Haney, George and Wheelon, Edward H. v. Brooke, William M.K. 53916

Recovery: Promising note:

$110.00

641/13

Sept. 1861

Oct. 1865

trustees of the University of Maine in Jeff city

Brooke

Van Wagoner

Haney

McBride

Conclusion: [illegible]

State of Missouri
County of St Louis }

Be it remembered that on the 27th day of the month of September, in the year of our Lord 1861, was filed in the Office of the Clerk of the Law Commissioner's Court of St. Louis County, a transcript from the Office of P.W. Johnstone, a Justice of the Peace of St. Louis Township, in a certain cause wherein George Harvey and Edwin H. Whedon are plaintiffs & Wm. McK. Brooke defendant, which transcript is in the words & figures following, to wit:

Cause of Action

Jefferson City, Missouri,
$100 December 1st 1859,

Eighteen months after date I promise to pay to the order of Thomas L. Price, Alexander Lee, Thomas Williams, Joseph Brooks, and James B. Gardenhire, Trustees of the University of Missouri, at Jefferson City, One Hundred Dollars with ten per cent interest from date for value received, negotiable & payable without defalcation or discount

Wm McKendree Brooke,

Endorsed "Thomas Williams"
"Harvey & Whedon,"

Protested for nonpayment
St. Louis, June 1st 1861
Lee 1st Jefferson

On the 3d day of July, A.D. 1861, a summons

2 was issued by said Justice for said defendant, which summons is in the words & figures following, to wit;

Summons

The State of Missouri

To any Constable of St. Louis Township, in St. Louis County — Greeting:

We command you to summon William McKendree Brooke to appear before the undersigned, one of the Justices of the peace of St. Louis Township, in St. Louis County, on the 19th day of July, 1861, at 9 to 12 of the clock in the forenoon, at his office, in the same Township, to answer the complaint of Harvey & Wheldon, a firm composed of George Harvey & Edwin H. Wheldon, for $100,00 and interest, & subpoena defendant as witness for plaintiff,

Given under my hand this 3d day of July, 1861, D. H. Johnstone, Justice,

Which summons was returned by the Constable endorsed as follows, to wit;

Const's Return

Executed this writ by reading the same to the within named defendant, Done in St. Louis Township, July 3. 1861,

G. W. Manning, Const,
by W. Meek, Deputy,

3 Harvey & Whedon, a firm composed of George Harvey & Edwin H. Whedon vs Wm McK Brooke } Summons on a note for $100.00 issued to Constable Manning on the 3d day of July, 1861, Returnable on the 19th day of July, 1861,

Returned "executed". On the return day of the summons the plaintiffs appeared. The defendant being called came not but made default. The action being founded upon an instrument of writing purporting to have been executed by the defendant & not denied by him underoath. Whereupon the Justice

Judgt of Justice considered & adjudged that the plaintiffs have judgment against the defendant for the sum of one hundred and twenty dollars and 35 cents, for their debt, damage & interest at ten per cent & also for the costs in this behalf expended, & that he have execution thereon according to law.

Now, on the 29th day of July, 1861, came defendant and made a motion to set aside the judgment by default, which was overruled by the Justice. He then prayed an appeal to the Law Commissioner's Court & entered into recognizance in the sum of Two hundred & forty dollars, with R. P. Bonner

4 as surety, and filed his bond on the 7th day of August, 1861, Appeal allowed,

State of Missouri
County of St. Louis }

I, Peter W. Johnstone, a Justice of the Peace within & for the County aforesaid, do hereby certify that the foregoing is a true transcript of the docket entries in the foregoing cause, together with all of the original papers filed in my office, in said cause,

Given & certified, this 24th day of September, 1861, Peter W. Johnstone, Justice of the Peace,

On said 7th day of August, 1861, said defendant also filed his affidavit for an appeal, in the words & figures following, viz:

affdt for appeal

Harvey & Wheldon, plaintiff }
Wm McKendree Brooke, defendant } before Justice Johnstone,

This day personally appeared before Peter W. Johnstone, a Justice of the Peace in & for the County of St Louis, in the State of Missouri, Wm McKendree Brooke, who being duly sworn upon his oath says that the application for an appeal, in the above entitled case, is not made for vexation or delay, but because he believes the appellant

5 is injured by the judgment of the Justice,

Wm McBroote

Sworn to & subscribed before me,
this 7th day of August, 1861,

P. W. Johnstone, J. P.

Said appeal bond filed on said 7th day of August, A.D. 1861, is in the words & figures following, to wit;

Appeal Bond

We, the undersigned Wm McKendree Broote & B. R. Bonner, acknowledge ourselves indebted to Harvey & Whedon, in the sum of two hundred and forty dollars, to be void upon this condition; Whereas Wm McKendree Broote has appealed from the judgment of P. W. Johnstone, a Justice of the Peace, in an action between Harvey & Whedon, plaintiffs & Wm McKendree Broote, defendant; Now if, on such appeal, the judgment of the Justice be affirmed, or if, on the trial anew in the Law & Equity Court of St. Louis County, judgment be given against the appellant, and he shall satisfy such judgment, or if the appeal shall be dismissed, he shall pay the judgment of the Justice, together with the costs of appeal, the recognizance shall be void,

6

Wm M Brooke (Seal)
B. R. Bonner (Seal)

Attest & approved, this 7th day of August, 1861, P. W. Johnstone, Justice,

Proceedings in Law Com. Court,

At a Regular term of the Law Commissioneis Court of St. Louis County, begun on Monday, the 7th day of October in the year of our Lord one thousand eight hundred & sixty one, the following proceedings took place in the above entitled cause, to wit;

Appellee enters appce,

George Harvey &
Edwin H. Whedon
Wm M K. Brooke } M Bride enters appearance of appellee

And at a Regular term of said Court, begun & held as aforesaid, on Monday, the 2d day of December A.D. 1861, the following further proceedings took place in said cause, on Friday the 6th day of December, in said last mentioned year, to wit;

Cont.

Harvey & Whedon
Wm M K. Brooke } By order of Court continued

4 And at a Regular term of said Court, begun & held as aforesaid, on Monday, the 3d day of February, A.D. 1862, the following further proceedings took place in said Cause, on Monday, the 10th day of February, in said last mentioned year, to wit:

Cont, Harvey & Whedon / Wm McK Brook } By order of Court continued

And at a Regular term of said Court, begun & held as aforesaid, on Monday, the 7th day of April, A.D. 1862, the following further proceedings took place in said Cause on Friday, the 11th day of April, in said last mentioned year, to wit;

Tried by Court & advmt, George Harvey & Edwin H Whedon / Wm McK Brook } This day come the parties by attorneys and waiving a Jury, submit this Cause to the Court, And the Court having heard the evidence and not being fully advised of the premises, takes time to consider

And at said term of said Court, begun & held as aforesaid the following further pro-

8 ceedings took place in said cause, on Wednesday, the 23d day of April, in said last mentioned year, to wit;

Judgt. for pffs. for $125.42

George Harvey & Edwin H. Whedon vs William McK Brooke } The Court having duly considered the evidence, & being fully advised of the premises, doth find that the defendant is indebted to the plaintiffs in the sum of One hundred and twenty five dollars & forty two cents. It is therefore ordered & adjudged by the Court that the plaintiffs recover of the defendant and B. R. Bonner, his security in the recognizance of appeal, the sum aforesaid, also, their costs expended herein, and have execution therefor.

And at said term of said Court, begun & held as aforesaid the following further proceedings took place in said cause, on Saturday, the 24th day of April, in said last mentioned year, to wit;

Mo. for new trial filed

George Harvey & Edwin H. Whedon vs William McK. Brooke, } Motion for a new trial filed

8½ Said motion for a new trial filed on said 24th day of April, in said last mentioned year, is in the words and figures following, to wit:

Motion for a new trial

Harvey & Whedon pltff, } Law Commissioner's Court,
" McKendree Brooke defdt, } April Term, 1862,

Defendant moves the Court to set the judgment rendered in this case aside & grant him a new trial—

Because there was not sufficient evidence on behalf of plaintiff to entitle plaintiff to recover

Because the Court erred in admitting improper and illegal testimony on behalf of the plaintiff,

Because the judgment is against and contrary to the evidence in the case,

Because it is against the law

Because the judgment is against the evidence and every principle of law governing the case,

Van Wagoner
for defendant

9 And at a Regular term of said Court, begun & held as aforesaid, on Monday, the 2d day of June, A.D. 1862, the following further proceedings took place in said cause, on Saturday, the 21st day of June, in said last mentioned year, to wit:

Mo. for new trial Overruled

George H. Harvey & Edwin H. Whedon " William McK. Brooke } The parties by attorneys come and submit to the Court the motion for a new trial herein; & the Court having considered said motion and being fully advised thereof, overrules the same,

And at said term of said Court, begun & held as aforesaid, the following further proceedings took place in said cause, on Thursday, the 26th day of June, in said last mentioned year, to wit:

Aff'dt. for appeal, Bill of Ex. and Bond filed

George H. Harvey & Edwin H. Whedon " Wm. McK. Brooke } The defendant by attorney comes, & files his affidavit for an appeal & his Bill of exceptions herein, And the defendant also presents to the Court his appeal bond in the sum of three hundred dollars, with Jacob S. Merrell and Benjamin R. Pomeroy as securities, which bond being by the Court approved, an appeal to the Supreme Court is granted

10 Said affidavit for appeal, appeal Bond & Bill of Exceptions, filed on said 26th day of June, in said last mentioned year, are in the words & figures following, to wit;

Affdt. for appeal

Harvey & Whedon
" } Affidavit
Wm McK Brook

Wm McK. Brook, being duly sworn on his oath, says that the appeal in the above entitled cause, is not made for vexation or delay, but because the affiant believes that the appellant is injured and aggrieved by the judgment of the Hon, Law Commissioner's Court.

Wm McKendree Brook

Subscribed & sworn to before me, this 26th day of June, 1862,

W. C. Huffman, Clk

Bond. Know all men by these presents, that we, William McK. Brook, as principal, and Jacob S. Merrill and Benjamin R. Bonner, as sureties, are held and firmly bound unto George Harvey & Edwin H. Whedon, in the sum of three hundred dollars, for the payment of which, well & truly to be made, we bind ourselves, our heirs, executors & administrators, jointly &

11 severally, firmly by these presents, ~~dated~~ sealed with our seals and dated at St. Louis, this 26th day of June, A.D. 1862,

The condition of the above obligation is such, that whereas Wm McK Brooke has appealed from the judgment rendered against him & in favor of Harvey Wheelon, in the Law Commissioner's Court of St. Louis County, for the sum of one hundred and twenty five dollars & forty two cents, together with costs,

Now, if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal, and shall prosecute his appeal & shall perform such judgment as shall be given by the Supreme Court and such as the Supreme Court may direct the Law Commissioner's Court of St. Louis County, to give, and if the judgment or any part thereof be affirmed, that he will comply with & perform the same so far as it may be affirmed, & will pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation to be void, otherwise to remain in full force & effect,

Wm. McKendree Brooke (seal)
Jacob S. Merrell, (seal)
B. R. Bonner (seal)

Law Commissioner's Court of St Louis County,
June Term, 1862. June 26, 1862

This day appeared Wm McK. Brooke, the principal & Jacob S. Merrell & B. R. Bonner, the securities in the foregoing bond, and acknowledged to have executed the same for the purposes therein expressed,

In witness whereof I hereto set my hand & affix the seal of said Court, at Office, in St. Louis, the & year last aforesaid, W. C. Huffman, Clk

(Seal)

## Bill of Exceptions

In the Law Commissioner's Court
April Term, A. D. 1862,

George H. Carvey &
Edwin H. Wheldon } Appeal from Justice Johnstone,
vs.
Wm. McKendree Brooke

Be it remembered that on the 11th day of April, 1862, this case was called for trial, both parties being ready for trial, the Court by consent of

13 Atty, of plaintiffs offers to read the note on file with the papers in evidence,

The defendants' attorney objects to plaintiffs ~~attorney~~ offering to read said note as evidence, in this case, on the ground that plaintiffs have neglected & totally failed to prove the endorsement of Thomas Williams to show that the payees endorsed said note,

Because the note is made payable to different persons, not co-partners, & that, in such a case, the endorsement & delivery of the note to the plaintiffs by one of the payees does not vest the title to the note in plaintiffs so that they can maintain an action on the same against defendant,

Objections overruled, and defendants' attorney then & there excepts,

Note read in evidence by plaintiffs,

[See Note on page 1, Clk's.]

Plaintiffs then rest,

Defendant offered no testimony, & offered the following instructions:

Instructions for deft, Refused

If the Court, sitting as a Jury, believes from the evidence, that the note sued on was made payable to the order of several parties or persons not partners, and that

said note was the joint property of the payees in said note at the time of its delivery to said payees, then the Court declares the law to be that before the plaintiff in this case can recover, it is necessary for the plaintiff to show that said note was delivered to plaintiff by all of the payees in said note; and that the delivery of said note by the endorsement of one of said parties does not give title to said note as to the other payees,

If the plaintiff has accepted the delivery of said note to him by the endorsement of one of the payees therein mentioned, then it is necessary for plaintiff to prove the indorsement of said payee in any event, and then Pltff. cannot recover unless he shows that the note was endorsed and delivered by all of the payees,

If the plaintiff seeks to recover from the defendant in this case on the ground that the witness Wm J Wells bought the note sued on from the trustees for value, then the Court declares the law to be that before the plaintiff can recover, the plaintiff must show, first, that the person who sold said note was the agent of the payees, & that he had

15 the power from the payees to sell said note and to deliver said note to the said Wells; and that said Wells has delivered said note to the plff. before this suit was brought, and that the said hunter from whose agent he bought the note were the payees mentioned in said note,

If the Court sitting as a Jury believes from the evidence that the note in question was made payable to the order of Thomas L. Price, Alexander Lee, Thomas Williams, Joseph Brooks and James P. Gardenhire & that said Price, Lee, Williams, Brooks and Gardenhire were not partners in trade, and that said note was endorsed or transferred but by one of said persons, viz. Thomas Williams, to the plaintiff, then the Court declares the law to be that said endorsement does not transfer or convey the legal title of said note to the plaintiffs, and the plaintiffs cannot recover

If the Court sitting as a Jury, believes from the evidence that the note in question was made payable to several persons not partners, then the Court declares the law to be that the transfer can only be by a joint endorsement of all parties, to whom or to whose order the note is made payable

Case submitted to Court
Plaintiffs then call as a witness on their behalf William J. Wells, who was sworn,
Defendants attorney objects because case is closed, Objections overruled by the Court,
Defendant then & there excepts to the ruling of the Court,
States that he purchased the note from agent of trustee, and gave full value for the same; that he sold the said note before maturity, to plaintiffs, and received full value for said note, and that plaintiffs are the owners,
Objected to by defendants counsel, Objection overruled & defendants counsel excepts then and there,
Court takes case under advisement, & on 23d April, 1862, decides that the Court refuses defendants instructions, and gave judgment in favor of plaintiffs for One hundred and twenty five dollars & forty two cents and costs of suit against defendant and his security on appeal Bond,
April 24th, 1862, defendants attorney files a motion to set aside judgment & for a new trial, Motion continued to June Term, 1862, of the Court, June Term, 1862, motion submitted by both parties to the Court,

17 Court takes same under advisement. June 21, 1862, Court overrules the motion for a new trial.

Thereupon defendant, by his attorney, excepts and comes and tenders this his bill of exceptions and prays an appeal, which is granted.

H. Durenbury
Law Commissioner {Seal}

State of Missouri
County of St Louis ss

I, W. C. Huffman, Clerk of the Law Commissioners Court of St. Louis County, certify the foregoing to be a true transcript of the record & proceedings in the above entitled cause, as the same now remain on file & of Record in my Office.

In witness of which, I hereto subscribe my name & affix the seal of said Court, at Office, in the City of St Louis, this 22d day of September, 1862

W. C. Huffman, Clerk

Index

| | Page |
|---|---|
| Cause of action – Note. | 1 |

| | | |
|---|---|---|
| 18 | Summons | 2 |
| | Const. Return | 2 |
| | Judgt. of Justice | 3 |
| | Affdt. for appeal | 4 |
| | Appeal Bond | 5 |
| | Proceedings in Law Com. Court | 6 |
| | Appellee enters appearance | 6 |
| | Cont. | 6 |
| | Cont | 7 |
| | Tried by Court & adviserment | 7 |
| | Judgt. for plaintiffs | 8 |
| | Motion for new trial filed | 8 |
| | Motion for new trial | 8 1/2 |
| | Motion for new trial overruled | 9 |
| | Affdt. for appeal, Bill of Ex & Bond filed | 9 |
| | Affdt. for appeal | 10 |
| | Bond | 10 |
| | Bill of Exceptions | 12 |
| | Instructions for deft. Refused | 13 |
| | " " " " | 14 |
| | " " " " | 15 |

Oct. T. 1865
No. 103

(13)

Law Com: Court

George Harvey and
Edwin H. Whedon
Respondents

vs.

William McK. Brooke
Appellant

from Law Commn Court

Appeal to Supreme Court

Filed December 11th
A.W. Mead
McBride, Atty. for Respondents
Van Wagoner " " Appellant

$16.00 Paid by appellant

George Harvey &
Edwin H Whedon
vs Respondents
William McK Brooke
appellant

IN SUPREME COURT,
TERM, 18

And now come the said Appellant and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Respondants
2. That said Court rejected proper and legal testimony offered by Respondants
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Appellant
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Respondants when it should have been rendered for the Appellants
10. That said Court overruled the motion for a new trial, made by Appellants

G. S. Van Wagonen &
Wingate attys for Applt

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

George Harvey &c

vs

Wm W J K Brooke

Assnment of Errors

Filed December 11. 1862

A. W. Mead

Clerk

Harvey & Whedon
vs Respondents
Wm McK Brook
Appellant

Supreme Court
of Missouri
8th Judicial
Circuit

Appellant relies on the following points for a reversal in this action of the judgment in the Court below.

1st. The endorsement of the note being by only one of the several payees, did not pass the legal title to the note, nor for the same reason did it carry the ~~legal~~ entire equitable interest. Thomas Williams in endorsing the note did not profess to act in a representative character or as the agent of his Co payees. there was no proof that the transaction was any thing else, than what on its face it purported to be, viz an indorsement by only one of the payees of the note, which gave no right of action either legal or equitable, beside there was no proof that ever the note was delivered to the said Williams or to Plaintiffs neither was the signature of the endorser proved - & hence Defendants instructions were improperly refused.

2. The Witness William J Wells was an incompetent Witness to prove the transfer and the consideration therefor, being in effect the

the assignor.

3d ~~Because~~ The Court had no right after both Plaintiff & Defendant had submitted the case to the Court & after the Instructions were submitted of the defendant to reopen the case & permit the Plaintiff to introduce new testimony in chief.

G. S. Van Wagoner
atty for Appllt

Supreme Court of Mo
8th Judicial Court
Harvey & Wheeler
vs
Wm M. R. Brook
Appellants Chief

Filed June 13. 1865
A. H. Meade
Clk

Supreme Court
8th Judicial Circuit

George Harvey, &
Edwin H. Wheden
vs Respdts
Wm. McK. Brook
Applt

This was an action brought by Harvey & Wheden against Brook before P. H. Johnson Justice of the Peace. on a promissory note which note was executed by Defendant Brook, Payable to the order of Thomas L Price, Alexander Lee Thomas Williams, Joseph Brooks and James B Gardenhire Trustees of the University of Missouri for one hundred dollars with ten per cent interest from date for value received negotiable and payable without defalcation or discount. endorsed by Thomas Williams. Harvey & Wheden

There was a judgment by default in favor of the Plaintiffs below for one hundred and twenty dollars, as the Defendants did not appear. the case was appealed in due time by the defendant to the Law Commissioners Court, and a trial had. the Law Commissioners Court after taking the case under advisement rendered a judgment for the Plaintiffs for one hundred and twenty five dollars. the defendant in due time filed a motion for a new trial. for the reasons.

1st Because ~~the judgment~~ there was not sufficient evidence on behalf of Plaintiffs to entitle Plaintiffs to recover

2d Because the Court erred in admitting

improper and illegal testimony on behalf of the Plaintiff.

3° Because the judgment was contrary & against the evidence in the case

4 Because the judgment was against the law

5 Because the judgment ~~was~~ is against the evidence & every principle of law governing the case

Which motion was overruled by said Court. Whereupon the defendant filed his bill of exceptions & the necessary bond which were signed & approved & an appeal granted to this Court

G. S. Van Wagner
atty for Appellant

Supreme Court of the
8th Judicial Circuit

Harvey & Wheeler
Respondents
vs

Mr M. K. Brook
appl

Statement

by Appellant

G. Stan Wagener
atty for
appelt

Filed June 15, 1865
J. A. Willis
Clerk

George Harvey and
Edwin A. Wheldon
vs
Wm. McK. Brooke

This is an action to recover the amount of a negotiable promissory note executed by the defendant to the order of Thomas J. Price, Alexander Lee, Thomas William, Joseph Brooks & James B. Gardenhire Trustees of the University of Missouri at Jefferson City. The note is endorsed "Thomas William" and "Harvey & Wheldon". The execution of the note was not denied and the plaintiff at the trial he had introduced the note and announced that he would close his evidence. The defendant then asked some instructions as to the law when the plaintiff asked leave to reopen the case which was granted, and he then introduced evidence tending to prove that he had purchased the note from the legal owner for value. A judgement was rendered for the plaintiff for the amount of the note and the defendant brings the case here by appeal.

The appellant insists that the plaintiff had no right to reopen his case after he had announced his evidence closed and also contends that the assignment was insufficient to pass title to the plaintiff so as to enable him to maintain an action in his own name.

As to the reopening of the case that is

a matter almost entirely within the discretion of the court below, and to be a cause of reversal it ought to appear that the court was guilty of some unfairness such as reopening for one party and refusing to admit the other to introduce evidence to counteract that introduced by the party for whose benefit the case was reopened, or that the adverse party was in some way prejudiced by the reopening of the case. The Nisi Prius courts ought to exercise a sound discretion in such matters; but this court would only reverse in such cases where real injury had been done; And we fail to see that the defendant has suffered any injury in this case by reason of its having been reopened, He offered no counter evidence nor did he state that he had any to offer,

With regard to the endorsement on the note it was ~~perhaps~~ sufficient in connection with the evidence that the plaintiff had purchased it for value, In Baeka vs Mullen (28 mo 180) This court held that the holder of a negotiable promissory note who had purchased the same for value might under our statutes maintain an action in his own name without an endorsement

Judgement affirmed

Lowelan

The other judges concur

Filed Dec. 12 1865

× 14

B

Harvey & Wheldon

vs

Wm M. K. Brooke

Opinion of Court

Judgement affirmed

Lovelace

Filed Dec. 12th 1865
J. A. Willis Clk
by E. S. Allen
Dy Clk

Horney & Wheldon
vs
Wm Mell. Brooke

Story on Bills of Exchange
§ 197, If a Bill be made payable or
indorsed to several persons not partners
(as to A, B, & C) then the Transfer
can only be by joint indorsement
of all of them!