Harley, William vs. Stapleton, Harrison 1855 Howard Co. 2nd Cir. 213/5

Stapleton, George admin of Stapleton, Harrison

Old 73/26

Affirmed

Debt = Harley surety, asked repayment from S who bet on presidential election

Plaintiff knowingly entered into an illegal contract, so he does not deserve reparation

Fayette
June 1854

W. E. Duncomb Esq.
Clerk Sup. Ct

Please send me by mail
writs of error, in the two following
cases decided at the last
Term of the Howard Cir. Ct.

William Harley vs Harrison Stapleton
on the part of the Deff. Harley.

John A. S. Major, against William
T. Harrison - garnishee of Lewis B.
Mc Mullin - on the part of the
garnishee Wil. T. Harrison -

Yours
A. Leonard

Wm Starley

vs

St Stapleton

& 1 other case

Praecipe

filed June 27 1854

Wm E Dunscomb

Clerk

Leonard

State of Missouri } In the Howard circuit
County of Howard } Court In vacation August
8th A.D 1851

Among other proceedings had in said Court on the date aforesaid a petition was filed herein which said petition is in words and figures following to wit:

William Harley Plaintiff
against
Harrison Slapleton Defendant
In the Howard Circuit Court
To December Term 1851

The plaintiff submits the following Statement of facts

On or about the 5th of November 1840 the plaintiff and the defendant and Alexander Sudgeon executed a promissory note to Solomon Houck payable to him on the first day of January 1841 for one thousand dollars for value received - The defendant was the principal and the plaintiff and Sudgeon were the securities in this debt and executed the note accordingly - The Note became the property of Antonio Guaspe by several assignments from the payee to Conelly & Glasgow - from the latter to E Leitensdorfer and from him to Guaspe and afterwards on or about the first day of February 1850 the plaintiff was compelled to pay and did pay to Antonio Guaspe four hundred and thirteen Dollars and seventy Cents the ballance of the principal and interest due on the Note and the further sum of ninety six Dollars & thirty Cents cost of suit and this payment

(2) was made pursuant to a decree of a proper judicial Tribunal in the State of Chihuahua made in a suit pending in that Tribunal between Antonia Guaspe Plaintiff and the present plaintiff Defendant the present plaintiff being at the time of the institution and pendency of that suit a resident in the State of Chihuahua and subject to the jurisdiction of that State

The plaintiff files in the Clerks office the original Note and assignments and certified copies of the judicial proceedings refered to The money paid by the plaintiff has never been refunded to him and he claims of the defendant on account of that payment the said sum of Five hundred and ten Dollars with interest thereon from the first day of February 1850 and asks judgment for the same and costs Leonard Atty

William Harley

Missouri Cooper County set
William Harley the plaintiff being sworn says that his proceedings annexed petition and the matters therein stated he believes to be true

William Harley

Subscribed and sworn to by the said William Harley before the undersigned one of the justices of the peace within and for the County of Cooper August 5th 1851

J W Draffen J P

The State of Missouri
To The Sheriff of Howard County Greeting:
We command you to summon

Harrison Stapleton to appear in the Howard Circuit Court at Fayette in Howard County on the first Monday in December next and answer the above and foregoing petition of William Harley and have you then and there this writ

Witness Andrew Cooper Clerk of our said Court with the seal thereof at Fayette this 8th day of August A.D. 1857.

(L.S.)

Andrew Cooper Clerk

I certify that I executed the within petition and summons by delivering a true copy of the same to the within named Harrison Stapleton on the 1st day of September 1857 in Howard County

N. G. Elliott Shff H.C.
By C. H. Stewart D.P.

Afterwards to wit on the 8th day of June 1858 the following order was made in said Court

William Harley
vs
Harrison Stapleton } The defendant files his answer to the plaintiffs petition and this cause is continued

Which said Answer is in the following words and figures to wit

Harrison Stapleton
ads
William Harley } In the circuit Court of Howard County

This defendant for answer to the petition of the plaintiff states that he admits the making of the note mentioned in the plaintiffs

[4]

petition and that he was the principal in said Note and that plaintiff and Alexander Dudgeon were the securities of defendant to the said Solomon Houck as stated in said petition. But this Defendant states that said Note was given to secure the payment of a wager upon the presidential election in the United States which took place in the year 1840 Solomon Houck bet this Defendant five Hundred Dollars against the sum of one thousand Dollars that William H. Harrison would receive fifty Electoral votes more than Martin Van Buren in the election of that year for President of the United States and the note mentioned in the plaintiffs petition was made and executed upon no other Consideration whatever than to secure the payment of the said Wager won by said Houck from this defendant and that said Note according to the laws of the United States is void as defendant now insists = And this defendant states that a suit was instituted against the present plaintiff on the same note in the County of Cooper in the state of Missouri before the institution of the alleged suit in the State of Chihuahua and this defendant being notified of the fact there-upon went into Court and filed a plea relying upon the fact that the said note was given to secure the payment of a sum of money won from this defendant upon a wager on the election for president of the United States and the plaintiff in that suit there-upon suffered ~~suffered~~ a nonsuit and that the present plaintiff well knew the fact that

this Defendant had refused to pay said note for the reasons aforesaid before the time at which he pretends he was compelled to pay the balance on said note in the State of Chihuahua. This defendant states that the said State of Chihuahua is a foreign State and not within the Government of the United States. That the said note upon which the petition alleges the suit was brought was made by and between citizens of the State of Missouri upon the consideration above mentioned and this defendant now insists that said note being void by the laws of the Government of Missouri it was void in all other places and that the pretended Court in this State of Chihuahua which the petition alleges rendered a decree on said note in favor of the said Antonia Guaspe, had no legal authority to render such decree nor to compel the plaintiff in this suit to pay the amount of the balance due on said note. And this defendant states that as to the assignments of said note, by Solomon Houck to Connelly and Glasgow, he has not sufficient knowledge to form a belief and whether the same was afterwards assigned by Connelly and Glasgow to one E Seitensdorfer and by him to the said Antonia Guaspe or not this defendant has not sufficient knowledge to form a belief and insists that the plaintiff be required to make proof of said facts. And this defendant states that he not being able to read the Spanish language cannot say whether the papers filed in the office of the Clerk of this Court

[6]

at the commencement of this suit, is the record of a decree of a proper judicial tribunal or not and therefore asks that plaintiff be required to prove the same and whether plaintiff paid the said several sums of money in his petition mentioned, this defendant has no knowledge and therefore also requires that the same be proved by proper legal evidence in the cause and whether the plaintiff had become a resident of the State of Chihuahua at the time he alleges the suit was instituted against him by Guaspe this defendant has not sufficient knowledge to form a belief and therefore requires proof of the fact. This defendant states that at the time the plaintiff became his security to the said Houch for the payment of the said note he was a citizen of the United States and residing in the State of Missouri and that at the time of the commencement of this suit this defendant is informed and believes he the said plaintiff was a resident of the State of Missouri. This defendant further states that the plaintiff well knew the consideration upon which the note mentioned was given and before the time the pretended suit was instituted in the State of Chihuahua often told this defendant not to pay the said note

Davis Atty
for Deft

Harrison Stapleton Defendant makes oath and says that he believes the above answer and the matters therein as

stated are true

Harrison Stapleton

I the undersigned a justice of the peace within and for the County of Howard and State of Missouri do certify that the above and foregoing affidavit was subscribed and sworn to before me on this 26th day of May AD 1852

Joseph Carey justice of the peace

And afterwards to wit on the 8th day of December 1852 the following order was made in said Court

William Harley
vs
Harrison Stapleton } This cause is ordered to be continued until the next Term of this court

And afterwards to wit on the 8th day of June 1853 the following order was made in said Court

William Harley
vs
Harrison Stapleton } This cause is continued until the next Term of this court at the cost of the plaintiff

And afterwards to wit on the 8th day of December 1853 the following order was made in said Court

William Harley
vs
Harrison Stapleton } This cause is continued

until next Term at cost of the plaintiff.

And afterwards to wit on the 6th day of June 1854 The following order was made in said court which is in the following words and figures to wit

William Harley
vs } Debt
Harrison Stapleton } now at this day come the petitioner and defendant aforesaid by their respective attorneys and join issue of the facts & allegations set forth in the petition and answer and thereupon comes also the following jury to wit Garret W. Morehead, Samuel T. Wallace John Tatum, Gabriel H. Oldham, Lewis Lynch, Thomas Howard, Lewis Walker, John Jordan, James Hocker, Joseph Myers, Thomas P. Evans, & William P. Phelps, twelve good and lawful men of the County of Howard who being duly elected tried and sworn well and truly to try the matter in controversy between the said William Harley and Harrison Stapleton upon their oaths aforesaid in manner aforesaid say that they find for the defendant. It is therefore considered by the court that the said William Harley take nothing by reason of his said action and it is further considered by the court that said Harrison Stapleton recover against the said William Harley his costs and expenses by him about his defence in this behalf laid out and

expended and that he have there-of execution

And afterwards to wit on the 7th day of June 1854 the following order was made in said Court

William Harley
vs
Harrison Stapleton } Now at this day comes the said William Harley by his attorney and files here in Court a motion to set aside the judgment and verdict rendered in this Cause yesterday and for a new trial of the same which is overruled by the court

Which motion is in the following words and figures to wit

Harley agst Stapleton
Hon Cir Ct June 1854

The plaintiff moves for a new Trial for the following reasons

1 The verdict is against the Evidence
2 The ~~evidence~~ verdict is against the instructions of the Court
3 The verdict is against law
4 The court ~~was instructed~~ misdirected the jury
5 The court refused proper instructions asked by the plaintiff

A Leonard for plaintiff

And afterwards to wit on the 8th day of June 1854 the following ~~motion~~ order was made

William Harley
vs
Harrison Stapleton } Now comes the plaintiff

[10] by his attorney and files his motion here in court asking the court to render a judgment in his favor because he says the answer of the defendant admits material facts &c which said motion is overruled by the court

And which said motion is in the following words and figures to wit

Harley vs Stapleton
Hon Cir Ct June Term 1854
The plaintiff moves the court for a judgment notwithstanding the answer because the answer admits the material facts in the petition and does not contain facts constituting a defence to said suit
Leonard for plaintiff

And afterwards to wit on the 8th day of june 1854 The following order was made in said court which is in the following words & figures to wit
William Harley Pltf
vs
Harrison Stapleton Deft
Now at this day comes the said plaintiff by his attorney and files here in court his bill of exceptions

Which bill of Exceptions are in the following words and figures to wit

Harley vs Stapleton
Hon Cir Ct
June Term 1854
Be it remembered that on the trial of this cause

the plaintiff proved that he paid the sum of four-hundred and thirteen Dollars and seventy Cents to Guaspe in payment of the note about the time mentioned in the petition and also proved the assignments of the Note stated in the petition also that he was in Chihuahua at and about the time of the payment and this was the only evidence on the part of the plaintiff the Defendant proved that about the time mentioned in the answer he made a bet with Mr Houck on the presidential election as stated in his answer and that the note was given to secure the payment of the bet The defendant also gave Evidence conducing to prove that plaintiff at the time he executed the note knew that it was given for the purpose of effecting a bet on the pres Election and this was all the evidence in the cause The plaintiff moved the court to declare that the facts of the judicial proceedings mentioned in the petition were not put in issue by the answer but the court overruled the motion & decided that the fact of the payment & the facts of the judicial sentence to pay the money was put in issue by the answer to which opinions of the court the plaintiff excepted. This being all the evidence in the cause the plaintiff moved the court for the following instruction to wit The plaintiff was not bound to avoid the payment of the Note by setting the bet upon it is alleged to have been given unless he was required to insist upon that defence. which the court refused and upon its own Motion instructed the jury as follows

[D] If at the time that Harley signed the note as security he did not know that it was for a bet on the election and he ascertained that fact before he paid said note he was not bound to set up the bet in his defence of a suit against him unless notified by the defendant so to do
If the note paid by plaintiff was given to secure a bet on the presidential Election and the plff at the time he signed said note knew that it was given for that purpose the plff cannot recover

To which the plaintiff excepted on the day after the verdict was found the plaintiff moved for a new trial as follows

Harley agst Stapleton
Hon Cir ct June 1854

The plaintiff moved for a new trial for following reasons
1 The verdict is against the evidence
2 The verdict is against the instructions of the Court
3 The verdict is against law
4 The court misdirected the jury
5 The court refused proper instructions asked by the plaintiff. Which was overruled by the court and the plaintiff Excepted
And afterwards the plaintiff moved for a judgment not with-standing the verdict which was overruled and the plaintiff excepted
And now prays that his exceptions may be allowed him. Signed sealed & made a part of the record which is done accordingly

Wm A. Hall (Seal)

State of Missouri }
County of Howard }

I Andrew Cooper clerk of the circuit Court in and for said County and State do Certify that the foregoing is a true and perfect transcript of the record and proceedings had in the foregoing Cause wherein William Harly is Plaintiff And Harrison Stapleton is defendant as truly and perfectly as the same now remains of Record and on file in my office

Given under my hand and the Seal of said Court at office in Fayette on this 28th day of June AD 1854

Andrew Cooper Clerk

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Second Judicial Circuit in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Howard County in the Judicial Circuit aforesaid wherein William Harley was plaintiff, and Harrison Stapleton was defendant

in an action of manifest error hath intervened, to the great damage of the said plaintiff as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the second Monday in January next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the twenty-seventh day of June in the year of our Lord one thousand eight hundred and fifty four

Wm E Dunscomb

Leonard

Wm Harley
v } Writ of Error
Harrison Stapleton

Filed June 30th 1857
A Cooper Clerk

State of Missouri }
Howard County } I Andrew Cooper clerk of the circuit court within and for the County aforesaid do certify that I executed the within writ by certifying under the seal of said court the record and proceeding had in the within entitled cause, in said court; a full and complete copy of which is attached to this writ.

Witness Andrew Cooper clerk of our said court with the seal thereof at office the day & year aforesaid

Andrew Cooper Clerk

Howard Circuit Court XX.

~~12~~ ~~XX~~ XX.

William Harley p. e.

v } appeal

Geo. Stapleton, admr. of

Harrison Stapleton, decd.

filed Jan. 15 1855

Wm E Duncomb

Clerk

Transcript rec-ord clerks

Fee $4.00.

Test.

Howard

2nd

[18]

In the Supreme Court
July Term 1855

William Hasley, appellant
against } Error to Howard
Harrison Stapleton, respondent

Statement of the Case.

This was an action to recover money paid by the appellant, as respondents Surety. The petition shows that the appellant and the respondent executed a promissory note to Solomon Hauck, payable to him on the first day of January 1841 for one thousand dollars for value received; that respondent was the principal, and the appellant security; that the note became the property of Antonio Guaspe by several assignments — from the payee to Connelly & Glasgow, from the latter to E Seitensdorfer, and from him to Guaspe; that in 1850 the appellant was compelled to pay to Guaspe 413 dollars and 70 cents, balance of principal and interest due on the note, and 96 dollars and 30 cents costs of Suit; & that this payment was pursuant to a decree of a proper judicial tribunal in the State of Chihuahua, made in a Suit pending in that tribunal between

Guaspe and the appellant, who was at the time a resident of Chihuahua, and subject to its jurisdiction. The plaintiff filed the original note and assignments, and certified copies of the judicial proceedings referred to, in Spanish, and asked judgment for the amount paid with interest.

The answer admitted the making of the note; that respondent was principal and appellant surety, but set up that it was given to secure the payment of a wager on the Presidential election of 1840, which was well known to the appellant before the institution of suit in Chihuahua; that the note was executed in Mexico, between its citizens; that respondent had not sufficient knowledge to form a belief as to the assignments; that respondent not being able to read Spanish could not say whether the papers filed is the record of a decree of a proper judicial tribunal or not, and therefore asked that appellant be required to prove the same; that respondent had no knowledge of the payment of the money, or of appellant's residence in Chihuahua, but that at the execution of the note, and the commencement of this suit he was a citizen and resident of Mexico

On the trial, the appellant proved the payment of 413 dollars and 70 cents to Guaspe, on the note, in 1850, the assignments, and that he was in Chihuahua about the time of the payment, and this was all the appellants testimony.

The defendant proved the note was given to secure a wager on the Presidential election of 1840, and offered evidence tending to show that the appellant, at the time when he executed the note, knew the consideration for which it was given, and this was all the evidence in the cause.

The appellant moved the court to declare that the facts of the judicial proceedings were not put in issue by the answer, which the court refused, and the appellant excepted.

The appellant moved the court for the following instructions:

1st. The plaintiff was not bound to avoid the payment of the note by setting up the bet upon which it is alledged to have been given, unless he was required to insist upon that defence.

Which the court refused, and the appellant excepted.

The court, on its own motion, instructed the jury as follows:

"If at the time Hearley signed the note, as security, he did not know it was for a bet on the election, and he ascertained that fact before he paid the note, he was not bound to set up the bet in his defence of a suit against him, unless notified by the defendant so to do."

"If the note paid by plaintiff was given to secure a bet on the Presidential election, and the plaintiff, at the time he signed the the note, knew it was given for that purpose, the plaintiff cannot recover."

To which the appellant excepted

The appellant moved for a new trial for the following reasons:

1st The verdict is against the evidence
2d The verdict is against the instructions of the court.
3d The verdict is against law
4th The court misdirected the jury
5 The court refused proper instructions asked by the plaintiff.

Which being overruled, the appellant excepted.

The appellant filed a motion for a judgment, notwithstanding the answer, because it admitted the material facts in the petition, and did not contain facts constituting a defense to the suit; but the motion is not noticed in the motion for a new trial, nor is it preserved in the bill of exceptions.

The case is here by writ of error.

Gardenhire, for respondent

1st The instructions of the court were right. A bet on the Presidential election is illegal, Rev. Stat. 404, Sec. 7, and will not be enforced, 8 Mo. 52. 8 Shep. 26; 16 Verm. 538; 8 Mo. 8; 18 Verm. (3 Nash.) 9; 10 Ala. 316; 11 Ind. 656. All wagers are unlawful, on their clear immoral tendency, and are not to be recovered in a court of justice, 1 Stobb. 82. But, at all events, a bet on an election is void at common law, being against public policy, 15 Conn. 28; 9 Barb. Sup. Ct. 315.

2d The judicial proceedings were put in issue by the answer. It is, upon this point, in ordinary and concise language, enabling a person of common understanding to know what is intended, Practice Act, Art. 6, Sec. 1. But suppose it is not; 'tis wholly immaterial. The instructions were given on the assumption that the judicial proceedings were proved, and were alike fatal to the plaintiffs case, with or without the judicial proceedings. The material points were whether the plaintiff paid the money for defendant, as his surety, whether the consideration of the note was illegal, and known to plaintiff when the note was executed. With these points the judicial proceedings had nothing in the

would to do. It is no matter, then, whether they were put in issue or not. The jury found that the consideration of the note was illegal, and known to the plaintiff when executed. Payment, in such case, under judicial proceedings would not help the matter. Money lent to game with cannot be recovered back, 3 Cush. 448. Even a negotiable note given for a gaming consideration is void, in the hands of even an innocent holder for value, 13 Penn. State R. (1 Harris) 601. Our statute is beyond construction, Rev. Stat. 340, Secs. 4 and 5. A bet on a Presidential election between citizens of Vermont, made in Canada, will not be enforced in Vermont, 18 Verm. 9. Foreign laws against our policy will not be enforced here, 2 Kent 458; Story's Conf. of Laws 203.

3d day. 12

William Harley

vs. } Error to Hawe

} -ard

Harrison Stapleton

Statement and

Brief of Respondent

filed July 2 1855

Wm E Dunscomb

Clerk

[30]

Supreme Court of Missouri, January Term 1856

William Harley, plaintiff in error

vs } Error to Howard Circuit Court.

Hannah Stapleton, defendant in error

Now at this day comes James B Gardenhire esq an attorney of this Court and suggests the death of Hannah Stapleton, the defendant in error, since the suing out of the writ of error in this cause, and on his motion it is ordered by the Court that a scire facias issue to Howard County to bring in as party George Stapleton, administrator of Hannah Stapleton, decd, and that this cause be continued until next term.

State of Missouri, ss.

I William E Dunscomb, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the order of said Supreme Court entered of record at the January Term, thereof, 1856, in the above entitled cause.

Given under my hand and the seal of said Court at the City of Jefferson this 8th day of February 1856

Wm E Dunscomb

SEAL OF THE SUPREME COURT OF MISSOURI

Wm Searley
v
Geo. Stapleton admr
of Harrison Stapleton decd

filed April 1 1856
Wm E Dunscomb
Clerk

I certify that I delivered the within named George Stapleton Administrator of Harrison Stapleton a true copy of the within sierafacies on the 24th day of March 1856 in Howard County

Shffs fee 50 cts

Bird Deatherage Shff N.C.

[32]

William Harley Plff in Error } Error to the
vs } Howard Cir
Geo. Stapleton adm.r } Court

This was an action by a surety to recover from his principal a sum of money he was compelled to pay as such surety: the plaintiff signed a note as surety given to secure a sum of money bet on this State on a presidential election: The Court instructed the jury that if the note paid by plaintiff was given to secure a bet on the presidential election, and the plaintiff at the time he signed the note, knew it was given for that purpose, the plaintiff cannot recover". There was a verdict for the defendant.

In our opinion the fact that the surety Harley was compelled by the judgment of a Court in the Mexican dominions to pay the debt, does not affect the merits of this controversy. The instruction given by the Court assumed, and the jury have so found that the plaintiff knowingly entered into an illegal contract: Whether he paid the money voluntarily or

or was compelled thereto by process of law, it is equally against the policy of the law, that he should recover in this action. We may presume, that but for the plaintiff the contract would never have been made nor the law violated: This is an attempt to obtain an indemnity for knowingly entering into an illegal contract. It is a rule, that whenever the party seeking to recover appears to have been in any respect contaminated with, or even privy to the illegal transaction on which the claim is originally bottomed, his remedy, whether upon the primary consideration, or a security substituted for it, is gone: Paley on Agency 120. If a surety to a note securing a sum bet on an illegal wager can recover against his principal by paying the sum secured, then the policy of the law ~~would be defeated~~ which forbids the recovery of money lost at unlawful gaming would be defeated. Judge Ryland concurring the judgment will be affirmed

Judge Leonard not sitting

Wm Scott

Harley
vs
Stapleton admr.

Opinion

filed Febr. 25 1857
Wm E Drumcomb
Clerk