Dougherty, John P. v. Whitehead, William 1860 Stoddard 460/7

615/2
59/060
31 Mo 255

Dougherty plaintiff resp.

Whitehead def app

owes $452.35
he executed a receipt for collection

Scott - def should have excepted & filed his bill of exceptions

"where one man @ the request of another performs beneficial services for him, unless it is agreed or it can be so inferred from the circumstances that the services were to be rendered w/out compensation, the law, in the absence of any express contract, will imply a promise on the part of him for whom the services were rendered to pay for them what they are reasonably worth"

Records of the pleas, proceedings, Orders and Judgements of the Circuit Court for the County of Stoddard in the fifteenth Judicial Circuit of the State of Missouri, began and held at the Court house in the Town of Bloomfield on Monday the Sixteenth day of November in the year of our Lord Eighteen hundred and fifty Seven, before the Honl Albert Jackson Judge of the Circuit Courts for the Circuit aforesaid

Be it remembered that on the 2nd day of October 1857 was filed in the Office of the Clerk of the Circuit Court of Stoddard County aforesaid, a petition in writing in the case of John P Daugherty versus William A Whitehead which said petition is in words and figures following to wit,

"John P Daugherty
" versus
"William A Whitehead
"

In the Stoddard Circuit Court fifteenth judicial Circuit of the State of Missouri November Term AD 1857.

" Plaintiff States that defendant on the 1st day "of October AD 1855 executed his receipt for the Collection "of money due by note from divers persons in said "receipt Specified, all of which will more fully appear "by reference to said receipt, which is hereunto filed "marked (A) and made a part of this petition, said notes "in said receipt Specified amounting in the aggregate "to four hundred and fifty two dollars & 35 Cents, exclusive "of Interest, which said sum defendant was to collect "and pay to plaintiff within a reasonable time. And

"Plaintiff avers that a reasonable time has elapsed & that
"said Moneys or a large amount thereof has been Collected
"by said defendant which he refuses to pay over, alth-
"ough requested so to do. Plaintiff prays that judgment be
"rendered against defendant & that he, defendant be forced to
"account for all Sums Specified in said receipt together with
"interest at the rates therein Specified, Amounting to the Sum
"of $452.35, exclusive of interest.

"

Bedford for Plaintiff.

"A.H. Bedford Atty for plaintiff States that the above petition
"& the Matters & things therein as Stated he believes to be
"true

"Sworn to & Subscribed before the undersigned } A.H. Bedford
"Clerk of the Circuit Court of Stoddard }
"County Missouri this 10th day of August A.D. 1857
"Reuben P. Owen Clerk"

Which said receipt filed, marked (A) & made part of
plaintiff's petition is in words & figures following, To wit,
"Received of D. P. Daugherty forty notes, one of eleven
"to Joseph Hammerly or Benjamin Taylor due 1st
"January 1856, Count the above one dollar & fifty cents
"One Note with Andrs of eleven dollars due January
"1st 1855, made payable to McDoo, One note of $12.50
"made payable J Hammerly, One note on Elias Birchfield
"made payable to McDoo for $12.50 due 22d. day of
"Nov 1854 One note on Warran I Reed of $12.00,
"made payable to McDoo due Oct 1855; One note on W.L.
"Reed for the Sum of $12.00, made payable to McDoo due

" Oct 20th 1855, one note on James Aker for $24.00, payable
" Joseph Hamerly due 1st Jan 1855; one note on Martin
" Haifner of $12.50, payable to McDoo due the 20th of
" October 1855; one note on Johnson M Graves for $12.00, payable
" to McDoo due the 20th October 1855; One note on Alfred Bullinger
" for $12.00, payable to McDoo due the 20th Oct 1855.
" One note on Wm Hicks for $12.00, payable to McDoo due Nov
" 2d 1855; one note on Ellen M Welch for $11.50, payable
" to Graham due the 19th Dec 1855; one note on Mozeriah
" Bolinger of $11.50 payable to McDoo due March 1st 1855;
" One note on Peter Singleton for $12.50, payable to McDoo
" due Nov 20th 1854; one note on James M Baker for $12.00,
" payable to McDoo due Oct 20th 1855; One note on Thomas
" Bailey for $12.50, payable to Graham due Oct the 14th 1854;
" One note on Elyah L Pop for $11.00, payable to Graham
" due the 16th Oct 1855; One note on Christopher Milfing
" for $12.50, payable to Graham due Oct 4th 1855; One
" note on Oliver M Mabey for $1250 payable to Graham
" due October 1855; One note on Wm Bailey for $1250
" payable to Graham due Oct 14th 1855; one note on
" Elyabeth Dadger for $1250; payable to Graham due
" Nov 7th 1855; One note on Frances Taylor for $8.00,
" payable to Hamerly Oct 13th 1855; One note on Joseph
" Johnson for $11.25, payable to Graham due 18th Oct 1855;
" One note on John L Mabey for $12.50, payable to Graham
" due 14th Oct 1855; One note on Benjamin Johnson for $1250
" payable to Graham due Oct 18th 1855; One note on Pleasant
" M Mayors for $11.00, payable to Graham due Oct 7th 1855;

"One Note on Jacob Wilfong for $12.50, payable to Graham
"due 19th Oct 1854, twelve months after date; One note on J H
"Hollis for ten dollars payable to Graham due Oct 17th
"1855; one note on J D Smith for $12.00, payable to Kennedy due
"Aug 24th 1854; One Note on Thomas Kinney for $23.00,
"Credits $15.00, to McDow due the 25th Dcer 1854; One Note
"on Martin Bush for $6.00, payable to Graham due Nov 6th
"1855, One Note on James Culbertson for $12.50, payable
"to Graham due Nov 1st 1855; One Note on J C Bottom for
"$11.50, payable to Graham due Nov 1st 1855; One Note on
"Andrew Norman for $12.50, payable to Graham due Nov 2d
"1855; One Note on Miles Gofroth for $11.55, payable to
"Graham due Nov 1st 1855; One Note on James M Gofroth
"for $12.50, payable to Graham due Oct 14th 1855; One
"Note on Thomas Allen for $12.50, payable to Graham
"due Oct the 14th 1855; One note on Barbary Mayors
"for $11.00, payable to Graham due November the 8th 1855
"One note on George W Johnson for $12.50, payable to
"Graham due Oct 14th 1855. Which I will Collect or
"account for as the Law directs, this Oct 1st 1855

" (Signed) Wm A Whitehead Sheriff
" of Stoddard County Mo."

Annexed to said petition the Clerk of said Circuit
Court issued the following Summons, to wit,

"State of Missouri } ss
"County of Stoddard } The State of Missouri to the
" Sheriff of Stoddard County in said State Greeting
"We Command you to Summons William A Whitehead

"to appear before the Circuit Court of Stoddard County
"on the first day of the Term thereof to be held at the
"Court house in the Town of Bloomfield within & for
"the County aforesaid, on the 3rd "Monday of November
"next to answer to the foregoing petition of John
"P Daugherty plaintiff; and that you testify to our
"said Court how you execute this writ and have you
"then there this Writ.
"(L.S.) Witness Richard Owen Clerk of said Court with the
"seal thereof hereunto affixed, at Office in Bloomfield
"this 2nd day of October A.D. 1857. Richard P. Owen Clk."
On which said petition and Summons the Sheriff
of said County of Stoddard made the following return
"Served the within petition and Summons on the
"within named Wm A Whitehead on the 12th day of
"October 1857, by delivering him a true copy of the same
"Served in Stoddard County Missouri. James Dowdy Sheriff
"Fees $1.00, By his Deputy John D Jackson."
And afterwards, to wit, on the 23rd day of November
A.D. 1857, at the November Term 1857, of said Circuit
Court before the Honorable Albert Jackson Judge, the
following proceedings were had in said Cause, to wit,
"John P Daugherty } Civil Action
"Versus
"William A Whitehead } The parties by their Attorneys
"appear and by agreement this cause is Continued
"to the next Term of this Court."

And afterwards, To Wit, on the 20th day of May AD 1858 at the May Term AD 1858 of the Circuit Court of said County of Stoddard before the Hon'l Albert Jackson Judge the following proceedings were had in said Cause in said Court To Wit,

"John P Daugherty
" versus
"William A Whitehead } Civil Action
The defendant by his
"Attorney Comes and files his answer to the plaintiff's
"petition herein and this Cause is Continued until the
"next Term of this Court."

Which said Answer filed by said defendant as aforesaid is in words & figures following, To Wit,

"John P Daugherty Plaintiff
" vs
"William A Whitehead, Defendant } Civil Action in the Circuit Court of Stoddard County Missouri May Term 1858

"Now Comes defendant & for answer to plaintiff's
"petition says, 1st That he admits that he received
"the notes mentioned in plaintiffs petition, to wit,
"in the affidavit, for Collection - 2nd He denies that
"he has Collected or received upon said notes the
"Sum of Four hundred and fifty two dollars and thirty
"five Cents - 3rd He admits that he has received a portion
"of said Sum; but is unable to say how much
"3rd He says that he has paid over to plaintiff
"all the money he has Collected or received on the
"Same

Ketchum & Arthur Pl'ffs Att'ys

"William A Whitehead makes oath & says that the
"above petition & the matters & things as therein stated
"he believes to be true
"Sworn to & subscribed in open } W A Whitehead
"Court this 19th day of May 1858
"Reuben P Owen Clerk".

And afterwards, To wit, on the 15th day of November AD 1858, at the November Term 1858, of the said Circuit Court, before the Hon'l Albert Jackson Judge the following proceedings were had in said Cause in said Court, To wit,

"John P Daugherty
" versus } Civil Action
"William A Whitehead } The plaintiff by his Attorney
"Comes and files his replication to the defendant's
"answer herein".

Which replication filed by said plaintiff as aforesaid is in words and figures following (To wit)

"John P Daugherty } Civil Action in the Stoddard
" vs } Circuit Court, November Term
"William A Whitehead } 1858

" Now at this time comes the plaintiff and
"for replication to defendant's answer herein, states
"that he the defendant has not paid over to said
"plaintiff the said sums which he has collected or
"any part thereof, or if he has done so plaintiff has
"not sufficient knowledge hereof to form a belief &
"hereof requires proof. J. P. Daugherty by
Bedford Atty

"H. H. Bedford Attorney for plaintiff States that the
"above replication & the matters & things as stated therein
"in he believes to be true
"Sworn to & Subscribed in Open Court
"before the undersigned this Nov 16th } H H Bedford
"1858. Ruben D Owen Clerk"

And afterwards (To wit, the 18th " day of November AD
1858, at the November Term AD 1858, of said Circuit
Court, before the Hon'l Albert Jackson judge the
following proceedings were had in said Court, to wit,

"John P Daugherty
" versus } Civil Action
"William A Whitehead } The parties by their Attorneys
"appear, Whereupon Comes a jury, To wit, 1 James Kelsey,
"2 William Wheeler, 3 James A Hollis, 4 William Lincoln
"5 William Morgan, 6 Alexander Cunningham, 7 John W
"Johnson, 8 Thomas J Walker, 9 John Kilcrease, 10 David
"McElwrath, 11 William L Boyd, 12 Richard Wall-
"Twelve good and lawful men Who being duly
"elected tried and Sworn to well and truly try this
"Cause and having heard all the testimony offered
"retire to Consult of their Verdict, When they return
"into Court, and the jurors aforesaid being polled
"Say "We the jury find that the defendant William
"A Whitehead is indebted to the plaintiff in the sum
"of four hundred and Eighteen dollars and Eighty five
"Cents" And during the trial of this Cause and before
"the jury retired to Consult of their Verdict, the

"defendant asked the Court to give the jury an instruc-
"tion which the Court refused, to which Opinion and
"decision of the Court the defendant excepts and
"Objects

And afterwards, To wit, on the 19th day of November
AD 1858, and the said November Term 1858, of said
Court, before the Hon'l Albert Jackson Judge the
following proceedings were had in said Court in said cause, to wit,

"John P Daugherty
" Versus } Civil Action
"William A Whitehead } The defendant by his Attorney
"comes and moves the Court to grant a new trial herein
"on reasons filed". Which said motion for a
new trial is in words & figures following, To wit,

" John P Daugherty } Circuit Court, Stoddard County
" Versus } November Term 1858 —
" William A Whitehead } Defendant moves for a new
"trial in the above entitled action, for that — First,
"defendant's Attorney was surprised by the testimony of
"Lemuel H Jackson a witness examined on the trial, in that
"it did not prove that said witness was the agent of
"the plaintiff and as such agent, settled the matter in
"controversy with defendant. Second, The Court
"misdirected the jury in allowing the instructions asked
"by the plaintiff and in excluded that offered by the
"defendant — Third; The Court excluded testimony
"offered by defendant to prove that Lemuel H
"Jackson was the agent of plaintiff, and as such

"agent had authority to settle and did settle the matter in
"controversy with defendant. Fourth, the Court misdirected the
"jury in instructing them to disregard the testimony of
"Jonas Eaker a witness examined on the trial, tending to
"prove a settlement between the agent of the plaintiff
"and defendant, of the matter in controversy
"
S. G. Ketchum
"
Dfts atty."

And afterwards Total, on the 22nd day of November
AD 1858, and the November Term AD 1858, of the said
Circuit Court before the Hon'l Albert Jackson Judge, the
following proceedings were had in said Cause, To wit,
"John P. Daugherty
Book C "versus } Civil Action.
Page 364 "William A Whitehead } The parties by their Attorneys
"appear, and the jury in this cause having returned
"a verdict for the plaintiff in this cause for the sum
"of Four hundred and Eighteen dollars and Eighty
"five cents for his debt. It is therefore considered
"and adjudged by the Court that said plaintiff
"recover against said defendant his debt aforesaid
"in form aforesaid found to the sum of Four hundred
"and Eighteen and Eighty five cents, together with his costs
"and charges by him laid out about his said suit
"in this behalf expended, and that Execution issue therefor
"And the Court having sufficiently advised of the motion
"to grant a new trial herein doth consider that said motion
"be over ruled; And the said defendant moves the

"to arrest the judgment herein which motion
"is overruled; to which Opinion and decision
"of the Court in Overruling said Motion for a
"new trial, and said Motion in arrest of judgment
"the defendant Objects and excepts."

"Which Motion in arrest of judgment filed by said
defendant is in Words & figures following, Dawit,

"John P Daugherty } Circuit Court of Stoddard County
" vs } November Term 1858
"William A Whitehead } William A Whitehead the defendant
"in the above entitled action, moves the Court to arrest the
"judgment herein, for that- First, The Verdict of the jury
"is against the evidence given at the trial
" S. G. Ritchey Defts Atty."

And afterwards, Dawit, on the 22nd day of
November AD 1858, at the November Term 1858, of the
Circuit Court aforesaid, before the Hon Albert
Jackson judge the following proceedings were had
in said Cause in said Cause in said Court, to wit,

"John P Daugherty } Civil Action
" vs
"William A Whitehead } The defendant by his
"Attorney Comes and files his affidavit and prays
"an appeal herein to the Supreme Court, which is
"granted"

Which said affidavit filed by said defendant as
aforesaid is in Words and figures following, to wit

Book C
Page 310

" John P Daugherty } Circuit Court, Stoddard County
" vs } November Term 1858
" William A Whitehead } This affiant States that the
" application for an appeal by William A Whitehead
" defendant in the above entitled action, is not made
" for Vexation or delay but because this affiant believes
" that the appellant is injured by the judgment in said
" action.
" Subscribed & Sworn to in Open Court } Wm A Whitehead
" before me, this 22nd day of November 1858
" Reuben P Oliver Clerk."

And afterwards, to wit, on the 23rd day of November AD 1858, at the November Term AD 1858, of the said Circuit Court before the Hon'l Albert Jackson judge, the following proceedings were had in said cause, to wit)

Book C
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" John P Daugherty } Civil Action
" vs
" William A Whitehead } The parties by their Attorneys
" appear, and the defendant files his bill of exceptions
" herein, which is allowed and signed and made part
" of the record in this cause"

Which said bill of exceptions filed by said defendant as aforesaid is in the words and figures following to wit)

" John P Daugherty } Bill of Exceptions - Circuit
" vs } Court, Stoddard County November
" William A Whitehead } Term 1858

" Be it remembered, that on the

"trial of this cause the plaintiff asked the following
"instructions- (" If the Jury believe from the Testimony in
"this cause, that William A Whitehead received the
"notes specified in the receipt mentioned in plaintiffs
"petition and agreed therein to collect said notes or
"account for the same, then and in that case it devolves
"upon said Whitehead to account for the same, either
"in money, the return of said notes or copies of judgements
"with the evidence that the money could not be made
"by the use of reasonable delligence") To which inst
"ructions defendant objects & excepts-
" Defendant asked the following instructions- (" If the
Jury believe from the testimony that the agent of the
"plaintiff settled with defendant- their finding must
"controlled by, and according to such settlement.")
"Which was refused by the Court- to which decision of
"the Court the defendant objects & excepts (Here insert postea)
"After which defendant moved for a new trial for the
"following reasons- First, Defendants attorney was
"surprised by the testimony of Lemuel H Jackson a witness
"Examined on the trial, in that it did not prove that said
"witness was the agent of the plaintiff, and as such agent,
"settled the matter in controversy, with defendant-
"Second; The Court misinstructed the Jury in allowing the
"instructions asked by the plaintiff, and in excluding
"that asked by defendant- and said motion was
"over ruled by the Court- To which decision, defendant
"objects & excepts- And afterwards defendant

"moved in arrest of judgement for the following reasons
"(viz) The Verdict of the jury is against the evidence
"given on the trial, which motion the Court Overruled
"and the defendant objects & excepts to the decision of
"the Court. Whereupon defendant presents this his
"bill of exceptions, which he prays may be signed
"Sealed and made part of the record in this cause
"which is done. Albert Jackson"

The following is the testimony in this cause

"John P Daugherty
" vs } Civil Action
"William A Whitehead

" Samuel A Jackson a witness on the part
"of the defendant being produced & sworn Stated, That
"the receipt referred to was left with him by one Verd
"to settle with Mr Whitehead, that he had tried
"at different times to get a settlement with Whitehead
"but could not get one. Whitehead would not as I
"thought was right. States that he can explain
"the reason of the Crapes which appear upon said
"receipt, that Whitehead told him to call over
"the list of names and as he called Whitehead
"would tell him to ~~Mark~~ Mark that one off, as
"he would pay for or account for all thus marked
"off, but when we got through he would not do
"so. (The receipt was shown and identified by
"the witness) That When they made the attempt to
"Settle that he read of Whitehead an note on

"D D Smith for $12.00, and thinks he received some
"three or four more notes, the amount of which or
"upon whom he could not state as he did not
"recollect. also one receipt given by Mr Herd for forty
"or forty eight dollars; that Whitehead had a paper
"with a list of names, or cant say whether you could
"Could call it a list of judgements or what it was.
"I did not think I would be doing right to take it.
"the amt of notes & receipts as afterwards exhibited
"in Court amounted to Ninety Six dollars. This is
"about the substance of the testimony given by S
"Jackson. A Jackson."

"Jno Easter a witness produced, Sworn & examined
"in behalf of defendant, testified as follows. I
"was called on by Whitehead, to assist him in
"making a settlement between Whitehead & Samuel
"A Jackson. from the fact that most of those
"notes were sued before me as justice of the peace.
"That was why I was called on, after I explained
"the matter to Jackson, the different judgements that
"had not been collected & some that had represented
"the matter to me as having been collected by
"Constable Hopper, and no account for, and Counting
"in a receipt for $48. that I had myself paid
"Herd as agent for Daugherty, and Counting two
"per cent that Whitehead claimed he was to get
"for Collecting and also some other debts that
"defendant had got rid of by suits before me,

" and Some debts and Cost that had accrued in Suits
" against McAdoo in Which Whitehead was garnished
" answered and paid over - after making Calculation of
" the Whole left Whitehead indebted on the receipt
" filed for $89.80/100; and Whitehead was also to deliver to
" Jackson a receipt on Daniel McLendon Constable of
" Pike Township, which I think was Sixty dollars -
" I Considered this a Settlement between Whitehead
" & Jackson - This is the Substance of Eakin's
" testimony

A Jackson "

State of Missouri }
County of Stoddard } ss. I, Reuben P Orrow Clerk of the Circuit Court in and for the County of Stoddard in the State of Missouri do Certify the foregoing to be a true and perfect transcript of the record and proceedings in the foregoing Case as the Same appears now remaining in my Office

In Testimony Whereof I have hereunto Signed my name and affixed the Seal of said Court at Office in Bloomfield this 17th day of February AD 1859

Reuben P Orrow Clerk

In the Circuit Court of Sussex County Mississippi

Bill of Cost on appeal to Supreme Court

John P Daugherty
Versus
William A Whitehead
} Civil Action

		$	cts	$	cts
Reuben D Owen Clk					
Nov 7 1858	Motion for new trial 25, Order 25		50		
	Motion in Arrest of judgment 25, Order 25		50		
	entering exceptions		25		
	filing affidavit 5, oath 5, certifying affidavit 10		20		
	entering appeal to Supreme Court		50		
	Copy of record (4000 words) 15¢ per 100	6	00		
	Certificate & Seal 50, Postage 10 15		65	8	60

A True Bill of Cost which have accrued on the appeal herein.

Given under my hand and seal of Circuit Court at Office in Bloomfield this 17th day of July 1859

Reuben D Owen Clk

(2)

~~2475~~
49

October Term 1860

John P. Dougherty
respondent.

(3).

William A. Whitehead.
appellant

Appeal from Stoddard
Circuit Court.

H. H. Bedford.

S. G. Kitchen.

Filed 24th Feby. 1859,
Wm S Glanville
Ck.

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Called, no app./ contd/ Called no appr. contd/

Affight erms/ apts. slot, & bf./ Renewed & remanded 20 Dec. 1860/ C.p. 112.

John P. Dougherty, Resp.
vs
Wm A Whitehead
applt

Appeal from
Circuit Court of
Goodland County

The appellants come and say that in the record and proceedings and judgment of the Circuit Court herein there is manifest error in this to wit

1. The Court erred in the giving plfs instruction and in refusing the instruction asked by Defendant

2 The Court gave ~~[illegible]~~ judgment for the wrong party

Jno McNeill for applt

Jno. P. Daugherty

v.

Wm. A. Whitehead

Assignment of Errors.

Filed 25 Oct. 1860.
W. S. Glanville
Ck.

John D Dougherty Resp } Appeal from
vs } Stoddard Circuit
Wm A Whitehead applt } Court

Statement by Jno W Noell for applt

This was an action for money had and received by Defendant to plffs use The plaintiff alleges that he put notes to the Amount of $452.35 cts in defts hands for collection and files Defts receipts as evidence. He avers that Defendant was to collect these notes and pay the Amount to plaintiff in a reasonable time, that a reasonable time has elapsed and the said monies "or a large part thereof has been collected by Defendant which he refuses to pay. The prayer is for Defendant to be forced to account for all sums specified in the receipt. No judgment is asked. The receipt is dated October 1st 1855 and filed with the petition

The answer of Defendant admits the receipt of the notes for collection. He denies he has received the amount of money alleged in the petition and is unable to say how much, alleges that he has paid to plaintiff all that he has collected At the November term 1858 the Cause was tried The only evidence

given on the trial was that of two witnesses L H Jackson & J Baker. Their evidence tended to show a settlement between Defendant and the agent of Plaintiff and Baker testified that on that settlement Whitehead fell in Debt $89. on the receipt filed in this Case

The Court at the instance of plaintiff gave the following instruction

"If the jury believe from the evidence in this Cause that Wm A Whitehead received the notes specified in the receipt mentioned in plaintiffs petition and agreed thereon to collect said notes or account for the same then and in that Case it devolves upon said Whitehead to account for the same either in money the return of the notes or copies of judgments with the evidence that the money could not be made by the use of reasonable diligence."

Exceptions were taken to this instruction by Defts The Defendant then asked this instruction

If the jury believe from the testimony that the agent of plaintiff settled with Defendant then finding must be controlled by and according to such settlement. This instruction was

refused and Defendant excepted

Motion for new trial was filed and overruled then a Motion in arrest of judgment also filed and overruled to all which decisions exceptions were duly taken and the Case brought here by appeal

Jno W Noell for appelt

Jno W Noell for appellant makes the following points

1. The Court erred in the instructions given the receipt of Defendant was for notes put in his hands for collection. and in such Case he was only bound for what he actually collected. or what was lost by wilful misconduct or negligence. The Contract on the part of which he was to Collect was Gratuitous. No Compensation is fixed or agreed on. Then in such Case the onus was on the Plaintiff to prove the Collection or prove the wilful negligence or misconduct of Plaintiff whereby the plaintiff was damaged The instructions given

was therefore wrong. The instruction
refused or one embodying the same
proposition in different phraseology
should have been given

Story on Bailments
Sec 182 top page 198

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Mr P. Dougherty
Respt

v

Wm A. Whitehead
appt

Statement &
Brief

Filed 25 Oct. 1860.
W. S. Glanville
Cl.

John P. Dougherty
vs.
William A. Whitehead

Appeal from the Stoddard Circuit Court

This was an action ~~on a receipt~~ growing out of a receipt given by the defendant Whitehead to the plaintiff by which the defendant undertook to collect a great many small notes for the plaintiff; after the receipt had been read in evidence, there was some ~~evidence~~ testimony given of a settlement between the defendant & Lemuel H. Jackson who it was alleged was ~~and~~ an agent for the plaintiff.

The court gave an instruction defining the liability of the defendant under his receipt, and refused the following instruction asked by the defendant: "If the jury believe from the testimony that the agent of the plaintiff settled with defendant, their finding must be controled by & according to such settlement." We are of the opinion that the evidence ~~warranted~~ required that ~~court~~ this instruction should have been submitted to the consideration of the jury. The fact that Jackson held the receipt was a strong circumstance unless it was explained, in support of the view that he was an agent.

In his motion for a new trial among others the defendant stated as reasons therefor, that the Court excluded evidence offered

to prove that Jackson was an agent for the plaintiff & as agent had settled the matter in controversy with the defendants and that the court misdirected the jury in instructing them to disregard the evidence of James Baker ::

A fact stated in a motion to the court is no evidence in this court of the existence of such fact :: If the facts stated in the motion did occur on the trial, the defendant should have excepted & filed her bill of exceptions which is the only evidence of their existence : Having failed to do this the action of the court below cannot be reviewed in the appellate tribunal : While on the subject of bills of exceptions it may be as well to state that the law now only allows one bill of exceptions. The matters excepted to during the trial are noted at the time and after the trial is over and the motion for a new trial or other appropreate motion is overruled a bill of exceptions is prepared stating the matters excepted to in the order in which they occurred during the trial. The evidence is stated or so much as is material to show that the instructions asked were warranted, then the instructions & the motion for a new trial or other motion all of which is authenticated by the signature of the judge so as to make

but one bill containing all the matters to which exceptions were taken just as in the order in which they occurred on the trial.

There was nothing in the objection made here that the undertaking of the defendant was without consideration & therefore no action will lie against him for failing to perform it: When one man at the request of another performs beneficial services for him, unless it is ~~otherwise~~ agreed or it can be so inferred from the circumstances, that the services were to be rendered without compensation, the law will imply a promise in the absence of any express contract on the part of him for whom the services were rendered, to pay for them what they are reasonably worth.

The other judges concurring the judgment will be reversed & the cause remanded

W Scott

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Dougherty

vs.

Whitehead

Opinion

Filed 20 Decr. 1866.

W. L. Glanville Clk.