Plahto, Morris v Patchin, Paul 1858 St. Louis 391/5

591/25 Morris adm
Henry - deceased

26 Mo. 389 filed - 1857
March 58

{alt title
{ Plahto's Adm v Patchin
app resp

Judge Rich - affirmed

negotiable promissory note Henry
Paul Patchin endorses note to Plahto
orig makers of note are in Frank Cty (Edward Isley Co.)

plaintiff knew where makers resided - it was the competent
thing to do - to - tell notary where

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* St Louis Court of Common Pleas *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Court of Common Pleas held in and for the County of St Louis

wherein Morris Platto administrator of Henry Platto was plaintiff and Paul P. Patchin was defendant.

in ~~an action of~~ a civil action manifest error hath intervened, to the great damage of 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 in the City of Saint Louis, in the County of Saint Louis, in said State, on the Third Monday in March 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 S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the 28th day of February in the year of our Lord one thousand eight hundred and fifty Seven.

$1.50 paid G. Krum & Co.

Wm S. Glanville,

CLERK.

State of Missouri } ss.
County of St Louis } I, Charles W Hicks Clerk of of the St Louis Court of Common Pleas, in and for the County aforesaid, ~~hereby trans~~ herewith transmit in obedience to the command of the within writ, a true and complete transcript of the record and proceedings in the case of Morris Plahto administrator of Henry Plahto against Paul P Patchin as fully as the same remain in my Office.

In testimony whereof I hereto set my hand and affix the seal of said Court, at Office in the City of St Louis this 28 of February 1857.

C W Hicks Clk C.C.P.

State of Missouri }
County of St. Louis } Be it remembered, that heretofore to wit; on the seventh day of August A D 1854 there was filed in the Office of the Clerk of the St. Louis Court of Common Pleas within and for the County of St. Louis a certain petition which is in the words and figures following to wit;

(1)

Petition.

Henry Phalto plaintiff vs Edward Illsley and Benjamin Johnson under name & style of Edward Illsley & Co and Paul P Patchin Defendants	In the St. Louis Court of Common Pleas September Term 1854 St. Louis County

Plaintiffs state that Defendants Edward Illsley and Benjamin Johnson under the name and style of Edward Illsley & Co by their promissory note hereto annexed dated the 1st day of January A D 1854 promised to pay to the order of P. P. Patchin Esqr (the other defendant) Four months after date thereof the sum of Two Hundred and twenty eight dollars and fifty cents for value received negotiable and payable without defalcation or discount.

Plaintiff states afterwards to wit; on the day and year aforesaid the said note was assigned by endorsement and delivered to plaintiff by said defendant Patchin. Plaintiff further states that said four months and grace having elapsed and said note having become due and payable and remaining unpaid, the same was on the 4th day of May A D 1854 protested

(2)

for non payment and said defendants duly notified thereof, Plaintiff says that said note and every part thereof still remains unpaid; Wherefore he asks judgment against defendants for the amount of said note together with interest and costs of protest

Hart & Jecko for Plff

State of Missouri }
County of St. Louis } Joseph Jecko agent for Plaintiff makes oath and says that he believes the above petition and the matters as therein stated are true.

Sworn to & subscribed before me } Jos Jecko.
this 7th day of August 1854 }

(Seal) Hermann Schroeder Notary Public

Thereupon issued the following Summons to wit:

County of St. Louis }

The State of Missouri

Summons

To the Sheriff of St. Louis County, Greeting:

We command you to summon Edward Illsley Benjamin Johnson & Paul P Patchin 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 Third Monday of September next then and there to answer the complaint of Henry Plaho, as set forth in the annexed petition; and have you then and there this writ;

(Seal) Witness Charles H Hicks Clerk of our said Court with the seal thereof hereto affixed at Office in the City of St. Louis this 7th day of August in the year of our Lord eighteen hundred and fifty four

C. H. Hicks. Clerk

(5)

Sheriff's Return.

Thereupon the Sheriff made the following Return
Executed August 8th 1854 in the County of St. Louis by delivering a copy of this writ and petition as furnished by the Clerk to Paul P Patchin one of the within defendants; the other defendants not found in my County

John W Kinna Sheriff
By Ch. Chadbourne Deputy.

Edward Illely & Benjamin Johnson not found in my County

Turner Madden Shff
Theodore LaBeaume, D

And afterwards by leave the following Demurrer was filed to wit: Sept. 21st 1854.

Demurrer

"Paul P. Patchin one of said Defendants by attorney comes & demurs to said Petition of Plaintiff, on the ground that it does not contain facts sufficient to constitute a cause of action as against said Patchin alleged endorser thereof,

Because said Petition does not allege any demand of payment of said note of the makers thereof or either of them at maturity or any other time

Because it does not allege any sufficient notice to defendant Patchin endorser to bind him as endorser

Because it does not allege the performance by plaintiff of the necessary acts to fix the liability of said Patchin as endorser.

W L Gray for
Patchin.

And afterwards the following further proceedings were had in this cause to wit;

The demurrer of the defendant Paul P Patchin

(4)

Demurrer Sust.d

to the Plaintiffs petition being submitted to the Court, and by the Court fully understood it is ordered that the said demurrer be sustained And afterwards to wit on 30th Oct AD 1854 the following Amended Petition was filed by leave to wit:

Amended Petition.

Plaintiff by leave of Court first had and obtained files this his amended petition and says that defendants Edward Alley and Benjamin Johnson under name and style of Edward Alley & Co by their promissory note hereinto annexed dated the 1st day of January AD 1854 ~~[illegible]~~ promised to pay to the order of P P Patchin Esq.r (the other defendant) four months after date thereof the sum of Two Hundred and twenty eight dollars and fifty cents for value received negotiable and payable without defalcation or discount.

Plaintiff states that afterwards to wit on the day and year aforesaid the said note was assigned by indorsement and delivered to plaintiff by said defendant Patchin

Plaintiff further states that said four months and grace having elapsed and said note having become due and payable and remaining unpaid the same was on the 4th day of May AD 1854 after dilligent search and enquiry was made at the City of St. Louis and elsewhere for the said makers of said note so that the said note might be presented and shewn to the said makers thereof and the said makers not being on such search and enquiry found, duly protested for non-payment and said defendants all duly notified of the said several premises.

(5) Plaintiff says that said note and every part thereof still remains due and unpaid Wherefore he asks judgment against defendants for the amount of said note together with interest and costs of protest

Hart & Jacks
for Peff

State of Missouri
County of St. Louis } p John B. Evans agent for plaintiff being duly sworn upon his oath says that he believes the above amended petition and the matters as therein stated are true

Sworn to & Subscribed before me this 30th October 1854 } J. B. Evans

C. H. Hicks Clk

And afterwards to wit on the 21st February AD 1855 the following Answer of Deft Patchin to Amended petition was filed to wit;

Answer to Amd. Pet

" Paul P Patchin in answer to said amended petition of Plaintiff says that he denies that he assigned and delivered said note to said Plaintiff as stated in said petition, but he admits that he endorsed it in blank & wholly without consideration & solely for the accomodation of the makers & defendant delivered it so endorsed in Blank & without consideration to the said makers to be used by them & as Defendant is informed & believes it was delivered by the makers thereof to the said plaintiffs in payment of goods wares and merchandise bought by them of plaintiff & with full notice to plaintiffs of the above facts. Defendant wholly denies that there was any consideration between plaintiff & defendant

(4)

on account of said note or that it was put into circulation by defendant other than as stated above

Defendant denies that at the maturity of said note to wit on the 4th day of May 1884 any diligent search & enquiry were made at St. Louis or elsewhere for the makers of said note by said plaintiff or any one for his behalf so that the said note might be presented & shown to said makers as alleged & he denies that said makers could not be found but on the contrary he alleges that said plaintiff knew when he took said note & at its maturity the residence & the place of business of the makers of said note & well knew where to present said note for payment at its maturity. Defendant says that the makers of said note were merchants residing and doing business at Clover Hill in the County of Franklin in the State of Wisconsin both when said note was delivered by them to plaintiff & at its maturity & said plaintiff well knew this when he took said note & at its maturity.

Defendant denies that said note was ever duly or legally protested as alleged & he also denies that he was duly notified of any of the premises alleged in plaintiffs amended petition or of any facts necessary and required by law to make defendant liable as endorser on said note.

Defendant says that said plaintiff knew of the place of residence & place of business of said makers of said note in sufficient time before the maturity of said note to have presented said note to them & demanded payment thereof of them yet he neglected & failed so to do and by reason of such neglect & failure on the part of said

(7)

plaintiff Defendant says he is fully dis-
-charged from all liabelily as endorser of
said note and he asks to be hence discharged
with his costs. W. L. Gray for Deft

State of Missouri }
County of St. Louis } Paul P Patchin defendant
makes oath & says he believes
the above answer & the matters therein as stated
are true

Sworn to & Subscribed before } Paul. P. Patchin.
me this 21st day of Febru-
-ary 1855

Seal } Eleazer Sherman. Notary Public

And afterwards the following further proceed-
-ings were had in this cause to wit;

Tuesday March 6th 1855

Death of plff Suggested

The death of the plaintiff herein being suggested
to the Court this cause is continued until the
next term of this Court.

And afterwards the following further proceed-
-ings were had to wit; Wednesday February 27"
1856.

Morris Plahto Admr of plff's enters his appr.

" Now at this day com Hart & Jack Eggrs
and withdraw their names as attorney for the
plaintiff, and thereupon comes Morris Plahto
administrator of Henry Plahto deceased and en-
-ters his appearance as party plaintiff herein."

And afterwards the following further proceedings
were had in this cause to wit: March Term 1856

Thursday April 24" 1856

Dismissed as to Ellsley & Johnson Patchin enters appr & Morris Phahto admr of Henry Phahto is substituted plff herein

" Now at this day comes Morris Plahto the
administrator of Henry Plahto deceased and also
the defendant Patchin by their attorneys, and
said Patchin files a motion to dismiss this

(8)

cause as to him, which motion is submitted to the Court, and the Court being fully advised in the premises, doth order that said motion be over-ruled, whereupon said defendant Paul P Patchin enters his voluntary appearance herein and waives the issuing of a writ of Scire Facias against him and the said Morris Plahto is substituted as party plaintiff herein as administrator of the said Henry Plahto, who thereupon dismisses this cause as to the defendants Edward Alsley and Benjamin Johnson.

And afterwards the following further proceedings were had in this cause to wit;

Wednesday November 24th 1858

Jury waived trial & Judgt. for Deft

Morris Plahto Administrator of Henry Plahto Deceased vs Paul P. Patchin

Now at this day come the parties by their respective attorneys and waiving a jury submit this cause to the Court, and the Court being fully advised in the premises doth find the issues herein joined in favor of the defendant: therefore it is considered by the Court that the plaintiff take nothing by his suit in this behalf and that the defendant go thereof without day and recover of said plaintiff his costs herein expended. Decision filed by the Court

And afterwards the following further proceedings were had in this cause to wit;

Monday January 17th 1859

Motion for Review Ord.

"The plaintiff's motion for a New trial herein being heard and fully understood by the Court, it is ordered that said motion be over-ruled.

(9)

And afterwards on 20th February AD 1857 the following Bill of Exceptions was filed to wit;

Bill of Exceptions

"Be it remembered that on the trial of this cause the plaintiff proved that he was the administrator of Henry Plahto deceased

Sanford B Kellogg sworn testified that on May 4th 1854 he was a Notary Public in & for the County of St. Louis. On that day the note in question was handed to me by Page & Bacon Bankers, for presentment for payment. My first effort was to ascertain if the makers resided or did business here I looked at the Directory & enquired of business men and of other Bankers but could not find or learn of the makers

On the same day I delivered notices of protest in the usual form to Henry Plahto & to defendant I told them that I could not find the makers I went to Plahto because his name was in pencil mark on the note, to get information

Cross Examined I made out the notices before I called on Plahto or defendant. Plahto told me that the makers did not reside in St. Louis I think defendant said so to I merely asked if the makers resided in St. Louis & made no further enquiry. The plaintiff then offered in evidence the note & Protest as follows;

$228 50/100 St. Louis January 1st 1854

Note & Protest.

Four Months after date we promise to pay to the order of P P Patchin Esq Two Hundred & Twenty Eight 50/100 Dollars for value received negotiable and payable without defalcation or discount.

Due 1/4 May Edward Ilsley & Co

Protested for Payment St. Louis May 4th 1854 J. B. Kellogg Fee $1.45

(10)

(Endorsed) Pay to Platts or Order
Paul P Patchin.

State of Missouri }
County of St. Louis } ss

Vol 9. Fol 8.

Be it Known That on the day of the date hereof at the request of Messrs Page & Bacon the holders I Sanford B Kellogg Notary Public within and for the County of St. Louis of the State of Missouri duly commissioned and qualified dwelling in the City of St. Louis did Present the original Promissory Note hereunto attached a copy of which is written on the reverse hereof at divers and sundry places in St. Louis for payment & after diligent enquiry I was unable to find the makers or their place of business in St. Louis

Whereupon I the said Notary Public at the request aforesaid did protest and by these Presents do solemnly and publicly protest as well against the makers and Endorsers of the said note, as against all others whom it doth or may concern for Exchange Re Exchange and all costs. Damages Charges and interest already incurred and to be hereafter incurred for want of payment of the said note Of all which I have given due notice to the Parties concerned.

Thus Done & Protested at the City of St. Louis aforesaid this 4th day of May A D 1854

(Seal) In Testimony thereof I the said Notary have hereunto set my hand and affixed my Notarial seal the day and year above written.

S. B. Kellogg
Notary Public

$2128 50/100 Saint Louis January 1st 1854

Four Months after date we promise to pay to

(11)

the order of P. P. Patchin Esq Two Hundred & Twenty eight $\frac{50}{100}$ Dollars for value received negotiable and payable without defalcation or discount

Edward Ilsley & Co

Endorsed

Paul P Patchin

cr/ H Plahto.

The plaintiff closed here. The defendant then offered the deposition of Edward Ilsley:

Deposition of Edward Ilsley

Edward Ilsley of lawful age being sworn & examined on the part of the defendant deposeth and saith

I was acquainted with Henry Plahto in his life time I am acquainted with the defendant Paul P Patchin I was in business at the commencement of 1854 I may be mistaken I was then in partnership with Robert A Johnson The style of our firm was Ilsley and Company, that was all we ever used as a shipping mark or otherwise; We did business in Franklin County Wisconsin at a place called Clover Hill we kept a country store, keeping groceries Dry Goods & clothing. Our firm had business transactions with Henry Plahto about that time we bought goods of him. I know of a note given by our firm to which Mr Patchin was a party as endorser. I have seen that note in suit in this cause, that is the note of which I speak It was dated on the first day of January 1854 or 1853 I am not certain which of the two years. The amount of the note is some Two hundred and Twenty Eight dollars and perhaps

(12)

some cents. It is payable four months after its date. That note was passed to Wm. Henry Plahto. He was in the clothing business on Main Street in St. Louis. I passed it to him in payment for a Bill of clothing purchased by our firm of him. Wm. Patchin was an accomodation endorser on that note at my & my partners request. He received nothing from us for the endorsement, Neither I nor our firm ever passed any other note of the description to Henry Plahto. At the time we passed this note to Wm. Plahto we were doing business in Franklin County, on Clover Hill the place named before. The goods which we bought for said note were marked by the men in Wm. Plahto's employ to our house at Clover Hill and shipped to that place. This was to done by our directions. I think I informed Wm. Plahto where we were doing business when we purchased the goods. I continued in business at that place some eighteen months after that time. This note never was presented to me there for payment. If that note had been presented to me there for payment it would have been paid.

Our firm had no place of business in St. Louis either at the time of the giving the note or at the time of its maturity. The place in Franklin County was our only place of business. There was no change in the business from the time of the giving of the note in question to the time of its maturity. I had no connection with any Benjamin Johnson.

Cross Examined (by Mr Harding)

I only bought goods of Wm. Plahto that one time, Neither I nor my firm ever had any

(13)

other dealings with him to my Knowledge. We were Strangers to him when we went there to buy that Bill of goods: That is we never had any business transaction with him before: I used to know Mr. Platts by sight before, but never had much of an acquaintance with him. He required security of us and that was the reason of our giving him the endorsed note: The note was made on purpose to pay for the goods. I cannot state exactly how long after the first of January 1854 it was that our firm dissolved. If my memory serves me right it was in the month of September of that year. If that note was given in 1854 I think I can state positively that the firm of Staley & Co were doing business at Clover Hill in February 1854 I think it was in September 1854 that we dissolved. I left the place about the first of April 1855 About the first of July 1855 I went on the Pacific Railroad. After our firm dissolved I was in business alone at Clover Hill till the next Spring about eight or ten months I cannot state the exact time. I am certain that I told Mr. Platts that we were doing business at Clover Hill. I am confident of it. I had quite a long conversation with him before we purchased the goods. If that note was dated in the first of January 1853 we dissolved in 1853 I was in business most of the time after we dissolved, before I went on the rail road During that time the store was locked up a couply of Months more or less during which time I did no business. There is no post Office at Clover Hill. Mr. Patchen some times

(14)

attended to our money-matters here, sometimes made payments for us. I did not tell Mr Platt that Mr. Patchin would take up that note when it became due. Mr. Patchin was not with me when I gave the note.

Re Examination (by Mr. Gray)

It was in the Spring of 1855 that my store was shut up before I went on the Railroad One year last Spring. The place was open and I was doing business there from the time when the note was given to the time when the store was closed, previous to my going on the Pacific Rail road.

Re Cross Examination (by Mr Harding)

The place was not occasionally closed during the year 1854 It might have been during the latter part of the year but not before. As for in 1854 it was not I was there during the whole winter of that year.

Edward Ilsley.

To the reading of which plaintiff objected, The Court overruled said objection & permitted said deposition to be read & the plaintiff at the time excepted.

In rebuttal the plaintiff proved that Platt's mind had been so affected by disease that he was not competent to do business as early as the Spring of 1853 & that he continued in that condition till he died, although he did attend to business off and on.

Upon the facts the Court rendered judgment for the defendant, finding the facts to be as follows:

Decision of the Court:

(15)

The Court finds the facts to be as follows;
The makers of the note in question resided and did business at the making and maturity thereof at Clover Hill, in Franklin County Missouri; They purchased goods of Plaintiff in the City of St. Louis on time and as a City endorser was requested they procured the accomodation endorsement of the Defendant and gave to Plaintiff said Note so endorsed in payment for said goods; Plaintiff and the Defendant both knew the place of business and residence of the makers of the note. On the day of the maturity of said note and after banking hours the Banking House of Page and Bacon put said note into the hands of a Notary, who made enquiries of other bankers and business men in St. Louis and examined the City Directory to ascertain if said makers resided or did business in said City and being unable to learn of them that said makers resided or did business in St. Louis ~~[illegible]~~ they noted the said note for protest, made out written notices in the usual form for the Defendant and Plaintiff called on said Plaintiff and the defendant respectively, and enquired of them if the makers resided or did business in St. Louis and on being answered in the negative gave to said Plaintiff and the defendant the usual Notices for endorsers after protest for nonpayment No inquiry was made either of Plaintiff or the defendant where the place of residence or business of the makers really was. The Notary then made out in form his protest for Non

payment.

The makers were solvent at the maturity of said note and would have then paid the same if it had been presented to them for payment.

Whereupon the Court declares that the plaintiff is not entitled to recover.

The plaintiff in due time filed his motion for a review as follows

Motion for Review.

"The plaintiff comes and moves the Court to review its decision in this cause first as to the facts in this to wit; That the Court ought to have found, but did not find the fact to be that Page & Bacon were the holders of the note at the time of its maturity and upon this point the plaintiff makes the following case viz; That on the day of the maturity of said note Page & Bacon as witness Kellogg testified delivered said note to him for collection said note was then and up to the time of the trial remained endorsed in Blank by the defendant.

Second, as to the law, Upon the facts as found the judgment should have been for the plaintiff. No negligence by which the notary could be charged is shown. The usual diligence exercised by Notaries is shown. The Defendant is shown to have failed in diligence by not informing the office where Ilsley & Co resided & did business, And the holders Page & Bacon, who were ignorant of the residence & place of business of Ilsley & Co used all possible diligence.

Rum & Harding
for Pltff.

17

The Court overruled said motion & the plaintiff immediately excepted to said ruling And that the facts aforesaid may become of record the plaintiff prays that this his Bill of Exceptions may be signed & sealed which is accordingly done

Samuel Treat (Seal)

State of Missouri }
County of St. Louis } ss I Charles H. Hicks Clerk of the St. Louis Court of Common Pleas within and for the County aforesaid, certify the above and foregoing to be a full true and complete transcript of the record and proceedings in the above entitled cause as fully as the same remain in my Office

In Testimony Whereof I hereto set my hand and affix the seal of said Court at Office in the City of St. Louis this Twenty Sixth day of February AD 1857

C. H. Hicks Clerk

Index to Transcript

Petition	page	1	Death of Pltff suggested	page	7
Summons	"	2	Morris Plaintiff Admr of Pltff		
Shff's Return & Demurrer		3	enters his appearance		7
Demr Sust.d & Amd. Pet		4	Dismissed as to Illsley &		
Ans to amd. Pet.	"	5	Johnson. Patchin enters his appr		

and Morris Plahto Adm^r of Henry Plahto is substituted Pltff herein " 7
Jury waived trial & Judgt. for Pltff " 8
Motion for Review Ord^d " 8
Bill of Exceptions Note & Protest " 9
Deposition of Edward Illsley " 11
Motion for Review " 16

Appt. of Mr. 57 Prefs & Stat. for each Mt 68
affirmed 1st April 1858 Book B 224

39 Ded

25 March. T. 1858

Morris Plahto Adm^r of Henry Plahto P.E.

vs Transcript

Saml. P. Patchin D.E.

Error to St. Louis Court of Common Pleas

Filed 28 Feby 1857
Wm. J. Glanville Cl.
Krum & Harding

Ay. 25
Examined

39 Ded

Morris Plahto administrator of Henry Plahto, dec^d. plaintiff in error vs:

Paul P. Patchin, defendant in error

In the Supreme Court - March Term 1857

And now comes the plaintiff in error & says that there is manifest error in the record, proceedings & judgment of the Court below, viz:

1st The Court below erred in admitting incompetent & illegal testimony offered by the defendant in error -

2^d - The Court below erred in it's finding of the facts of the case -

3^d - The Court below erred in it's judgment upon the facts as found -

4th The Court below erred in overruling plaintiff's motion for a review -

Krum & Harding
for plaintiff in error. -

And now comes said Defendant in error and says there are no errors in the said Record & proceedings as alleged & prays judgt

M L Gray for
Deft in error

~~165~~ 39

Plahto's admt

vs:

Patchin

Assignt of errors

Kunn & Harding

for plff in error

Filed 25th March 1857.

Wm S Glanville

Clk

Morris Phillips Admr
Plff in Error
vs
Paul P. Patchin
Deft in Error

In Supreme Court
Oct Term 1857

Plaintiff sued Defendant on a negotiable promissory note dated January 1st 1854 for $228 50/100 dollars made by Edward Illsley & Co, payable 4 months after date to the order of Deft P. P. Patchin & indorsed by him.

The Petition after stating the making of the note as above set forth alleged its assignment by Deft to Plaintiff, & that on 4th May 1854, the said note, "after diligent search & enquiry was made at the City of St Louis & elsewhere for the said Makers of said note so that the said note might be presented & shewn to the said Makers thereof, and the said makers not being on such search & enquiry found, was duly protested for non-payment & said Defts all duly notified of the said several premises" & Plff prayed judgment.

Patchin in his answer, denies that he assigned & delivered said note to Plff but admits he indorsed it in blank, wholly without consideration & solely for the accommodation of the makers & deft delivered it to the makers so indorsed in blank & without consideration, to be used by them & as Deft is informed, it was delivered

by the said makers to Plff. in payment of goods bought by the makers of Plff. & with full notice of the above facts. to Plff.
Deft wholly denies there was any consideration between Plff & Deft. on account of said note, or that it was put into circulation by Deft other than as above stated.
Deft denies the allegations of Plff's Petition about diligent search for the makers and that they could not be found. on the contrary he alleges that Plff knew when he took said note & at its maturity. the residence & place of business of said makers & well knew where to present the same to said makers - that said makers were merchants residing & doing business at Clover Hill in the County of Franklin State of Missouri both when said note was delivered by makers to Plff. & at its maturity. & that Plff well knew this. when he took the note & at its maturity.
Deft denies that said note was duly presented. or protested as alleged. & denies that Deft was duly notified of the premises alleged in Plff's Petition. or of any facts necessary to make Deft liable as indorser on said note
that Plff knew of the residence & place of business of said makers in time before its maturity to have presented it to them & his failure to do this discharged Deft & prays judgment.

The case was tried before the Court & the Court found the following facts

Decision of the Court.

The Court finds the facts to be as follows. The makers of the note in question resided & did business at the making ~~of the note~~ & maturity ~~of~~ thereof at Clover Hill in Franklin County Missouri; they purchased goods of Plohto in the City of St Louis on time & as a city indorser was requested. They procured the accommodation indorsement of the Defendant, & gave to Plohto said note so indorsed in payment for said goods. Plohto & the Defendant both knew the place of business & residence of the makers of the note; On the day of the maturity of said note, & after Banking hours the Banking House of Page & Bacon put said note into the hands of a Notary, who made enquiries of other Bankers and business men in St Louis & examined the City Directory to ascertain if said makers resided or did business in said City and being unable to learn of them, that said makers resided or did business in St Louis. then noted the said note for protest, made out the written notices in the usual form, for the Defendant & Plohto, — called on said Plohto, & the Defendant respectively, & enquired of them if the makers resided or did business in St Louis, & on being answered in the negative, gave

to said Plaintiff & the Deft, the usual notices for indorsers after protest for non-payment, No enquiry was made, either of Plaintiff or the Defendant where the place of residence or business of the makers really was. The Notary then made out in form his protest for non-payment.

The makers were solvent at the maturity of said note & would have then paid the same, if it had been presented to them, for payment.

Wherefore the Court declares that the Plaintiff is not entitled to recover.

The Plff. within 4 days filed his motion for review, asking the Court to review its decision, first as to the facts, in this, that the Court ought to have found but did not, that Page & Bacon were the holders of the note, at its maturity, & on this point made the following case viz that, on the day of the maturity of said note Page & Bacon, as witness Kellogg testified delivered ~~the~~ said note to him for collection; said note was then & up to the time of the trial, remained indorsed in blank by the Defendant.

Second, as to the law, that on the facts as found judgment should have been for Plff. that no negligence by which the Notary could be made liable, is shown - the ~~usual~~ usual diligence exercised by Notaries is shown. the Deft is shown to have failed in diligence by not informing the officer where Illsly & Co

resided & did business and the holders Page & Bacon, who were ignorant of the residence & place of business of Illsley & Co used all possible diligence.

The above were the only grounds on which a review was asked.

The Court over-ruled the motion for Review & Plff excepted.

The note as offered in Evidence by Plff was as follows

"$228 $\frac{50}{100}$ St Louis January 1 1854

" four months after date we promise

" to pay to the order of Paul P. Patchin Esq

" Two hundred & twenty eight $\frac{50}{100}$ Dollars

" for value received negotiable & payable

" without ~~discount~~ defalcation or discount

signed "Edward Illsley & Co

Indorsed "Pay H. Plahto or order

" signed Paul P. Patchin

" Or H. Plahto "

Deft offered the Deposition of Edward Illsley to which Plff objected & the Court admitted it. & Plff excepted.

The motion for a Review did not mention as a reason therefor, that improper Evidence had been admitted by the Court.

M. L. Gray for Respt

No ~~125~~ 39

In Sup Court
Oct T. 1857

Henry Plohlo's Adm
Pltf in E
v
P P Patchen
Deft in E

Stale by Deft in error

M. L. Gray

Filed 14 Nov. 1857
Wm S Glanville
Ck.

Plahto's admr. plaintiff in error
vs.
Patchin, defendant in error

In the Supreme Court
March Term 1858.

Statement on behalf of plaintiff in error.

This was an action against the defendant in error as endorser of a negotiable promissory note, made by Illsly & Co. to the order of the defendant in error and by him endorsed in blank. The note remained so endorsed in blank until the trial, when the endorsement was filled up in the form in which it appears in the record. The note was dated at St Louis.

At the trial, the plaintiff proved by the notary who protested the note, that on the day of its maturity, the same was delivered to him by Page & Bacon, to be by him presented for payment. Plahto's name was on the note in pencil mark, but did not otherwise appear thereon.

The defence was want of due presentment of the note to the makers, on the day of its maturity, for payment.

The facts as proved are stated in the finding of the Court, excepting that the Court omitted to find that Page & Bacon were the holders of the note at the date of its maturity. Said finding is as follows, viz: The makers of the note in question resided and did business at the making & maturity thereof at Clover Hill in Franklin County Missouri; they purchased goods of Plahto in the City of St Louis on time, and as a city endorser was requested they procured the accommodation endorsement of the defendant & gave to Plahto said note so endorsed in payment for said goods; Plahto & the defendant both knew the place of business and residence of the makers of the note. On the day of the maturity of said note and after

Banking hours, the Banking House of Page & Bacon put said note into the hands of a Notary, who made enquiries of other bankers and business men in St Louis and examined the City Directory to ascertain if said makers resided or did business in said City and being unable to learn of them that said makers resided or did business in St Louis, then noted the said note for protest, made out written notices in the usual form for the defendant & Plaintiff, called on said Plaintiff & the defendant respectively & enquired of them if the makers resided or did business in St Louis and on being answered in the negative gave to said Plaintiff & said defendant the usual notices for endorsers after protest for non payment. No inquiry was made of either Plaintiff or the defendant, where the place of residence or business of the makers really was - The Notary then made out in form his protest for Non Payment - The makers were solvent at the maturity of said note & would have paid the same if it had been presented to them for payment. Whereupon the Court declares that the plaintiff is not entitled to recover -

The plaintiff objected to the reading of the deposition of Illsley, offered by defendant to prove that the makers resided at Clover Hill, Franklin County, Missouri & that Plaintiff knew the fact, on the ground that Page & Bacon, the holders, or their agent, the notary, could not be charged with want of diligence by reason of information in Plaintiff's possession, not brought home to them - The objection was overruled and the deposition admitted in evidence; to which ruling plaintiff took due exception -

The Court below rendered judgment for the defendant. In due time the plaintiff filed his motion, with a case made, for a review, on the grounds that the Court omitted to find material facts which were proved and that upon the facts as found the judgment should have been for the plaintiff. This motion was overruled, and the plaintiff brings his case here by writ of error. —

Krum & Harding
for plaintiff in error.

39 —

Plakto's admr
plff in error
vs:

Patchin — deft

Statement by plff
in error —
Krum & Hendrix
p. q.

Filed 22d March 1858
Wm S Glanville
Ch

Plaintiff's admr
P.E. vs.
Patchin - D.E.

In the Supreme Court. -

Brief on behalf of plaintiff in error

—

1st Page & Bacon were the holders of the note at its maturity, it being delivered by them to the notary for presentment, endorsed in blank by the defendant. -
Story on Bills § 207. - 2. Shep 101. -

2d The holders will be presumed to have been holders for value, and their acts, in making presentment of the note, bound the defendant unless they were guilty of laches.
Renshaw vs. Triplett & others 23d - Mo - 213. -

3d The holders had no other evidence, so far as appears of record, of the residence of the makers than the place at which it bears date - The presumption is in such cases, that the makers reside at the place where the note bears date
2d Cranch 127. 4 Serg & Rawle 480. 3 Kent 96.

4th The holders, through their agent, the notary, used all the diligence required of him to ascertain the place of business & residence of the makers -
~~Story Prom Notes § 264.~~ - Hunt vs. Maybee 8 Selden. N.Y. Rep p 266 -
And the holders were excused for not making presentment - ib - Story Prom N § 264 - 21. Wend. 643.

Especially, as the notary called on the defendant & enquired if the makers resided in the city & was informed that they did not, and as defendant knew and did not inform the notary where they resided --

4th The Court below erred therefore in its decision and judgment.

Kinney & Harding
for plff in error.

39 -

Plahto's admr

vs:

Patchin -

Brief of plff in Error -

Krum & H

p.q.

Filed March 22 1858

Wm S Glanville

Ct.

Henry Plahto's Admr
vs
Paul P. Patchin

In Sup Court
October Term 1857

Brief of Deft in Error by

Plaintiff in error has assigned four errors (alleged) of the Court below, which I will notice in their order.

I. That the Court erred in admitting improper evidence on the part of the Deft in error, to wit the Deposition of Edward Ilsley.

1. According to the well established practice of this Court, this ground of error will not be looked into or examined at all for the reason that this alleged error of the Court below, was not made a ground or reason, ~~for~~ in the motion for a review. The Court below should have had an opportunity to have reconsidered this point & not having given that opportunity, by alleging this as a reason for a review or new trial. Pltff in error is precluded from raising the question here.

10 Mo R. p 515. 13 Mo R p 455. 15 Mo R p 488.
See also 9 Mo R 497. 11 Mo 358. 623

2. If the above does not dispose of this alleged error, I then say this Court will not look into this matter, because Pltff has not preserved on the record the specific grounds ~~of~~ on which he objected to the Deposition.

8. Mo R. p. 128 13 Mo R p 203.

3. There is no legal ground of objection to the Deposition

III. The next alleged error is, that the Court erred in its finding of facts.

The only complaint on this point was, as appears in the motion for review, that the Court did not find that Page & Bacon were the holders of the note at its maturity, & refers to the testimony of the witness Kellogg. The Court will see, by referring to Kellogg's testimony in the Bill of Exceptions, that the finding of the Court, is in almost the words of Kellogg, & is all, that his testimony would authorize the Court to find.

Besides it was wholly immaterial, who the holder of the note was, as the same degree of diligence & action, would be required from one holder as another, to fix the liability of the indorser.

The liability of the indorser did not depend upon who was the holder of the note, but upon the acts of the holder to get payment from the maker, at maturity.

Again the indorsement of "Cr H Plahto" on the back of the note, showed that it was merely deposited with Page & Bacon for collection & that it in fact belonged to H. Plahto.

To show that Page & Bacon, if the holders of the note, can not be excused for non presentment to makers see Sects 265 & note 1, of Story on Promissory notes

IIII The 3rd error assigned is that the Court erred in its judgment on the facts found.

This raises the question of due diligence on the part of the holder of the note, in making presentment at the residence or place of business of the makers. At the time the note was given & at its maturity, the makers lived at Clover Hill, Franklin County Mo.

& did business there & neither lived or did business in St Louis, nor had an agent in St Louis & all these facts were well known to Plff from the time he received the note, & might have been known to Page & Bacon, if they were the holders of the note, by a simple enquiry of Plff or Deft - The Notary runs along the street & makes casual enquiries, & not hearing of the makers, at once notes the notes for Protest - makes out the notices for indorsers & never enquires of them, who are parties to the note & most likely to know the makers & where they are, - ~~tel~~ about their residence & place of business.

To have ~~left~~ waited till after Banking hours, on the day of the maturity of the note, before making enquiry of the whereabouts of the makers, if the holder was ignorant, was such gross laches & want of diligence, as to discharge the indorser at once.

The law is clear, that if the makers reside in the State & their residence is known to the holder or, by due diligence & enquiry, could have been known, that the note must be presented, at the residence or business place of the makers, even where the maker has changed residence or place of business, between the making or maturing of the note, in order to charge an indorser.

14. J.R p 144. 2 Watts & Serg p 140
2 Martin's Reps New Series p 511 -
19 J.R. p 391. 5 Binney p 541. 3 Wharton 116.
1 Barb Sup Ct R 158. 1 Cowen 321. 3 Denio 145
Story on bills [redacted] 351 & Note 4.

Story on Prom Notes § 251. 235-6. 265 & note 4

The proof of Deft conclusively shows that if the holder had presented the note for payment at its maturity, to the makers, it would have been paid. Deft therefore is directly damaged, to the amount of the note by this lachis of the holder.

IV The over-ruling of the motion for review & for new trial, was proper, for the reasons given under the 3 previous heads

M. L. Gray for Rs

No 39
In Supreme Court
Oct. T. 1857

H. Plahlo's Adm
v
P. P. Patchin

Respondents Brief

M. L. Gray

Filed 22 March 1858
Wm. S. Glanville Cl.

No 39. Plahto'ador vs Palchin.

The engagement of the indorser to pay a negotiable promissory note, is not absolute like that of the maker, but is conditional, and if the holder intends to charge the indorser, it is his duty to make a demand of payment on the maker at the maturity of the note, unless there exists some legal excuse for ~~it~~ omitting it. The note was dated at St Louis and the presumption ordinarily would be indulged that the makers resided there, but this presumption was repelled in this case by the ~~[illegible]~~ testimony that the plaintiff when he received the note on the day of its date knew that the makers resided in Franklin County, and the Notary on the day he protested it was informed both by the plaintiff and defendant that the makers did not reside in St Louis. The plaintiff in the first instance received the note the day it was executed, and as between him and the defendant who ~~who~~ was the immediate indorser, the latter had the right to require that the note should be presented for payment to the makers. If the plaintiff transferred the note to Page & Bacon too late to have a due presentment made, he could not complain of their omission to present it, but the defendant having transferred it long enough to have a proper presentment made, had a right to stand on the terms of his original undertaking against every person who ~~[illegible]~~ subsequently received the note. The law does not require any thing unreasonable of the holder to ascertain ~~to ascertain~~ the residence or place of business of the maker, but due diligence

~~only~~ is required, and if the maker has absconded or is concealed, ~~and~~ or cannot be found after due inquiries or if he has removed ~~his place~~ to another State or County since the note was given. the holder will be relieved from the necessity of any other efforts to make a presentment (Story P. Prom. Notes Sec 264)

What will be considered proper diligence on the part of the holder in making inquiries to ascertain the residence or place of business of the maker is not susceptible of a definite rule and must depend on the circumstances of each particular case.

The finding of the court shows that the plaintiff knew all the time where the makers resided and that the Notary had told that they did not reside in St Louis. If it was not the duty of the plaintiff when he transferred the note to Page & Bacon, to inform them where the note should be presented for payment it was at least his duty to have informed the Notary, when asked if the makers resided in St Louis,

The deposition was properly admitted, for it was certainly ~~to~~ Competent to prove where the makers resided or had their place of business

The pleadings of the court on the question of diligence was substained by the evidence and the judgment will be affirmed

The other Judges concur

R. C. Richardson

No 39

Plaintiff

v

Patchin

Opinion of the Court

Affirmed

Filed 1st April 1858
Wm S Glanville Cl.

Richard Jm