiff by his Counsel, and moves the Court here to set aside the Nonsuit rendered in this Cause, and to grant him a new trial for the following reasons - 1. Because the Court erred in deciding that the legal title to the note being shown to be out of the plaintiff, and in the said Frederick D. Ortley by the endorsements on the back thereof, the plaintiff Langham could not maintain this action -

2. Because the Court erred in overruling the motion of the plaintiff to allow him to strike out the endorsements, or so to regulate them, as to show the title in him - A. Hamilton atty of pltff.

And afterwards at another day of the November Term 1839 of said Circuit Court, towit on the 21st day of February 1840, the following further proceedings were had towit Elias T. Langham to use &c. vs Joseph Sebarge - Bill of Exceptions filed - which Bill of Exceptions is in the words and figures following towit - In the St Louis Circuit Court Nov Tm. 1839 Langham to use &c. vs Sebarge - Bill of Exceptions - Be it remembered that on the trial of this cause, the plaintiff produced in evidence, the following note and endorsements - St. Louis 20th August 1836 - $152 37/100 Twelve months after date I promise to pay to the order of Elias T. Langham one hundred and fifty two dollars and thirty seven cents, without offset or defalcation for value recieved - Joseph his + mark Sabarg Witnesses Irene Sanford Isabella Crosap - Protested for Nonpayment St. Louis 23rd August 1837 P. Walsh Noty Public Fees $2.25 - Joseph Sabarg Note $152 37/100 - due 20 August 1837 - Pay contents to H. K. Ortley Ho - E. T. Langham - Pay to F. W. Ortley - H. K. Ortley Ho - Rec. Sep. 16. 1837 Sixty dollars on acc H. K. Ortley Ho - $60 - Octo 18. 1837 Rec. twenty dolls. H. K. O. & Co - Nov. 10. 1837. Rec. twenty dolls. $20. H. K. O. & Co - which said endorsements were admitted by the Counsel for the Defendant, and thereupon the Court decided that a judgment of non suit must be entered against the plaintiff inasmuch as the legal title of the note was shown by the endorsements to be out of the plaintiff, and in Frederick W. Ortley, in whose name the suit should have been brought, as the Court intimated - and thereupon the Counsel for the plaintiff moved the Court to permit him to strike out the endorsements, on the back of the note, or so to regulate and modify them as to show the title in the plaintiff, if the same could be shown by so doing, which motion the Court refused whereupon the plaintiff submitted to a nonsuit, and now on this same day, moved the Court to set aside the same, and to grant him a new trial, for the following reasons - In the Saint Louis Circuit

Court, Nov. Tm. 1839. Elias T. Langham to the use of Frederick D. Ortley vs. Joseph Lebarge, Motion to set aside nonsuit &c. — And now at this day comes the said plaintiff by his Counsel, and moves the Court here to set aside the nonsuit rendered in this Cause, — and to grant him a new trial for the following reasons — 1. Because the Court erred in deciding that the legal title to the note being shown to be out of the plaintiff, and in the said Frederick D. Ortley by the endorsements on the back thereof, the plaintiff Langham ~~can~~ could not maintain this action — 2. Because the Court erred in over ruling the motion of the plaintiff to allow him to strike out the endorsements, or so to regulate them, as to show the title in him — A Hamilton. atty. of pltff — which the Court over ruled — to which judgment of the said Court, over-ruling the said motion for a new trial, the Counsel for the plaintiff excepts and prays that this his bill of exceptions may be signed, sealed &c., which is done this 20th of Feby 1840. — L. E. Lawless (Ess.)

State of Missouri

County of St Louis ⁊ss I John Ruland Clerk of the Circuit Court within and for the County aforesaid, certify the foregoing to be a full, ~~com-plete~~, true and complete transcript of the record and proceedings in the Case of Elias T. Langham, who sues to the use of F. D. Ortley, against Joseph Labarge as the same remain in my Office —

In testimony whereof I have hereunto set my hand, and affixed the seal of said Court at Office in the City of St Louis, the thirteenth day of March one thousand eight hundred and forty.

J. W. Ruland Clerk

No
Supreme Court - 3rd Jud: Dist:
May Term 1840

Elias T. Langham to use &c.

vs Transcript.

Joseph Labarge

fee $2.64 paid by Attn Hamilton

Filed 30 March 1840.
JW. Ruland Clerk
S. C.

In the Supreme Court.

May Term, 1844.

Elias T. Langhan, who sues to the use of
Frederick D. Oxley,
vs.
Joseph Lebarge.

In Error.
Assignment of Errors.

And now comes the said Plaintiff, by Alexander Hamilton, his Attorney, and says that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this that the said Frederick D. Oxley was by the law of the land entitled to bring and maintain his said suit in the name of the said payee, Elias T. Langhan, as nominal Plaintiff. whereas the said Circuit Court by its judgment aforesaid held and decided that he was not so entitled to bring and maintain his said action: therefore in that there is manifest error: There is also error in this, that the Circuit Court aforesaid refused to allow the said Plaintiff to amend, by striking out or so modifying the endorsements on the back of the said note as to throw the title to the said note into the said Plaintiff. And the said Plaintiff prays that the judgment of non-suit aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be annulled, reversed, and altogether holden for nought, and that he be restored to all things which he hath lost by occasion of the said judgment, &c.

A. Hamilton,
Atty. of Plff.

Mo. Supreme Court,
May Tm. 1840.

Elias T. Langham,
to use of F. D. Ortley,
vs.
Joseph Sebargo. } Assgs. of Errors.

Hamilton,
Atty.

Filed May 18th 1860
J W Rulan & Clerk

E. T. Langham to use of F. D. Ortley v.
Joseph Lebarge
Error to St Louis Circuit Court.

Opinion of the Court
by Napton J.

This was an action brought by Langham, founded on a promissory note given to Langham by Lebarge & by Langham directed to be paid to H. R. Ortley & Co. & by H. R. Ortley & Co. ordered by indorsement to be paid to F. D. Ortley. The ~~note~~ suit was instituted in the name of Langham, the payee, to the use of Ortley the holder.

The case of Kepper v. Oliver 3. Mo. Rep. 433 is exactly in point & decides the only question arising in this case, except that, ~~of allowing~~ raised in the circuit court, in relation to the right of the plaintiff Langham to strike out the endorsements & so regulate them as to show himself the holder. This, it is obvious, he could not ~~cannot~~ do, for the form of his action declares, that Langham is not the holder

or legal owner of the note, but F. D. Ortley, to whose use the suit is brought.

There was therefore no error committed by the Court, either in directing a nonsuit, or refusing leave for the plaintiff to amend.

Judgment affirmed

W. R. Napton

Recorder M. M. Gish

G Tompkins

Langham to use of &c.
v.
Lebarge

Opinion of the
Court by
Naptor J.

Filed June 1st 1840
J W Ruland Clerk

Elias T. Langham to the use &c
vs
Joseph Labarge

In the Supreme Court
May Term 1840

This was an action brought by Elias T. Langham to the use of T. D. Ortley, against Joseph Labarge, which action was founded on a note executed by Joseph Labarge to Elias T. Langham and by Langham in writing on the back directed to be paid to H. K. Ortley & Co. And by H. K. Ortley & Co ordered, by indorsement on said note, to be paid to T. D. Ortley.

The case being submitted to the Court without Jury, the court intimated that plaintiff ought to take nonsuit, because by the Indorsements on the note the legal title had passed out of Langham and had vested in T. D. Ortley. to which nonsuit the plaintiff submitted, & afterwards for Reasons filed moved the Court to set it aside, which motion the Court Over Ruled.

The Reasons filed are in substance 1st that the court erred in deciding the legal title to the note to be out of Langham - 2d That the Court erred in refusing to permit the plaintiff to strike out or modify the indorsements on the note.

It is nowhere pretended that the indorsements on the note were ever in Blank & the law is too well settled that where an assignee is assigned to a particular person by name the legal title vests in the assignee to require, here either argument or authority. And it is believed to be equally well settled as to the inability to strike out or change such an Indorsement. Besides had he been permitted to strike out or alter the indorsements it must

Decision Sup Court Ms. from 1837 & 1839 Jeffries & Oliver. to use of Bryan page 433

be apparent that the style of the case could not have ~~applied to such~~ have been retained and consequently a different plaintiff than the one suing must have been by that process, substituted. It is therefore submitted that the court did not err in overruling the motion to set aside the non suit.

Brent for defendants in Error

Elias T. Langham to use

of Eng

Joseph Labarge

Defendants Brief

Jno. Bent

In the Supreme Court
May Term, 1840.

Elias Y. Langham
to the use of F. D. Ortley
vs.
Joseph Lebarge
} Case

This was an appeal from a Justice of the Peace to the Saint Louis Circuit Court. The claim was founded upon a negotiable promissory note drawn by the Defendant in favour of the Plaintiff, who indorsed it to H. K. Ortley & Co who indorsed it over to F. D. Ortley, to whose use the suit was brought.

On the trial the note was produced with these several endorsements upon it, all of which were admitted. The Circuit Court intimated that the Plaintiff must be non-suit, inasmuch as it appeared by the endorsements that the legal title to the note was not in the Plaintiff, but in F. D. Ortley, to whose use the suit was instituted. The Plaintiff then moved the Court to permit him to strike out the endorsement on the back of the note, or so to modify and regulate them as to show the title in the Plaintiff, and thus do away with the objection. which Motion the Court overruled, and thereupon the Plaintiff submitted to a non-suit, which he moved to set aside, which motion was overruled. The Plaintiff excepted.

The assignment of errors is general and special.

A. Hamilton for Plff.

This action was well brought in the name of the payee, as nominal plaintiff, to the use of F. D. Ortley. Being founded upon a statutory negotiable note, the decision of this Court in the case of Thomas, to the use of Deane, vs Wash and Savage (1 vol. Mo. Reports, 665) does not apply. In that case the Court decided that a plea was good, which alleged that the note was assigned to a third person before suit, and that the Plaintiff could not reply that the action was brought for the use of such person. It was so held, because, in the language of the Court, the then statute of assignments clearly required the legal owner to sue in his own name. One late act (R. C. 105

sec 6 and 7.) differs from the former in this, that notes of this description are made negotiable, and suits thereon are maintainable in like manner as in cases of inland bills of exchange, and not otherwise. We must look then, out of the statute. In the case of Waggoner vs. Colvin, (11 Wendell, 29.) the Supreme Court of New York decided, that to a plea that the legal title had been transferred by endorsement and delivery, to third persons before suit, who still were the true and lawful owners and holders of the note, it would have been a good answer that the suit was instituted by them in the name of the Plaintiff, (who was Payee,) for their own benefit, referring to 15 Johns. 247, 20 ib. 367, and 7 Cowen, 176. The holder of negotiable paper, after it has been endorsed, may sue it in the name of another with his consent, and he may bring such suit in his own name in trust for another. 7 Greenleaf, 28. 9. Mass. 423. 3 Greenleaf, 73. 15 Mass. 534. 2 Bruce, 227.

2. The payee and holder of a negotiable note with an endorsement written thereon to a third person, can without a re-assignment or receipt from the indorsee, maintain an action in his own name. 3 Wheat. 172. 3 Wash. 404. 1 Bruce. 288. 289.

3 The Plaintiffs motion to amend, by striking out the indorsement so as to remove the objection stated by the Court, should have been allowed. It could have produced no surprise, the parties plaintiff and defendant remained substantially the same, and it tended to the benefit of the Defendant, the effect of the proposed amendment only being to open the way to defence which might otherwise have been properly excluded.

A. Hamilton,
Atty. for Plff.

Mo. Supreme Court.
May Tm. 1840.

Elias T. Langham,
who sues to the use of
Frederick D. Colley,
vs.
Joseph Lebarge.
Cause & Points.
A. Hamilton,
Atty. of Plff.

In the Supreme Court
May Term 1840

Elias P. Langham,
to the use of F. D. Ortley
vs.
Joseph Lebarge

Case

This was an appeal from a Justice of the Peace, to the Saint Louis Circuit Court. The claim was founded upon a negotiable promissory note drawn by the Defendant in favor of the Plaintiff, who indorsed it to H. K. Ortley & Co. who indorsed it over to F. D. Ortley, to whose use the suit was brought.

On the trial the note was produced with these several indorsements upon it, all of which were admitted. The Circuit Court intimated that the Plaintiff must be non-suit, inasmuch as it appeared by the indorsements, that the legal title to the note was not in the Plaintiff, but in F. D. Ortley, to whose use the suit was instituted. The Plaintiff then moved the Court to permit him to strike out the indorsements on the back of the note, or so to modify and regulate them as to show the title in the Plaintiff, and thus do away with the objection, which motion the Court overruled, and thereupon the Plaintiff submitted to a non-suit, which he moved to set aside, which motion was overruled. The Plaintiff excepted.

The assignment of errors is general and special.

A. Hamilton, for Plff.

1. This action was well brought in the name of the payee, as nominal plaintiff, to the use of F. D. Ortley. Being founded upon a statutory negotiable note, the decision of this Court in the case of Thomas, to the use of Deane, vs. Wash and Savage (1 vol. Mo. Reports, 665.) does not apply. In that case the Court decided that a plea was good, which alleged that the note was assigned to a third person before suit, and that the plaintiff could not reply that the action was brought for the use of such person. It was so held, because, in the language of the Court, the then statute of assignments clearly required the legal owner to sue in his own

name. Our late act, (R. C 105, Sec 6 and 7,) differs from the former in this, that notes of this description are made negotiable, and suits thereon are maintainable, in like manner as in cases of inland bills of exchange, and not otherwise. We must look, then, out of the statute. In the case of Waggoner vs Colvin, (11 Wendell, 29,) the Supreme Court of New-York decided, that to a plea that the legal title had been transferred by endorsement and delivery, to third persons before suit, who still were the true and lawful owners and holders of the note, it would have been a good answer that the suit was instituted by them in the name of the Plaintiff, (who was payee,) for their own benefit, referring to 15 Johns. 247, 20 ib. 367, and 7 Cowen, 176. The holder of negotiable paper, after it has been indorsed, may sue it in the name of another with his consent, and he may bring such suit in his own name in trust for another. 7 Greenleaf, 28, 9 Mass 423, 3 Greenleaf, 73, 15 Mass 534 2. Breeze 227.

2 The payee and holder of a negotiable note with an endorsement written thereon to a third person, can without a re-assignment, or receipt from the indorsee, maintain an action in his own name. 3 Wheat. 172, 3 Wash. 404. 1 Breeze 288, 289.

3 The plaintiffs motion to amend by striking out the indorsements so as to remove the objection started by the Court, should have been allowed. It could have produced no surprise, the parties plaintiff and defendant remained substantially the same, and it tended to the benefit of the defendant, the effect of the proposed amendment only being to open the way to defences which might otherwise have been properly excluded.

Alex. Hamilton,
Atty. of Plff.

Mo. Supreme Court.
May Tm. 1840.

Elias T. Langham,
who sues to the use
of Frederick D. Ottey,
vs.
Joseph Lebarge.
Case & Points.
A. Hamilton,
Atty. of Plff.