Lovelace, William C. v. Wingfield, Edward W. G. 1860 Montgomery 457/10

612/9
60/060

Lovelace resp
plaintiff

rec from note
from def via Isaac Whiteside
$375

wins

Wingfield app

he & plaintiff had
worked out deal
- no consideration to
support note

dismissed @ Lovelace's request

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State of Missouri
Montgomery County ss

Be it Remembered that on the 21st Sept 1859 in the Circuit Court of said County, William C. Lovelace filed the following Petition

In the Montgomery Circuit Court
October Term 1859

" William C. Lovelace
" vs
" Edward M. Kingfield
" Plaintiff states that
" defendant by his promissory note hereto
" annexed dated October 26th 1858 promised to
" pay one Isaac V Whiteside, three hundred
" and seventy five dollars, four months
" after date, that said note was for value
" received, negotiable and payable without
" defalcation or discount, and with
" interest from date at the rate of
" ten per cent per annum, that on
" the 26th day of October 1858, the said
" Isaac V Whiteside for value assigned
" by endorsement and delivery, said note
" to plaintiff — That Pltff notified defen-
" dant of said assignment, and requested
" him to pay the same, which he has not
" done, but that the amount of said note is
" yet due and unpaid, for which together
" with costs of suit Pltff asks judg-
" ment

W. C. Lovelace for Pltff

Petition

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Answer

And afterwards to wit on the 27th Oct 1859 in the Circuit Court aforesaid the said Term having begun on the 24th day of said Month defendant filed the following Answer

" In the Montgomery Circuit
" Court October Term 1859
" William Lovelace Plaintiff
" Against
" Edward Mangfield Defendant

" The defendant
" comes and says he admits the Execution
" of the note in suit but he denies
" that said note was given for value
" received, he says that there was a
" total failure of consideration
" of said note, and that there is no conside
" -ration to support the same. He
" further says that since the Execution
" and delivery of the note sued upon
" he and the plaintiff contracted and
" agreed with each other, that he plain
" -tiff should receive the avails and
" proceeds of a certain judgment
" thereafter to be rendered in favor
" of this defendant against one
" Isaac V Whiteside, in the Montgomery
" Circuit Court, and that the same
" should be applied in full discharge
" and satisfaction of said note sued
" upon in this case, and further agreed
" that no suit should be brought upon
" this note, And defendant says by reason
" of his said covenant, and agreement

" not to sue defendant, as according
" to their said agreement and under
" standing he is not liable to a suit
" on this note
"
Sharp, Jones & Hayden

And afterwards to wit on the 28 October 1859, further proceedings were had in said cause as appears from the records of said court as follows

Answer Stricken out

" William C Lovelace
" vs } Motion to strike out the
" Edward W G Wingfield } answer
" Now at this day come
" the said parties by their attorneys, and
" thereupon the matters contained in said
" motion are submitted to the court
" Whereupon it is considered by the
" court that said motion be sustained, and
" said answer is stricken out accordingly

Judgment

" Same
" vs }
" Same } Now at this day come the said
" plaintiff, and the said defendant having
" failed to answer to said plaintiffs action
" and the instrument sued on being a
" note, the court thereupon finds that
" the said defendant is indebted to the
" said plaintiff in the sum of four
" hundred and twelve dollars
" and fifty cents; Whereupon it is considered

" by the court, that said plaintiff recover
" against said defendant, the aforesaid
" sum of four hundred and twelve
" dollars and fifty cents for his debt
" to bear ten per cent per annum interest
" from this date, together with his costs
" about his suit expended, and that he have
" thereof Execution

And afterwards on the day last aforesaid, further proceedings were had in said cause as follows

Appeal granted

" William C Lovelace
" vs
" Edward W G Wingfield

Now at this day
" the said defendant filed a Bill of Exceptions
" and also filed an affidavit and bond
" and prayed an appeal to the Supreme
" Court which is granted

Bill of Exceptions

Said Bill of Exceptions is here copied as follows

Circuit Court October Term 1859

" William Lovelace plaintiff
" vs
" Edward W. G. Wingfield defendant

Be it remem
" bered that at this term of court
" the plaintiff filed his motion

5 " to strike out the answer of the defen
" -dant, filed in said cause for the reasons
" therein set forth, which said motion
" is as follows

" In the Circuit Court
" William C Lovelace
" vs
" Edward W G Wingfield

" The plaintiff moves
" to strike out, the answer in the above
" cause for the following reasons
" 1st Said Answer was not filed
" within the first two days of the term
" 2nd The Answer does not show
" wherein said note failed in con
" -sideration
" 3rd The Answer does not show
" that the judgment was ever obtained
" or that if obtained, it has been paid
" to plaintiff, or placed in any
" way under his control
" W S Lovelace for Pl

Motion to strike out Answer

" And thereupon the court sustained said mo-
" -tion and struck out the answer of defendant
" to which the ruling of the Court the defendant
" saved his exception, and now here tenders his
" bill of exceptions, which he prays may be
" signed, and made a part of the record
" which is done accordingly
" A H Buckner
"
"

Appeal Bond

Said Appeal Bond is here copied

Know all men by these presents that we Edward W. Mayfield as principal and Matthias J. Ragan and Thomas Dowler as securities are held and firmly bound to William C. Lovelace in the just and full sum of eight hundred dollars for the payment of which, we bind ourselves our heirs Executors and administrators, jointly and severally firmly by these presents — The condition of this obligation is such that whereas, Edward W. Mayfield has appealed from the judgment of the Montgomery Circuit Court in a certain cause lately pending therein wherein William C. Lovelace is plaintiff against Edward W. Mayfield is defendant — Now if he shall prosecute his said 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 such as the Supreme Court may direct the Circuit Court to give and if the judgment of such Court or any part thereof be affirmed and he will comply with and perform the same, so far as it may be affirmed, and will pay all damages

7 " and costs which may be awarded
" against him by the Supreme Court
" then this recognizance to be void, other
" wise to remain in full force. As
" Witness our hands and seals this 28th
" day of October 1859.

Edward W G Wingfield Seal
Thomas Dowler Seal
M J Ragan Seal

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Certificate

State of Missouri
Montgomery County } SS — I Jacob L Sharp
clerk of the Circuit Court in and
for said County certify that the fore-
going is a true copy of the Record
and proceedings in the suit of
Wm C Lovelace vs E W G Wingfield
In Witness whereof, I have
hereunto set my hand
and official seal. Done
at office in the Town of
Danville the 23rd February
AD 1860 — J L Sharp clerk
By S T Sharp Deer

5 Missouri
Montgomery Cir Ct
5 Oct 60 Oct 7. 1859

(9)

Wm C Lovelace
respondent
vs } Record

E. W. G. Wingfield
appellants

Appeal from Montgomery
circuit court

$10 enclosed

Filed 24th Feby 1860.
Wm S. Glanville
Ck

Ct Supreme Court

$10. pd. Ch. Glanville by defendant
mo. to dismiss / Dismissed 18 Oct. 1860 /

Wm C Lovelace ~~deft in error~~ appellee
vs
Edwd W. G. Wingfield ~~pltff in error~~ appellant

Sup Ct
Oct Term
1860

Appeal from Montgomery Circuit Court

The Appellee by his Attorney Comes and moves the Court to dismiss the Appeal in this Cause & remand the Cause to the Circuit Court for want of prosecution of said Appeal —

The record was filed in this Court Feb 24 1860 — and no Errors assigned or the appeal otherwise prosecuted

Walter Lovelace
for appellee

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W C Lovelace
vs
E W G Wingfield

Motion to dismiss
appeal

Filed 16 October 1860.
W. S. Glanville
Ck.