2120

Antoine Soulard, executor of James Mackay, deceased

v

Bernard & Joseph Pratte

September 1825- St. Louis

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

Be it Remembered that heretofore to wit on the Eighteenth day of September in the Year One Thousand Eight hundred and twenty four, Bernard Pratte & Joseph Pratte filed their declaration by Bates their attorney in the office of the Clerk of the Circuit Court for the County of St. Louis against Antoine Soulard Executor and Isabella Mackay Executrix of James Mackay deceased which said declaration is in the words and figures following to wit: In the Circuit Court, October Term 1824.- St. Louis County to wit: "Bernard Pratte & Joseph Pratte plaintiffs complain of Antoine Soulard Executor and Isabella Mackay Executrix of the last will & testament of James Mackay deceased of a plea of Trespass upon the case upon promises, For that whereas heretofore in the lifetime of the said James Mackay (who is since dead) to wit on the twenty seventh day of March in the Year One Thousand Eight hundred and twenty one at St. Louis in the County aforesaid the said James Mackay made his certain promissory note of that date which is now here to the Court shewn and thereby promised the said plaintiffs by the name and description of B. & J. Pratte or order, to pay them, sixty days after the date of the said Note, the Just & full sum of five hundred and eleven dollars & fifty two cents, with interest of ten per cent from that date for value received

And also for that whereas, heretofore, in the lifetime of the said James Mackay to wit on the day & year aforesaid at St. Louis aforesaid the the said James Mackay accounted with the said plaintiffs of and concerning divers sums of money before that time due & owing from the said James to the said plaintiffs and then in arrear & unpaid, and upon that accounting the said James Mackay was then & there found to be in arrear and indebted to the said plaintiffs in a large sum of money to wit Five hundred and Eleven dollars and fifty two cents, and being so found to be in arrear and indebted he the said James Mackay in consideration thereof, undertook & then & there faithfully promised the said plaintiffs to pay them the said last mentioned sum of money whenever he the said James should be thereunto afterwards requested. Nevertheless, altho' the time specified in the said promissory Note for the payment of the sum of money thereein mentioned has long since elapsed, the said James in his lifetime and the said Executor & Executrix since the death of the said James have not, nor has either of them paid the said sum of money or either of them, or any part thereof, but so to do the said James in his lifetime

and the said defendants since the death of the said James have hitherto wholly neglected & refused, and the said defendants still do neglect & refuse to the damage of the said plaintiffs One Thousand dollars — And therefore they sue. By their Attorney — E. Bates — and afterwards to wit on the Eighteenth day of September aforesaid the Clerk of our said Court endorsed thereon a summons in the words and figures following to wit, County of St. Louis ss. The State of Missouri To the Sheriff of said County Greeting — We Command you to summon Antoine Soulard Executor and Isabella Mackay Executrix of the last will and Testament of James Mackay deceased that they be and appear before the Judge of our Circuit Court at the next term thereof to be held at the City of St. Louis within and for the County of St. Louis on the first Monday in October next then and there to answer unto Bernard Pratte and Joseph Pratte of a plea of trespass upon the case upon promises to the damage of said plaintiffs of One Thousand Dollars — and have you then there this writ — (Seal) Witness Archibald Gamble Clerk of our said Court at Office this 18th day of September 1824 — Archibald Gamble Clerk — and afterwards to wit on the return day of said writ the Sheriff to whom the same was directed returned the same into Court with his return thereon endorsed in the words and figures following to wit; Executed this writ on Antoine Soulard and Isabella Mackay September 18th 1824, as appears from the above acknowledgement — John F. Walker Sheriff by Wm Simonds Sr. D. Shff — and afterwards to wit at the Term aforesaid come the defendants by their attorney and filed their plea in the words and figures following to wit — In the Circuit Court October Term 1824 — Antoine Soulard Exr and Isabella Mackay Extrx ads. B & J Pratte — And the said defendants by their attorneys come and defend the wrong and injury when &c and say that the said James during his lifetime did not undertake and promise in manner and form as the said plaintiffs have thereof complained, nor since the death of said James did they the said defendants undertake and promise in manner and form as the said plaintiffs have thereof complained against them, and of this they put themselves upon the Country — Magenis Atty for dfts — Whereupon this cause was con-

-tinued to the next term of this Court, at which term, to wit at the March Term of said Court in the Year One Thousand Eight hundred and twenty five Come the parties aforesaid by their respective attornies aforesaid and neither of the parties requiring a Jury all and singular the premises are by them submitted to the Court which being seen and heard and by the Court here fully understood the Court do find as to the issue with Joined between the parties aforesaid that the said James during his lifetime did undertake and promise in manner and form as the said plaintiffs have thereof complained and since the death of the said James the said defendants did undertake and promise in manner and form as the said plaintiffs have thereof Complained against them and they assess the damage of the said plaintiffs by them sustained by reason of the non performance of the promises and undertakings in the declaration mentioned to the sum of Seven hundred and twenty dollars and twelve cents. Therefore it is con--sidered that the said Bernard Pratte and Joseph Pratte recover against the said Antoine Soulard Executor and Isabella Mackay Executrix of James Mackay deceased their damages aforesaid in form aforesaid by the Court assessed and also their Costs and Charges by them about their suit in that behalf expended and that they have thereof Execution against the goods and Chattels, lands and Tenements of the said James Mackay deceased in the hands of the said Executor and Executrix to be administered. Whereupon the said defendants file their bill of exceptions in the words and figures following to wit- In the Circuit Court March Term 1825- Mackay's Exr: ads B & J. Pratte. Be it Remembered that on the trial of the above cause the plaintiffs offered in evidence a note purporting to be signed by James Mackay the testator but no evidence was given to prove that the signature to said note was in the hand writing of said testator, upon which said defendants by their Counsel move the Court to instruct itself sitting as a Jury that there was no evidence to prove that the said Note was made by said testator and that in the absence of such proof they must find for the defendant- which instruction the Court refused to give to which opinion the defendants by their counsel except, signed and sealed by Alexander Stuart (Seal) B Pratt B Mackays Exrs Be it Remembered that on the trial of

the above cause the plaintiff produced a note purporting to be the one specified in the declaration and purporting to be signed by James Mackay the deceased whereupon the said defts by their counsel objected to the said Note being given given in evidence unless the hand writing of said Mackay were proved by competent witnesses, this objection was by the Court overruled and the said Note permitted to go in evidence to which opinion of the Court the said defts by their counsel except and tender this their bill of exceptions — signed and sealed by

Alexr Stuart (L.S.)

State of Missouri }
County of St Louis } ss

I Archibald Gamble Clerk of the Circuit Court for the County of St Louis do certify the above to be a correct Copy of the Record and proceedings in the case of Bernard and Joseph Pratte against Antoine Soulard Executor and Isabella Mackay Executrix of James Mackay deceased

Given under my hand & Seal of Office at Saint Louis this Nineteenth day of October 1825

Archibald Gamble Clerk

10 77
B 423

B & I Pratte
vs
A. Soulard & I Mackay
Exr & Exrs of Jas Mackay decd

Transcript —

Transcript — $ 1 . 57
Tax & Certificate — 1 . 50
$ 3 . 07

Filed 9th Novr 1825
W. Douglass Cl.

Examined

Mackay Exrs
vs
Pratee et als

And the said plaintiffs by their atty come and say that in the record and proceedings aforesaid and in the judgment aforesaid there is manifest error in this to wit that the said judgment was rendered for the said Dfts and against the said plaintiffs whereas the said judgment ought to have been for the said plaintiffs and against the said Dfts there is also error in this to wit — the said Court decided that it was not necessary to prove the handwriting of said testator to said note in declaration mentioned — Wherefore for the errors aforesaid and for other errors in the said record and proceedings the said plaintiffs prays that said judgment in form aforesaid may be set aside reversed annulled and held for nought and that the said plaintiffs may be restored which they may have lost by reason of of said judgment —

Magenis
Cty
for pltffs
in error

There is no such Error
E Bates

Mackay Ecr
3
Pratte et al

Assignment of errors

filed 12 Novr 1825
H. Douglass Clk

Soulard & Mackey exch & Exctx
vs
B & I Pratte
Error from St Louis

An action of Assumpset was brought on a promissory note plea non Assumpset Verdict & Judgment for the plaintiffs Pratte in the Court below

The Error complained of appears by a bill of exceptions The plaintiffs on the trial offered to read the note in evidence without proving the hand writing of the Testator which was objected to the court Overruled the Objection and the note was read in evidence and an exception taken

The plaintiffs in Error contend that the act of the Legislature of 1807 is not to be construed to extend to executors but that they may be admitted to plead a plea denying the execution of a writing without supporting it ~~[illegible]~~ by oath or affirmation The words of the Act are that Wherever any suit shall be commenced in any court founded on any writing whether the same be under seal or not the Court before whom the same is depending shall receive such writing in evidence of the debt or duty for which it was given And it shall not be lawful for the defendant in any such suit to deny the execution of ~~the same~~ such writing unless it be by plea supported by the affidavit of the party putting in such plea which affidavit shall accompany such plea The language of the law is that the party pleading must make the oath It makes no exception in

in favor of Executors nor can we make it the-
Language of the law is clear plain and explicit and
Where there is no Ambiguity there is no room for con
— struction. The party pleading the plea denying the execution
of the Writing must support that plea by Oath or affirmation
That has not been done. The Judgment is right and
is ~~to be~~ affirmed With costs and five per centum damages —

Mathias McGirk
George Tompkins
R Wash

Judges

(19) 9 287

Mahleys Exts
vs Opinion of the Court
B & J Pratte

287

Filed 18th Novr 1825
Th. Douglass Clk
W Girk

720 12
5
3600 60

Dani S Sims 2 2 2
B W S

Mackay Ecrs
B. & J. Pratt } Assumpsit

This was an action founded on a promissory note purporting to have been made by the plaintiffs testator. At the trial no evidence was adduced on the part of the defendants to prove that the signature to said note was in the handwriting of said testator. Upon which the Counsel for the plaintiffs moved the Court to instruct the jury that there having been no such proof they must find for the plaintiffs—

This case rests entirely upon the construction which will be given to the Statute of this State which enacts that the defendant shall not the execution of a note or instrument sued upon except upon oath. This Statute it is contended only applies to an individual in in his own proper person and not to one in a derivative or representative capacity— To give it a different construction would open the door to grop frauds and be productive of the most mischievous consequences. If this inference be correct, the case then stands as at Common Law and the defendants should have made it agreeable to the allegation in the declaration which allegation was traversed by the plea

of Non assumpsit Magnus

Attg for pltffs

Mackay Eors
v
Platte

R. A. Poatte
vs
James Mackay's Exors:

This was an action of assumpsit brought by Poatte vs Mackay's Exors: on a prom: note. the Deft below pleaded non assumpsit, on that issue the note was produced at the trial, and without proving the execution of the note, judgt: was for the Pltffs.

I understand that the only point of objection is that the execution of the note was not proven

I insist that such proof was unnecessary as the execution ~~thereof~~ was not denied by any plea supported by affidavit.

see Geyers Digest 250.

C. Baty

Platte
ads
Mackay's Exec -