Chadburne, Gideon vs. Page, Daniel D
Bacon, Henry
Wyman, Edward
Brown, Thomas

1856 St. Louis

383/7

5888/2

C had bill of exchange - $ 1978[15]
refused pymt
affirmed - Scott
Leonard absent
same as Hallowill v Page

The State of Missouri, } Sct.
County of St. Louis }

Page 1.

Be it remembered
that heretofore to-wit: on the Seventh day
of June. A.D. 1855 there was filed in the
office of the clerk of the St. Louis Court
of Common Pleas, within and for the County
aforesaid, a petition, which is in the words
and figures following, to-wit;

Petition.

Gideon H. Chadburne
Plaintiff.

against

Daniel D. Page, Henry
D. Bacon, Edward Kyman
& Thomas Brown. defendants.

In the St. Louis
Court of Common
Pleas for St. Louis
County.

The plaintiff states that
certain persons doing business under the name
firm and style of Page, Bacon & Co. at
San Francisco California drew their certain
Bill of Exchange which is hereto attached
by which they directed the said defendants
late copartners in trade under the name firm
& style of Page & Bacon at St. Louis to pay
to the order of the plaintiff Ninety days
after sight the sum of Nineteen hundred
and seventy eight dollars & fifteen cents for
value received, which said bill of exchange the
said defendants afterwards to wit on the fifteenth
day of February 1855 under the name & style
of Page & Bacon accepted said bill of exchange
payable at the Bank of America in the State
of New York, the plaintiff states that on the
day said bill of exchange became due and
payable to wit on the 19th day of May 1855

payment of said bill of exchange was duly demanded at said Bank of America in the City and State of New York aforesaid, that payment of the same was then and there refused, that neither said Bank nor the said defendants did or would pay the same, that the whole amount thereof is now due and owing by the said defendants to the plaintiff as also interest and damages - the plaintiff asks judgment for said sum of nineteen hundred and seventy eight dollars & fifteen cents also for interest and damages allowed by statute and for costs

Hudson & Thomas Attys for Plff

Gideon H. Chadbourne, plaintiff, makes oath and says that the foregoing petition and the matters therein as stated are true to the best of his knowledge and belief - G.H. Chadbourne

Seal Sworn to and subscribed before me this 7th day of June, 1855, as witness my hand and official seal. John Dicker Notary Public.

Thereupon a summons was issued which is as follows, to-wit;

Summons. County of St Louis. ss.

The State of Missouri

To the Sheriff of St Louis County, Greeting;

We command you to summon Daniel D. Page, Henry D. Bacon, Edward Wyman & Thomas Brown to appear before the Judge of our Court of Common Pleas on the first day of the next term thereof, to be held in the City of St. Louis, within and for the County of St. Louis, on the Second Monday of October next, then and there to answer the

3.

complaint of Gideon H. Chadburne as set forth in the annexed petition; and have you then and there this writ.

(Seal) Witness Charles H. Nicks. Clerk of our said Court with the seal thereof hereto affixed, at office in the City of St. Louis, this Seventh day of June in the year of our Lord eighteen hundred and fifty five.

C. H. Nicks Clerk.

Sheriff's Return.

Upon which summons the Sheriff made the following return.

Executed this writ in the County of St. Louis on the 9th day of June 1855 by delivering a copy of the writ and Petition (as furnished by the Clerk) to Thomas Brown, on the 11th day of June 1855 by delivering a copy of the writ and Petition to Edward Wyman on the 29th day of June 1855 by delivering a copy of the writ and Petition to Henry D. Bacon also on the 15th day of September 1855 by leaving a copy of the writ and petition as furnished by the Clerk at Daniel D. Page usual place of abode with a white person of his family over the age of fifteen years in St. Louis County. Turner Maddox Sheriff By Geo A. Stevens Deputy

Filed afterwards to wit; at the October term of said Court, on the 10th day of October 1855 the following answer was filed,

Answer of Bacon Brown & Wyman.

The said Defendants Bacon, Brown & Wyman for answer to Plaintiffs petition say they have no knowledge sufficient to form a belief as to the truth of the allegations therein that "payment

of said Bill of exchange was duly demanded &c. & therefore they require proof of the same. H. D. & G. P. Strong Attys for Defts

State of Missouri
County of St. Louis } ss H. D. Bacon one of the defendants above named being duly sworn says he believes the foregoing answer and the matters therein as stated to be true. H. D. Bacon

Sworn to before me this 10 Oct 1855
C. W. Hicks Clk.

And afterwards on the 15th of October 1855 the defendant Page filed an "affidavit denying service & Motion to quash Sheriffs return &c."

And on the 27th of October 1855 the following proceedings were had in said Court to-wit.

Mo. to quash Return &c Overruled

"The Motion of the defendant Daniel D. Page to quash the return of the Sheriff herein, or permit or require said Sheriff to amend said return, being submitted to the Court and by the Court fully understood, it is ordered that said motion be overruled."

and on the 30th October 1855 the following further proceedings were had to-wit;

Leave refused Page to ans. generally.

"Now at this day comes as well the plaintiff by his attorney as the defendants Bacon, Wyman and Brown by their attorneys, as also the defendant Daniel D. Page in his own proper person, thereupon said Page asks leave generally to file an answer herein which is refused; thereupon the defendants move the Court for leave to amend the answer now

5.

Leave to amend ans. refused.

on file by inserting the name of Daniel D. Page as party thereto, which motion is also overruled by the Court; Whereupon the plaintiff dismisses this suit as to the defendants Henry D. Bacon, Edward Wyman and Thomas Brown, and moves the Court for judgment against said Defendant Daniel D. Page for want of an answer, Wherefore the Court doth find from the instrument of writing on which this action is founded that said defendant Page is indebted to the plaintiff in the sum of Two thousand, two hundred and forty one dollars, and twenty two cents; therefore it is considered by the Court that the plaintiff recover of the defendant the debt aforesaid in form aforesaid as found, and also his costs herein expended and have thereof execution.

Dismissed as to Bacon, Wyman & Brown.

Judgment against Page for $2241.22.

And afterwards to-wit on the 2d of November 1855 the said defendant Page filed a motion to set aside said judgment &c.

And on December 4th 1855 these proceedings were had to-wit; "The defendant Daniel D. Page's motion to set aside the judgment herein being heard and fully understood, it is ordered that said motion be overruled; Whereupon said defendant files a Bill of Exceptions herein,

Mo to set aside judgt overruled.

Bill of Exceptions.

Said Bill of Exceptions is as follows, to wit;

Be it remembered that heretofore to wit, on the 15th day of October A D 1855 the said Daniel D. Page filed his affidavit in words and figures to-wit "State of Missouri, County of St. Louis ss Daniel D. Page one of the defendants in the

Page's afft denying service & Mo to quash Writ &c.

above entitled cause, being duly sworn says that a copy of the Writ in said cause was not left with any white member of his family above the age of fifteen years as in the return of the Sheriff to said Writ is alleged, nor was such copy left at this affiants usual place of abode, that at the time of the said pretended service, neither this affiant nor any member of his family was present within the County of St. Louis, and this he prays to be permitted to be established by proof, and that the return of the Sheriff as aforesaid be quashed, or the Sheriff permitted or required to amend the same according to the facts. Danl. D. Page

Subscribed & sworn to before me this 15th day of October 1855 C. W. Nicks Clerk"

and moved the Court to quash the Sheriff's return or require him to amend it according to the facts, and upon the hearing of the matters therein offered to prove by witnesses present in Court that the return of the Sheriff of service of the summons in this case upon said Page by leaving a copy thereof at his usual place of abode, with a white person of his family was false, and that all the allegations of said affidavit were true, and that the copy of said summons was left at the usual place of abode of the said Henry D. Bacon and not of said Page, and with a white person of said Bacon's family, and not of the family of said Page & that in no other way was service thereof made, which evidence the Court refused to receive, to which decision of the Court refusing to receive said evidence, or to permit said Page to prove the allegations of his said affidavit, the said Page did then and there

except. The Court thereupon overruled said Page's motion, and refused to quash said return or to require the Sheriff to amend the same, to which decision of the Court overruling said motion & refusing to quash the Sheriff's return or to require him to amend it according to the facts, the said Page did then & there except.

The said Page then moved the Court for leave to enter his appearance & file an answer generally in said cause, within such time as the Court might direct as answer being then prepared, which motion the Court overruled and refused to grant leave generally to said Page to enter his appearance & file an answer generally, to which decision said Page did then & there except. The Court then stated that if an answer were prepared & shown to the Court it would then decide whether it might be filed, which leave must be determined by the defense proposed to be made whether it goes to the merits or not. The said defendants Bacon Brown Wyman & Page then asked leave to amend the answer already on file in said cause, by inserting therein the name of said Page, so as to make it the joint answer of all of said defendants which motion the Court overruled, & refused to permit said answer to be amended, to which decision of the Court overruling said motion & refusing to permit said answer to be amended, all of said defendants did then and there except. The Court thereupon on motion of said plaintiff dismissed said cause as to said Bacon, Brown & Wyman, and rendered judgment final by default

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against said Page, to which decision of the Court dismissing said cause as to Bacon, Wyman & Brown & rendering judgment by default final as to Page, the said Page did then and there except. And afterwards to wit on the 2d day of November 1855 the said Page filed the following motion (& reasons) to set aside said judgment — " Defendant Daniel D. Page moves the Court to set aside the judgment by default & to permit him to enter his appearance & plead in this case, 1st " Because the Court erred in overruling the motion of said Page to quash said return &c " & in refusing to quash the same, & in refusing leave to said Page to file his answer in said case, and in refusing leave to amend the answer of the defendants by inserting therein the name of Page & making it the joint answer of all the Defendants, and in rendering judgment final by default against said Page,

Motion to set aside judgment.

2d " Because said judgment is for a larger sum than is due to plaintiff, & is erroneous & larger than was demanded,

Hudson & Thomas } D. D. Page in p.p. & Mo. "
Contra.

Which motion the Court overruled & refused to set aside said judgment, to which decision of the Court overruling said motion and refusing to set aside said judgment and permit said Page to enter his appearance & plead, the said Page did then and there except, and prays that this his bill of exceptions may be allowed, signed & made part of the record in this cause. Which is done

Samuel Treat.

9. And afterwards during said October term, to-wit on the 20th day of February 1856, these proceedings were had to-wit;

Gideon H. Chadbourne,
Daniel D. Page. } Appeal.

Comes now the defendant by his attorney and an appeal is allowed him to the Supreme Court from the judgment herein rendered, and thereupon said defendant files an appeal bond, with himself as principal, and Augustus H. Evans as security, which bond is acknowledged by the obligors, and approved by the Court,

Said appeal bond is as follows, to-wit;

Appeal bond. Know all men by these presents, That we Daniel D. Page as principal, and Augustus H. Evans as surety are held and firmly bound unto Gideon H. Chadbourne in the sum of Twenty nine hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, Sealed with our seals, and dated at St. Louis, this Seventeenth day of November A.D. 1855, The Condition of the above obligation is such, that whereas the said Daniel D. Page has appealed from the judgment rendered against him, and in favor of said Gideon H. Chadbourne October 3d, 1855 in the St. Louis Court of Common Pleas for the sum of twenty two hundred and forty one dollars and twenty two cents, together with costs, Now, if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal; and shall prosecute

his appeal; and shall perform such judg=
ment as shall be given by the Supreme Court
and such as the Supreme Court shall direct
the St. Louis Court of Common Pleas to give;
and shall, if the judgment or any part thereof
be affirmed, comply with and perform the
same so far as it may be affirmed; and pay
all damages and costs which may be awarded
against him by the Supreme Court, then this
obligation shall be void, otherwise it shall
remain in full force and effect.

Danl. D. Page (seal)
A. A. Evans (seal)

Approved
Attest C. W. Nicks Clk.

St. Louis Court of Common Pleas. October Term
1855. Be it remembered that on this 17th
day of November 1855 appeared Daniel D. Page
the principal, and Augustus A. Evans the security
in the foregoing bond, and acknowledge that they
executed the same for the purposes therein expressed.
(Seal) In Witness Whereof, I hereto set my hand and
affix the seal of said Court, at office, in St. Louis
the day and year last aforesaid. C. W. Nicks Clerk.

State of Missouri
County of St. Louis } ss:

I, Charles W. Nicks
Clerk of the St. Louis
Court of Common Pleas in and for the County
aforesaid, certify, that the above & foregoing is
a full and complete transcript of the record
and proceedings in the above entitled cause
as fully as the same remains in my office.

In testimony whereof I hereto
set my hand and affix

11 the the seal of said Court at office in St. Louis this 3d day of October AD 1856

C. W. Hicks
Clerk.

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(2)

March Term 1857

Gideon W. Chadburne

v. Transcript.

Daniel D. Page.

Appeal from St. Louis
Court of Common Pleas.

Filed 9 October 1856
Wm. S. Glanville
Ck.

A. D. & G. P. Strong.

Exd.
$3.50 paid by atty

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Gideon W. Chadburne
vs
Page & Bacon

Supreme Court of the State of Missouri. October Term A.D. 1856.

The Said Appellant, Comes & assigns the following errors in this Cause &

1st The Court erred in refusing to permit said Page to file an answer in this Cause, & in refusing to permit the answer of the other defendants to be amended as prayed for by defendants.

2d The Court Erred in refusing to sustain the Motion of Said Page, to quash the Sheriff's return &c. & in refusing to quash said return.

3d The Court erred in rendering judgment by default, against said Page, and in assessing illegal and excessive damages, & in refusing to set said judgment aside.

N.D. & G. P. Strong
Attys for Appellant.

And now comes the above named Respondents and says that in the record and judgment of the court below there is no error

Hudson & Thomas
Attys for Resd.ts

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Chadburne
vs
Page & Bacon

Assignt of Errors

Filed 6 November 1856
Wm S. Glanville
Ck

N. D. & G. P. Strong
for Appt.

Chadburn } In Supreme Court
"
Page &c }

And now comes the said pl'ff and says that in the record & proceeding in the Court below there is no such error as above alleged by the deft wherefore he asks judgment of this court

Hudson & Thomas
atty for pl'ff

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Chadburn

v

Page &c

Joinder in Error

Hudson & Thomas

attys for Pltff

Filed 28 March 1857

Wm S Glanvill

Ch

In Supreme Court
March Term 1857

Gideon W Chadbourn Pltff
vs
Daniel D Page deft

The only question in this case is whether or not the court below did right in refusing to allow Page to file an answer as prayed by him. The action is founded on a bill of Exchange, and there was not the slightest evidence that deft had any defence to the action. The judgment of the Court below was right and ought to be affirmed, with damages—

The counsel for pltff believe that a reference to the record will satisfy the court that the judgment of the Court below was right, and submit this case without argument.

Hudson & Thomas
attys for pltff

No 147

Chadburn
v
Page

Pltff Brief

Chadburn & Thomas
attys for pltff

Filed 17 April 1857
Wm Sylvanus
Clk

G. W. Chadburne
vs
Page & Bacon

Supreme Court. March Term 1857.

This Suit was upon a Bill of Exchange drawn in California, upon & accepted by defendants.

The main Point in the Case arises upon the Motion to quash the Sheriffs return, and for leave to answer asked by Page, & refused by the Court.

This is the same Point as that made in the Case of Hallowell & Co. vs Page & Bacon, No 95. submitted on a former day of this term.

Defendants submit this Case upon the points & Authorities made in that Case.

No question as to damages is raised in this Case.

N. D. & G. P. Strong
Attys for Defts.

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Chadburne
vs
Page & Bacon.

Statement & Brief
for Defts.

Filed 18th April 1857
Wm S Hamilton
Clk

M. D. & G. F. Strong.
Attys for Defts.

G. W. Chadburne Respdt.
vs.
D. D. Page Applt.

Appeal from the St. Louis Court of Common Pleas.

~~This case [illegible] The same~~

The points, which were determined in the case of Hal Lowell & others vs D. D. Page decided at this term of the court will ~~det~~ settle this case

Judge Ryland concurring the judgment will be ~~[illegible]~~ affirmed: J. Leonard absent

Wm Scott

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J. W. Chadbourne
vs
D. D. Page

Opinion

Filed 11 June 1857
Wm S Glanville
Clk