Beidman, John v. Gray, George & Armstrong, William 1864 Sr8/2

631/28 282/38

Beidman (R) (P)

V

Gray (A)

Varnum D B vol (D)

Wells, Ensign B

Rush & Rutherford A

Greenfield & Givens

Oct 64

Clark

March 60

P state that D in PN 300 - after 12 mth

10% / annum

paid $15 rest lv

signed as endnr.

Bates, Revised & Remarks Bay Andrews

Record of the Proceedings orders and Judgments of the Circuit Court of Clark County in the Fourth Judicial Circuit of the State of Missouri begun and held at the Court House in the Town of Waterloo in the County aforesaid on Monday the 19th day of September 1859 before the Hon Thomas S Richardson Judge of the Circuit Courts for the Circuit aforesaid —

Be it remembered that the 16th day of March AD 1858 there was filed in the office of the Clerk of the Circuit Court of the County of Clark aforesaid a Petition in the words and figures following towit;

Plaintiffs Petition

John W Beidman Plaintiff
Against
V. D. Burch alias
Varnum D Burch,
George Gray
William B Armstrong and
E B Wells alias
Ensign B Wells Defendants

In the Cir Court of Clark County

Plaintiff States that the defendants by their promissory note, hereunto filed, dated the 20th day of January 185-, promised for value received to pay plaintiff the sum of three hundred dollars, twelve months after the date thereof with interest from maturity at the rate of ten per cent per annum, that defendants on the 16th day of August 185-, paid fifteen dollars on said note, and that the balance and the interest thereon, are yet due plaintiff, and for which he asks judgment. Plaintiff States that the defendant Varnum D Burch duly executed his promissory note, hereunto filed, and said defendants George Gray William B Armstrong and Ensign B Rees Signed their names upon the back thereof and duly executed the same, and delivered the same to plaintiff, by which promissory note dated the 20th day of January 185-, said defen-

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dants promised for value received to pay plaintiff the sum of three hundred dollars, twelve months after the date thereof that defendants on the 16th day of August 1857 paid fifteen dollars on said note, and that the balance with interest at the rate of ten per cent per annum from maturity is yet due plaintiff and for which he asks judgment—

Greenfield & Givens
Attorneys for plaintiff

State of Missouri } ss
County of Clark }

H. J. Greenfield,

Affidavit to Plaintiffs Petn

One of the attorneys for plaintiff, makes oath and says the above petition and the matters as stated he believes to be true—

H. J. Greenfield

Subscribed and sworn to before me this 16th day March 1858

John P Hampton
Clerk

Endorsed Filed 16 March 1858.—

Jno P Hampton Clk

"The note annexed to the above pe

tition is in the words and figures following towit;

"$300.00 Athens Mo Jany 20th 1857

Note } Twelve months after date, I promise to pay to the order of John W Beidman Three Hundred 00/100 Dollars for value received, negotiable and payable without defalcation or discount, and with interest from maturity at the rate of ten per cent per annum V. D. Burch

Upon the back of the above note are the following endorsements;

"Geo Gray
Wm B Armstrong
E. B. Wells

August 16th /57 received on the within "$15 nit -

Filed 16 March 1858 - J. P. Hampton clk

"

And afterwards towit on the 17th day of March AD 1858 there was issued from the office of the clerk of the Circuit Court of the County of Clark a writ of Summons which was annexed to a copy of the above petition and is in the words and figures following

5-

5-

Summons &

Court; "The State of Missouri - to the Sheriff of Clark County greeting; We Command you to Summon V D. Burch alias Varnum D Burch, George Gray, William B Armstrong and E. D. Wells alias Ensign B. Wells that they be and appear in our Circuit Court, at the Court House, in the Town of Waterloo, within and for said County of Clark, on the third Monday in April A.D. 1858, there and then, before the Judge of our said Court to answer the petition of John W. Beidman exhibited against them in said Court, of which petition the annexed and foregoing is a copy, and have you then and there this writ -

Witness the undersigned Clerk of said Court, with the Seal thereof affixed -

Seal Done at office at Waterloo, this 17th day of March 1858

John D. Hampton
Clerk

On which said petition & Summons the Sheriff of Clark County made the following return towit;

Sheriffs return on Summons

"I executed the within writ by delivering a copy of the petition and writ to the within named William B Armstrong, and by delivering a copy of the writ to the within named George Gray, at the County of Clark, on the 18th day of March AD 1858, the within named Varnum D Burch and Ensign B Wells not being found in Clark County--

Oscar F Ensign

Fee $2- Sheriff of Clark County Mo

And afterwards towit, on the 22d day of September AD 1858, at the September Term 1858 of said Circuit Court, before the Hon Addison Reese Judge, the following proceedings were had in the above cause towit;

" John W Beidman Pltff

vs } Petition on notes

Entry of Answer

V D Burch & others Defts

This day come the defen-

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dants George Gray & William B
Armstrong, by their attorneys, and
file their Answer herein -
Which said answer is in the words and
figures following to wit:

Answer

"John W Gerdiman Plaintiff } In the
against } Circuit
Varnum D Burch } Court
George Gray and } of Clark
William B Armstrong } County
Defendants } Missouri

Defendants - George Gray and William
B. Armstrong for answer to the
Plaintiffs petition herein filed deny that
they executed the note filed with plain-
tiffs petition dated the 20th day
of January 1857 & deny that
they promised for value received
to pay Plaintiff three hundred
dollars twelve months after the date
thereof with interest as alleged by
Plaintiff - but state that they
did not execute or sign said
note as a Maker thereof -
Defendants admit that the Deft.
Varnum D. Burch duly executed
his promissory note filed with plain-
tiffs petition - Defendants also

admit that they Signed their names upon the back of said note — but defendants deny that by so doing that they promised for value received to pay plaintiff the Sum ~~of~~ Stated in plaintiffs petition —

Defendants for further Answer State that on the 25th day of January 1857 that said Burch One of defendants executed Signed and delivered to plaintiff his said promissory note, being the same as filed with plaintiffs petition as the foundation of this suit, and that after the said note had been executed by the said Burch, that Plaintiff demanded Security upon the Same & that these defendants when applied to by said Burch & Pfaff refused to Sign said note as parties thereto, but finally agreed to Sign their names upon the back of said note and become liable only as Subsequent indorsers, and that they intended to become such indorsers of said note according to the ordinary and usual custom of indorsing mercantile paper, & defendants State

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that they were not privy or parties to the consideration of said note & that the making the note, and the indorsement thereof was not co-temporaneous acts, but that the indorsement of said note by them was subsequent to the said execution thereof by said Burch, and that it was well known by the plaintiff, at the time of said endorsement, aforesaid, by these defendants, that they merely intented to be responsible as subsequent indorsers, and it was further agreed between said defendants & said plaintiff that said defendants should not be liable to be called upon for the payment of said note, until after plaintiff or the holder of the note should first have exhausted his remedy against the payor of said note, & maker thereof, aforesaid. But defendants say that the plaintiff not regarding his promise or the understanding upon which defendants indorsed said note that he has not even called upon said Burch or made an effort to collect said

note of said Burch the d? maker thereof - Defendants state that on the 21st day of January 1858 and at the time said note become due that the said Burch was living in the County of Clark and State of Wisconsin and continued to reside in said County for a long time afterwards to wit; until sometime in the Spring of the year 1858, but that plaintiff during all that time did not make an effort to collect the amount of said Burch, but suffered the said Burch to remove with his property to the State of Iowa, and all without even as much as making a demand of said Burch of payment of said note. Defendants say that the plaintiff has not used due diligence to collect the same of said Burch & that if said plaintiff had used due diligence to collect said debt of said Burch that he might have collected the same - Defendants deny owing the plaintiff anything & deny

11 that they are joint makers of said note or that they intended to become such when they indorsed the same -

Said defendants having now fully answered the plaintiffs petition, ask that they may be discharged therewith with costs of suit & for general relief -

Bush & Rutherford
Attys for defendants
Armstrong & Gray

Affidavit to Answer } George Gray one of Defendants makes oath and says he believes the foregoing answer and the matters therein as stated to be true -

Geo Gray

Sworn to and subscribed to before me this 22nd day of September AD 1858 - J. P. Hampton CK

Filed 22nd Sept 1858, Jno P Hampton CK

And afterwards towit: at the September Term 1858 of the Circuit Court of Clark County aforesaid and on the 23rd day of said month the following other proceedings were had by said Court in the above entitled cause towit:

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Continuance

John W Beidman Pltff
vs
V D Burch Defendants
+ others

The Parties by their attorneys come and this Cause is continued —

And afterwards towit at the September Term 1859 of the Circuit Court of Clark County aforesaid and on 1st day of October 1859 before the Hon Thomas S Richardson Judge of said Court the following proceedings were had in the above Cause towit;

Judgment

"John W Beidman Plaintiff
Against Petition on Notes
V D Burch alias
Varnum D Burch
George Gray
William B Armstrong and
E B Wells alias
Ensign B Wells Defendants

The said Plaintiff by his attorney came together with the defendants George Gray and William B Armstrong by

their attorney and thereupon on motion of said Plaintiff this Cause is dismissed as to the defendants Varnum D Burch and Enos D Wells - and this Cause coming on to be heard (as to remaining defendants) upon petition of plaintiff and answer of said defendants George Gray and William B Armstrong and the Case being argued is submitted to the Court - Whereupon the Court finds for said plaintiff the Sum of Three Hundred and Thirty Two Dollars and Seventy Cents for his Damages - It is therefore Considered and adjudged by the Court that said plaintiff do have and recover of and from the said defendants George Gray and William B Armstrong the Sum of Three Hundred and Thirty Two Dollars and Seventy Cents for his Damages together with his Costs and Charges in this behalf laid out and expended and that he may

have his Execution therefor —
Ordered that this Judgment bear Interest at the rate of 10 per cent per annum —

John W Beidman Plaintiff
vs } Civil Action
George Gray &
William B Armstrong Defts

Now at this day come the said defendants by their attorneys and move the Court to set aside the finding of the Court in the above Entitled Cause and arrest the Judgment thereon and grant them a new Trial for reasons in their said motion Stated — Which Motion is overruled by the Court — And thereupon the said defendants present their Bill of Exceptions in this Case which being seen and examined is signed Sealed and Made a part of the record in this Cause —

Entry of Motion for New trial

Order overruling Motion

Entry of Bill of Exceptions

And thereupon the said defendants pray an appeal from the Judgment of this Court rendered in this Cause

15—

to the Supreme Court— And the said defendants having filed their bond with William D Bush as Security to the plaintiff in the penal Sum of One Thousand Dollars according to law, and the said Bond and the penalty and Security thereto being approved by the Court— It is therefore

Order granting appeal

Ordered by the Court that the defendants be granted their said appeal to the Supreme Court, that the appeal be a Supersedias of Execution and that the Clerk of this Court Certify to the Supreme Court the records in this Cause—

Defendants Bill of Exceptions is in the word and figure following towit;

Bill of Exceptions

John W Beideman Plaintiff

Against

George Gray and William B Armstrong

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In the Circuit Court of
Clark County Missouri
September Term 1859

Be it remembered that at the September Term of our said Clark Circuit Court and on the 1st day of October it being the last day of said Term this Cause coming on to be heard upon the petition and answer herein in this Cause filed — Whereupon said Cause was Submitted to the Court for trial — Where upon the plaintiffs introduced as evidence the note annexed to plaintiffs petition in this Cause with the indorsements thereon in the words and figures following towit; "$300.00 Athens Mo Jany 20th 1857

Twelve Months after date I promise to pay to the order of John W Berdman Three Dollars for value received negotiable and payable without defalcation or discount and with interest from

17 maturity at the rate of ten per cent per annum. Wm D Burch

Endorsed on the back

"Geo Gray
Wm B Armstrong
E B Wells

August 16 1857.

Recd on the within $15 int -

Filed 16th March 1858, J P Hamptonck

"which was all the evidence offered by plaintiffs to the reading of which Deft excepted Whereupon Defendants called and offered Witnesses to prove that they did not execute or sign said note as makers there of but that they signed their names upon the back of said note under an express agreement between Plaintiff and the said Gray and Armstrong that the said defendants were not to be liable for the payment of said note only as subsequent endorsers and should not be liable or called upon for the payment of said note until after Plaintiff or the holder of said note should first have exhausted his remedy against Birch the maker

& payor of said note and defendants also offered to prove that at the time said note became due that the said Bunch was living in Clark County & State of Nisperia & continued to live in said County for a long time afterwards and that the plaintiff had used no diligence to collect the same from Bunch and that plaintiff could have made the same from the property of defendant Bunch if he had used due diligence - to the introduction of all which evidence plaintiff objected, which objection was sustained by the Court to which decision of the Court the defendants at the time excepted, which was all the evidence offered or introduced in the cause - The Court then found for the plaintiff Whereupon the defendants Gray and Armstrong filed their motion to set aside the finding of the Court and arrest the Judgment thereon and grant them a new trial -

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John W. Beidman Plaintiff
against
V. J. Burch
George Gray &
William B. Armstrong

In the Circuit Court of Clark County Missouri

Motion for new trial

Now on this day comes the above named defendants and moves the Court to set aside the finding of the Court in the above entitled cause and arrest the Judgment thereon and grant them a new trial for the following reasons to wit;

1st Because the finding of the Court is contrary to law and evidence—

2nd Because the Court refused to hear the evidence offered by defendants—

3rd Because the Court erred in the law of the case—

Bush & Rutherford
for Defendant

Filed 1st Oct 1859. J. P. Hampton Cex

"Which motion was overruled by the Court; to the overruling of which motion Defendants at the time excepted and now presents this his Bill of

exceptions and asks that the same may be Signed Sealed and Made a Part of the Record in the Cause -

T. S. Richardson Esq
Judge 4th Jud Cirt

Filed October 1st 1859. J. P. Hampton Clk

Appeal Bonds

Appeal Bonds

Know all men by these Presents that we George Gray & William D Armstrong as Principals and William D Bush & Stephen H Bechtol as Securities are held and firmly bound unto John M Beidman Plaintiff in the Sum of One Thousand Dollars for the payment of which we bind ourselves our Heirs & Administrators firmly by these Presents - Signed and Sealed with our Seals this the 31st day of September 1859 -

The Condition of the above Bond is such that whereas the said John M Beidman has appealed from the Judgment of the Circuit Court of Clark County - Mississ

21 rendered at the September Term of said Court - Now if the appellant shall prosecute the 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, that they will comply with and perform the same so far as it may be affirmed & will pay all damages & costs & will pay all costs and damages which may be adjudged against the appellant by the Supreme Court then this bond shall be void otherwise remain in full force - Geo Gray Seal

Wm B Armstrong Seal

Wm D Bush Seal

Seal

Approved Oct 1/59 and appeal allowed -

T S Richardson Judge

Filed October 1st 1859, J. P. Hampton CC

Affidavit for appeal

Affidavit for appeal } John W Berdman Plaintiff } In the Cir
Against } Court of
George Gray + } Clark County
Wm B Armstrong } Missouri

Now on this day comes the Defendants in the above entitled Cause and moves the Court to grant them an appeal in the above entitled Cause and William B Armstrong one of defendants who after being duly sworn says that their application for an appeal from the Judgment of the Circuit Court in the above entitled Cause is not made for Vexation or delay but because they believe themselves agrieved by the Judgment of the Circuit Court.

Wm B Armstrong

Subscribed + Sworn to before me this 3rd day of October 1859 -

John P Hampton Clerk

State of Missouri }
County of Clark } ss

I John P. Hampton
Clerks Certificate } Clerk of the Circuit Court for the said County of Clark, in the State of Missouri, do hereby Certify, that the foregoing is a true transcript of the records and Proceedings in a Certain action of debt, lately depending in said Court between John M Bedman Plaintiff and Varnum D Burch, George Gray William P Armstrong and Enoch D Wells Defendants, as fully as they exist among the Records of said Court in my Office —

In Witness Whereof I hereunto Set my hand and affix the Seal of said Court — Done at Office at Waterloo this 6th day of January 1860 —

John P Hampton
Clerk

1862 Oct 23d Contd by Court Dp 86
1863 Oct 20 Contd by Court
1864 Oct 18 Subtd on apptbrief
1864 Dec 2d Reversed and Remanded. Opinion filed Dp 290

(28)

No. 8
October Term 1864

John W Beidman
respondent.

vs

George Gray &
W B Armstrong
appellants.

Appeal from Circuit Court,
Clark Co.

M. E.

Greenfield & Greens.
Bush & Ruttenford.

Filed March 20. 1860.
Wm S Glanville
Clk

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$1000 paid by C. Gray aplt. / apts brief /

In the Supreme Court by
Appeal from the Clark
Circuit Court

John W Beidman Plaintiff
Against
Varnum D Burch
George Gray
William B Armstrong +
Ensign B Wells Defendants

Statement of Case

This is an action brought upon a promissory note dated January 20th 1857 payable twelve months after date for the sum of three hundred dollars with ten per cent interest and signed by V D Burch and payable to John W Beidman the Plaintiff - with a Credit of fifteen dollars endorsed thereon - paid by V D Burch the defendant before the maturity of the note

The note was executed and delivered to the Plaintiff by defendant V D Burch a short time afterwards the Plaintiff demanded security upon the note - The defendants Gray Wells and Armstrong refused to sign said note as securities or parties but endorsed their names on the back of said note with the express understanding that they were to be held liable only as subsequent indorsers with an express agreement between them

and Plaintiff that they were not to be liable for the payment of said note until the Plaintiff should exhaust his remedy against the maker — The Plaintiff failed to collect the money from the assignee of the note although it could have been made by using due diligence and after the maker of the note had removed to the state of Iowa with his property the Plaintiff brought his action against all of the endorsers with Bush as makers of the note without making a demand of payment from the maker of the note once without the note being protested for non payment — the defendants Gray & Armstrong the appellants were the only parties served with process Gray & Armstrong filed their answer setting forth their defence to the action on said note and the cause coming on to be heard the Circuit Court refused to admit any evidence in support of the allegations contained in defendants answer but rendered judgment against the defendants Gray & Armstrong from which they have appealed to this Court —

Bush & Butterfield
Attys for Appellants

In the Supreme Court by
Appeal from the Clerk
Circuit Court

John W Bridman Plaintiff
Against
Varnum D Burch
William B Armstrong
Ensign B Wells &
George Gray defendants

The appellants
for assignment of errors say that
the Circuit Court erred in the law

1st

In refusing to admit the
evidence offered by the defend-
ants

2 errors

The finding of the Court
was contrary to the law and evidence

3rd

The finding of the court was
for Plaintiff when it should have
been for defendants

4th

In overruling defendants motion
to set aside the finding of the Court
and to grant a new trial and
to arrest the judgment

5th

In rendering Judgment against
the defendants without proof of
a demand and notice of non pay-
ment from the maker of the note

Bush & Bullitt for
Appellants

In the Supreme Court
by appeal from the
Circuit Court of
Clark County

John W Birdman Plff
against
Cummins D Burch
William B Armstrong
Ensign S Wells &
George Gray Defendants

Points & References

The inquiry being between the original parties to the note parol evidence was admissable to explain the manner in which the names of the appellants were endorsed upon the note. If they endorsed their names on the note under an agreement with the Plaintiff that agreement fixed their liability and they were not liable beyond it.

Appellants having endorsed their names upon the back of the note after it was executed by Burch and delivered to Plaintiff under an agreement not to be held liable until Plaintiff had exhausted his remedy against Burch they were not liable and cannot be sued as makers of the note

The note sued upon being negotiable the appellants were not liable until after a demand and notice of non

payment by the maker of the note and the Plaintiff had no right of action until after a demand was made and a notice of nonpayment was Given

See

Lewis vs Harvey 18 Mo R-P 74 & Schneider vs Schiffman 20th Mo R-P-571 & Davis vs Francisco 11th Mo R-P-572

Bush & Rutherford Attys for Appellants

John W. Biedman
vs Brief Statement of Case &c
Gray Armstrong & others
Appellants

Filed Oct. 8. 1860

Bridman

vs

Gray & Armstrong

This is a suit upon a negotiable note made by V D Bruch to the plaintiff, upon the back of which note the defendants wrote their names. The petition charges them as makers of the note. They answered, and at the trial offered to prove, that they did not execute or sign said note as makers thereof but that they signed their names upon the back of said note under an express agreement between plaintiff and themselves that they were not to be liable for the payment of said note, only as subsequent endorsers and should not be liable or called upon for the payment of said note until the plaintiff or the holder of said note should first have exhausted his remedy against Bruch the maker and payor &c.

This evidence was rejected, and judgment given for plaintiff from which the defendants appealed.

The Court erred in rejecting the evidence.

It was competent for the defendants to show that they signed as indorsers and not as makers. Lewis v Harvey 18 Mo 74

Schneider v Schiffman 20 Mo 571.
Judgment reversed & cause remanded.
Barton Bates
Judges Bay & Dryden Concur.

No 11

Beidman
vs
Gray & Armstrong
= = =
Opinion

Filed December 2d/64
A.W. Meade
Clerk

Reversed & remanded
Bates

State of Missouri } Clark Circ Ct
County of Clark }

John W Beidman Plff } Clerk
vs } Appeal
George Gray and
William B Armstrong
Defts

J. P. Hampton Clerk fees

1859 Oct 1st	Entering appearance	.15
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	Filing motion —	.05
	Order overruling motion	.50
	Filing & Entering Bill of Exceptions	.30
	Order on filing Bill of Exceptions	.50
	Motion for appeal —	.25
	Oath & Certificate 15 filing 05	.20
	Appeal Bond —	.50
	Order approving Bond	.50
	Order granting appeal —	.50
	Order for appeal to be Supercedeas of Exn —	.50
	Order for Clerk to Certify Record to Supreme Court	.50
	Transcript of Record Containing 3950 words @ 15 —	5.92
	Certificate & Seal —	.50
		$11.12

Beidman
v 3
Gray & Armstrong

Fen Bill