Retman, George v Rosenbaum, Jacob 1864 524/7

Romyn A

Gardner R

Retman R P

v

Rosenbaum A D

March 61

March 64

St Louis

Louis Bartold made and executed

PN - to

George Retman 130

Def delivered note to P

- due -

Appeal dismissed Dismiss

1

State of Missouri } ss
County of St Louis }

Be it remembered that on the 27 day of June 1860 there was filed in the Office of the Clerk of the St Louis Circuit Court a petition which is in the words and figures following to wit:

George Retman - Pltff
vs
Jacob Rosenbaum
Defendant

In the Circuit Court of St Louis County
September Term 1860

St Louis County, ss

Petition

Plaintiff states that heretofore to wit on the 8th day of May 1858 one Louis Bartold made & executed his promissory note in writing by which he promised six months after date thereof to pay to the order of George Retman the plaintiff One hundred & thirty dollars for value received without defalcation or discount, that on the same day the defendant also became a maker of said note by writing his name on the back thereof, and the said Louis Bartold and the said Defendant did on the said 8th day of May 1858 make execute and deliver ~~said 8th day of May~~ note to Plaintiff for value received and did thereby promise to pay to the order of Plaintiff six months after the date thereof the said sum of One hundred & thirty dollars without defalcation or discount, and Plaintiff states that said note has long since became due & payable. That the

sum of Fourteen dollars has been paid on said note and is credited on the same, And that the balance of said note is still due & unpaid to Plaintiff Wherefore Plaintiffs prays Judgment for the balance due on said note with interest and Costs. Plaintiff files herewith the said note marked Exhibit "A"

Gardners
Attys for Pltff.

Samuel H. Gardner one of the Attorneys of Pltff and Agent of Pltff in this behalf being duly sworn on his oath says he believes the foregoing Petition and the matters therein as stated are true

Saml. H. Gardner

Subscribed & Sworn to before me this 26th of June 1860
S Rice Clk.

On the filing of which petition the following Summons was issued

To the Sheriff of St Louis County: Greeting

Summons — We Command you to summon Jacob Rosenbaum 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

3 last Monday of September next then & there to answer the Complaint of George Petermann as set forth in the annexed petition; and have you then and there this writ;

Seal

Witness Stephen Rice Clerk of our said Court with the seal thereof hereto affixed at office in the City of St Louis this 21st day of June 1860

Stephen Rice Clk

There is endorsed on said writ the following Sheriffs return

Sheriffs Return

Executed this writ in the County of St Louis on the 27th day of June 1860 by delivering a copy of this writ and petition as furnished by the Clerk to Jacob Rosenbaum, the within named defendant

See page 5d for Answer

Thomas E. Courtnay - Sheriff
By. James A Guion - Deputy

And afterward at the September Term 1860 of said Court on the 19th day of December 1860 - was had the following proceeding

Jnogt

Now come the 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 defendant is indebted to the plaintiff in the sum of one hundred and thirty dollars and fifty cents - It is therefore

considered by the Court that the plaintiff recover of the defendant the debt aforesaid in form aforesaid as found and also his costs herein expended and have execution therefor

And afterward on the 22d December 1860 at same term of said Court

Mo for new trial filed

The defendant files his motion for a new trial herein —

And afterward at the same term of said Court on the 26th day of January 1861 —

Mo over & Bill of Exc filed

Now Come the parties by their respective attorneys and the Court having heard and considered and being fully advised of and concerning the motion for a new trial herein doth overrule the same —

Bill of Exceptions filed —

And afterward at same term of said Court on the 30 day of January A.D. 1861 —

Appealed

The defendant files an affidavit for an appeal and an appeal is allowed him to the Supreme Court from the Judgment herein rendered and he thereupon files an appeal bond which is approved by the Court

{ See page 3 for Record Entries herein }

5

And on the 25th day of September 1860 the following answer was filed

Answer

The defendant in Answer to his, plaintiffs petition says he believes the plaintiffs alleyation as regards the statement that the said Louis Bartold executed his note to Plaintiff on the 0th day of May is true; But he denies that on the same day he defendant also became a Maker of said note by writing his name on the back of the same, and denies that he as alleged with said Louis Bertold did on the 0th day of May 1858 make executed and deliver said note to Plaintiff for Value Received and did promise to pay to the order of plaintiff six months after date thereof the said Sum of One hundred and thirty dollars without defalcation or discount as by him plaintiff in his petition alleged He says he has no knowledge or information sufficient to form any belief as regards his plaintiffs alleyation of the payment of said Sum of Fourteen dollars, and says if said Sum is so paid the same was so paid by said Louis Bartold or his legal representatives, as he says that he believes the said Bartold had departed this life before said note was due & payable, And for further answer to Plaintiffs petition Deft says: That some time after said note was executed the said plaintiffs fearing that he the said Louis Bertold would not pay

him came with the said Bartold to him Defendant, and he then & there at the request of both the said Louis Bartold and the said ~~Louis Bartold~~ plaintiff endorsed said note it being expressly understood between all parties then he was merely to be endorser and security;

Defendant says that he never received any notice of the nonpayment of said note by said Maker the said Louis Bartold nor did the Plaintiff ever demand any money from him defendant until the institution of this suit; Plaintiff says that the said Louis Bartold departed this life sometime in the Summer of 1858 and that he believes that said Bartold's Estate will pay all debts that may have been exhibited against said Estate within the first year. And that if he had proper notice of the non-payment of said note he might by diligence and proper notice in time have saved himself for the amount of said note But he says that he believes that by reason of the neglect and lashes of plaintiff for neglecting as aforesaid of giving him proper notice of the non payment of said note that no exertions or diligence on his part now would be any avail so as to enable him to make any thing on account of said note out of the estate of the said Louis Bartold deceased. By reason of

4

all which Defendant says plaintiff is not entitled to recover any Judgment prayed for by him and prays for Judgment to discharge him hence without costs

Romyor
Deff^ts Attorney

Jacob Rosenbaum being duly sworn on his oath says that he believes the foregoing answer & the matters of facts therein as stated ~~to~~ be true

Jacob Rosenbaum

Sworn to & Subscribed before me this 25th day of September 1869

S Rice Clk

See page 3 for Record Entries

And on the 26th day of January 1861 the following Bill of Exceptions was filed

Bill of Exceptions

Plaintiff after reading the petition & answer and note sued upon and Endorsement thereon as follows;

$130.00 St Louis May 8th 1858

Six months after date I promise to pay to the order of George Retmann One hundred

9. hundred and Thirty dollars for Value received without defalcation or discount

Louis Bartold

There is Endorsed on said note the following:-

$14 00

Note - One hundred and twenty six dollars and twenty two Cents allowed March 1860 in favor of George Rettmann against the Estate of Louis Bartold deceased & placed in the 5th Class

William S. Ferguson
Judge Probate

closed his case -

Rettmans Testimony } Defendant then swore Rettmann the plaintiff who testified that some time, he did not state how long, after said note had been executed by Frederick Bartold the maker thereof he requested Mr. Bartold to give him security on said note whereupon he plaintiff and the said Frederick Bartold went to Mr. Jacob Rosenbaum the Deft. who at the request of both the payees, plaintiff and the maker of said note wrote his name on the back of said note with the express understanding that he was to be merely security on said note; It was admitted on the trial that Bertold died in the fall of the Year 1859 -

Here Defendant closed his case & asked the Court the following Instructions:

Defts Instructions Refused

If the Court sitting as a Jury believe from the evidence that the Defendant Rosenbaum although neither payee nor maker on said note sued on signed his name as Endorser and not as maker, and that such was the understanding of the parties thereon sued the Plaintiff cannot recover: Mo. Rep. Vol 18. p 74.

Refused

If the Court sitting as a Jury believe from the evidence that the said Rosenbaum the Defendant in said suit signed his name on the back of said note with the understanding between the maker & holder and said Defendant that he so signed his said name as Indorser for the maker thereof, then the said plaintiff cannot recover:

Refused

If the Court sitting as a Jury believe from the evidence that the said Defendant Rosenbaum endorsed said note for said maker & that that was the understanding between the parties at the time of the execution of said note and that he never received any notice of the non-payment by said maker of said note from plaintiff or his Agents at the time said note became due and payable then the Plaintiff cannot recover: —

which was refused by the Court to which Defendant excepted

S. M. Breckinridge (Seal)

4

Said Affidavit for an Appeal is as follows:

Affidavit for Appeal

Jacob Rosenbaum the above named Defendant being duly sworn says that the Appeal in this Cause is not made for vexation or delay but because he believes the Appellant is aggrieved by the Judgement and decision of this Court

Jacob Rosenbaum -

Sworn to & Subscribed before me January 30th AD 1861

S Rice Clk

Appeal Bond

Said Appeal Bond is as follows:

Know All Men by these presents that we Jacob Rosenbaum as principal and Félix A. Mc. Donald and Fred Loeffler & Chas. Borg as sureties are held & firmly bound unto George Rettman in the sum of three hundred and twenty five dollars for the payment of which well and truly to be made we bind ourselves our heirs, executors and Administrators jointly and severally firmly by these presents sealed with our seals and dated at St Louis this 30th. day of January A D 1861 - The Condition of the above Obligation is such that whereas Jacob Rosenbaum has appealed

from the Judgment rendered against him and in favor of George Rettman in the St Louis Circuit Court for the sum of One hundred and thirty dollars and fifty cents together with costs ; - Now if the said Appellant shall prosecute his appeal with due deligence to a decision in the Supreme Court and shall perform such judgement 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 be affirmed comply with and perform the same so far as it may be affirmed, and pay all damages & costs which may be awarded against him by the Supreme Court then this obligation shall be void otherwise it shall remain in full force & effect

Approved Jany 30th 1861 S M Breckenridge

Jacob Rosenbaum (seal)
H A McDonald (seal)
Fred Loeffler (seal)
Chas. Bozy (seal)

Said Motion for a New Trial is as follows ;

Motion for New Trial

Now on this day comes the Deft and moves the Court to set aside the Judgment rendered in said cause and for reasons says :

1st. That the Court erred in refusing the instructions asked by Defts —

2nd

(13) 2nd Because the Judgement is against Law and evidence

3rd Because the Plaintiff from the evidence advanced could not recover at Law

Romeyer
Atty for Deft.

State of Missouri } ss
County of St Louis } I Stephen Rice Clerk of the St Louis Circuit Court within and for the County and State aforesaid certify the above and foregoing to be a true & complete transcript of the record and proceedings in the above entitled cause as fully as the same remains of record 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 13th day of February 1861

Stephen Rice Clk

Index

Petition	Page	1
Summons	"	2
Sheriffs Return	"	3
Answer	"	5
Bill of Exceptions	"	8
Note	"	9
Rettmans Testimony	"	9
Instructions Refused for Deft		10
Affidavit of appeal		11
Appeal Bond		11
Motion for New Trial		12

~~149~~ ~~291~~ ~~[illegible]~~ ~~[illegible]~~

~~[illegible]~~ (4) ~~[illegible]~~ ~~[illegible]~~ 40

40

March Term 1864

George Retman
respondent.

vs

Jacob Rosenbaum
appellant.

Transcript for Supreme Court

E.

Filed. March 2d 1861.
Wm S. Glanville clk.

Romyn for
appellant

Gardners for
appellee

Fee $4.40

$10.00 pd by Romyn atty.

1864 March 24. Motion to dismiss appeal sustained Dp 226

George Retman
Respondent
vs
Jacob Rosenbaum
Appellant

In Supreme Court
March Term
1864

And now comes the said Respondent and moves the Court to dismiss the appeal in this cause for the reason that appellant has filed no assignment of Errors herein as required by law and the rules of this Court

A M & S H Gardner
for Respondent

Retman
vs
Rosenbaum
Motion to dismiss

Filed March 23d 1864
A.W. Mead
Clerk