Lemp, Adam vs. Schnerr, Ernest 1852 St. Lais 316/9

564/21

$148.62
debt on wages
brewery
Gamble
reversed and remanded

21

State of Missouri } Sct
County of St Louis } Pleas held before the Law
Commissioner of St Louis County

Be it Remembered that on the 23d day of August AD 1831 was filed in the Office of said Law Commissioner a Petition. which is in the words and figures following to wit:

Petition

"Ernst Schnerr Plaintiff } In The Law Commissioner's Court
vs
Adam Lemp Deft } August 23d 1831
St Louis County S.S.

The plaintiff states that the defendant owes him the sum of One hundred & forty eight dollars & Sixty two cents for work & labour done & performed at his instance & request, the particulars of all which & the credits will appear by the account hereto annexed & made a part of this petition. The plaintiff asks judgment for the amount of $148.62 being the balance due him

Todd & Krum Attys for Pleff

Ernst Schnerr the pleff being duly sworn says that the foregoing petition & the matters therein as stated he believes to be true

Ernst Schnerr

Sworn to & subscribed
before me this 6th day of Nov 1831
John W. Colvin Law Com
By Edw. E. Allen Deputy

"

"

Adam Lemp

Account

To Ernest Schnerr Dr

(1)

To Amount due me for services rendered as a Brewer in your Establishment at the rate of $500 per annum

(2)

as per agreement from March 27th 1850 till August 12th 1851

	$687.50
Credit as below	538.88
To balance due	$148.62

Accounts

Cr. Cr. 1850	By cash 1st of September		$25.00
"	One pair of Shoes		2.00
"	the 11th November		10.00
"	" 10th December		10.00
"	" 14th "		15.00
"	" 31st "		15.00
1851	" 1st February		15.00
"	" 7th March		10.00
"	" 12th April		15.00
"	" 31st May		15.00
"	" 20th June		10.00
"	" Ditto		5.00
"	" 7th July		353.00
Loss of time 28 days by absence			38.88
			$538.88

"

And now to wit: on the 23d day of August A. D. 1851 a summons is issued to Elbridge G. Clark one of the Constables of St Louis Township in St Louis County, said summons is in the words and figures as follows to wit

"The State of Missouri To Elbridge G. Clark one of the Constables of the Township of St Louis in St Louis County — Greeting

Summons

We command you to summon Adam Lemp to appear before the Law Commissioners Court of St Louis County on the 12th day of Sept AD 1851 to be held at the Office of said Commissioner in the City of St Louis within and for the County of St Louis then and there to answer the complaint of Ernest Schnew; as set

forth in the annexed petition, and have you then there this writ

Witness John W. Calvin the Law Commissioner of St Louis County with the seal of said Court hereto affixed at Office in the City of St Louis this 23d day of August in the year of Our Lord One thousand eight hundred and fifty one

John W. Calvin
Law Commissioner of St. Louis County

"

Afterwards to wit: on the 25th day of August 1851 the said Constable makes the following return to wit:

Constables Return

"Executed this writ by delivering a true Copy of the complaint & Summons to the within named Adam Lemp at St Louis County Augst 25th 1851
fee $1.00

E. G. Clark Constable
By C. Schaeffler Dty

"

Afterwards to wit on the 15th day of September 1851 the following order was made to wit:

Time Given to file Ans

"Ernest Schnew
v
Adam Lemp

Now at this day came the defendant by his attorney, and asks of the court further time in which to file his answer to the plaintiffs petition time is given to the 24th September 1851

"

And now to wit: on the 24th day of September 1851 the following order is made to wit:

Answer filed

"Ernest Schnew
v
Adam Lemp

This day came the defendant by his attorney and filed his answer herein

"

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(4)

The answer filed by the defendant on the 24th day of September 1831 is in the words and figures as follows to wit:

"Ernest Schmen plaintiff } In the Law Commissioners
vs } Court of St Louis County
Adam Lemp Defendant } Sept 24th 1831
St Louis County } ss

Answer

Defendant states in answer to plaintiffs petition that on the twenty seventh day of March 1830 he hired the plaintiff as a Brewer in his Brewery from year to year at the annual Salary of five hundred dollars. Defendant states that he has paid the plaintiff five hundred dollars in full for his first years services as such Brewer. Defendant states that plaintiff in pursuance of the contract above stated continued in the service of the defendant from the Commencement of the second year until on or about the sixteenth day of August 1831, when plaintiff voluntarily without any just cause and without any notice to the defendant left his service before the end of the second year for which he was so hired. Defendant denies that he owes the plaintiff the said Sum of One hundred and forty eight dollars and sixty two cents or any other sum whatever on account of work and labour done or any other account or that there is any balance due the said plaintiff. Defendant further denies that there was any agreement to employ the plaintiff from the 27th day of March 1830 to August 12th 1831 as by him in his said petition alleged

Romyn & Decko
N. & D. A. Holmes
Defdts Attys

State of Missouri }
County of St Louis } ss Adam Lemp the above named defendant makes oath and says that the matters and

Answer

things contained in the foregoing answer he believes to be true as the same are therein stated

Adam Lemp

"

And now to wit: on the 22d day of September the following order is made to wit:

Continued to Sept 26th 1851

"

Ernest Delmes
vs
Adam Lemp

Ordered that this cause be continued to the 26th Septembr. instant.

"

Afterwards to wit on the 26th day of September 1851 the following order was made to wit:

"

Ernest Delmes
vs
Adam Lemp

This day came the defendant by his Attorney and on his motion, on his affidavit filed herein this suit is continued to the 13th of October next.

"

Cont'd to Oct 13th 1851

And Afterwards to wit on the 29th day of September 1851 the following Order was made to wit:

"

Ernest Delmes
vs
Adam Lemp

This day came the defendant by his Attorney and on his motion time until the 2d day of October next is given him in which to file his answer herein

"

Time given to file Amd Answer

And now to wit on the 3d day of October 1851 the following Order is made to wit:

"

Ernest Delmes
vs
Adam Lemp

This day came the defendant by his Attorney and filed an amended answer herein.

"

Amended Answer filed

5

(6)

Amended Answer "D"

The Amended answer filed by the Defendant on the 3d day of October 1851 is in the words and figures as follows to wit

Ernest Schnerr Plaintiff
vs
Adam Lemp Defendant
} In the Law Commissioners Court October 12th 1851

Def's Amended Answer

State of Missouri } ss.
County of St Louis }

Defendant for his amended answer to plaintiffs petition states that on the twenty seventh day of March 1850 he hired the plaintiff as a Brewer in his Brewery from year to year, at the annual salary of five hundred dollars ~~in full for his first year~~ Defendant states that he has paid the plaintiff five hundred dollars in full for his first years services as such Brewer Defendant states that plaintiff in furtherance of the contracts as above stated continued in the service of defendant from the commencements of the second year until on or about the sixteenth day of August 1851 when plaintiff voluntarily without any just cause, and without any notice to the defendant left his service before the end of the second year for which he was so hired - Defendant denies that he owes the plaintiff the said sum of One hundred and forty eight dollars and Sixty two cents or any sum whatsoever, on account of work and labour done, or on any other account or that there is any balance due the said plaintiff - Defendant further denies that there was any agreement to employ the plaintiff from the 27th day of March 1850 to August 12th 1851 as by him in his said petition alleged - Defendant by way of offset says that at the time of the hiring aforesaid the plaintiff represented himself as a skillful brewer, and

Amended Answer

Competent to take charge of Defendants brewery as foreman in which capacity plaintiff was employed on the terms first above stated: Defendant further states that the plaintiff, on the said 27th day of March 1850 in consideration of the said annual salary of five hundred dollars so agreed to be paid plaintiff undertook and promised the defendant to make and brew for him beer of a good marketable quality, and further that if the beer so made by him in his capacity of defendants foreman should not prove to be of the quality aforesaid, that then he the plaintiff would pay the defendant all damages occasioned the defendant by reason of any defect in the quality of the beer so agreed to be made; yet defendant states that plaintiff did not keep and perform his said contract, but on the contrary in the months of January and February 1851 while in defendants employ as aforesaid did make and brew three hundred and twenty barrels of beer of very inferior quality and not worth by five dollars per barrel as much as good marketable beer, by the plaintiff so agreed to be made to the damage of the defendant in the sum of one hundred and fifty dollars, which now remains unpaid, and for which, and his costs defendant he asks judgment. Holmes Romyn & Decko

Defts Attys

State of Missouri }
County of St Louis } ss. Adam Lemp the above named defendant makes oath and says that the matters and things contained in the foregoing answer and claim of offset he believes to be true as the same are therein stated

Adam Lemp

Sworn to and subscribed before me this third day of October 1851

Fredk. Kuhlmann Justice of the Peace

(7)

(8)

Afterwards to wit: on the 10th day of October 1851 the following Order was made to wit:

Time allowed to file replication to offset.

"Ernest Schnerr v Adam Lemp } On motion of the plaintiff by his attorney, time until the 20th of October Inst. is allowed him in which to file his replication to the offset herein—

"

And now to wit on the 13th day of October 1851 the following order is made to wit:

Continued to 28th Oct 1851

"Ernest Schnerr v Adam Lemp } Continued to the 28th of October Inst.

"

And now to wit on the 21st day of October 1851 the following order is made to wit:

Further time given to file Replication

"Ernest Schnerr v Adam Lemp } On motion of the plaintiff by his attorney time until the 25th of October Inst. is given him in which to file a replication to the offset herein—

"

Afterwards to wit: on the 24th day of October 1851 the following Order was made to wit

Replication to Offset filed

"Ernest Schnerr v Adam Lemp } This day came the plaintiff by his attorney and filed his replication to the offset herein—

"

The Replication to the Defendants offset filed by the Plaintiff on the 24th day of October is in the words and figures as follows to wit:

Replication to Offset

"Ernest Schnerr Pltff
vs
Adam Lemp Dfts.

In the Law Commissioners Court —
St Louis County. — p

Plaintiff by way of reply to the offset attempted to be made by defendant in his amended answer, says, that it is not true, as alleged, that plaintiff made & brewed 320 barrells of beer of inferior quality, and not worth by five dollars per barrell as much as good marketable beer, and plaintiff alleges that all the matters & things by him to be performed & done, while in the employment of defendant were by him performed & done in a skilful & proper manner, & in accordance with the terms of his hiring by defendant, and that defendant has not sustained any damage by reason of any unskilful, unworkmanlike, or improper performance of plaintiffs duties, while in said employment.

Todd Krum & Harding
Attys for Pltff

Ernest Schnerr plaintiff, being duly sworn says, that he believes the matters & things set forth in the foregoing reply as stated, to be true,

Ernst Schnerr

Sworn & Subscribed before me
this 23d day of October
AD 1831 as witness my
hand & official Seal
C. Harding Nat. Sub.

"

And now to wit on the 28th day of October 1831 the following order is made to wit:

Cont'd by consent to 6th Nov 1831 at 9 A.M.

"Ernest Schnerr
vs
Adam Lemp

This day came the parties by their attorneys, and by consent this cause is continued to the 6th day of November 1831 at 9 o'clock A.M.

"

(9)

(10)

Afterwards to wit on the 6th day of November 1851 the following proceedings were had in said cause to wit:

Jury Verdict Judgt for Deff $148.62

"Ernst Schnerr vs Adam Lemp } This day came the parties by their attorneys and thereupon came a jury to wit: W. H. Turner, George Rowe, James Parks, Fred. Warrance, James Wheeling, & Joshua Jeffries, six good, and lawful men, who are duly elected tried and sworn well and truly to try the issues between the parties. After a consideration of the matter, the Jury render this verdict to wit: "We the jury find for the plaintiff in the sum of One hundred and forty eight dollars and sixty two cents." It is therefore considered by the Court that the plaintiff recover against the defendant the debt aforesaid in form aforesaid by the Jury found also his costs and charges in this behalf expended and that he have thereof Execution"

And now to wit: on the 7th day of November 1851 the following order is made to wit:

Entry of Motion for New Trial

"Ernest Schnerr vs Adam Lemp } This day came the defendant by his attorney and moved the Court in arrest of Judgment, and to grant him a new trial herein and filed his reasons therefore"

Afterwards to wit on the 13th day of December 1851 the following Order was made to wit:

Motion for New Trial Sustained

"Ernest Schnerr vs Adam Lemp } Now at this day came the parties by their attorneys and the motion of the defendant to set aside the judgment herein and grant a new trial comes on to be heard. Whereupon the Court after hearing the argument of Counsel and being fully advised thereof comes ~~[illegible]~~ consider that the said motion be sustained. That the said Judgment be set aside

Motion for New Trial overruled

and a new trial granted upon the payment of all the costs of the last trial, and the costs which have accrued up to this time.

Afterwards to wit: on the 5th day of January 1852 the following order was made to wit:

"

Amended petition filed

Ernst Bohmer
vs
Adam Lemp

Now at this day comes the Plaintiff by his Attorney and files an amended petition herein -

The Amended petition filed by the Plaintiff in said cause is in the words and figures as follows to wit:

"

Amended petition

Ernst Bohmer Jeff
vs
Adam Lemp Dft

In the Law & Commissioners Court for Lewis County Mo.

Plaintiff states in this his amended petition, that defendant is indebted to him in the sum of One hundred & forty eight 62/100 dollars, for work & labor done & services rendered, by plaintiff as foreman of defendants brewery at defendants instance & request. Plaintiff states that he was so engaged in defendants service & employment from March 24. 1851. to August 12th 1851 inclusive. excepting the four weeks hereinafter mentioned, & that his said services were reasonably worth at the rate of five hundred dollars per year. Plaintiff states that between the dates last mentioned, he, with the assent of defendant was absent from said employment for the space of four weeks, & that he does not claim his wages during that time - Plaintiff asks judgment for the amount of One hundred & forty eight 62/100 dollars with interest with interest from the commencement of this suit

(11)

C. Harding Atty for Pltff

Amended Petition

(12)

Ernst Schnerr plaintiff being duly sworn upon his oath says that he believes the foregoing petition & the matters therein as stated to be true

Sworn to & subscribed before me this 5th day of January A.D. 1832

Ernst Schnerr

John W. Colvin Law Comm
By Edwd. E. Allen Deputy

"

Afterwards to wit; on the 8th day of January 1832 the following Order was made to wit:

Ans to Amended Pet. filed

"Ernst Schnerr vs Adam Lemp

Now at this day comes the defendant by his attorney and files his answer to the plaintiffs petition

"

Said answer is in the words and figures as follows to wit:

Answer to Amended petition

"Ernest Schnerr vs Adam Lemp

In the Law Commissioners Court of St Louis County Jan 8th 1832

Defendant for answer to plaintiff amended petition says that he is not indebted to said plaintiff in the sum of One hundred and forty eight dollars and sixty two cents for work and labour done by plaintiff nor in any other sum whatever Defendant states that plaintiff was employed by defendant as a foreman in his brewery by the year at the annual salary of five hundred dollars commencing the first year on or about the 27th March 1850 Plaintiff worked the first year and was paid by this defendant five hundred dollars for that year's services. Plaintiff continued in defendant's service upon the same terms for a part of the second when plaintiff voluntarily and without any just cause, and against

Ans. to Am. petition

the will of defendant, left defendants employ, before the end of the second year's service. Wherefore by plaintiffs failure to perform the services of the second year by him so agreed to be rendered; this defendant is not liable to pay plaintiff for any part of the second years services - Defendant denies that plaintiff is entitled to judgment for $148.62/100 with interest

Secko & Holmes atty.

And now to wit on the 8th day of January 1852 the following order is made to wit:

Contd to Jan 12th 1852

"Ernest Schnerr vs Adam Lemp } Now at this day come the parties by their attornies and by consent thereof this cause is continued to the 12th day of January 1852"

Afterwards to wit on the 12th day of January 1852 the following order was made to wit:

Contd to Jan 16th 1852

"Ernest Schnerr vs Adam Lemp } Now at this day come the parties by their attornies and by consent thereof this cause is continued to the 16th day of January 1852"

And now to wit on the 16th day of January 1852 the following proceedings were had in said cause to wit:

Verdict for pfff $148.62

"Ernst Schnerr vs Adam Lemp } Now at this day come the parties by their attornies and thereupon come a jury to wit: John Scully, Robert F. Seaman, B. Cummings, J. S. O'Haaa - J. B. Hunter, & J. H. Smith - six good and lawful men who are duly elected, tried, and sworn, well and truly to try the issue joined between the parties. Whereupon the said Jurors after hearing the evidence and the argument of counsel return this verdict to wit: "We the Jury do find that the defendant is indebted to the plaintiff in the sum of $148.62 cts" Jas. H. Smith Foreman" It is therefore considered by the

(13)

(14)

Verdict for Deff —

Court, that the said plaintiff recover against the said Defendant, the debt aforesaid, in form aforesaid, by the Jury found also his costs and charges in this behalf expended, and that he have thereof execution

"

And now to wit: on the 17th day of January 1852 the following order is made to wit:

Motion for New Trial filed —

"Ernest Schnerr
vs
Adam Lemp

Now at this day comes the defendant by his attorney, and moves the Court to set aside the verdict and Judgment herein and grant a New Trial, and files his reasons therefor —

"

Said Motion and Reasons are in the words and figures as follows to wit:

"Ernest Schnerr
vs
Adam Lemp

In the Law Commissioners Court of St Louis County Jan 17th 1852

Motion for New Trial

Now at this day comes the above named defendant by his Attys and moves the Court to grant him a new trial in the above entitled cause for the following Reasons:

1st. Because said Verdict is against the evidence —
2d. Because said Verdict is against the Law and the evidence —
3d. Because the Court gave contradictory instructions
4th. Because the Court erred in giving defendants instructions —

Ramyn & Decko
N & D. A. Holmes Defdts Attys —

"

Afterwards to wit on the 29th day of March 1852 the following order was made to wit:

Motion for New Trial Overruled

"Ernest Delmen } Now at this day the motion of the defendant
vs } to set aside the verdict and judgment herein
Adam Lemp } comes on to be heard, neither party appearing
the matter is taken by the Court to be submitted. Whereupon
the Court being fully advised thereof, doth consider that the
said motion be, and the same is overruled —

And now to wit on the 6th day of April A.D. 1852 the
following order is made to wit:

Bill of Exceptions filed

"Ernest Delmen } Bill of exceptions filed —
vs
Adam Lemp }

Said Bill of Exceptions is in the words and figures as
follows to wit:

Bill of Exceptions

"Ernest Delmen } In the Law & Commissioners Court of
vs } St Louis Co March 30th 1852
Adam Lemp }

Be it Remembered that on the trial of
the above entitled cause upon plaintiffs amended petition
and defendants answer thereto, plaintiff offered evidence
tending to show that he worked for defendant as foreman
in his brewery from the 27th day of March 1850 to the 12th
day of August 1851. Defendant admitted that the price claim
=ed was reasonable. Here plaintiff closed his case —
Defendant then produced Christian ~~Holmes~~ Uhrig who
being sworn testified as follows: — I know the parties.
I know that Delmen was in Lemps employ as foreman
of his Brewery. Lemp made a contract with him by the year
Delmen commenced on the 27th day of March 1850, and
worked until August 1851. I was not there when he com=
=menced. I was there during that part of the second year
which he worked: I was present about the 6th day of July
1851; Delmen was going to Dittsburg; Lemp asked him, if when

(15)

Bill of Exceptions

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he came back, he would stay by him - Schnen replied certainly I will. On the 6th of July 1851, I settled with Schnen for the first year; Schnen had recieved money ~~the~~ from time to time, to the amount of $ 352.00, on acct, I heard Schnen say several times, that he was to have $ 500. per year, and the books showed that too; I commenced working for Lemp in Oct. 1850; Schnen was there then; I was the clerk and kept the books. Schnen left for Pittsburg on the 8th of July 1851, and was gone about four weeks, when he came back, went to work for Lemp, and worked from eight to fourteen days; he then asked Lemp for more wages. Lemp said to Schnen, our contract is for $ 500. per year. Schnen said, I must have more, I can't stay any longer for $ 500. Lemp said, our contract is for five hundred dollars and is not out, and you have to stay by me; Schnen said he would not, and then he left -

Cross examined by Stiff - Mr Koegle was a partner before the 27th of March 1850 - I know he was before that time - believe they dissolved in '49 or '50 - The conversation took place in the brewery - Some of the hands were present - I was standing so near I could hear. I may not have heard all - It is usual to hire the foreman by the year.

Theodore Beck being sworn says:- I am a vinegar factor - I worked nine months for Lemp - I heard Lemp ask Schnen when he left for Pittsburg, if, when he came back he would attend to his business again, and he said he would - Schnen said he had five hundred dollars per year - this was in Lemp's yard; Schnen said several times before he went to Pittsburg, that he was getting five hundred dollars per year. He made one batch of beer on his return from Pittsburg - I don't know any more than that he hired for one year at five hundred dollars per year

Cross Examined by Stiff - I was not in Lemp's employ in 1850, before the 5th of November

Henry Koll - produced and sworn on the part of the -

defendant says:

Bill of Exceptions

I worked for Lemp when Schmer worked there Schmer told me, five, or six times, that Lemp, had made a bargain with him for five hundred dollars per year - told me so in Feb, march, and April 1851 - I had a conversation with Schmer about same bad beer; he said he did not care as he had a contract for the whole year -

So in Lemp's Employ now -

Peter Andres produced and sworn on the part of the defendant, testified as follows:— I know the parties, I know that Schmer said he was hired by the year - said so last year before he left for Pittsburg - some two or three months before

Cross Ex-by Stiff - I had no conversation with any one about this case, only as he told that I must come here and testify In September 1850, Lemp and Koegle were in partnership and they kept on a month, or a month and a half after. As far as I heard, Koegle was a partner in the Brewery business, I know it, from what I heard of Lemp and Koegle - It was before I came to Lemps, that I heard it - I entered Lemps employ in Oct. 1850 and there was no partnership then - The defendant here closed his case; the above was all the evidence given on either side -

On motion of Plaintiff the Court gave the following Instructions" 1 - If the Jury believe from the evidence, that plaintiff was employed on or about the 27th day of March 1850, to work for an entire year at a stipulated price, in a brewery carried on by ~~plaintiff~~ defendant & some other person or persons in partnership with him, still they cannot infer that plaintiff worked under the same agreements, for the second year - merely from the fact of his continuing to work on, in said Brewery after the expiration of his first year, if the Jury believe from the evidence, that before the commencement of the second year, said firm was dissolved, & that said

(17)

(18)

Bill of Exceptions

Brewery was not after said dissolution carried on by said partnership" "2 – The Jury cannot find for defendant on the ground of there being any special contract for the second year" "3 – Unless the Jury are satisfied from the evidence, that in making the agreement, plaintiff & Defendant understood & agreed, that plaintiff bound himself to remain in the employment of defendant, during the space of an entire year, they cannot find for defendant on the ground that the contract was for an entire year – And proof that was to be paid at the rate of so much per year is not proof conclusive that he agreed to work for an entire year" – "4 – If the Jury believe from the evidence that the first hiring was made by Peff., with defendant, & another person, then defendant's partner, that said partner had ceased to be such, by, or before the expiration of the first year of plaintiffs service, then no inference therefrom can be drawn as to the nature of the hiring after the expiration of ~~the~~ said first year" –

"5 – If the Jury believe from the evidence, that Kaegel ceased to be a partner of Lemp, by or before the expiration of plaintiffs year, then defendant is liable to plaintiff, for the value of plaintiffs services since the expiration of said year" –

"6 – The fact of a hiring, at a fixed price per year, is not evidence of a hiring for an entire year, if it is the general custom in making such contracts, to consider them as binding only during the pleasure of both parties" —

To the giving of which and each of them, defendant excepted – On motion of defendant the Court gave the following Instructions "1 – If the Jury believe that plaintiff was employed ~~to~~ in defendants brewery by the year at five hundred dollars per year, and that plaintiff left defendants employ before the end of the year, voluntarily and without any just cause, they will find for the defendant" "2 – If the jury believe there was a hiring by the year at five hundred dollars per year then plaintiff is not entitled to recover any thing, ~~at~~ without show=

Bill of Exceptions

=ing a full performance on his part" - "3 - If the Jury be=
=lieve from the evidence, that plaintiff contracted to serve
the defendants, as a brewer, for one year, commencing on the
27th. day of March 1850, and that after the expiration of
the year, plaintiff continued in defendants employ; then
the presumption of Law is that there was a hiring for the
second year, upon the same terms as for the first." "4 - If
the Jury believe that there was a contract, then the fact
that plaintiff was to be paid, at the rate of five hundred
dollars per year is evidence that the term of service was
by the year, and the burden of showing the contrary
lies upon the plaintiff." "5 - Although the Jury believe
that plaintiff was originally employed by Lemp & Co.,
yet, if that partnership was dissolved before the end of the
first year's services, and plaintiff continued with the
remaining partner, then the presumption of Law is, that
plaintiff remained under the contract made with Lemp
& Co. if any such was made, and the burden of showing
the contrary lies upon the plaintiff" - "6 - If the Jury
believe from the evidence, that there was a hiring of
plaintiff from year to year, at the annual salary of five
=hundred dollars, and that the plaintiff entered upon
the performance of the second year's services, and that
the second year commenced on the 27th. day of March
1851, then plaintiff had no cause of action at the Com=
=mencement of this suit." "7 - The burden of showing
that plaintiff had just cause for leaving defendants'
employ, before the end of the year lies upon the plaintiff
and the claim of, and refusal of higher wages, is not
such just cause" -

The above were all the instructions asked
refused, or given, on either side. To the giving of defendants
instructions, and each of them the plaintiff excepted, and his
exceptions were allowed, Afterwards, and within four days, the
defendants filed the following motion for new trial:

(19)

(20)

"Ernest Schnerr } In the Law Commissioners Court
vs } of St Louis County Jan 17th 1852
Adam Lemp }

Bill of Exceptions

Now at this day comes the above named defendant, by his Attys and moves the Court to grant him a new trial in the above entitled cause for the following reasons:

1st. Because said verdict is against the Evidence.
2d. Because said verdict is against the Law and the evidence
3d Because the Court gave contradictory instructions
4th. Because the Court erred in giving defendants instructions

Ramyn & Lecko
N & S. A. Holmes Defts Attys

Which being by the Court fully considered was afterwards on the 27th day of March 1852, overruled, to the overruling of which motion, the defendant by his counsel excepted, and prayed the Court to allow, sign, and seal, this his Bill of exceptions which is done this 6th day of April 1852

John W Calvin Seal
Law Comr

"

Appeal Bond filed

Afterwards to wit on the 29th day of July 1852 the following Order was made to wit:

"Ernest Schnerr } Now at this day comes the defendant by his
vs } attorney, and prays an appeal in this case
Adam Lemp } to the Supreme Court, which is by the Court to him granted. Whereupon he files an appeal bond in accordance with the Statute in that case made and provided, with sufficient security approved by the Court

"

Said Appeal Bond is in the words and figures as follows to wit:

Appeal Bond

"**Know** all Men by these Presents that we Adam Lemp as principal on Louis Bach as security are indebted to Ernest Schnen in the Sum of three hundred dollars for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly, and severaly, firmly by these presents, sealed with our seals, and dated at St Louis, this the 29th day of July eighteen hundred and fifty two The condition of this obligation is such, that whereas Adam Lemp, has appealed from the judgment rendered against him said Adam Lemp, and in favor of said Ernest Schnen, in the Law Commissioners Court of the County of St Louis, for the sum of One hundred & forty eight & 62/100 dollars together with the Costs in said suit expended Now if the said apellant will pay all costs and damages that may be awarded against him, ~~and~~ occasioned by such appeal, and he shall prosecute his appeal, and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the Law Commissioners Court of the County of St. Louis to give and if the judgment, or any part thereof be affirmed, that he will comply with and perform the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation to be void otherwise to remain in full force and effect

Attest
John W Calvin Law Com

Adam Lemp
Louis Bach

(21)

22

State of Missouri }
County of St Louis } ss

I John W. Colvin Law Commissioner of St Louis County, do certify the foregoing to be a true and perfect transcript of the Record and proceedings had in the case of Ernest Schnier against Adam Lamp – as the same remains of Record in my Office.

In Testimony Whereof I have hereto set my hand and affixed my Official Seal at my Office in St Louis City and County of St Louis, on this the 5th day of July A.D. 1852

John W Colvin Law Com
By M Williams deputy

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(21) 86

Oct. T. 1852.

Ernest Delmer

vs Transcript —

Adam Lemp

Appeal from Law Comm Court

N & S A Holmes
Romyn & Lecko } for Appellee

Hurd Hordung for Appellee

Fee for this Transcript $6.75

6.75
8.30
115.05

Filed 7th October 1852
Wm S. Glanville
Clerk.

Ernst Schnerr
vs Appellee
Adam Lemp
Appellant

In the Supreme Court of the State of Missouri
October Term 1852

Now at this day comes the said Adam Lemp, Appellant, by his Attys, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, that it appears by said record that the first, second, third, fourth, fifth, and sixth instructions, asked by plaintiff on the trial of said cause in the Court below were given, whereas the same, and each of them, ought to have been refused: Also in this, that it appears by the record aforesaid, that the Court, on the trial aforesaid, gave contradictory instructions: Also in this, that it appears by the record aforesaid that the judgment in said cause was for the plaintiff, whereas the same ought to have been for the defendant. Wherefore the said Appellant prays that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored in all things which he has lost by occasion of said judgment.

Robt Holmes } Attys
Romyn & Decker } for Appt

And now comes the ~~plaintiff~~ ~~appe~~ respondent & says that there is no error in the record proceedings & judgment of the court below, but that the same should be in all things affirmed

Harding Jr
Atty for ~~Appellee~~
Respondent

86

In the Supreme Court

Ernest Schnurr
vs Appellee

Adam Lemp
Appellant

Assignment of Errors

Filed 21st October 1882
Wm L Lanville, Clerk

Schneer
vs } Copy the statement
Lemp

The Law commissioner in the first third and fourth instructions given for the plaintiff undertook to direct them as to the effect they were to give the evidence upon the finding of particular facts. As an instance, he tells them that if the plaintiff contracted to work for the defendant and his partner in their brewery for a year at a stipulated price that they can not infer that he worked under the same agreement for the second year merely from the fact that he continued to work in the brewery after the expiration of the first year, if in the mean time the partnership of the defendant was dissolved. The question of fact was before the jury whether the service rendered by plaintiff to defendant was under an agreement to work by the year for a fixed price, and the circumstances referred to in the instruction, might well have satisfied the jury of the existence of such agreement for the second year. It was the sufficiency of the evidence to establish a fact upon which he was instructing the jury not upon a question of law.

In the fifth instruction for plaintiff he tells the jury that the defendant is liable to the plaintiff in this action ~~if the~~ for his services after the expiration of the first year if the partnership in which the defendant was engaged was dissolved. This liability is declared as existing notwithstanding any agreement that may have been made between the

parties for service to be rendered by Plaintiff for an entire year before he should receive any part of the compensation agreed upon -

The sixth instruction given for plaintiff alludes to a general custom as sufficient to control the effect of the evidence given to prove a hiring for an entire year when there was no proof of any general custom

In the present case the Law Commissioner seems to have thought that he was acting with becoming fairness and impartiality when he gave all the instructions asked by both parties involving diametrically the opposite sides of the same question of law. This will appear by comparing the instructions given on both sides. It is to be regretted that such course should be pursued. Let him give such instructions only as are consistent with his own opinions of the law and then at least he will not expose both parties to the danger of a reversal which ever way the trial may result.

As he has given wrong instructions for the plaintiff the judgment will be reversed & the cause remanded with the concurrence of the other judges

A R Gamble

Schneer

vs

Lemp

Opinion

HRG –

Filed 18th December 1882
Wm. S. Glanville, Clerk.

Ernest Schnerr
agt Appellee
Adam Lemp
Appellant

In the Supreme Court of the State of Missouri October T. 1852

N & S A Holmes for Appellant.

1. The instructions given for the plaintiffs assert no proposition not specifically denied in defendant's instructions: this is error.

2. It cannot be contended that the verdict of the jury negatived the hypotheses upon which defendants instructions were predicated, because plaintiff's second instruction excluded the question of an entire contract.

3. Plaintiffs third instruction is calculated to mislead a jury and is of a kind to be discountenanced.

4. Plaintiffs fifth instruction is clearly erroneous: it put the whole case upon a question not in dispute at all.

5. It is contended that the doctrine of the cases of Britton vs Turner, 6 N. H., 481, and Lee & Dolen vs Ashbrooke, 14 Mo., 385 does not apply in cases like this where the entirety
13. J. R. 94. ~~of the contract~~ is insisted upon as an essential part of the contract and where any election to receive or reject the services received is out of the question from the very nature of the case. 18 Wend. 187. notes
13. [illegible]
N. & S A Holmes, Attys

Ernest Schneer
vs Appeal
Adam Lemp
Appellant

Brief of Appellants
Counsel —

Ernst Schnerr, respondent } In the Supreme
vs } Court —
Adam Lemp, appellant }

Respondent's brief.

Hardisty, for respondent, contends

1st That the court below had no power to grant a second new trial to the defendant below, for either of the reasons assigned in his motion therefor.

Rev Stat. '45 p 830 — Sec 3 art 7. Practice at Law.
Hill vs Wilkins 4 Mo R. 86 —
Humbert vs Eckert 7 ib. 259
7 ib. 57
Ramsey vs: Hamilton 14 ib. 358 —

2d — That, although contradictory instructions were given, appellant was not prejudiced thereby.

The instructions asked & given on behalf of the plaintiff below were substantially correct, and the declaration of principles, directly at variance with them, was error of which respondent only could complain. —

3d — That, even admitting the contract to have been entire & that plaintiff left defendants' employment voluntarily & without legal excuse, before the expiration of the time fixed thereby, still, plaintiff was entitled to recover for his services, so far as they were beneficial to the defendant.

Hence it follows 1st that defendants' answer & the facts attempted to be proved thereunder constituted no defence to this action & 2d that the errors committed by the Court below are immaterial, — and that the jury found

in accordance with the law of the case. —
Lee & Dolen vs: Ashbrook 14 Mo R. 378
Britton vs: Turner 6. N. H. 481 — ~~& authorities~~
4 McCord 246 & ib. 249 } Notes to Cutter vs Powell in 2d Smith's leading cases — & authorities there cited —
That the true rule is, that the recovery depends upon the benefit derived by defendant from plaintiff's part performance, & not upon defendant's acceptance thereof, see above cases &
Moses vs: Stevens. 2d Pick. 336 —
14. Mass 282
7. Pick 181 — 11. Verm. 557
20. do 620 —
2d Cushg 80 —
Sedgw. on Dam, p 219. et seq & notes & authorities. —
That plaintiff, if he may recover at all, can sue before the expiration of the year
see Smith L. C. notes to Cutter vs Powell —
~~[illegible]~~ —

C Harding Jr
for resp't

No 86

Supreme Court

Ernst Schnerr

vs

Adam Lemp

Respondent's brief

Harding

for resp't

14 Mo R 378

6 N H 481

4 McLean 246-249

7 Pet 581

2 Pick 236

14 Mass 282

11 Verm 557

20 " 620

2 Cush 80

Smith Lead Co.

Cutter vs Powell 4 notes

Sedg Dam 219 notes

~~27 Penn 155~~

Ernest Schnerr, Appellee
vs
Adam Lemp, Appellant

In the Supreme Court of the State of Missouri

October Term 1852

Statement of the Case.

This was an action brought by plaintiff, Schnerr, against Lemp in the Law Commissioners Court of St Louis County on the 23d day of August, 1851, to recover the value of services alleged to have been rendered defendant as foreman of his brewery. After several amendments of the pleadings and a verdict and judgment for the plaintiff, which was set aside, a second trial was had on the 16th day of January, 1852, upon amended petition and defendants answer thereto, which, under the instructions of the Court hereinafter set forth, resulted in a verdict for the plaintiff in the sum of $148,62. On the second trial, the plaintiff introduced evidence tending to show that he was at work in defendants brewery, as foreman, from the 27th of March 1850, to the 12th of August, 1851, and it was admitted that the price claimed was reasonable. Plaintiff also introduced evidence tending to show that at the time he was employed, defendant was in partnership with one Kaegle, and that said partnership was dissolved before the end of the first year.

Defendant introduced evidence tending to show that plaintiff originally was hired by the year and that he continued in Lemps

employ after the dissolution of said partnership under an express contract to serve by the year, at the annual salary of five hundred dollars, and that plaintiff left defendants service on the 12th day of August, 1850, before the completion of the years services, without any good cause and against the will of the defendants.

On the motion of plaintiffs counsel the court gave the following instructions:

1. If the jury believe from the evidence that plaintiff was employed on or about the 24th day of March, 1850, to work for an entire year at a stipulated price in a brewery carried on by the defendants and some other person, or persons, in partnership with him, still they cannot infer that plaintiff worked under the same agreement for the second year. Merely from the fact of his continuing to work on in said brewery after the expiration of his first year, if the jury believe from the evidence, that upon the commencement of the second year, said partnership was dissolved and that said brewery was not after said dissolution carried on by said partnership.

2. The jury cannot find for defendant on the ground of there being any special contract for the second year.

3. Unless the jury are satisfied from the evidence, that at the making the agreement plaintiff and defendants understood and agreed

that plaintiff bound himself to remain in the employment of defendant during the space of an entire year, they cannot find for defendant on the ground that the contract was for an entire year; and proof that he was to be paid at the rate of so much per year, is not proof conducive that he agreed to work for an entire year

4. If the jury believe from the evidence that the first hiring was made by plaintiff with defendant and another person, then defendant's partner, that said partner had ceased to be such by or before the expiration of the first year of plaintiff's service, then no inference therefrom can be drawn as to the nature of the hiring after the expiration of the said first year.

5. If the jury believe from the evidence that Keagle ceased to be a partner of Lemp by or before the expiration of plaintiff's year, then defendant is liable to plaintiff for the value of plaintiff's service since the expiration of said year.

6. The fact of hiring at a fixed price per year is not evidence of a hiring for an entire year if it is the general custom in making such contracts to consider them binding only during the pleasure of the parties.

On motion of defendant's counsel the Court gave the following instructions
1. If the jury believe from the evidence, that plaintiff was employed in defendants brewery by the year, at five hundred dollars

per year, and that plaintiff left defendants employ before the end of the year, voluntarily and without any just cause, they will find for the defendants.

2. If the jury believe there was a hiring by the year at five hundred dollars per year, then plaintiff is not entitled to recover anything without showing a full performance on his part.

3. If the jury believe from the evidence that plaintiff contracted to serve defendants as a brewer for one year commencing on the 27th of March, 1850, and that after the expiration of this year, plaintiff continued in defendants employ, then the presumption of law is that there was a hiring for the second year on the same terms as the first.

4. If the jury believe there was a contract, then the fact that plaintiff was to be paid at the rate of five hundred per year, is evidence that the term of service was by the year, and the burden of showing the contrary lies upon the plaintiff.

5th Although the jury believe that the plaintiff was originally employed by Lemp & Co, yet, if the partnership was dissolved before the end of the first years services, and plaintiff continued with the remaining partner - then the presumption of law is that

plaintiff remained under the contract made with Lemp & Co, if any such was made, and the burden of showing the contrary lies upon the plaintiff.

6. If the jury believe from the evidence that there was a hiring of the plaintiff from year to year at the annual salary of five hundred dollars per year, and that plaintiff entered upon the ~~[illegible]~~ performance of the second years services, and that the second year commenced on the 27th day of March, 1851, then plaintiff had no cause of action at the commencement of this suit.

7. The burden of showing that plaintiff had just cause of leaving defendants employ before the end of the ~~second~~ year lies upon the plaintiff, and the claim of and refusal of higher wages is not such just cause.

The giving of erroneous and contradictory instructions as is contended by the appellant is assigned for error

N & S A Holmes } Atty
Romyn & Decks } for Appt

Respondent agrees to the above, but here refers to makes an additional statement of the reasons assigned by appellant ~~below~~ in his motion, in the court below, for a second new trial.

C. Harding Jr

In the Supreme Court

Ernest Schnerr appellee
vs
Adam Lenz appellant

Statement of the Case