Chambers, Alexander v. Lane, James S. 1838 3rd D. St. Louis 159/8

130 Debt

1 Affirmed Lane's recovery on $610 note

2 - Contract; Deed; Bank of Missouri

State of Missouri County of St Louis sct.

Be it remembered, that heretofore to wit on the twenty first day of February Eighteen hundred and thirty Eight James S Lane by his attorney filed in the office of the clerk of the Circuit Court, within and for the county of St Louis, his petition in the words and figures following to wit—

Petition "St Louis Circuit Court - For March Term 1838 - To the St Louis Circuit "Court. James S Lane Plaintiff states that he is the legal owner "of a Note against the Defendant Alexander Chambers to the follow- "ing effect.—

$610 $\frac{04}{100}$ St Louis October 12th 1837

One day after ~~after~~ date I promise to pay to the order of James S Lane at the Bank of the State of Missouri in St Louis, Six hundred and ten $\frac{4}{100}$ Dollars without defalcation and for value received — A Chambers

the word after stricken out by leave of court April 6th 1838 John Ruland Clerk

"Yet the debt remains unpaid - Therefore the plaintiff demands judgment "for his debt and damages for the detention thereof together with costs "I Spalding atty for plff." Whereupon the Clerk of said Court is-

Summons sued a summons in the words and figures following to wit—"County "of St Louis, ss. The State of Missouri, To the Sheriff of the county of "St Louis: Greeting. We command you to summon Alexander "Chambers, if he be found in your county, to appear before the Judge "of our Circuit Court, on the first day of the next Term thereof, to be "held at the City of St Louis, within and for the county of St Louis, on "the second Monday of March next, then and there to answer to unto "James S Lane, of his demand as set forth in the annexed petition. "And have you then there this writ. (LS) Witness John Ruland, clerk "of our said Court, with the seal thereof hereto affixed, at office, in "the city of St Louis, this twenty first day of February in the year of "our Lord Eighteen hundred and thirty Eight John Ruland Clerk."

Return On which said summons was the following Sheriffs Return to wit— "Executed this writ on the 21st day of February 1838, in the county of "St Louis by offering to read it and the petition to Alexander Chambers "the defendant all of which he refused to hear and acknowledged

"the service thereof - James Brotherton Sheriff by J Gordon D Shff." - And
afterwards to wit on the second day of April in said year the follow-
Pleas. 1 ing pleas were filed in said cause to wit - " Alexander Chambers Deft ats
"James S Lane Plaintiff. Petition in Debt St Louis Cir Court. And the
"said Defendant by Bryan Mullanphy his attorney comes & defends
"the wrong and injury when &c and says that the said supposed writing
"is not his deed and of this he puts himself upon the country & Alex-
2. "ander Chambers by his atty Bryan Mullanphy - Alexander Cham
"bers Deft. ats James S Lane Plaintiff. Petition in Debt. St Louis
"Circuit Court - And the said Defendant by Bryan Mullanphy his
"attorney comes and defends the wrong and injury when &c. and says that
"the said supposed note is not his deed & of this he puts himself upon the
"country &c. Alexander Chambers by his atty Bryan Mullanphy.
3. "Alexander Chambers Deft. ats James S Lane Plaintiff. Petition in Debt
"St Louis Circuit Court. And the said Defendant by Bryan Mullanphy
"his attorney comes & defends the wrong & injury when &c. and say that the
"said supposed note is not his note & of this he puts himself upon the
"country &c. Alexander Chambers by his atty Bryan Mullanphy."
4 "Alexander Chambers Deft ats - James S Lane Plaintiff Petition in Debt
"St Louis Circuit Court - And the said Defendant by Bryan Mullanphy
"his atty, comes and defends the wrong and injury when &c and
"sayeth that he did not undertake & promise in manner and form
"as the said plaintiff hath above thereof complained against him
"& of this he puts himself upon the country &c Alexander Chambers
5 "by his atty Bryan Mullanphy." Alexander Chambers Deft - Ats -
"James S Lane Plff. Petition in Debt. St Louis Cir: Court. And the
"said Defendant Alexander Chambers by Bryan Mullanphy his
"attorney comes & defends the wrong & injury when &c. and says that he
"does not owe the said sum of money above demanded or any part
"thereof in manner and form as the said Plaintiff, hath above there-
"of complained against him & of this he puts himself upon the country
"&c Alexander Chambers by his atty Bryan Mullanphy."

And afterwards to wit on the seventh day of the month and year afore-
said the following ~~proceedings~~ replication was filed in said cause to wit-

Replication "Lane vs Chambers - April Term 1838 and the said plaintiff says that the said
"two first pleas to said petition are not nor is either of them or the matters of
"them or either of them sufficient in Law, to bar or preclude him said plain-
"tiff from having or maintaining his said action thereof against him the
"defendant & this he is ready to verify wherefore he prays judgment &c
And afterwards on the 16th day of April in said year, the following proceedings were had in said cause to wit: James S Lane vs. Alexander Chambers. S. On motion of Attorney for the plaintiff leave is given him to withdraw his demurrer to defendants third plea
J Spalding atty for pltff" And afterwards to wit on the twelfth day of
the month and year aforesaid the following proceedings were had in said

Judgment. — cause to wit = " James S Lane = vs = Alexander Chambers. Petition in Debt.
"Now at this day come the parties aforesaid by their respective attorneys
"and thereupon all and singular the matters and things whereof they
"have put themselves upon the judgment of the court are by them
"to the court submitted which being seen and heard and by the
"court here fully understood, for that it appears to the court
"that the first and second pleas of the said defendant and the
"matters and things therein contained in manner and form as above
"pleaded are not sufficient in Law to bar or preclude the said
"plaintiff from having and maintaining his aforesaid action thereof
"against him the said defendant - therefore it is considered by the
"court that said demurrer of the said plaintiff to those pleas be
"sustained. Whereupon neither party 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 doth find
"as to the first issue within joined - that the said supposed note is
"the note of the said defendant - And as to the second issue within joined
"the court doth find that the said defendant did undertake and promise
"in manner and form as the said plaintiff hath above thereof com-
"plained against him And as to the third issue within joined the court
"doth find that the said defendant does owe the said sum of money
"above demanded and every part thereof in manner and form as the
"said plaintiff in his petition hath alleged - And the court doth further
"find and ascertain from the instrument of writing on which this
"action is founded that the said defendant is indebted to the said

"plaintiff in the sum of six hundred and ten dollars four cents as
"above alleged and that the said plaintiff hath sustained damage by reas-
"on of the detention of said debt to the amount of Eighteen dollars &
"thirty cents - therefore it is considered by the court that the said
"plaintiff recover of the said defendant, his debt aforesaid in form
"aforesaid by the Court found to be due, as also his damages aforesaid
"in form aforesaid by the Court assessed together with his costs and
"Charges in this behalf expended and have thereof Execution. Whereupon
"the defendant files his motion for a new trial, and also his Bill of
"Exceptions" And the said motion for a new trial is in the words &
Mo. for New Trial figures following to wit - " Jas. S Lane Plff - vs - Alexander Chambers
"Deft. Petition in Debt. St Louis Circuit Court March Term A.D 1838
"Deft moves the Court for a New Trial in this cause for the follow-
"ing reasons 1st Because the Court sitting as a Jury found contrary
"to law and evidence. 2 Because the Court found without evidence
"3. Because the Court erred in permitting Plff to amend. 4. Because
"the Court erred in admitting the note offered in evidence by plaintiff, 5 Because
"the Court erred in refusing defendant alexander Chambers by B. Musgrove his att'y a continuance. And on the
fourteenth day of April in the year aforesaid the following proceed-
overruled ings were had in said cause to wit - "James S Lane - vs - Alexander
"Chambers. Now at this day come the parties aforesaid by their respect-
"ive attornies, & thereupon the motion of the said Defendant to grant him
"a new trial of this cause is by them submitted to the Court, which
"being seen and heard & by the court here fully understood, it is consid-
"ered that said motion be overruled" And the said Bill of Exceptions
Bill of Exceptions. is in the words and figures following to wit - " James S Lane Plff
" - vs - Alexander Chambers Deft. Petition in Debt. St Louis Cir Court
"March Term A.D 1838. Be it remembered that on the trial of this
"cause the plaintiff proved that defendant executed & offered in evi-
"dence the following note "$610 94/100 St Louis October 12th 1837 One
"day after date I promise to pay to the order of James S Lane
"at the Bank of the State of Missouri, in St Louis Six hundred
"and ten 4/100 Dollars without defalcation, and for value received

"A Chambers." This evidence Deft, moved to exclude it for va-
"riance from the supposed copy set forth in the petition in this
"cause, which copy was amended after the making up of the plead-
"ings in this cause but which copy prior to such amendment read as
"follows - "$ 610 96/100 St Louis October 12th 1837. One day after after date
"I promise to pay to the order of James S Lane at the Bank of the
"State of Missouri in St Louis, Six hundred and ten 96/100 Dollars
"without defalcation & for value received A Chambers." Which mo-
"tion the court overruled. The Defendant moved while the cause was
"on trial for a continuance on the amendment aforesaid, which mo-
"tion the court overruled - The amendment was made on application
"in open court several days previous, to the trial, but defendants
"Attorney was not aware of such amendment till the trial -
"Above was all the evidence given in the cause whereupon Deft
"moves for a new trial for reasons filed:- "Jas S Lane Plff vs
"Alexander Chambers Deft. Petition in Debt. St Louis Cir. Court
"March Term 1838. Deft moves the Court for a new trial in this
"cause for the following reasons - 1st Because the court sitting as a
"Jury found contrary to law and evidence - 2d Because the said
"Court found without evidence - 3. Because the court erred in per-
"mitting Plff. to amend. 4 Because the court erred in admitting the
"note offered in evidence by Plff. 5. Because the court erred in refu-
"sing Defendant a continuance Alexander Chambers by Mullanphy
"his attys" & Deft excepted to the judgments of the court sustaining
"said Demurrer, permitting such amendment, & overruling the said
"motions of Deft. which exceptions are by the court here allowed
"& made part of the Record, being signed and sealed by the court
"here." L S Lawless (Seal)."

State of Missouri
County of St Louis } ss I John Ruland Clerk of the Circuit Court
in and for the County of St Louis aforesaid, hereby certify the

foregoing to be a full & true transcript of the Record and proceedings of said Court in the case of James S Lane -vs- Alex^r Chambers as the same now remains of record in my office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office in the city of St Louis this sixteenth day April Eighteen hundred and thirty Eight.

John Ruland Clerk

STATE OF MISSOURI, } ss.

Third Judicial District,

The State of Missouri, to the Honorable the Circuit Court of St Louis County, GREETING:

FOR AS MUCH as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of St Louis before our Judge thereof, between James S. Lane

Plaintiff, and Alexander Chambers

Defendant,

in a plea of Petition in Debt *as it is said, manifest error hath happened, to the great damage of the said* Alexander Chambers *as by his complaint we are informed:* WE, *being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf,* COMMAND YOU, *that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the City of St. Louis, within and for the Third Judicial District, on the* Second Monday of June *next, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.*

Witness, JOHN RULAND, *Clerk of our said Court, and the seal of office hereunto affixed, at the City of St. Louis, this* fifth *day of* May *in the year of our Lord, one thousand eight hundred and thirty-*eight *and of the Independence of the United States of America, the* sixty second

John Ruland Clerk.

(30) No 7

Supreme Court = 3d Judicial District

June Term 1838

781

Alexander Chambers

vs.

James S. Lane

$1.50 Error to St Louis circuit court.

781

Transcript — $1.00
certificate & seal .50
Return under seal .50
$2.00

Filed 16th May 1838
John Ruland Clerk

State of Missouri } ss
County of St Louis }

I, John Ruland, Clerk of the circuit court within and for the county aforesaid, in obedience to the within writ, hereby return the same executed as commanded.

Given under my hand and the seal of said court at office in the City of St Louis this 1st day of June 1838

John Ruland Clerk

~~James S. Lane~~ ~~plaintiff~~ ~~Defendant~~ ~~in error~~

~~vs~~

Alexander Chambers plaintiff in Error
James S. Lane vs Defendant in Error

Supreme court of the State of Missouri sitting at Saint Louis
June Term A.D. 1838
Writ of Error from Saint Louis Circuit Court

~~Statement of the case~~

assignment of Errors

And the said Alexander Chambers the plaintiff in error and defendant in the Court below avers that in the record and proceedings in the Circuit Court, in this Cause there are manifold & manifest errors as will better appear from the transcript of the said cause now in this court - and he assigns for error

1°. The Circuit Court erred in this that Judgment in the circuit court was given for Defendant in error against plaintiff in error whereas according to law Judgment ought to have been given for Plaintiff in error against defendant in error as from the said cause, and the record thereof and the proceedings therein and the transcript thereof now in this Court will more fully and at large appear -

2°. The circuit Court erred in this that it allowed Lane to amend the supposed copy of the note in his petition by altering such supposed copy in the petition & erasing the word after therein after issues made up when according to law such amendment at such a stage of the Cause ought not to have been allowed - as will appear from the

Record & proceedings in the cause and the transcript thereof now in this Court.

3°. The Circuit Court erred in this that it overruled the application of Chambers for a continuance whilst allowing Lane to amend, when according to law such continuance ought to have granted by the said court, as by the record & proceedings in the cause, and the transcript thereof now in this court will more fully & at large appear.

4°. The Circuit Court erred in this that it sustained Lane's demurrer to 1st & 2nd. pleas of Chambers, when according to law the said Circuit Court ought to have overruled such demurrer - as by the record & proceedings in the cause and the transcript thereof now in this Court will more fully & at large appear.

5°. The Circuit erred in this that it permitted the original note to go in evidence, when according to law such note ought not to have been permitted to go in evidence, as will appear from the record and proceedings in the cause and the transcript thereof in this Court.

6°. The Circuit Court erred in this that it overruled Chambers's motion for a new trial, whereas according to law such motion ought to have been sustained, as from the record and proceedings in the cause and the transcript thereof in this court will more fully appear

Bryan Mullenphy
Counsel for Plff in error.

Supreme Court = 3d Judicial District

Alexander Chambers
vs
James S. Lane

Assignment of Errors

Filed 2d June 1838
John Ruland Clerk Supreme Court

~~Alexander~~ ~~plaintiff in error~~

Alexander Chambers plaintiff in error

vs

James S. Lane Defendant in error

Brief of Plaintiff in Error —

Supreme Court of the State of Missouri —

Transcript from St Louis Circuit Court, in error —

Plaintiff in error deems that the amendment permitted to Defendant in error below was permitted against law —

That being permitted after the pleadings were made up, it took away from Defs below a good defence, took him by surprize, ought not to have been permitted without a continuance; and when such continuance on such ground was applied for, being applied for as soon as Defs below heard of the amendment, it ought to have been granted without hesitation —

The note proceeded on was made payable at one place & not generally — Provision to meet it was necessary at that place & not elsewhere — The court before sustaining the action & demurrer of Plaintiff below, ought to have been satisfied that such provision had not been made. The course pursued by the court was to Convert a contract to pay in one place into a general contract to pay any or every where — It may be that the money to take up the note is still awaiting the arrival of the note at the special place of payment — The note does not appear to have ever been at such special place of payment —

The two pleas to which a gen. demurrer was sustained were well & pertinently pleaded being forms of non est factum, to an instrument the subject matter of profert Mullanphy for Plaintiffs in Error

Chambers
v
Lane
Error from St Louis
Circuit Court
Brief of plaintiffs
in Error Mullanphy
for Pltff in error

Alexander Chambers plaintiff in error-

vs

James S. Lane defendant in error.

Supreme Court of the State of Missouri, sitting at Saint Louis, June Term A.D. 1838.

Writ of Error from Saint Louis Circuit Court

Statement of the case

This was a petition in debt in Saint Louis Circuit Court brought by James S. Lane against Alexander Chambers returnable to March Term A.D. 1838 on a note of hand for $610 04/100. The note (the original) was in the usual form commencing - One day after date &c - The supposed copy of same in the petition was a copy with this exception that the word after occurred twice in said copy thus - "One day "after after date &c" and only once in the original note. A summons issued to Defendant below who appeared and pleaded -

1°. Non est factum -

2°. That the supposed note was not his deed.

3°. That the supposed note was not his note.

4°. non assumpsit.

5°. Nil Debet.

The two first pleas were demurred to and Demurrer sustained. The others of the issues thereon were found for Plaintiff below who had Judgment.

After the pleadings & issues had been made up & completed, Court permitted Plaintiff below to amend above supposed Copy of the note in the petition contained by striking out the word "after" which was repeated therein. The following is a fac-simile of the amendment as made to original petition. One day after ~~after~~ date &c and the striking out with the time of striking out is noted on the margin of the petition.

On the trial of the cause Defendant below for the first time heard of the amendment aforesaid, stated the fact to the Court & moved for a continuance thereupon which motion the Court overruled, to which Defendant excepted.

Plaintiff below produced original note and offered to give same in evidence Defendant below moved to exclude it for variance from the Copy as originally set forth in the petition as it remained after pleadings had been made up, which motion the Court overruled to which defendant below excepted.

Plaintiff below proved the execution of the note & had verdict & Judgment as before stated & nothing further

The note was on the face of it payable at a particular place - but no presentation whatever either there or elsewhere was attempted to be proved - Nor did it appear that the note was ever at the place where it was made on the face of it payable.

Defendant below moved for a new trial for reasons filed which the Court overruled to which judgment of the court overruling such motion of Defendant below defendant below excepted.

Thereupon Defendant below having tendered and obtained the signature & seal of the court to a bill of exceptions — brought the case by error to this Court.

1838 1818.
1818. 1838. 1818.

~~James S. Lane~~

Alexander Chambers
vs
James S. Lane —
Error.

Statement of the
case.

Brief of Pltff in
Error Mullanphy
Attorn for Pltff
in Error

Supreme Court

A. Chambers
vs.
Jas S. Lane

June Term 1898

Lane sued Chambers on a promissory note, by petition in the usual form, which note reads as follows.

"$610.04/100 St. Louis October 12th 1897

One day ~~after~~ date I promise to pay to the order of James S. Lane at the Bank of the State ~~of the State~~ of Missouri in St. Louis Six hundred and ten 4/100 Dollars without defalcation and for value received

A. Chambers."

Defendant appeared and pleaded as follows.

1st. that the said supposed writing is not the defendant's deed.

2nd " that said supposed note is not his deed.

3rd " that said supposed note is not his note.

4th " non assumpsit.

5th. nil debet. — concluding all the pleas to the country.

Plaintiff demurred to the two first pleas which assert that the note sued on was not the defendant's deed: and the demurrer was sustained by the Court below.

The cause came on for trial on issue on the other pleas, & on the note's being read in evidence (exception of it by defendant having been moved) judgment was rendered for the plaintiff for the amount thereof.

In the copy of the note in the petition the word "after" was repeated, so as to read "one day after after date" &c, ; but several days before the trial the plaintiff obtained leave of the court to amend by striking out one "after", which was accordingly done by leave of court, by drawing the pen through the word several days before trial.

after the plaintiff had gone through his case, the defendant, moved to exclude the note offered in evidence, on the ground of said supposed variance, which being overruled, he moved for a continuance on the ground of the amendment having been made, which motions were also overruled. He then moved for a new trial on the same grounds & because the court permitted the amendment, which motion was overruled. Exceptions were taken to these several decisions of the court.

1 The Demurrers were rightly sustained. The petition was on a note, & the two first pleas asserted that it was not the defendant's deed, & deed means a sealed instrument. These pleas were no answer to the action, and the issue on them would have been totally immaterial.

2. All the other objections relate to the amendment, & the refusal of the court to grant a continuance on account of it.

No amendment was necessary in this

case; & secondly, if one were necessary, the Court did right to permit it, & would have done right, in permitting it even on the trial & that too, without a continuance

See case of Atwood vs. Gillespie. 4 Miss. Rep. 423. where these very points are settled in case of a note, & in which the word "pay" was omitted in the copy in the petition, & an amendment permitted on the trial without a right to continuance.

New Revised Code 467.

12

Supreme Court

A. Chambers plff. in error
vs.
Jas. S. Lane deft in error

Brief of deft in error

J. Spalding
of Counsel

June Term 1838

June Term 1838

Alexander Chambers
vs
James S. Lane
} Error to the circuit court of St Louis County

Lane sued Chambers in the circuit court by petition in debt under the Statute, and had judgment. To reverse that Judgment this writ of error is sued out.

By the act under which this suit was commenced the plaintiff is required to insert in the petition a copy of the instrument sued upon. The instrument sued on in this case reads thus "One day after date I promise &c." in the copy inserted in the petition the word "after" was twice copied, and that copy read thus "One day after after date I promise &c." After the pleadings in the cause were made up, and before trial, the plaintiff was allowed on motion to amend the copy. The defendant moved for a continuance of the cause on account of the amendment allowed, and his motion was overruled, and judgment being rendered against him, he moved for a new trial, and that motion was overruled. and these decisions of the court are assigned for error. The amendment permitted by the court could not possibly have produced any surprise. The legal effect of the instrument was precisely the same as before the copy was amended by striking out one of the words "after" which had been twice written by mistake.

The circuit court then in my opinion committed no error either, in refusing the defendant a continuance, or in refusing him a new trial; and such being the opinion of the rest of the court the judgment of the circuit court is affirmed.

Geo. Tompkins

We concur

Holmes Geyer

Jno. C. Edwards.

James S Lane
vs
Alexander Chambers

Error to the circuit court of St Louis county

Alex^r. Chambers
vs
opinion
James S. Lane

June term 1838

G. Tompkins