Thompson, John S. etal v. McCullough, James H. 1860 St. Louis 450/12

610/13
59/060
31 Mo 224

Thomp plaintiffs resp
William H White
Hiram A. Psyor

Wm

Napton - vendors of bills or notes are resp for genuineness of notes when not endorsed

Mc app
Charles Webb } note brokers

sold forged notes totaling $1,469.19 to plaintiffs

names of makers of notes forged by a partner

firm endorsed the notes endorsements were real but the endorsers were ~~[illegible]~~ a failing company

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State of Missouri }
County of St. Louis } S.S. Be it remembered that on the Twenty ninth day of January in the year of our Lord Eighteen hundred and fifty eight there was filed in the office of the Clerk of the St. Louis Circuit Court, a Petition in words and figures as follows, to wit:

John S. Thompson, William H. White, and Hiram A. Pryor, Plaintiffs.
vs
James H. McCullough & Charles Webb, Defendants

In the St. Louis Circuit Court
February Term 1858

Petition

Plaintiffs state, that they are partners trading and doing business under the name and style of Thompson, White, and Pryor, and that defendants are partners, doing business in the name and style McCullough, & Webb. And that heretofore, and while said plaintiffs and defendants were so partners as aforesaid, to wit: on or about the 8th day of April 1857, Defendants had in their possession and held a certain piece of paper as and for a promissory note of a certain firm or company of persons, under the name and style of Goodwin, and Anderson, for the payment of the sum of Three hundred and eighty two dollars, and forty three cents to the order of a certain, Colston Keep & Co. dated the first day of April 1857, and payable sixty days after the date thereof, and negotiable and payable without defalcation or discount at the Bank of the State of Missouri, and which said promissory note, purported to be endorsed by the said Colston Keep-

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&c. And plaintiffs ~~state~~ that defendants, so having and holding said piece of paper, purporting to be made and endorsed as aforesaid on the day and year first aforesaid, proposed and offered to plaintiffs, to sell and deliver said piece of paper to plaintiffs, as good, true and valid promissory note of the said Goodwin, and Anderson, at and for the sum and price of Three hundred and sixty seven dollars and forty three cents, and plaintiffs then and there, on the offer and proposition of defendants, agreed to buy of defendants, and did buy of defendants said piece of paper as and for, the promissory note of the said Goodwin, and Anderson, on the terms, so proposed and offered as aforesaid, and then and there paid to defendants, the said sum of Three hundred and sixty seven dollars and forty three cents, and defendants delivered to plaintiffs said piece of paper, as and for, the promissory note of the said Goodwin, and Anderson. Plaintiffs state, that said piece of paper, was not a good true or valid promissory note, of the said Goodwin, and Anderson, but on the contrary thereof was a bad, forged and invalid note: and when the same, according to the purport thereof became due and payable, ~~the same was due and payable,~~ the same was duly presented for payment at the said Bank of the State of Missouri, and payment thereof, was demanded and refused, that the same was then and there protested for non payment thereof—And plaintiff say that said piece of paper, was and is of no value whatever, whereby plaintiffs have been deprived of the use

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and benefit of said note, and of said sum of money paid for the same, and been put to charges and costs, to wit: One dollar and Sixty five cents in having said note protested, and have been otherwise greatly injured and damnified, said plaintiffs ask judgment for said sum of three hundred and Sixty seven dollars and forty three cents, and interest thereon, and for the amount the costs and charges of protest.

And plaintiffs, further state that defendants, also at the same time, to wit: on the said 8th day of April 1857. had in their possession and held a certain other piece of paper, as and for a promissory note, of a certain other firm or company of persons, under the name and style of of S. Tomlinson & Co. for the payment of the sum of Three hundred and one dollars and seventeen cents, to the order of the said Colston Keep & Co. dated the 7th day of April 1857, and payable sixty days after the date thereof, negotiable and payable without defalcation or discount payable at Boggy & Miltenberger & Co Bank, and which said last promissory note purported to be endorsed by said Colston Keep & Co, and plaintiffs state, that defendants so having and holding said last mentioned piece of paper, purporting to be made and endorsed as aforesaid, on the day and year first aforesaid, proposed and offered to plaintiffs, to sell and deliver, said piece of paper to plaintiffs as a good true and valid promissory note of the said S. Tomlinson & Co. at and for the sum and price of Two hundred and eighty nine dollars and seventeen cents and plaintiffs

then and there in said offer and proposition of defendants, agreed to buy of said defendants, and did buy of defendants, said last mentioned piece of paper, as and for the promissory note of the said S Tomlinson Co, at and for the price and sum of Two hundred and eighty nine dollars and seventeen cents, aforesaid, and then and there paid the same to defendants, and defendants delivered to plaintiff, said piece of paper, as and for the promissory note of the said S. Tomlinson Co— Plaintiffs further state that said last mentioned piece of paper, was not a good true and valid promissory note of the said S. Tomlinson Co, but on the contrary thereof, was a bad, forged and invalid note, and when the same, according to the purport thereof, became due and payable, the same was duly presented for payment, at the Banking house of the said Bogy Millenberger, Co, and payment thereof was demanded and refused and said note protested for non payment. and plaintiffs say that said last mentioned piece of paper was and is of no value whatever, whereby plaintiffs have been deprived of the use and benefit of said note, and of the said sum of money paid for the same, and been put to charges & costs to wit: one dollar and sixty five cents, ~~and~~ in having said note protested, and been otherwise greatly injured and damnified, and plaintiffs also ask judgment for said sum of Two hundred and eighty nine dollars and seventeen cents and interest thereon, and for the amount said costs and charges of protest.

And plaintiffs, also state, that heretofore, to wit: on the 29th day of April 1859, and while said plaintiffs and defend-

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ants were partners as aforesaid, Defendants had in their possession and held a certain other piece of paper as and for a promissory note of the said Goodwin and Anderson, for the payment of the sum of Three hundred and twenty five dollars to the order of the said Colston Keep & Co, dated the 28th day of April 1857, and payable sixty five days after the date thereof negotiable and payable without defalcation or discount, and which said last mentioned promissory note purported to be endorsed by the said Colston Keep & Co. And plaintiffs state that defendants, so having and holding said last mentioned piece of paper purporting to be made and endorsed as aforesaid, on the said 29th day of April 1857, proposed and offered to plaintiffs, to sell and deliver to plaintiffs, said last mentioned piece of paper as a good true and valid promissory note of the said Goodwin and Anderson, at and for the sum and price of Three hundred and nine dollars, and plaintiffs then and there on said offer and proposition of defendants agreed to buy of defendants and did buy of defendants said last mentioned piece of paper, as and for the promissory note of the said Goodwin and Anderson, at and for the said price and sum of Three hundred and nine dollars, and then and there paid the same to defendants, and defendants delivered to plaintiffs, said last mentioned piece of paper, as and for the promissory note of the said Goodwin and Anderson, And plaintiffs say that said last mentioned piece of paper was not a good, true and valid promissory note of the

said Goodwin, and Anderson, but on the contrary thereof was a bad, forged and invalid note, and when the same according to the purport thereof, became due and payable, the same was duly presented, for payment to the said Goodwin, and Anderson, and payment thereof demanded and refused, the said note was thereupon protested for non payment - And plaintiffs say that said last mentioned piece of paper, was and is of no value whatever, whereby plaintiffs have been deprived of the use and benefit of said note and of said sum of money so paid for the same, and been put to charges and costs, to wit: one dollar and sixty cents, in having the same protested and have been otherwise greatly injured and damnified, and plaintiffs also, ask judgment for the said sum of Three hundred and nine dollars, and the interest thereon, and for the amount of said costs and charges of protest.

And plaintiffs also further state, that heretofore, to wit: on the fourth day of May 1857, and while plaintiffs and defendants were partners, as hereinbefore stated, defendants had in their possession and held, a certain other piece of paper as and for a promissory note, of the said Goodwin & Anderson, for the payment of the sum of Three hundred and seventy six dollars and thirty eight cents, to the order of the said Colston Keeper & Co. dated the fourth day of May 1857, and payable sixty days after the date thereof, negotiable and payable without defalcation or discount, at the Bank of the State of Missouri, and which said last mentioned promissory note purported to be endorsed, by

said Messrs Colston Keep Ks, and plaintiff state that defendants so having and holding said last mentioned piece of paper, purporting to be made and endorsed as aforesaid, on the said 4th day of May 1857. proposed and offered to plaintiff, to sell and deliver, said last mentioned piece of paper to plaintiffs, as a good true, and valid promissory note of the said Goodwin, and Anderson, at and for the sum and price of Three hundred and fifty seven dollars and fifty cents. and plaintiff then and there on said proposition and offer of defendants agreed to buy of defendants, and did buy of defendants, said last mentioned piece of paper, as and for the promissory note of said Goodwin, and Anderson, at and for the sum and price of Three hundred and fifty seven dollars, and fifty cents, and then and there paid the same to defendants, and defendants delivered to plaintiffs, said last mentioned piece of paper, as and for the promissory note of the said Goodwin, and Anderson, And plaintiff state that the said last mentioned piece of paper, was not a good, true or valid promissory note of the said Goodwin, and Anderson, but on the contrary thereof was a bad, forged and invalid note, and when the same according to the purport thereof became due and payable, the said note was duly ~~presented~~ presented for payment, at the Bank of the State of Missouri, and payment thereof demanded, and refused, and said note was protested for non payment. and plaintiffs say said piece of paper was and is of no value whatever, whereby plaintiffs, have been deprived of the use and benefit of said note, and of said sum of

money, paid for the same, and been put to charges and costs, to wit: One dollar and forty five cents, in having said note protested, and have been otherwise greatly injured and damnified. And plaintiffs also ask judgment for said sum of three hundred and fifty seven dollars and fifty cents, and the interest thereon, and for the amount of said costs and charges of protest.

Drake. & Wood
Attys for Plaintiffs

Jeff. give credit on demands in above petition for forty one dollars and 25 cts paid 3rd July 1857. paid by Keep

John S. Thompson, one of said plaintiffs makes oath and says, that the above petition and the matters therein stated he believes to be true.

John S. Thomson.

Subscribed and sworn to before me this 29th Jany 1858

Stephen Rice. Clk

Upon which petition a Summons was issued in words and figures as follows, to wit:

The State of Missouri,
County of St Louis } ss. To the Sheriff of St Louis County—Greeting:

Summons

We command you to summon James McCullough, and Charles Webb, to appear before the Judge of our Circuit Court, 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 Fourth Monday of February next, then and there to answer the complaint of John S. Thompson,

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William H. White. and Keiran A. Pryor, as set forth in the annexed petition: and have you then and there this writ.

Witness, Stephen Rice, Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of St Louis, this 29th day of January in the year of our Lord eighteen hundred and fifty eight.

Seal

Stephen Rice, Clerk

Upon which Summons the Sheriff made his return in the words and figures as follows, to wit:

Sheriffs Return

Executed this writ in St Louis County on the 30th day of January 1858. by delivery a copy of the writ and petition as furnished by the Clerk to Charles Webb, and by delivering a copy of the writ as furnished by ~~the~~ Clerk to James H. McCullough.

James Castello Shiff

By Nicholas Berg. Dpty

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

Tuesday March 9th 1858

John S. Thompson vs James H. McCullough vs } The Court having heard and considered the demurrer of said defendants to the petition of said plaintiff and being thereof fully and sufficiently advised, doth order that the same be overruled. Leave is given said defendant to file an answer herein within ten days.

Demurrer Overruled

And on the 27 day of April 1858. the following Answer was filed, to wit:

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Answer

Defendants for answer to plaintiffs petition say that they have no knowledge or information sufficient to form a belief as to whether they ever held or had in their possession and sold to defendants the particular notes described and mentioned in plaintiffs petition or either of them, and therefore they require strict proof of the same— And defendants say as to the note described and mentioned in the first count of plaintiffs petition as bearing date the 1st day of April 1857. made by Goodwin and Anderson, to the order of Colston Keep. Co for $382 43 defendants have no knowledge or information sufficient to form a belief whether they ever had said note or sold the same to plaintiffs, and require strict proof thereof. And defendants for further answer say that some time in the month of April 1857. they did sell as agents of S. L. Colston. E. D. Keep, and Joseph Heard, copartners doing business in the city of St. Louis under the firm name and style of Colston Keep & Co. a certain promissory note for and of the amount of about Three hundred and eighty two dollars and 42/100 purporting to be made by Goodwin, and Anderson, to the order of said Colston, Keep, & Co. and by said Colston Keep & Co. endorsed in blank, and defendants say A. S. W. Goodwin, and Robert Anderson, compose the firm of Goodwin, and Anderson, and that they were at the time of the sale of said note partners doing business in the city of St Louis, under the firm name, and style of Goodwin and Anderson, that whether said note was actually made and executed by said Goodwin, and Anderson, or whether the same was invalid and forged

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the defendants have no knowledge or information sufficient to form a belief. And defendants further say the endorsement of said Colston Keep & Co. was good and valid on said note, that said note was placed in the hands of defendants for the purpose of negotiating it, by and for said Colston Keep & Co, as their agents, that said plaintiffs knew that defendants were acting as agents of said Colston Keep & Co, at the time of the said sale of said note, and did not buy said note on any representation of said defendants, nor did said defendants warrant the signature of said note or sell the same as and for the good true and valid promissory note of said Goodwin, and Anderson, that the defendants did not at the time know, or profess to know whether the signatures of Goodwin, and Anderson, was valid and good and that plaintiffs took the said note on their own knowledge and judgment, that before purchasing said note the plaintiff requested that it, with several other notes which defendants held for negotiation might be left at plaintiffs office long enough for them to determine whether there was any among them that plaintiffs desired to purchase that plaintiff were accustomed to buy and deal in negotiable notes, and trusted entirely to their own judgment and not upon any representations of defendants. And defendants, further say that said note is not valueless and worthless, that said Colston Keep & Co, have paid part of the same since it became due, and plaintiff contracted and made arrangements with a member of the firm of said

Colston Keep & Co. for the full payment of said note. And defendants further state that they have no knowledge or information sufficient to form a belief as to whether they ever had in their possession or sold to plaintiffs the particular notes set out in the second count of plaintiff petition to wit the note described and purporting to be signed and made by S. Tomlinson & Co, dated April 7th 1857. for the sum of 301 17/100 $ to the order of said Colston Keep & Co. and therefore require strict proof of the same - but defendants say that they did have in their possession for said Colston Keep & Co, and as their agents a note purporting to be made and executed by S. Tomlinson & Co to the order of Colston Keep & Co for the sum of 301 17/100 $ dated about the 7th day of April 1857. that said note was endorsed by said Colston Keep & Co and placed in the hands of defendants to negotiate for them, that the endorsement at said note by said Colston Keep & Co, was good and valid, that defendants have no knowledge or information sufficient to form a belief as to whether the signatures of said S. Tomlinson & Co is good and valid or forged. that did believe and had good reasons to believe that the signatures of S Tomlinson, & Co. were "bona fida" good and valid. that in selling said note to said plaintiffs, said plaintiffs well knew that defendants were acting as agents of said Colston Keep & Co. that defendants did not represent said note to be the note of said S. Tomlinson & Co. that they did not in any way garantee or warrant the quality or worth

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of said note that plaintiff did not buy said note on any representations of said defendants, but solely on their own judgment, that defendants did not know the firm of S. Tomlinson & Co. or their signature and did not so represent to plaintiff, and defendants further state that they are informed and believe that said S. Tomlinson & Co. are a firm and were at the time of said sale of said note to plaintiff composed of S. Tomlinson and Brother, and H. A. Keep, and doing business under the firm name and style of S. Tomlinson & Co., that the plaintiff took said note and kept the same before purchase long enough to satisfy themselves of its quality and worth and after satisfying themselves purchased the same of defendants. And defendants deny that said note is or was at the time of the same worthless and of no value, that said Bolston Keep & Co. endorsed said note in blank, and were at the time of said sale of said note a good and solvent firm, that since the maturity of said note they have paid a pation of said note and have made an arrangement with plaintiffs to pay the same in full. and defendants say that they have no knowledge of S. Tomlinson & Co. signature, or information as to whether said note was forged and require proof of the same, and they deny that they paid the same as and for a good true and valid promissory note of the said S. Tomlinson, & Co. as alleged in plaintiff petition.

And defendants further say as to the note described

in this third count of plaintiffs petition as made by said Goodwin, and Anderson and bearing date 28th of April 1857. for the sum of $325.00 to the order of said Colston Keep & Co. they have no Knowledge or information sufficient to form a belief, whether they ever held and sold said note to plaintiffs, and therefore require strict proof thereof. but defendants say that they did hold a promissory note for the sum of $325.00 bearing date on or about the said 28th day of April payable to said Colston Keep & Co. that said Colston Keep & Co. endorsed said note in blank, employed said defendants to negotiate said note for them as their agents, that said defendants sold said note to said plaintiffs, said plaintiffs knowing at the time that defendants were acting as agents only of said Colston Keep & Co. that defendants did not offer said note as the good true and valid promissory note of said Goodwin and Anderson, that defendants knew nothing as to the quality of said note, that they did not know nor have they now knowledge or information sufficient to form a belief as to whether the signatures of Goodwin, and Anderson, to said note was forged and false - Defendants say that said Colston Keep & Co endorsed said note and defendants acted as agents only in negotiating the same to plaintiffs that plaintiffs took said note for inquiry and inspection so as to satisfy themselves before purchasing the same, that they bought the same upon their own judgment

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that the defendants made no representation as to the quality and worth of said note to the plaintiff- and defendants deny that said note is valueless and of no worth, but on the other hand said Colston Keep & Co, since the maturity of said note have paid a part of it. And defendants says they have no knowledge or information sufficient to form a belief as to whether said note is still unpaid in whole or in part. that said Colston Keep & Co did promises and agree to pay the same since maturity and have paid a portion of the same. And defendants say they have no knowledge or information sufficient to form a belief as to whether they ever had in their possession and sold to plaintiff the said note of said Goodwin and Anderson, for the sum of $376 38/100 to the order of said Colston Keep & Co. dated the 4th of May 1857, as described in the fourth count of plaintiff petition, and require strict proof of the same. But defendants say they did sell to plaintiff a note on or about the 4th day of May 1857. for the sum of $376.38 dated on or about the 4th day of May 1857. made by said Goodwin and Anderson, and endorsed by said Colston Keep & Co, that said Goodwin and Anderson are a firm as hereinbefore stated. that said Colston Keep & Co, are a firm as hereinbefore stated. that said Colston Keep & Co endorsed said note in blank, and employed defendants to negotiate the same as agents for them. that defendants did sell said note to plaintiff for said Colston Keep & Co and as

their agents. that plaintiffs knew at the time of said sale that defendants were acting as such agents. that defendants did not offer plaintiffs said note as the good true and valid promissory note of said Goodwin and Anderson, nor did they warrant the signature of said Goodwin and Anderson to be valid and genuine, they knew, nor pretended to know nothing about it nor have they knowledge or information sufficient to form a belief as to the signature is good valid and genuine. And further defendants say the endorsement of said Colston Keep Co was good and genuine and that said note is and was not worthless. that a portion of the same has been paid at least and whether the same has been paid in full defendants have no knowledge or information sufficient to form a belief and require proof. and defendants say that plaintiffs bought said note on their own judgment and not upon any representations of defendants-that they kept the same for inspection and inquiry before purchasing that plaintiffs were accustomed to buy paper and were competent and good judges. that defendants did not in any way warrant the genuiness of said note.

And defendants state specifically that they have no knowledge or information as to whether they sold. or ~~have~~ had in their possession either of said notes mentioned and described in plaintiffs petition to said plaintiffs and they therefore require strict proof of the same.

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And in regard to the several notes which defendants say they did sell plaintiffs, they have no knowledge or information sufficient to form a belief whether they have not been paid plaintiffs and therefore require strict proof of the same.

Jones D[illegible] for defts

Charles Webb, one of above named defendants for defendants being duly sworn on oath says he believes the above and foregoing petition and the matters therein as stated and set out to be true.

Chas Webb

Swan to & Subscribed before me this 30th day of March 1858.

Seal

Francis M. Rawle

Notary Public St. Louis Mo

And afterwards at the October Term 1858, the following further proceedings were had, to wit:

Tuesday December 14th 1858

Judgment

Now at this day come the parties by their respective attorneys, and waiving a jury submit this cause to the Court upon the pleadings and proofs, and the Court having duly heard and considered the same doth find therefrom that the defendants are indebted to the plaintiffs in the sum of fourteen hundred and sixty nine dollars and nineteen cents. It is therefore considered by the Court that the said plaintiffs recover of the said defendants, the sum aforesaid ~~said~~ in form aforesaid found, and also their costs herein expended and have execution therefor.

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And afterwards at the October Term 1858. the following further proceedings were had in this cause, to wit:

February 12th 1859

The Court having duly heard and considered the motion for a New trial herein, and being thereof fully advised doth order that the same be overruled: thereupon the defendants files an affidavit for an appeal herein wherefore it is ordered that an appeal be allowed the said defendants to the Supreme Court, from the judgment herein rendered. Thereupon the said defendant files an appeal bond in the sum of Three thousand dollars conditioned according to law, which bond is approved by the Court. Bill of Exceptions filed.

Which Affidavit is in the words and figures as follows. to wit:

Affidavit for Appeal.

Jas McCullough, one of defendants above named being duly sworn on oath says that appeal is not made by above named defendants in above entitled case for vexation or delay, but because affiant believes that appellants are aggrieved by the judgment or decision of the Court.

Jas. H. McCullough.

Sworn to & Subscribed before me this Ninth day of Feby 1859.

S. Rice Clk

Which Bond is in the words and figures as follows. to wit:

Appeal Bond

Know all men by these presents. That we James McCullough, as principal, and John Garnett, and E. A. Corbet, as sureties are held and firmly bound unto John S. Thompson, Wm H. White, and Hiram A Pryor, in the sum of Three thousand dollars, for the pay-

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ment of which, well and truly to be made, we bind our-
selves, our heirs, executors and administrators, jointly and
severally, firmly by these presents. Sealed with our seals, and
dated at St. Louis, this 12 day of February A. D. 1859.
The condition of the above obligation is such, that whereas
James H. McCullough, and Charles Webb, have appealed
from the judgment rendered against them, and in favor of
John S. Thompson, William H. White, and H. A. Pryor, in
the St. Louis Circuit Court, for the sum of Fourteen hundred
and sixty nine dollars and nineteen cents, together with
costs. Now, if the said appellant will pay all costs and
damages that may be awarded against them, occasioned
by such appeal; and shall prosecute their appeal, with due
dilligence to a decision in the Supreme Court, and shall
perform such judgment as shall be given by the Supreme
Court, and such as the Supreme Court may direct the
St. Louis Circuit Court 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 dam-
ages and costs which may be awarded against them by
the Supreme Court, then this obligation shall be void, other-
wise it shall remain in full force and effect.

Jas H. McCullough (seal)
John Garnett (seal)
E. A. Corbet (seal)

Approved.- S. R. Lackland Judge

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

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Bill of Exceptions

Be it remembered that on the 14th day of Dec 1858. at Oct Term of this Court. the above entitled cause was called for trial. a jury being waived. the same was tried by the Court. The plffs gave in evidence testimony going to show that defendants acting and carrying on the business of note brokers sold to plffs the notes described in plffs petition. that those notes were not made by the parties by whom they purported to have been made. that their names were forged by Colson of the firm of Colson Keep & Co. but the endorsement on each of said notes by Colson Keep & Co was genuine. made by Colson one of the members of the firm. that at the time of the alleged sale of said notes Colson Keep & Co were a firm doing active business in the city of St Louis but in rather failing circumstances. that afterwards they became and now are wholly insolvent. It was admitted by plffs that defendants at the time of the alleged sale of said were note brokers. and known as such by plffs. The plffs then rested.

The defendants offered no evidence—

The plffs then asked the following instruction

If the defts for a valuable consideration sold the notes to plffs described in the petition. as notes made by Goodwin and Anderson. and purporting to bear their signatures. the defts thereby impliedly warranted the purported signature of Goodwin and Anderson to be the genuine signature of that firm and of the alleged Signature of said alleged makers was a forgery and not the genuine signature of said firm of Goodwin. and Anderson. and

Given

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thereof, then the plaintiff is entitled to recover the pltff have sustained damaged by reason in this the amount of said damage.

which was granted by Court, under objection of defendants and to the granting of which defendants then and there excepted. The defendants asked the following instructions of law.

Refused 1. Unless the jury find from the evidence that the defendants sold the note sued on to the plaintiff and at the time of such sale knew or had reason to believe that name of Goodwin and Anderson was forged then the plaintiffs cannot recover.

Refused 2. If the jury find from the evidence that the defendants as note brokers held the notes sued on and sold the same to plaintiffs, then the plaintiffs cannot recover in this action, unless he satisfy the jury by evidence that the name of Goodwin and Anderson was forged on said note and that said defendants knew said fact when said note was sold.

Refused 3. A note broker who sells a note in good faith is not responsible to the purchaser for any loss in consequence of the name of the maker and of any endorser on said note, unless he makes false representations to the purchaser on the strength of which the purchase was made, or unless he knew of said forgery at the time of said sale.

4. The Court is asked to declare the law in this case follows, viz:

That to entitle the plaintiff to recover in this case

Refused

he must satisfy the Court by evidence, that he received said note of said defendants, that the name of Goodwin, and Anderson, was forged, and either that said defendants knew of said forgery, or that defendants made representations to plaintiff, on the strength of which said notes was taken.

Given

5. The plaintiff is not entitled to recover in this case unless he prove more than the fact that said defendants as note brokers sold plaintiff the note in question, and that the names of Goodwin, and Anderson, was forged on said note when it was sold to plaintiff.

Given

6. If the defendants as agents or note brokers sold said note to plaintiff, the more fact that the name of Goodwin and Anderson was forged on said note, at the time of said sale if proved will not entitle the plaintiff to recover in this action.

of which the 1st, 2d, 3d, and 4th were refused by the Court, to which refusal defendants then and there excepted. The cause then being submitted upon the proof offered and the petition and answer the Court found for plffs and gave judgment against defendants for the sum of $1469. 14/100 being the aggregate of said notes, whereupon upon the same day defts filed their motion to set aside the finding and judgment and for new trial in words as follows.

Motion for New trial

Now comes defendants and move the Court to set aside the finding and judgment in the above entitled cause and for new trial for the following reasons.

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1st Because the finding and judgment was against the evidence and the law.

2d The finding and judgment was against the weight of evidence.

3d The Court erred in declaring the law as asked for by plaintiffs.

4th The Court erred in refusing to declare the law as asked for by defendants.

Jones. Sherman & Knox
for defts.

which being overruled by the Court the defts then and there excepted, and come and take their appeal and present this their bill of Exceptions and pray the Court to allow and sign the same.

J R. Lackland, Judge.

State of Missouri }
County of St Louis } ss. I, Stephen Rice, Clerk of the St Louis Circuit Court, within and for the County aforesaid certify the foregoing to be a true and correct copy of the record and proceeding had in the case of John S. Thompson & als. plaintiffs and James H. McCullough & al defendants as fully as the same remains of record and on file 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 14th day of February A. D. 1859.

S Rice Clk

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95 ~~[illegible]~~ ~~[illegible]~~ 2

(13)

October Term 1860

John S Thompson,
William H White and
Hiram A Pryor
Respondents.

vs

James H McCullough
and Charles Webb
Appellants.

Appeal from St Louis Circuit Court.

Knox & K. & Jones
for Appellants.

Filed 4 March 1859.
Wm S. Glanville
Cd Ck.

$10 25/100 paid by Knox & Kellogg.
95 ~~[illegible]~~ S Rice Ck

apptt. joinder/ res. bf/ transcpt for Mr. Knox $0.45/ stat./ apts. bf/
sulor/
Affirmed 15 Dec. 1860, C. p. 106/

No 275

John S. Thompson
Ads Respondents In the Supreme Court

vs

James H. McCullough March Term 1859
Ads Appellants

The Appellants come and file errors in this case as follows:

1st The Court erred in giving instructions
2d The Court erred in refusing instructions asked of the Appellants
3d The Court erred in the distribution of Law
4. The Court erred in finding for the Respondents

Vinas & Nutley
Attys for Appellants

Respondents come and for joinder in error say, there is no error in the records as assigned by Appellants above.

Drake & Wood
for Respondents

No 2[illegible] 95

In the Supreme Court
March Term 1859

John L. Thompson
Atty Respondents

vs

Charles Webb et al
Appellants

Assignment of Trans

Vernon Kelly
Atty of Appellants

Filed 21 March 1859
W. L. Glanville Cl.

John S. Thomson
William H. White &
Hiram A. Pryor } Respondents
vs
James H. McCullough
& Charles Webb } Appellants

In the Supreme Court
Appeal from
St Louis Circuit Ct.

This was a civil action, commenced by petition, containing four Counts, or causes of action, each Count or cause of action, charging that Defendants, sold to plaintiffs, as genuine and valid, a promisory note, purporporting to be the note, of a certain Messrs Goodwin & Anderson, that plaintiffs paid to defendants, for the same the amount of the note, and charging that the note, was not genuine and valid, but invalid & forged, and of no value.

Defendants in substance Answer, that they did sell and deliver to plaintiffs, notes such as those described in the petition, that at the time of the sale they supposed them genuine, and whether, a forged or not, at the time of answering they had no knowledge or information sufficient to form a belief — That in making the sale of the notes, they acted as the agents, of a certain Colston, Kup & Co, who were indorsers on said notes, — The Answer contains some other statements, not, deemed material, as the case now stands before this Court, on the evidence as preserved by the bill of exceptions.

The trial of the cause below, was by the Court without jury.

On the trial, plaintiffs proved that Defendants acting & carrying on the business of note Brokers, sold to plaintiffs, the four notes described in plaintiffs petition, that these notes were not made by the parties, by whom they purported to have been made, that their names were forged by Colson of the firm of Colson Keep Ho, but the endorsement, by Colson Keep Ho, on each of said notes, was genuine, made in the handwriting of said Colson one of the members of said firm, that at the time of the alledged sale, Colson Keep Ho, were a firm in business, but in failing circumstances, and afterwards became and still are wholly insolvent — It was admitted by plaintiffs that Defendants at the time of the alledged sale of said notes were note brokers, and known as such by plaintiffs — (But it was not admitted or proved, that Defendants in the sale of the notes acted as the agents of any other party, or that they disclosed, the name of any principal to plaintiffs)

Defendants offered no evidence.

At the instance of plaintiffs the Court gave the following instruction.

"If the Defendants for a valuable consideration, sold the notes to plaintiffs described in the petition, as notes made by Goodwin and Anderson, and purporting to bear

their signatures, the Defendants thereby impliedly warranted, the purported signature of Goodwin & Anderson to be the genuine signature of that firm And if the alledged signature of said alledged makers, was a forgery, and not the genuine signature of said firm of Goodwin & Anderson, and the plaintiffs have sustained damage by reason thereof, then the plaintiffs are entitled to recover the amount of such damage.

Defendants, asked instructions, numbered from One to Six inclusive, see pages of Record 21 & 22, the fifth and sixth of which were given, & the first, 2nd 3rd & 4 refused.

The giving of the instruction asked by plaintiffs and the refusal of the 1st 2nd 3rd & 4th instructions asked by Defendants, is assigned for Error.

Wm. T. Wood, for Respondents, refers to the following, authorities to sustain the action of the Court below —

Edwards on bills & promissory notes page 291.
Morrison vs Currie & another 4 Duer N.Y. p 79.
Maryland Case 1st Hill N.Y. p. 290.
Story on promissory notes — Sec. 118. p. 123
American Law Register, June 1855 page 502

No 119 95

John S Thomson & others
v. Appeal
James S. McCullough
& another

Respondents Brief
by
Wm. J. Wood

Filed 19 April 1860.
Wm. J. Glanville
Cl.

No 95

John L Thompson
et als Respondents
v
Charles Webb et als
Appellants.

In Supreme Court
Oct Term 1850

This is an action instituted by the plaintiffs against the defendants to recover of them the amount of certain notes sold by the defendants as agents of the endorsers of the notes to the plaintiffs

The answer puts in issue every material allegation in the petition

The plaintiffs offered evidence tending to prove that defendants who were doing business as note brokers sold to the plaintiffs the notes described in plaintiffs petition that the makers names on all of said notes were not genuine but were forged. Plaintiffs further proved that the endorsements of Colston Keep & Co were all genuine and were made by one of the members of the firm of Colston Keep & Co that said endorsements were in the hand writing of Colson. It was further admitted by the plaintiffs that the defendants were note brokers and as such sold the notes in question to plaintiffs. That plaintiffs knew that defendants were note brokers, when they purchased the notes.

The Court gave the following instructions

Thompson.
vs.
McCullough

Plaintiff's Instructions given.

If the defts for a valuable consideration sold the notes to plffs described in the petition, as notes made by Goodwin & Anderson & purporting to bear their signatures, the defts thereby impliedly warranted the purported signature of Goodwin & Anderson to be the genuine signature of that firm & of the alleged signature of said alleged makers was a forgery & not the genuine signature of said firm of Goodwin & Anderson, and the plff have sustained damage by reason thereof, the the plff is entitled to recover in this the amount of such damage, which was granted by Court, under objection of defendants and to the granting of which defts then & there excepted. The defts asked the following instructions of law.

Given

1. Unless the jury find from the evidence that the defts sold the note sued sued on to the plff and at the time of such sale knew or had reason to believe that name of Goodwin & Anderson was forged then the plffs cannot recover.

Refused.

2. If the jury find from the evidence that the defts as note brokers held the notes sued on & sold the same to plffs then the plffs cannot recover in this action, unless he satisfy the jury by evidence that the name of Goodwin & Anderson was forged on said note & that said defts knew said facts when said note was sold.

Refused.

3. A note broker who sells a note in good faith is not responsible to the purchaser for any loss in consequence of the forgery of the name of the makers of any endorser on said note, unless he makes false representations to the purchaser on the strength of which the purchase was made, or unless he knew of said forgery at the time of said sale.

Refused.

4. The Court is asked to declare the law in this case as follows:

That to entitle the plff to recover in this case he must satisfy the court by evidence, that he received said note of said defts, that the name of Goodwin & Anderson was forged, & either that said defts knew of said forgery, or that defts made representations to plff on the strength of which said notes was taken.

Refused.

5. The plff is not entitled to recover in this case unless he prove more than the fact that said defts as note brokers sold plff the note in question, & that the names

Given.

of Goodwin & Anderson was forged in said note when it was sold to pleff.

6. If the defts as agents or note brokers sold said note to pleff, the more fact that the name of Goodwin & Anderson was forged on said note, at the time of said sale if proved will not entitle the pleff to recover in this action.

Given.

Of which the 1st 2. 3. & 4th were refused by the Court, to which refusal defts then & there excepted.

Knox & Kellogg
Atty

No 95
In the Supreme Court
Oct Term 1860

John L Thompson
et al
Charles Webb et al
Stipulated of cons
Knox & Kellogg
Atty for Appellants

Filed 9th Nov 1860
W J Glanville
Cl

John S. Thomson et al
Respondents
vs
Charles Webb et als
Appellants

No 95
In the Supreme
Court
October Term.
AD 1820

Appellants contend that the Court erred in the instruction given the jury. The instruction is to the effect that the appellants warranted or guaranteed the signatures of the makers of the note, Goodwin and Andrews to be genuine -

A note broker is the mere agent of negotiable securities, to realize moneys from such securities for his principal. The moment the money is received it is to be paid to the principal. The agent merely receives the commissions

The cases which have held him who transfers a negotiable security on which one of the names was forged, are cases where the money received for such securities, was for the use of the persons making the transfer
2 Johns Rep. 455. 6 Mass Rep. 182

There is no evidence that the appellants were guilty of any negligence in regard to the note in question

The payees of the note from whom it was received, endorsed it, - It is not the province of note brokers to make inquiry as to the genuineness of prior parties on the note received by them, unless there are circumstances connected with the transaction calculated to create suspicions in the minds of men of ordinary prudence

It is enough for the Broker to know that the signature of the party from whom the note is received, is genuine-

It would be as reasonable to hold the commission merchant responsible, for the proceeds of the sale of goods sold in good faith by him, but afterwards turn out to be sold without authority from the real and legal owner

If the sale be made in good faith and with no knowledge of any want of authority on the part of the person sending them for sale, then, after the money has been paid once, the law will not compel a second payment -

The instructions asked for
the appellants should have been given

Knox & Kellogg
for appellants

No 95

John S. Thomas et al
Respondents
vs
Charles Webb et al
Appellants

Appellants Brief

Filed 14 Novr. 1860
W L Glanville
Clk.

Knox & Kellogg
for appellants

Thompson & others v. McCulloch & Webb

This suit was brought to recover the amount of ~~four~~ several forged notes, amounting in all to $1469.19, which the defendants had sold to the plaintiffs. The defendants were note brokers, & it appeared that the names of the makers of the notes were forged by a member of the firm, in whose name they were endorsed~~ment~~. The endorsements were genuine - but the endorsers, Colvin, Keech & Co. were at the time of the trial proved to be insolvent, & although engaged in business at the date of the ~~endorsements~~ sale to the Rutgers, they were then in failing circumstances. The plaintiffs had a judgment.

~~It will be seen~~ The bill of exceptions does not show that any question was raised at the trial, by evidence or by instructions, as to whether the defendants were ~~acting~~ dealing with the notes as principals or agents. It merely appeared that they were bill brokers & that the ~~dant~~ plaintiffs dealt with them, knowing them to be engaged in this sort of agency. There was no evidence, other than this fact, ~~that they were bill brokers~~, to show that they were acting as agents for any one else, or if they were, that they disclosed the name of their principal & that the plffs. gave credit to him. Under such circumstances the defendants are to be held as principals.

It appears to be very well settled, that the vendor of a bill or note, without endorsement, is responsible for the genuineness of the paper. He is considered as representing the note to be signed

& endorsed by the persons whose names appear upon it in that character, & if those signatures are forgeries, the consideration fails. Gurney & others v. Womersley & others. 3 Am: Law Reg. 502 - 1 Jurist (N.S.) 328.

Judgment affirmed

W. B. Napton

95

Thompson & others
v.
M'Culloch & Wells

Opinion of the Court
Napton

Filed 15 Dec. 1860.
M. Williamson Clk.