Ham, Peter v. Barret, John 1859 St. Louis 423/8

601/29

58/M59

Barret def app H.M. Jones

says he never had a note from L - denies he endorsed note to H

says note was settled w/ L

says Ham was Cool of Bacon & Page (to whom note was delivered)

Ham plaintiff resp N.D & G.P. Strong

was recipient of note for $500 ordered by ~~Barret~~ Leslie, from ~~Miron Leslie~~ Barret

payment refused by L

nothing been paid

wins $ 642.15

member of Leslie & Barret

Scott - Affirmed

presumptions of fact v law

payment = pres fact, jury decided

1

State of Missouri }
County of St. Louis } Be it Remembered that heretofore, to wit, on the 15th day of February in the year of our Lord one thousand eight hundred and fifty six there was filed in the office of the clerk of the St. Louis Court of Common Pleas within and for the County aforesaid a certain petition which is in the words and figures following to wit;

Petition

Peter A. Ham, Plaintiff
against
John R. Barrett

State of Missouri, County of St. Louis ss
St. Louis Court of Common Pleas
March Term A.D. 1856.

Plaintiff states that Miron Leslie, since deceased, executed his negotiable promissory note bearing date St. Louis, December 15th 1852 and thereby promised, ninety days after the date thereof to pay to the order of said defendant, by the name of J. R. Barrett, five hundred dollars, negotiable and payable, without defalcation or discount, and for value received, and then and there delivered said note, which is filed herewith, to said defendant, who then and there for a valuable consideration, endorsed and delivered said note to said plaintiff, who is now the legal owner & holder thereof. Plaintiff further states that at the maturity of said note, payment thereof was duly demanded of said Leslie, who failed and refused to pay the same, and said note was thereupon duly protested for non payment, of all which, said defendant had due notice, the cost of said protest was one $\frac{35}{100}$ dollars. Plaintiff states that no part of said note has been paid, but the whole amount thereof with the interest & statutory damages is and remains due and owing from said defendant to said plaintiff. And he asks judgment for the same. A. D. & G. P. Strong Attys for Plff.

500

2

Peter A. Ham, the Plaintiff above named, being duly sworn says the foregoing petition and the matters therein as stated, he believes to be true. P. A. Ham.

Sworn to & subscribed before me this 14th Feby 1856

C. N. Hicks, Clerk

St. Louis, December 15th 1855

Note Sued on

Ninety days after date I promise to pay to the order of J. R. Barrett five hundred dollars negotiable and payable without defalcation or discount and for value received

Miron Leslie

Pay to Peter A. Ham. J. R. Barret.

Thereupon issued the following Summons to wit,

County of St. Louis s. s.

Summons

The State of Missouri,

To the Sheriff of St. Louis County, Greeting:

We command you to summon John R. Barrett to appear before the Judge of our Court of Common Pleas, on the first day of the next term thereof, to be holden in the City of St. Louis, within and for the County of St. Louis, on the second Monday of March next, then and there to answer the complaint of Peter A. Ham as set forth in the annexed petition; and have you then and there this writ.

Seal

Witness Charles N. Hicks, Clerk of our said Court with the seal thereof thereto affixed, at office, in the City of St. Louis, this 15th day of February in the year of our Lord eighteen hundred and fifty six.

C. N. Hicks, Clerk

Acknowledgment of Service

I hereby acknowledge service of the within writ and petition this Feby 15th 1856. J. R. Barrett

Afterwards, to wit, on the seventeenth day of March in the year of our Lord one thousand eight hundred and fifty six the said J. R. Barrett filed his answer to the foregoing petition which is as follows, to wit,

294

Defts Answer

Peter N. Haw, Plff
vs
Jno. R. Barret, Deft

Defendant in answer to Plffs petition, denies that the note sued on was ever delivered by Minor Leslie to him and denies that he deft. ever endorsed and delivered said note to plff. for value or otherwise - Deft. has no acquaintance whatever with Plff. and has never had a business transaction with him of any sort. Said note was made and endorsed for the accommodation of Minor Leslie, & as this deft. believes delivered by him to Messrs Page & Bacon and for his, said Leslie's use, but whether it was so delivered in payment of a debt, or to be discounted or in any manner for value reo Deft does not know, nor has he information sufficient to form a belief - However that may be, said note was delivered to Page & Bacon, by Leslie, and they continued the holders thereof until its maturity and it was their property when it was dishonored. As soon as notice was received of the dishonor of said note, Mr. Leslie told deft. that he would go down and attend to it immediately - Deft. saw Mr. Leslie soon afterwards & was assured by him that he had been to Page & Bacons, & the note had been arranged.

Not long after this, the time not now remembered, Deft happened to be passing Page & Bacons Banking house & when Deft told Mr. H D Bacon a member of that firm that Mr. Leslie had said, to wit, that the note had been settled, Mr. Bacon replied that it was true, Mr. Leslie had settled for the note, or arranged the note, or used words of similar import.

With the assurance from Mr. Leslie & Mr. Bacon, the maker and the holder, that the note sued on, had been settled or arranged this Deft was perfectly satisfied, and never heard any thing to impeach or contradict the said assurance until about the middle of February last, when Plff

wrote a letter to Deft. demanding the payment of said note -

Deft. says Minor Leslie died in the summer of 1854 - that he lived near 18 months after the note sued on became due, and this deft upon the faith of the correctness & truth of the assurance given by Mr. Bacon, was afterwards induced to assume responsibilities for said Leslie which he would not have assumed, had he for a moment deamed that the note sued on was still outstanding - & by assuming such responsibilities Deft has been greatly damnified & has lost large sums of money, greatly exceeding the amount of said note - which responsibilities Deft would not have assumed and which losses he would have avoided but for the assurance received from Mr. Bacon that the note sued on had been settled - Deft says that said H. D. Bacon was in 1852 & is yet a member of the firm of Page & Bacon who were the holders of said note from its execution until it was settled as stated by said Bacon - and Deff never had any control or custody of said note until about the time of the bringing of this suit, about three years after the said note had been paid and satisfied by Minor Leslie as herein before stated -

And at this time, Deft denies that Mr. Peter A. Nam, has any real interest in said note the charges that the said Nam is the mere tool of Page & Bacon, for the purposes of this suit, being a person to whom it might be more convenient to do the necessary swearing -

And the Deft now charges that the said Peter A Nam is not the real party in interest in this suit - Deft further answering says that before the maturity of said note the said Page & Bacon were indicted by the Grand Jury

317

of St. Louis for a misdemeanor & offence against the laws of the land - That they had retained Miron Leslie as an Atty at law to defend them; that said Leslie was at that time a member of the firm of Leslie & Barret, of which Deft. was also a member - That about the time of the maturity of the note sued on the case vs Page & Bacon was tried in the St. Louis Criminal Court, and a verdict rendered against them, an appeal was taken, & the case was afterwards tried in the Supreme Court of the State of Missouri - And the said Leslie & Barret defended said Page & Bacon in the St. Louis Criminal Court & also in the Supreme Court of the State & the services of the said Leslie & Barret in said cause were reasonably worth One thousand dollars - No part of which sum has been paid by said Page & Bacon unless by way of settling the note of Leslie, sued on, & which this Deft. believes to have been done & therefore so charges.

And having so answered the said Defendant prays to be hence dismissed with his reasonable costs - Thos. J. Gantt p d

State of Missouri }
County of St. Louis } L. R. Barret Deft. being duly sworn states that he believes the foregoing answer and the matters therein as stated are true - L. R. Barret

Sworn to and subscribed before me the undersigned this seventeenth day of March eighteen hundred & fifty six - Gerhard O. Kalb Clerk Notary Public St. Louis Co. Mo

Afterwards, to wit, on the twenty fourth day of April in the year of our Lord one thousand eight hundred and fifty seven the plaintiff by his Attornies filed his Reply to the Answer of the said Defendant, which follows in these words to wit -

Reply

T. N. Ham }
vs } Plaintiff in reply to that part of Defendants Answer, which ~~says~~ alleges
L. R. Barret } that Page & Bacon were indebted to

334

said Defendant and Miron Leslie for professional services, states that he has no knowledge or information sufficient to form a belief on said matter except so far as he has derived information from the said Page & Bacon - and from such information he denies that said Page & Bacon were so indebted to said defendant, or said Leslie or to either of them as alleged - N. D. & G. P. Strong for Plff -

Peter A Ham on oath says the said reply and the matters & things therein as stated he believes to be true -

P. A. Ham -

Subscribed & sworn to before me this 24th April 1857

C. W. Hicks

Jury

Saturday November 28. 1857 - Now at this day come the parties by their Attornies, & thereupon came a jury to wit: J. D. Housman, Chas Hoppe, A. G. Wells, J. P. Bunnel, Thomas Noonan, W. H. Childs, W. R. Hardcastle, J. A. Hardy, Francis Langlette, R. G. Mudenwood, Martin Lepere and Daniel Walsh, twelve good and lawful men, who being duly elected tried and sworn the issues herein joined well and truly to try - the trial progressed and being finished, the jurors aforesaid, upon their oaths aforesaid say

Verdict

they find for the plaintiff & assess his damages at the sum of Six hundred and forty two Dollars & fifteen cents -

Judgment -

Therefore it is considered by the Court that the Plaintiff recover of the defendant the damages aforesaid as assessed and also his costs herein expended, and have execution therefor -

Mo to set aside verdict overruled

January 22c 1858 The Defendants motion to set aside the verdict and for a new trial herein being heard and fully understood by the Court, it is ordered that said motion be overruled -

Afterwards, to wit, on the ninth day of February AD 1858 the Defendant files a bill of Exceptions herein, which said Bill of Exceptions follows in these words to wit.

326

7

Bill of Exceptions

Peter A. Ham
vs
John R. Barret

Be it Remembered that on the trial of this cause the plaintiff offered in evidence the note sued on

Note

St. Louis December 15th 1852

Ninety days after date I promise to pay to the order of J. R. Barret five hundred dollars negotiable and payable without defalcation or discount and for value received Miron Leslie
Pay to Peter A. Ham. J. R. Barret.

Witness
P. A. Ham

Peter A Ham, the Plaintiff being introduced as a Witness by Defendant, stated that he is now and has been for many years the Clerk and confidential Agent of David D. Page. For several months in 1856 was in the employ of Page & Bacon. Have had desk in the office of Page & Bacon all the time ever since 1851. Dont know whether he was on confidential terms with Page & Bacon. He got the note from Page & Bacon. either from Mr. Bacon or Mr. Brown does not remember which. He gave his note for it for like amt, that is, for $500, payable one day after date. This was some time in February 1856, a few days before this suit was ~~xxxxxxxx~~ brought. At the time Page & Bacon was indebted to him in the sum of a thousand dollars, and he held this note for the same. When he purchased the note Leslie was dead. Had never had any conversation with Mr. Barrett about the note sued on in this case. asked no questions of Mr. Bacon or of any member of the firm of Page and Bacon in regard to this note. Messrs Page & Bacon did not guarantee the payment of the note. He witness has never paid the note which he gave to Page & Bacon. Did not have the note credited on the note which he held against Page & Bacon, because he considered them perfectly good. Witness did not ask the reason why the note sued on, had not been paid.

367

Witness
Stephen Haskill

Stephen Haskill, Witness for Defendant stated that he met with Henry D Bacon in New York at the Metropolitan

Hotel in July or August 1854 & in conversation with him in regard to Mr. Leslies affairs, Mr Bacon then said that he had been out here a short time before & had had a settlement in full with Leslie, & they had passed receipts. When Leslie died, which was in 1854 he was insolvent. In the Spring of 1854 five hundred dollars could have been made out of him. he loaned him $3000. in Spring of 1854. My understanding from Bacon was that the settlement had with Leslie was a General one.

Stephen Haskell, being cross-examined, stated that the object of his interview with Bacon in New York was to see if he could secure the $3.000.00 he had loaned to Leslie, in any way through Mr. Bacon. He had understood that Leslie was to have an interest in some lands entered by Bacon and wished to inquire about it; that Bacon then told him that Leslie had no interest in the land, had never paid any thing, and had agreed that if he Bacon would pay them a good fee for the small note case, he would give up all claim to any part of the land, and that he Bacon had done so.

Witness had no interest in making any inquiry as to Leslie's indebtedness to Page & Bacon, as his only object was to see if he could secure any part of his debt against Leslie. That when Bacon stated that a settlement had taken place between him and Leslie he might have referred to the matter of the land. though witness understood him to say they had had a general settlement. Witness cannot state the language used by Mr. Bacon, but only the impression he received from it. Witness says that Bacon & Leslie were on very intimate terms of friendship. And Leslie was generally very "hard up" for money, and witness does not know that a debt of 500 dollars could have been made out of him during the last year of his life. He supposed that it could

350

when he loaned him the $2000. or he would not have loaned it. That when he died his estate was insolvent, and paid very little. Witness had a deed of trust on some negroes to secure the money he loaned to Leslie, but after his death witness compromised and took a 1000 dollars and released the balance of his claim. That the words and letters in the left hand lower corner of the receipt are in Henry D Bacons hand writing, and are "Pay H.D.B." the letters are the initials of his name. Witness does, not know that that was the private mark of Mr. Bacon, when an account was presented to him in his Banking House to indicate to the Teller, that he could pay it.

The following receipt was then shown. Witness who said it was in Leslies hand writing both body & signature. The receipt was then offered in evidence on the part of Plff. which was in substance as follows.

Receipt of Leslie & Barret

Messrs Page & Bacon

To Leslie & Barret Dr

For professional services in two indictments of the State vs you for issuing illegal currency, trial in the Criminal Court. fine $8000. reversed by the Supreme Court $500.00

Cr By Cash $100.

balance $400.00

Recd payment in full St Louis 8th July 1854

Leslie & Barrett

Pay H.D.B. by Miron Leslie

and this was all the testimony in the case. The Defendant asked the following instructions which were refused by the Court. (to which ruling of the Court defendant then & there excepted).

Defts instructions 1

300

If the Jury believe from the evidence that the note sued on was paid by Leslie & Barret to Page

& Bacon prior to notice of its transfer to the plaintiff after it became due, they will find for the defendant.

2- If the Jury believe from the evidence that Page & Bacon paid to Leslie the sum of $500. after the note sued on became due it affords a presumption that the note in controversy was fully discharged before such payment by them.

3c If the Jury believe from the evidence that Page & Bacon after the note in controversy became due and whilst it remained their property paid to Leslie the sum of $500 & that Bacon afterwards stated to the witness Haskell that all accounts between the firm of Page & Bacon & said Leslie were fully settled, it is such presumptive evidence of payment by Leslie as will authorize a verdict for defendant.

4th If the Jury believe from the evidence that Page & Bacon are the real parties in interest in this suit and that the Plaintiff is not the real party in interest as the bona fide & absolute owner of the note sued on, they will find for the defendant.

5th- If the Jury believe from the evidence that by an arrangement between Page & Bacon and Leslie which was binding on Page & Bacon time was given to Leslie on the note sued on, without the consent of Barrett, they should find for the Defendant.

6th If the Jury believe from the evidence that after the promissory note sued on in this action became due the same was paid to Page & Bacon before the end of the year 1854, then they will find for the defendant, the plaintiff having admitted that the said note was not transferred to him until the year 1856.

7th If the Jury believe from the evidence that Page & Bacon are the real parties in interest, & that Pff is not the bona fide holder of the note sued on, for

325

a valuable consideration, they will find for the defendant.

Instructions to Jury by the Court.

The Court on its own motion gave the following instruction.

8th. If the Jury believe from the evidence that the Note sued on was paid to Page & Bacon before it was transferred to the plaintiff, they will find for the Defendant. otherwise, they will find for the plaintiff.

To which Defendant then & there excepted. The case was then submitted to the Jury and the following verdict

Verdict of Jury

Peter A. Hann Plff
vs
Jno. R. Barrett Deft

We the Jury find a verdict for the Plaintiff in the sum of Five Hundred dollars as principal and interest & protest fees one hundred & forty two $\frac{15}{100}$ Dollars. in all the sum of Six hundred and forty two $\frac{15}{100}$ Dollars $642 $\frac{15}{100}$ W. A. Hardy, Foreman

The defendant moved to set aside the verdict and for a new trial for reasons given

Motion to set aside Verdict & for new trial

Peter A. Hann
vs
John R. Barrett

In the St Louis Common Pleas
The Defendant moves the Court for a new trial of this cause & assigns therefor the following reasons.

1. The Court erred in rejecting testimony of a legal nature offered by defendant.

2° The Court erred in refusing to give the instructions asked by defendant.

3° The verdict is contrary to law.

4th The verdict is against the evidence.

5th The Verdict is contrary to law & evidence.

6th The verdict is altogether & entirely without support from the evidence or the law and is wholly erroneous. Hannegan atto. for deft.

Mo. overruled.

Which was overruled by the Court, and exception thereto was then and there taken by defendant.

304

And the defendant prays the Court to sign & seal

this Bill of Exceptions, which is accordingly done and made part of the Record herein.

Saml Reber Judge &c.

February 11. 1858 The defendant files an affidavit for an appeal herein in these words to wit:

Affidavit for Appeal

In the St. Louis Court of Common Pleas February 10. 1858

Peter N. Ham vs J R Barret } John R Barret, defendant, being duly sworn, upon his oath says that his application for an appeal herein is not made for vexation or delay but that he believes he is aggrieved by the judgment herein rendered and he appeals, that Justice may be done in the premises. J. R. Barret.

Sworn to before me this the 10th Feby 1858. C.W. Hicks, Clk.

Appeal allowed & Bond filed

And on his motion an appeal is allowed him to the Supreme Court, from the judgment herein, and he thereupon files an appeal bond with himself as principal and R. T. Barret & William Fulton as securities which Bond is approved by the Court - and follows in these words to wit;

Bond

Know all men by these presents, That we, J.R. Barret as principal & R. T. Barret and William Fulton as securities are indebted to Peter N. Ham in the sum Twelve Hundred & eighty five dollars, for the payment whereof we bind ourselves, our heirs, executors & administrators, jointly and severally, firmly by these presents - sealed with our seals and dated at St. Louis, this tenth day of February one thousand eight hundred & fifty eight.

The Condition of this obligation is such, That whereas the said J.R. Barret hath appealed from the judgment rendered against him & in favor of Peter N. Ham in the St. Louis Court of Common Pleas for the sum of six Hundred and forty two dollars & fifteen cents, together with costs - Now if the said appellant shall prosecute his appeal with due diligence to a decision in the Supreme Court, and shall perform such judgment as shall be given by the Supreme Court, or

346

such as the Supreme Court may direct the St Louis Court of Common Pleas to give, and if the judgment of such Court, 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.

J. R. Barret (Seal)
R. F. Barret (Seal)
William Fulton (Seal)

Approved - Attest
C. W. Hicks Clerk

The State of Missouri }
County of St. Louis } ss

I Charles W. Hicks, Clerk of the St. Louis Court of Common Pleas within & 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 remains 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 nineteenth day of February in the year of our Lord one thousand eight hundred and fifty eight.

Chas. W. Hicks
Clerk

195

Index over

Index to Transcript

Petition	page	1
Summons & Dfts acknowledgmt of Service	"	2
Defts Answer	"	3
Pltfs Reply	"	5
Jury - Verdict - Judgmt - & Mo to set aside &c	"	6
Bill of Exceptions - Dfts Note	"	7
Witnesses Ham & Haskell	"	7
Leslie & Barnes Rect to Page & Bacow	"	9
Defts instructions 1	"	"
" Do 2. 3. 4. 5. 6. 7.	"	10
Instructions to Jury by Court - 8	"	11
Verdict & Mo. to set aside & for new trial	"	"
Mo. overruled	"	"
Affidavit for Appeal - Same allowed - Bond	"	12
Certificate of Clerk Hicks	"	13

12 ~~[illegible]~~ ~~[illegible]~~

29

March Term 1859

Peter N. Ham respt.

vs Transcript

John R Barret appts.

Appeal from St. Louis Court of Common Pleas

Hannegan ~~Gault~~ for Deft

N. D. & G. P. Strong

Filed 27 Feby. 1858

Wm S Glanville Ck

$7 25 pd by Deft.

12 ~~[illegible]~~ ~~[illegible]~~

Opinion (forinder) appts. stat & brief submitted on writ orgnment

Affrmd. 27 May 1859 - B.p. 359 (Op. Scott)

399

In the Supreme Court of Missouri
March Term 1858

John R Barrett Appellant
vs Assignment of Errors
Peter A. Ham Respondent

The appellant assigns the following errors in the record of the trial of this case in the St Louis Court of Common Pleas.

1. The Court below erred in refusing to give the instructions to the Jury asked by the defendant ~~below~~ on the trial.

2. The instruction given to the Jury by the Court of its own motion, was erroneous because it afforded the Jury no assistance in determining the points at issue.

3. The verdict was altogether against the evidence in the case and against the laws & it should have been set aside, and a new trial awarded.

Hannegan atto.
for appellant

The said Appellee comes & says that there are no errors, as above set forth.

Filed 4 Nov 1858.
W. S. Glanville C.K.

W. D. & G. P. Kerr
for Appellee.

224

John N Barrett

vs

Peter S. Ham

Assignment of Errors

Filed April 21, 1858
Wm S Glanville
Cl

Peter N. Hearn
vs
I. R. Barret

Pltffs. Points.

The only question presented by the record is the question of payment.

The court presented that question fairly to the jury & they found for plaintiff.

The instructions of defendant were properly refused, because all that was embraced in them that was pertinent to the issues, & justified by the evidence was given by the court in its own instruction.

Upon the question of plaintiff's title, there was no evidence on which any instruction could be based, or rather there was nothing to repel the legal presumption of ownership, arising from the endorsement & possession of the note, and the court committed no error in refusing ~~plaintiffs~~ defendants instructions on that subject. Those instructions were grossly objectionable in form, instructing not upon the law, but upon circumstances & telling the jury in effect, what weight they were to give to this & that circumstance, in determining the questions of fact submitted to them.

No 12

Supreme Court, Mar 7. 1859.

Peter N. Ham

vs

J. R. Barret.

Plaintiff's Brief,

Filed 22 March 1859
Wm S Glanville
Ck

Geo. P. Strong

Peter N. Ream.
vs
S. R. Barrett.

Abstract of record.

Plaintiff in his petition alleges the making of a Negotiable note by Myron Leslie for 500$ to the order of & endorsed by defendant, dated Dec 15, 1852. at 90 days. The note with the special endorsement to plaintiff ~~was then dead~~ is copied with the petition.

Defendant filed his answer denying that he endorsed & delivered the note to plaintiff, but admits that he endorsed & delivered it to Leslie for his accommodation, & that Leslie delivered it to Page & Bacon.

Defendant then attempts to set up the defense of payment by Leslie, before plaintiff took the note, and also alleges that plaintiff has no interest in it, & is a "mere tool of Page & Bacon for the purposes of this suit, being a person to whom it might be more convenient to do the necessary swearing."

Deft. alleges that said note was paid by an acct of Leslie & Barrett vs Page & Bacon for professional services.

Plaintiff denies this.

The cause is submitted to a jury who find a verdict for plaintiff.

Upon the trial plaintiff introduced the note & endorsement by Barret, which are

12.

Sup. Court March 5 1859.

Peter N. Hearn
vs
J. R. Barret,

Abstract for Defg.

Filed 22 March 1859.
Wm S Glanville Ck.

Geo. P. Stern

Peter W. Ham, respondent
v
J. R. Barret
appellant

In Supreme Court
March Term, 1859.—

This was an action on a promissory note for $500, dated December 15, 1852, drawn by Mirm Leslie and endorsed by the defendant J. R. Barrett, for the accommodation of the said Leslie and discounted for the said Leslie by Page & Bacon. The note was negotiable and payable 90 days after date. Mirm Leslie died in the Summer of 1854. The present action was commenced February 15, 1856. The note was assigned by Page & Bacon to Ham, the plaintiff, several days before the institution of the present suit.

The execution, and endorsement of the note by the defendant, are admitted. The defense set up is payment. The evidence tending to support this defense consists principally of the admissions of Mr. Bacon of the firm of Page & Bacon. — The evidence shows that the business relations of Bacon and Leslie were intimate; that they had even entered upon speculation in the public lands in concert, Leslie having an interest, the extent of which is unknown, in certain lands entered in the name of Bacon. As is shown by the testimony of Mr. Haskill, Leslie and Bacon in 1854 had a general settlement and passed receipts. The plaintiff puts a receipt in evidence dated July 8, 1854, signed by Leslie in the name of the firm of Leslie & Barret, acknowledging the payment in full of $500 for professional

services rendered by Leslie & Barret in the case of the case of the State v. Page & Bacon, an indictment for issuing illegal currency. The case was submitted to the jury upon the following instruction: "If the jury believe from the evidence that the note sued on was paid to Page & Bacon before it was transferred to the plaintiff, they will find for the defendant; otherwise, they will find for the plaintiff." The court refused all the instructions, seven in number, asked by the defendant.

The instructions refused are as follows: "1. If the jury believe from the evidence that the note sued on was paid by Leslie or Barret to Page & Bacon prior to notice of its transfer to the plaintiff after it became due, they will find for the defendant. 2. — If the jury believe from the evidence that Page & Bacon paid to Leslie the sum of $500 after the note sued on became due, it affords a presumption that the note in controversy was fully discharged before such payment by them. 3. — If the Jury believe from the evidence, that Page & Bacon, after the note in controversy became due and whilst it remained their property, paid to Leslie the sum of $500, and that Bacon afterwards stated to the witness Haskell that all accounts between the firm of Page & Bacon and said Leslie were fully settled, it is such presumptive evidence of payment by Leslie as will authorize a verdict for defendant. — 4. — If the jury be=

leive from the evidence that Page & Bacon are the real parties in interest in this suit, and that the plaintiff is not the real party in interest as the bona fide and absolute owner of the note sued on, they will find for the defendant. 5.— If the jury believe from the evidence that by an arrangement between Page & Bacon and Leslie, which was binding on Page & Bacon, time was given to Leslie on the note sued on without the consent of Barret, they should find for the defendant." &c &c &c &c — — — —

Points for appellant. —

1.— There was evidence ~~dem~~ showing that Leslie and Bacon, in 1854, entered into a general settlement of accounts. The testimony of Haskell is explicit upon this point.— The date of the receipt given in evidence ~~[illegible]~~ corresponds precisely with that given by Haskell. What the items of this account were we do not fully know. Thus much we know;— that Leslie & Barret had a claim against Page & Bacon for professional services rendered in the case of the State v. Page & Bacon. If the note sued on had not ~~al~~ already been paid ~~already~~, it must have entered into ~~the~~ this settlement. Mr Leslie had also an interest in certain lands entered in the name of Bacon. This also entered into the account and settlement, as the testimony expressly. This account and settlement that is admitted to have

taken place, was an account and settlement between Mr. Leslie and Mr Bacon, the latter representing the firm of Page & Bacon. The only known item that Mr. Bacon could bring into this account against Leslie was this very note sued on. Mr. Leslie was principal and Mr. Barret merely endorser & surety. It was endorsed for the accommodation of Mr. Leslie. Now the claim that Mr. Leslie had to an interest in the land entered in the name of Bacon, which interest Mr Bacon wished to extinguish, would properly form a matter of offset against the liability of Mr. Leslie to Page & Bacon on the note in controversy. The debt evidenced by the note was Mr. Leslie's debt, not at all Mr. Barrets. The claim of Mr. Leslie to an interest in the entered lands was Mr. Leslie's claim. In it Mr. Barret had no interest whatever. In the claim for professional services however Mr. Barret was interested jointly with Leslie. It is ridiculous to suppose that Mr. Bacon would compensate Mr. Leslie for surrendering his interest in the land by paying Mr. Barret a higher fee than he otherwise would have done for the professional services rendered by Leslie & Barret. All these matters however were settled early in July 1854. Mr. Leslie did surrender his interest in the land; he was compensated for this surrender. He could be compensated only by some payment that would enure to his peculiar benefit. So far as appears Mr. Leslie owed Mr. Bacon nothing except the debt evidenced by the the note sued on. Mr. Bacon paid the debt due Leslie & Barret

Barret was extinguished. — This presumption is based upon and accords with common experience, and is most commonly invoked in the case of the payment of rent. The payment of ~~rent~~ one months rent, raises a presumption that a previous month's rent had been paid. This principle is applicable to the case at bar. —

H. M. Jones for Appellant.

No. 12

Peter N Ham
respondent

v.

J. R. Barret
appellant.

Statement & Brief
for appellant.

Filed 23d March 1859
Wm S Glanville
Cl.

Peter N. Hann
vs
J. R. Barret

Appeal from the St. Louis Court of Common Pleas

This was an action against Barret as endorser of a negotiable note: Plea payment

We have nothing to do with the question whether the evidence was or was not sufficient to establish the fact of payment.

The instructions asked by the defendant and refused by the court of which complaint is made, were properly refused inasmuch as they required the court to declare that to be a presumption of law, which was only a presumption of fact to be raised or not as the jury would determine from the circumstances in evidence: There are presumptions of law and presumptions of fact. The former are of a nature to exclude all contrary proof and which the Courts will not suffer the jury to disregard, whilst the latter are founded ~~on the evidence~~ in experience, and may be raised or not as the jury may determine, & for a disregard of which the court grants or refuses a new trial as upon the evidence in all other cases of trial by jury: Where a presumption is one of fact merely, the court is not warranted in declaring it to the jury as ~~such~~ a presumption authoritatively raised by law but should direct them that from the evidence it is their province to determine whether they will raise the presumption or not. The jury looking to the bench for the law would naturally take, that such a declaration was binding ~~on them~~ & left them no discretion. When the facts are before the jury, the presumptions or inferences they warrant are questions purely for them: Best on presumptions 465.

When presumptions of fact founded in experience and in the usual course of the dealings of men, are not repelled by contrary evidence they should be respected by juries and they have no arbitrary power to reject them. They must stand until they are overthrown by contrary

proof: Presumptions of payment arising against claims for debts alleged to remain unpaid, while subsequent demands due on the same account, and arising from the same cause, are proved or admitted to have been regularly discharged, are presumptions of fact liable to to be repelled by proof to the contrary, ~~to be drawn~~ & to be ~~raised~~ found to have application to a case by a jury subject to the power ~~of granting a new trial~~ in the court of granting a new trial. Matthew's on presumption 398. 9.

The other judges concurring judgment affirmed. W. Scott

12

Ham
vs
Barret

Opinion

Affirmed.

Filed 27th May. 1859.
Wm. S. Glenville
Cl.