McGill, Richard H. vs Leduc, Mary P admin of Paken, Joshua 1834 3rd D/ St. L. Co 140/10

12,800 owed by McG

Rec'd; Adm may sue for deceased; but Leduc failed to show proof

Women; Contract; Estates

State of Missouri
County of Saint Louis } ss Be it Remembered that heretofore to wit; on the seventh day of November in the year of our Lord One thousand eight Hundred and thirty three Mary P. Leduc Administrator of Joshua Palen deceased, by his attorney filed in the Office of the Clerk of the Circuit Court for the County of Saint Louis his petition with the note on which said Petition is founded attached thereto which said petition is in the words and figures following to wit; In the Circuit court St Louis County November Term 1833. Third Circuit Sct. Mary P. Leduc administrator of all and singular the goods & Chattels rights & Credits which were of Joshua Palen deceased plaintiff states that he holds a note on the defenants Richard H. M'Gill & Thomas Ingram Jr in substance as followeth. $1200.00. St. Louis August 10th 1831. Twelve months after date we or either of us promise to pay to the order of M. Joshua Palen twelve Hundred dollars without defalcation value received, with interest from the date at the rate of ten percent per annum, Thomas Forsyth, Richd H M'Gill, Thomas Ingram Jr – yet the said debt remains unpaid. wherefore he prays judgment for his debt and damages for the detention of the same together with costs. The plaintiffs atty Edwd Bates. and the note filed as aforesaid is in the words and figures following to wit; $1200.00. St Louis August 10th 1831. Twelve months after date we or either of us promise to pay ~~to pay~~ to the order of Mr. Joshua Palen twelve Hundred dollars without defalcation Value received with interest from the date at the rate of ten per cent per annum Thomas Forsyth. Richd H. M'Gill. Thomas Ingram Jr. Thereupon the Clerk of the said Circuit Court made out a duly Certified Copy of the foregoing Petition and indorsed thereon a writ of Summons in the following words. to wit; County of Saint Louis ss; The State of Missouri. To the Sheriff of the County of Saint Louis. Greeting We command you to summon Richard H. M'c Gill and Thomas Ingram Jr that they be and appear before the Judge of our Circuit court on the second day of the next term thereof to be held at the City of St Louis within and for the County of Saint Louis on the fourth monday of November instant then and there to answer unto the above demand of Mary P. Leduc Administrator of all and singular the goods and chattels rights and credits which were of Joshua Palen deceased as set forth in his petition of which the above is a copy and have you then there this writ (Seal) Witness Archibald Gamble Clerk of our said Circuit Court at Office this seventh day of November one thousand Eight Hundred and thirty three Archibald Gamble Clerk. and the Sheriff of the County of Saint Louis to

whom said writ was directed returned the same into court with his return thereon endorsed in the words and figures following to wit; Executed this writ by delivering a true Copy of it & the petition to Richard H M°Gill in the City of St Louis on the 8th November 1833 Thomas Ingram Jr not found in my County. John K Walker Sheriff by J Brotherton D.p.S. and afterwards to wit; at the said November Term on the 27th day of November in the year aforesaid the said defendant by his Attorney filed his pleas as follows to wit, Richard H M°Gill impleaded with Thomas Ingram. ads: Mary P Leduc admr of Joshua Palen deceased and the said defendant Richard by A R Gamble his attorney comes and defends the wrong and injury when &c and says he is not indebted to the said plaintiff in manner and form as the said plaintiff hath above thereof Complained against him and of this he puts himself upon the Country &c. A R Gamble atto and for further plea in this behalf the said defendant says that the said plaintiff ought not to have and maintain his aforesaid action against him because he says that the said Joshua Palen in his life time to wit; at the County aforesaid made and executed his last will and testament in writing signed by the said Joshua Palen and attested by two competent witnesses who subscribed their names to such will and testament in the presence of the said Joshua Palen he the said Joshua Palen being at the time of the execution of the said will and testament above the age of twenty one years and of sound and disposing mind which said last will and testament still remains in full force and effect not revoked or otherwise vacated and this the said defendant is ready to verify wherefore he prays Judgment &c. A R Gamble atto. and on the day of filing the above plea the plaintiff by his attorney filed his replication thereto in the words and figures following to wit: M P Leduc Admr of Joshua Palen vs. Richard H M°Gill and the said plaintiff as to the plea of the said defendant by him first above pleaded & whereof he has put himself upon the Country does the like and as to the plea of the said defendant by him secondly above pleaded the said plaintiff says that by reason of any thing in that plea alleged he ought not to be barred from having and maintaining his action aforesaid because he says that the said second plea & the matters & things therein pleaded & set forth are not sufficient in law to bar & preclude the action aforesaid nor is he in any wise bound by law to reply to the said plea and this he is ready to verify

wherefore he prays judgment &c Edwd Bates. and afterwards to wit:
at the March Term of the said Circuit Court in the year of Our Lord one thousand
Eight Hundred and thirty four. on the third day of May in the year aforesaid the
following proceedings were had in this Cause to wit; Mary P Leduc Administrator
of Joshua Palen vs Richard H Mc Gill. Impleaded &c. Now at this day come the
parties aforesaid by their respective attorneys aforesaid and thereupon all and
singular the matters aforesaid whereof the parties aforesaid have put them-
-selves upon the Judgment of the court are by them submitted to the Court which
being seen and heard and by the court here fully understood and mature de-
liberation being thereupon had. for that it appears to the Court that the
plea of the aforesaid defendant by him secondly above pleaded and the matters
and the matters and things therein pleaded and set forth are not sufficient
in law to bar and preclude the action aforesaid nor is he the said plaintiff
in any wise bound by law to reply to the said second plea. therefore it is
considered that the demurrer of the said plaintiff to the second plea of the
said defendant be sustained and thereupon neither of the parties requiring
a Jury all and singular the premises are by them submitted to the court
which being seen and heard and by the court here fully understood the court
do find as to the issue within joined between the parties aforesaid that he the
said Richard is indebted to the said plaintiff in manner and form
as the said plaintiff hath above thereof complained against him and the
court do further find that the said defendant is indebted to the said plaintiff
in the sum of twelve Hundred dollars as he the said plaintiff hath in his
said petition alleged and that the said plaintiff hath sustained damage by
reason of the detention of said debt to the sum of two Hundred and seven
dollars and sixty six cents. therefore it is considered that the said Mary
P Leduc Administrator of Joshua Palen deceased recover against the said
Richard H Mc Gill (who is impleaded with Thomas Ingram Jr) his debt
aforesaid in form aforesaid by the court found to be due and also his damages
aforesaid in form aforesaid by the court assessed together with his costs and
Charges by him about his suit in that behalf expended and that he have
thereof execution

State of Missouri
County of Saint Louis } ss I Archibald Gamble Clerk of the Circuit Court within and for the County of Saint Louis do hereby Certify that the foregoing is a true and perfect transcript of the Record and proceedings in the Case wherein Mary P. Leduc Administrator of Joshua Palen was plaintiff and Richard M.c Gill impleaded &c. was defendant as the same now remains of record in my office.

Given under my Hand and the Seal of the said Circuit Court at office this 2 2d day of May in the year one thousand eight Hundred and thirty four

Archibald Gamble
Clerk

Richard H McGill

Mary P Leduc Admr
of Joshua Palen deceased

And the said Richard by Gamble his attorney comes into Court and says that in the record and proceedings and in giving the judgment aforesaid by the said Circuit Court there is error in this that the said Court sustained the demurrer of the said Leduc Administrator as aforesaid to the said plea of the said Richard by him secondly above pleaded whereas by the law of the land the judgment on the said demurrer ought to have been given that the petition of the said Leduc administrator as aforesaid was insufficient. There is also error in this that the judgment on the said demurrer was given for the plaintiff below whereas by the law of the land it should have been given for the defendant below Wherefore for the errors aforesaid as well as for other errors appearing on the record the said Richard prays that the judgment aforesaid in form aforesaid in form aforesaid rendered be reversed annulled and not for nought held and esteemed

H R Gamble
atto for pltff in
Error

And the said Defendant in error comes & says that there is no such error in the said record, in manner & form as the said plaintiff in error has above alleged & this &c
Wherefore &c

Edw. Bates

No 26

Supreme Court 3rd Judicial District

June Term 1834

Richard H McGill

vs

M. S. Leduc. Admr of Joshua Palen

vs

Richard H McGill, Impldt &c.

Transcript	$ 1.40
Certificate & seal	0.50
Jag	0.62½
	$ 2.52½

Filed 24th May 1834
Joseph C Brown Clerk

assignment of Errors filed 10th June 1834
Joseph C Brown Clerk
Joinder in Error filed 10th June 1834
Joseph C Brown clerk

Ex d

STATE OF MISSOURI, } ss.
Third Judicial District,

The State of Missouri, to the Honorable the Circuit --- Court of Saint 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* Mary P Leduc Administrator of Joshua Palen - - - -

Plaintiff , and - - - - - - - - - - - - - - - -

Richard H McGill - - - - - - - - - - - - - - - - *Defendant ,*
in a plea of Debt on Petition and summons - - *as it is said, manifest error hath happened, to the great damage of the said* Richard H McGill - - - - - - - - - -
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* First — Monday - - *of* June - - - - *next, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.*

In Testimony Whereof, *I,* JOSEPH C. BROWN, *Clerk of our Supreme Court for the Third Judicial District, have hereunto set my hand and seal of Office, at Office, this* - Twentieth - - - *day of* May - - - - - *in the year of our Lord one thousand eight hundred and* thirty Four - - - - *and of the Independence of the United States of America, the* Fifty Eighth

Joseph C Brown Clerk

In obedience to the Commands of the within writ I return herewith a certified Transcript of the Record and proceedings in the case within mentioned as therein commanded

St Louis May 24th 1834

Archibald Gamble Clerk

No 26 (Ex) 449

Supreme Court 3d Judicial District

June Term 1834

Richard H. McGill

Error to St Louis Circuit Court

Mary P. Leduc Admin'd of Joshua Palen

449

Judgment reversed & Remanded book D page 22

Fa bill 47

Mt Gill } On Error the St Louis
vs
Ledue Admr. } Circuit Court.

The defendant in error sued the plaintiff in error in the circuit court, by Petition & summons & got Judgment to reverse which the present writ of error is prosecuted.

In the circuit court the defendant filed a plea, which was demurred to & overruled. On the demurrer, the counsel for the defendant attacked the Petition, & the question now presented to this court is whether the Petition be good & sufficient to entitle the plaintiff below to have Judgment.—

The proceedings are founded upon an act of the General Assembly passed Jany 17th 1825, entitled "An act simplifying proceedings at law for the collection of debts". Rev. code p. 620. The Petition pursues the form given in the statute, setting out that "Mary P Ledue administrator of all & singular the goods & chattels, rights & credits which were of Joshua Palen deceased, plaintiff states that he holds a note on the defendant" &c — It is insisted by the counsel for the Appellant, that the plaintiffs right to sue as administrator of Palen, is not set out or shewn, & that the Petition is therefore, bad & should have been so adjudged on the plaintiffs demurrer to the defendant's plea. — It is further insisted by the Appellant's counsel, that an administrator cannot sue by Petition & Summons, inasmuch, as the forms prescribed in the act do not admit of the averments required by law to entitle an administrator to recover in his representative character. To this ~~the~~ it is answered by the counsel for the Appellee — "that the Petition & summons law is a highly remedial statute, & was intended to afford a plain & simple remedy in all cases of plain & direct indebtedness evidenced by the writing of the debtor. That the object of the law is broad & comprehensive, & it's language universal in it's application & provides as well for an administrator, as for any other lawful holder of a bond or note. We do not feel called upon to decide, whether an administrator may or may not sue by Petition & summons? The statute was doubtless intended to be highly remedial & with the proper averments, made in such conformity to the statute as the

nature of the right intended to be asserted under it, would admit of or make proper, an administrator would present a strong claim to the equity of the statute. The case under consideration however, is a very different one; & the statute simplifying proceedings at law, must not be so construed as to repeal by implication, that universal principle at the foundation of all our legal proceedings — that the plaintiff must shew his right to call on the defendant to satisfy or answer his complaint or demand. — It may well be, that Leduc administered in Illinois or in England, & so the Petition would state the truth; yet it cannot be pretended, that administration so obtained, would entitle him to sue on the bond as Palen's legal representative in this state. — The Judgment is reversed the cause is remanded

M'McGirk
George Tompkins
N Wash

26 June 1834

Richard H McGill
vs
M Peleduc Admin of Joshua Palen
" "

Copied for this State

Judge Wash

Filed 23d June 1834

527 words omitted

Copied for Marsh

Richard H. McGill
Vs
M. P. Leduc Administrator of Palen } Error to St Louis Circt. Court.

This was a petition, and summons on a note for $1200, against McGill and one Ingram McGill only was served with process and pleaded Nil debet, on which issue was joined — 2nd and a special plea that Palen had made a will — The Petitioner demurred to the 2nd plea. The demurrer was sustained and the general issue being found for the petitioner judgement was rendered accordingly; to reverse which judgement the deft. McGill brings the case here —

The whole matter comes up on the demurrer and in the Circuit Court the only ground contended for on the part of McGill was that an Administrator could not sue in this form — It was not contended that the plea was good. I suppose the same ground only will be contended —

The petition and summons law is a highly remedial one; it was intended to afford a plain and simple remedy in all cases of plain and direct indebtedness evidenced by the writing of the Debtor. The object of the law is broad and comprehensible the language of it is of universal application and without exception

I contend that every man who can lawfully hold a bond or note, may lawfully sue in this form And surely an Administrator is a lawful holder —

Richd. H. McGill

Leduc^rs, adm^r. of Palen

Depts: brief

E Bates

Richard H McGill
Vs
M. P. Leduc Admx of Palen } Error to St. Louis Cret. Court

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Rich^d. H. McGill

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Leduc, adm^r. of Palen

Deft's brief

E. Bates

Richard H McGill

vs

M P Leduc Admr
of Joshua Palen

This was an action commenced by petition and summons in the St Louis Circuit Court on a promissory note

The defendant filed a plea intended to produce a demurrer and on the demurrer excepted to the petition

The point made in the Court below was that the proceeding by petition and summons was not designed for any cases requiring other averments than those contained in the statute & that it was necessary in a suit by an administrator on a contract made with the intestate that the grant of administration should appear upon the plaintiffs declaration or petition - That merely styling the plaintiff administrator and alleging, that, in that character he held the bond or note did not show him to be the legal representative in this State, because the allegation would be in its terms equally true if the plaintiff were administrator in Illinois or Maine. This point is intended to produce the decision of the question whether the statute designed this proceeding to be used in ~~other than the case of assignment mentioned in the statute~~ any case in which an averment ~~was~~ is necessary to shew the right of the plaintiff to recover other than the case of assignment mentioned in the statute There are said to be express authorities in ~~the~~ Kentucky from which State we borrow this law but as there are not here any copies of those decisions I cannot cite them to the Court

J. H. Gamble
" "

Richard H McGile

v

M P Ledue adm^r of
Joshua Palen

Brief of Plaintiff in
Error H. R. Gamble