THE BOATMAN'S SAVING INSTITUTION V HOLLAND, LEONARD B. MARCH 1866 COUNTY OF ST. LOUIS 562/3

OLD 652/15

- AFFIRMED
- INVOLVED: AN ACTION ON A NEGOTIABLE NOTE
  - -NOTE
  - -ENDORSEE
  - -TITLE
  - -EVIDENCE
  - -ADMISSIONS
  - -PLEADINGS

*ENCLOSED PAPERS STATED " 1866 APRIL 1866 -APPEAL DISMISSED
-CASE WAS LOCATED IN MISSOURI REPORTS, VOL. 38; 1866 pp. 49-51.

INCLUDED
- ANDERSON, DAVID DOING BUSINESS UNDER THE NAME AND STYLE OF: ANDERSON & WATSON

1 State of Missouri } ss. Be it remembered, that on the
County of St. Louis } 7th day of December A.D. 1864.
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:

"Petition.

Boatmans Saving Institution Plff. } In St. Louis Circuit
vs. } Court. February Term
Leonora B. Holland, Deft. } 1865. County of
St. Louis.

Plaintiff states, that it is a body corporate, duly incorporated under the laws of the State of Missouri - that said defendant by his certain negotiable promissory note dated December 1, 1860, promised four years after date to pay to the order of David Anderson nine hundred ~~and~~ & twenty eight Dollars for value received, negotiable & payable without defalcation or discount with interest at six per cent per annum from date - that afterwards & before the maturity of the same the said David Anderson duly assigned by endorsement & delivered the said note for value received to certain persons doing business under the name ~~and~~ & style of Anderson & Yates, who before the maturity of the same assigned by endorsement & delivered the said note to said plaintiff for value; which said note is here filed & marked A.; that said plaintiff is still the holder of said note - that said note was on the third day of December

2. 1864. duly presented for payment & payment was then & there duly demanded which was refused thereupon said note was duly protested for non payment of all which due notice was given to said parties & for which said Plaintiffs paid two ⁰⁰ Dollars being costs of protesting said note - Plaintiff asks judgment against said Defendant for the amount of said note & interest on the same from December 1, 1860 & the costs of said protest as aforesaid & also for costs &c.

Lockland, Cline & Jamison
Attys for Plff

Charles Hodgman Cashier of said Plaintiff makes oath & says, that he believes the foregoing petition & the matters & things therein as stated are true

Sworn to & subscribed before me }
on this 7th day of December 1864 } C. Hodgman

Witness my hand and Seal
of said Court
Frank A. Schneider
Clk

Seal

"Thereupon the following Summons issued, to-wit:

County of St. Louis, - Ss.
The State of Missouri,

Summons. To the Sheriff of St. Louis County - Greeting:

We command you to summon Leonard B. Holland to appear before the Judge of our Circuit Court on the First day of the next Term thereof, to be held in the

3. City of St. Louis, within and for the County of St. Louis, on the First Monday of February next, then and there to answer the Complaint of The Boatmens' Saving Institution as set forth in the annexed petition: and have you then and there this writ.

Seal Witness F. A. H. Schneider, Clerk of our said Court, with the Seal thereof hereto affixed, at office, in the City of Saint Louis, this 7th day of Dec in the year of our Lord, eighteen hundred and sixty-four.

F. A. H. Schneider Clerk "

Upon which summons the Sheriff made the following return to-wit:

Sheriffs' Return "Executed this writ in the County of Saint Louis on the 20th day of December 1864 by delivering a copy of the writ and Petition as furnished by the Clerk to Leonard B. Holland

fee $1.00 John C. Vogel Sheriff
By Louis Burge Dep "

And on the 20th day of February 1865 the following Answer was filed;

Anwer The Boatmens Savings Institution plff. vs. Leonard B. Holland def. } In the St. Louis Circuit Court. February Term 1865 St. Louis County ss.

Defendant above named for anwer to the petition of plaintiff filed in the above

4. entitled cause states that as to whether or not the plaintiff is a body corporate duly incorporated under the laws of the State of Missouri or not, he has no knowledge or information sufficient to form a belief –

Defendant further admits that he made the note sued on, but he denies that before the maturity of said note David Anderson (the payee therein & to whom said note was delivered by defendant,) assigned by endorsement and delivered said note for value, to the firm of Anderson & Watson.

Defendant further denies that said firm of Anderson & Watson before the maturity of said note, assigned by endorsement and delivered the same to the plaintiff for value

But Defendant for further answer to plaintiff's petition says that the note sued on was among others executed & delivered by defendant and was delivered to said David Anderson under the following circumstances; said Anderson being or claiming to be the owner of a certain leasehold on Chesnut and Commercial Streets in the City of St Louis, with the improvements thereon erected erected on a certain lot of ground situated in block no 9 of said City, containing 40 ft front more or less on Front street by 82 ft more or less bounded East by Front street South by Chesnut

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St. West by Commercial Street - Anderson also claiming to the owner of lots 2 3 & 8 in "Rosehill" a tract of land laid out and subdivided by Mary E. Stein Trustee a plat of which is of record in the Recorders Office of St. Louis County aforesaid Defendant further states that he defendant about said time was seized and possessed of certain real estate in the County of St. Louis, containing about Thirty two acres, being the Eastern end of the Southern portion of the North west quarter of Section 6 in Township 44 North of Range 6 East, that he was also seized and possessed of a tract of land containing about One 82/100 acres, being a part of the South East quarter of Section 6 in Township 44 ~~North~~ North of Range 6 East of the 5th principal Meridian -

Defendant further answers that being so seized as aforesaid said Anderson applied to defendant to exchange and trade his defendants property above described for his (said Andersons) property herein described and falsely and fraudulently represented the title to his, said Andersons property to be perfect and free from incumbrances of all kinds and fraudulently concealed from defendant certain defects in his said Andersons title to said property, and said defendant relying on the truth of said statements of said Anderson was thereby induced to make the trade or exchange as afore-

said - And said exchange was made, said defendant receiving from said Anderson, deeds for said Andersons property above described and said defendant conveying to said Anderson by proper conveyances the said property described as belonging to him on said 19th day of October and said defendant further executed to said Anderson and delivered to him his fourteen negotiable notes each for the sum of $ 928 including the note sued as a consideration for said property mentioned as belonging to Anderson, and said notes were secured to Said Anderson by a Mortgage duly executed by said defendant on said leasehold property above mentioned.

Defendant further answers that the property conveyed to him by said Anderson was subject to several incumbrances in the nature of deeds of trust and dower title and the title to none was perfect or free from incumbrances and that when he discovered the false & fraudulent character of said representations & concealments, which was not done till after said exchange had been perfected, he tried by every means possible to induce said Anderson to reinstate him in his original position, which said Anderson refused; - defendant was, therefore compelled and did bring a suit in the St. Louis Land Court at the October Term 1862 of said Court against said Anderson and others

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including the Plaintiff herein, the object of which suit was to obtain a decree setting aside the title of said Anderson to said property mentioned as being conveyed to him by defendant, to conceal said notes and to restore said parties as near as possible to their original condition -

And defendant alleges that said plaintiff was duly served with process in said action and have aswered therein, which suit is yet pending and undetermined.

Defendant further answers that said note sued on was endorsed by said David Anderson to said plaintiff and was delivered to said plaintiff as collateral security for the payment of certain indebtedness due by said Anderson to plaintiff - and not for any valuable or new consideration passing from plaintiff to said Anderson at the time -, but defendant alleges the fact to be that said Anderson is the real owner of the notes, which are merely held by plaintiff untill said Anderson's indebtedness is paid, he therefore prays that this action against may be dismissed and for such other ~~and~~ & further relief as is demanded in the premises

Peacock & Cornwell

Attys for defendant

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State of Missouri } ss.
County of St. Louis }

L. B. Holland, being duly sworn on oath says the above answer and matters therein are true as he believes

L. B. Holland

Sworn to and subscribed before me this 20th day of February 1865

James Cornwell
Notary Public St. Louis Co Mo

"

And afterwards on the 5th day of April 1865 a motion for judgment was filed, which said motion is in the words and figures following, to-wit:

"The Boatmans Saving Institution } In St. Louis
vs. } Circuit
Leonard B. Holland } Court No. 45
Feby Term 1865

Motion for Judgt.

And the said plaintiff comes & moves the court for judgment upon the petition & answer in said cause

Lackland Cline & Jamison
Attys for Plff. "

And afterwards, to-wit: on the 13th day of April 1865, the motion for judgment was overruled, as appears from the ~~record~~ entry on the record, which is in the words and figures following:

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Motion Overruled

The Boatmens Savings Institution } The motion for
vs. } judgment filed
Leonard B. Holland } herein being heard

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and fully considered by the Court, it is ordered by the Court that the same be overruled.

And afterwards, on the 27th day of October 1865 the following proceedings were had to-wit:

" Friday October 27th 1865

Judgt. The Boatmens Savings Institution vs Leonard B. Holland } Now come the parties by their respective attorneys and submit this cause to the court on the pleadings and proof and the Court having heard and considered the same doth find therefrom that the Defendant is indebted to the plaintiff in the sum of Twelve hundred and thirteen — dollars and thirty five cents, and doth also find the issues herein joined in favor of the plaintiff. It is therefore considered by the Court that the plaintiff recover of the defendant the debt aforesaid as found together with its costs and charges in this behalf expended and have execution therefor. "

And afterwards on the 28th day of October 1865 the following motion was filed; to-wit:

Motion for New Trial

"The Boatmens Savings Institution vs Leonard B. Holland def. } In the St. Louis Circuit Court

Now at this day comes the defendant above named and moves the court to set aside the

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judgment rendered in the above entitled case and to grant defendant a new trial

1st Because the verdict is against the law
2nd Because it is against the evidence
3rd Because it is against the law under the evidence
4th Because the Court erred in refusing to permit defendant to introduce proper & legal proof.

Deacock & Cornwell
attys for def

"

And afterwards on the 25th day of November 1865 the motion for new trial was overruled by the Court, as appears from the entry on record, which is in the words and figures following; to-wit:

"

Saturday November 25th 1865

Motion for New Trial overruled

The Boatmens Savings Institution vs Leonard B. Holland } The motion for a new trial heretofore filed herein being heard and fully considered by the Court is overruled.

"

And afterwards on the 30th day of December 1865 affidavit for appeal was filed, which is in the words and figures following; to-wit:

"

Affidavit for Appeal

State of Missouri } ss. In St. Louis Circuit Court
County of St. Louis }

The Boatmens Savings Institution vs Leonard B. Holland.

Marshal P. Sanguinet agent for Leonard B. Holland being duly sworn on oath says that the appeal in the above entitled cause is not taken for vexation or delay, but

11 because he believes that defendant is injured by the judgment of the Circuit Court.

Sworn to and Subscribed before me this 30th day of December 1865 } M. P. Sanguinet

F. A. J. Schneider Clk. "

And on the said 30th day of December 1865 the following bond was filed and approved; to-wit:

Appeal Bond

"Know all men by these Presents, That we Leonard B. Holland as principal, and M. P. Sanguinet and James M. Riley as suret are held and firmly bound unto the Boatmen's Savings Institution in the sum of Twenty four hundred & 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 Thirtieth-day of December-A.D. 1865.

The Condition of the above obligation is such, that whereas Leonard B. Holland has appealed from the judgment rendered against him and in favor of The Boatmen's Savings Institution-in the St. Louis Circuit Court, for the sum of dollars and cents, togethers with costs.

Now, if the said appellant will prosecute his appeal, with due diligence, to a decision in the Supreme Court; and shall perform such judgment as shall

be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis Circuit Court to give; ~~then~~ and, if the judgment or any part thereof be affirmed, will comply with and perform the same so far as it may be affirmed and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force and effect.

L. B. Holland Seal
M. P. Sanguinet Seal
James M. Riley Seal

Approved in
Open Court
Dec 30th 1865
F. A. H. Schneider
Clk

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And also on the said 30th day of December 1865 a Bill of Exceptions was filed which is in the words and figures following; to-wit:

Bill of Exceptions

The Boatmens Savings Institution Plff.
vs
Leonard B. Holland def

In the St. Louis Circuit Court
No 45 Feby Term 1865

Be it remembered that on the trial of the above entitled cause the plaintiff introduced Charles Hodgman who being duly sworn said I am Cashier of the plaintiff. I know David Anderson ~~and~~ & defendant, the note sued on was among others given to the plaintiff

as collateral security for indebtedness due by him to the Bank - Anderson was indebted to the Bank to a large amount as maker of protested bills secured by endorsements and before the maturity of the note sued upon, he came to the plaintiff and gave this and other notes for the debt on condition that the plaintiff would give him time and release the indorsers on said protested bills which was done by plaintiff and in this manner it took the paper in question

On Cross Examination, witness stated the Bank had no further interest in this note & the other ones than to the extent of the indebtedness due by Anderson to the Bank.

Plaintiff then introduced in evidence the insert note & protest note sued on by it, with protest, to which defendant objected, which objection the court overruled, & defendant then & there excepted this being all the plaintiff's case.

Defendant submitted in writing the following "It is proposed by L. H. Walters to be shown "that the consideration as to the note in suit "failed, that false and fraudulent representations were made by the payee and endorser "David Anderson to defendant upon which "defendant relied and upon the faith of "which he gave the note in suit to Anderson - which the court refused to permit defendant

14. to do, to which defendant excepted at the time.

Defendant also introduced the Admission of plaintiff that "there are two judgments that "have been recovered by the plaintiff against "defendant on the collateral notes of the same "amounts as the one in Suit and that the "Same have been appealed to the Supreme "Court & appeal bonds have been given in each "of said cases"

This being all the testimony introduced in the cause, the Court setting as a jury gave a verdict for plaintiff for $1212 35/100 to which defendant excepted.

Afterwards and in due time defendant filed his motion for a new trial (which see & here insert) which motion the Court overruled & which defendant excepted at the time.

Defendant therefore tenders this his Bill of Exceptions which he prays may be signed sealed & made a part of the records of this Court which is done accordingly—

James C. Moodey
Judge "

State of Missouri
County of St Louis } I the undersigned Clerk of the St Louis Circuit Court certify the foregoing to be a true and Complete Transcript of the Record and Proceedings of Said Court in

the Case of the Boatmens Saving Institution Vs Leonard B. Holland as the same remains of record and on file in my Office.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Court at Office in St Louis the 20th day of February 1866

Jas Johnson Clk.

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(15) 107

March Term, 1866.

The Boatmens Savings Ins.

Respondent

Transcript

Leonard B. Holland

Appellant.

Appeal St Louis Cir Ct.

L C & Jamison attys

for Respt

Peacock & Cornwall

for Appellant.

Filed Mch. 3d 1866

O. T. Fishback

Clk

$10.00

Fee 9.00 Paid by Appellant.

Asst of errors filed

1866 Apr 17 Appeal dismissed by Appt at his cost.

The Boatmen Savings Institution
vs
Leonard P. Holland

IN SUPREME COURT,
March TERM, 1866.

AND now come the said defendant and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said defendant (appellant below) assigns the following, to wit:

1. ~~That said Court admitted improper and illegal testimony offered by~~ defendant
2. That said Court rejected proper and legal testimony offered by defendant
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~~
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 plaintiff below (appellee) when it should have been rendered for the defendant (appellant below)
10. That said Court overruled the motion for a new trial, made by defendant

Peacock & Cornwell
Attys for def

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 .....

No 233

The Boatmen's Savings Institution

vs

Leonard B. Holland

Assignment of Errors

Peacock & Cornwell
attys for def
& appellant