Tutt, John S et al vs. Blancjour, Peter ; 1860 Platte Co. #12 Cir. 259/12

93/33

·Debt - bill of exchange - $250

Affirmed - evidence properly rejected
evidence known to endorser but not to endorsee is not admissible

State of Missouri }
County of Platte }

Be it remembered that heretofore at the October Term A.D. 1858 of our Platte Court of Common Pleas within the County and State aforesaid began and held at the Court Room in the City of Weston, on Monday the 11th day of October A.D. 1858. The Hon Sol P. McCandy, being then and there Judge thereof. When and where among other proceedings then and there had, was the following to wit

Heretofore to wit on the 20th day of September A.D. 1858 there was filed in the Clerks office of our said Court a certain petition wherein Peter Blumejour is plaintiff and Merit L. Young and John S. Dall defendants which said petition is in words and figures as follows to wit

Petition In the Weston Court of Common Pleas in Platte County Missouri October 2. 1858.

Peter Blumejour Plaintiff

Against
Merit L Young and
John S Tull defendants

The plaintiff states that the defendants John S. Tull by his bill of Exchange hereto annexed dated Watson Mo December 3rd 1857 and addressed to Samuel S Turner & Co at Watson aforesaid required said S. S. Turner & Co at sight to pay defendant Merit L Young or order the sum of Two hundred and fifty dollars for value received. Negotiable and payable without defalcation or discount. That said defendant Merit L Young transferred by Endorsement and delivered said bill of Exchange for value received to the plaintiff. That said transfer and delivery of said bill was on or about the 4th December 1857 and in the Course of trade between the parties That afterwards to wit on the 3rd day of February 1858 plaintiff caused said bill to be presented to said S. S. Turner & Co for payment who thereupon refused the same of which the defendants were duly

notified; That on the 3rd day of February 1858 aforesaid upon the refusal of said S J Turner & Co to pay said bill. the same was lawfully protested for non payment. by Jas N Burnes. a Notary Public for Platte County. and the defendants at the same time legally notified; That said bill of exchange is still due plaintiff by the defendants. for which with interest and damages as by statute allowed this plaintiff prays judgment

J N & C F Burnes
attys for Plf

Peter Blanejour plaintiff makes oath and says he believes the above petition and the matters as therein stated are true

P. Blanejour

Sworn to and subscribed before me on this 20th September AD 1858

Jas N. Burnes
N. P.

Copy of Bill of Exchange

$250 - Weston Mo Dec 3 1857

at sight after date promise to Pay to the order of M L Young Two Hundred and fifty Dollars for value received. negotiable and payable without application or discount, with interest from maturity, at the rate of ~~per~~ cent per annum.

To S L Turner & Co

Wesson Mo

Jno Stro Tutt

Endorsed on Back M L Young

Protested for non payment February 1858 Jno N Burris Notary Public

And afterwards to wit on the 28th day of ~~October~~ Sept AD 1858 there issued from the Clerks office of our said Court, a certain writ of summons in words and figures as follows to wit,

STATE OF MISSOURI, } Sct.
County of Platte. }

The State of Missouri, to the Marshal of the Weston Court of Common Pleas, In Platte county—Greeting: You are hereby commanded to summon

Merit L Young and
John S Tatt

that they be and and appear before the Judge of our Weston court of common pleas, on the first day of the term thereof to be holden at the court room in the city of Weston, and county aforesaid, on Monday, the 11th day of October 1858, and there to answer into the petition of

Peter B Cunningham

Wherein fail not, and have you then there this writ.

Witness, H. J. WOLF, Clerk of the court of common pleas, with the seal thereof affixed at Weston, on this 20th day of Sept A. D. 1858

seal

H J Wolf Clerk.

E G Hunt D C

~~Endorsed~~

Executed this writ by delivering to the within defendant Newt J Young a true copy of the within writ and petition in Weston Township in Platte County Missouri on this 21 day of September 1858

Marshal fee $1.00

G W Hood Marshal
of the Weston Court
of Pleas

The within named defendant John S Tutt not found in my County

G W Hood Marshal of
the Weston Court of C Pleas

Marshal fee 50¢

6

And at the same time there was issued from our said Clerks office a certain Counter part of the original writ and petition. directed to the Sheriff of Buchanan County State of Missouri. which is in the words and figures as follows to wit.

In the Weston Court of Common pleas in Platte County Missouri October 7. 1858
Peter Blanyour Plaintiff
against
Merit L Young and
John S. Tutt Defendants

The plaintiff states that the defendant John S. Tutt by his bill of Exchange hereto annexed dated Weston Mo December 3rd 1857 and addressed to Samuel J Turner & Co at Weston aforesaid requested said S. J. Turner & Co at sight to pay defendant Merit L Young or order the sum of Two Hundred and fifty dollars for value received. negotiable and payable without defalcation or discount That the defendant Merit L Young transferred. by endorsement and delivered said bill of Exchange

for value received to the plaintiff that said Transfer and delivery of the said bill was on or about the 4th Decr 1857 and in due course of trade between the parties. That after=wards to wit: on the 3rd day of Febru=ary 1858 plaintiff caused said to be ~~protested~~ presented to said S I Turner & Co for payment who thereupon refused the same of which the defendants were duly notified. That on the 3rd day of February 1858 aforesaid upon the refusal of said S I Turner & Co to pay said bill the same was lawfully protested for non payment by I N Burnes a Notary Public for Platte County and the defendants at the same time legally notified. That said bill of Exchange is still due plaintiff by the defendants for which with interest and damages as by statute allowed the plaintiff prays Judgement

I N & C F Burnes
Attys for Plf

Peter Blanejour plaintiff makes

oath and says he believes the above petition and the matters as therein stated are true

P Blanejour

Sworn to and subscribed to before me this 20th day of Sept 1858

J N Barnes N.P.

Copy of Note

$250 – Weston Mo Dec 3rd 1857 at sight after date – promise to pay to the order of M L Young Two Hundred and fifty Dollars for Value received negotiable and payable without defalcation or discount with interest from maturity at the rate of – per cent per annum

To S. Turner & Co John S Tatt

Weston Mo

State of Missouri

County of Platt

I H J Wolf Clerk of the Weston Court of Common Pleas within the County and State aforesaid do hereby certify that the above foregoing and annexed is a full true and perfect copy of the original petition filed in the foregoing Entitled Cause and of the writ which issued thereon

Seal
destroyed by
fire 14 Sep
1858
H J Wolf Clk
E G Hunt D C

In testimony whereof I have
unto ~~set~~ subscribe my name
and affix the seal of said
Court at office in the City
of Weston this 20th day
of Sept 1858

H J Wolf Clk
E G Hunt D. C.

And afterwards to wit on the 20th
day of Sept AD 1858 there issued
from the Clerk's office of our said
Court. A certain writ of summons
in words and figures as follows
to wit —

STATE OF MISSOURI, } Sct. Sheriff of Buchanan
County of Platte.

The State of Missouri, to the ~~Marshal of the Weston Court of Common Pleas~~, ~~In Platte~~ county—Greeting: You are hereby commanded to summon

Merit L. Young and

John S. Tutt

that they be and and appear before the Judge of our Weston court of common pleas, on the first day of the term thereof to be holden at the court room in the city of Weston, and county aforesaid, on Monday, the 11th day of October 1858, and there to answer into the petition of

Peter Blumyour

Wherein fail not, and have you then there this writ.

Witness, H. J. WOLF, Clerk of the court of common pleas, with the seal thereof affixed at Weston, on this 20 day of Sept A. D. 1858

(Seal)

H J Wolf Clerk.

E G Hunt D C

I Return the within petition not served
John S Tutt not found In Buchanan
County Mo Oct 10 - 1858

Sheff fee Morgan 50 - pd } M D Morgan Sheff
Buchanan County Mo

And afterwards the following was entered of Record

October Term Tuesday October 14th AD 1858

Peter Blanyour Plff
vs
Merit L Young and
John S Tate Defts

Now here at this time an alias writ is awarded in this Cause to be issued to the Marshal of this Court and to the Sheriff of Buchanan County State of Missouri returnable to the next Term of this Court. to which Term this Cause is continued -

And afterwards to wit on the 23rd day of October AD 1858. there was a certain alias writ issued to the Marshal of the Western District of Common Pleas. which writ is in the words and figures as follows to wit -

STATE OF MISSOURI. } Sct.
County of Platte.

The State of Missouri, to the Marshal of the Weston Court of Common Pleas, in Platte county—Greeting: You are hereby commanded to summon

Merit L Young and

John S Pratt

that they be and appear before the Judge of our Weston court of Common Pleas, on the first day of the term thereof to be holden at the court room in the city of Weston, and county aforesaid, on Monday, the 14th day of February 1858 and there to answer unto the petition of

Peter Blumigan

Wherein fail not, and have you then there this writ.

Witness, H J Wolf, Clerk of the court of common Pleas, with the seal thereof affixed at Weston; on this 23rd day of October A. D., 1858

Seal

H J Wolf Clerk.

E G Hewitt D C

Copy of Return on alias writ

Executed this writ by to the within named defendant a true copy of the within writ and petition in Weston township Platte County Missouri on this 23rd day of October 1858

Marshal fee $1.00 G W Hood Marshall
W C Pleas

Executed this writ by delivering to the within named defendant Merit L Young a true copy of the within writ and petition in Weston township Platte County Missouri on this 28th day of October AD 1858

Marshal fee $1.00 G. W. Hood Marshal W C Pleas

And afterwards the following was
entered of Record to wit

February Term Wednesday February 16th A.D. 1859

Peter Blanyour Plff
v
Mark L Gray and
John S Tait Defts

Now here at this time
comes defendant John S Tait
by his attorney and files his answ-
=er to the plaintiffs petition.

which answer is in the words
and figures as follows to wit

Peter Blanyour Plaintiff
against
John S. Tait Defendant
In the Weston Court of Common
Pleas February Term 1859
Defendant for answer to plaintiffs petiti
=on admits the execution of the in-
strument of writing filed by plaintiff
in this cause, but denies that same
was executed for a consideration val
=uable or valid in law, but that

said instrument was without any consideration whatever to defendant Defendant charges the fact to be that Merit L Young in whose favor said instrument or order was executed and defendant was engaged in gaming & that said Young won by gaming from the defendant the amount of said order, & for which sum was executed that within a short period of time thereafter said Young became indebted to defendant in a similar sum of money upon a like account & it was mutually understood and agreed that over the respective indebtedness of said Young and the defendant should be cancelled by said mutual indebtedness. ~~of said Young~~ Defendant afterwards was informed that said order was in possession of said Plaintiff but that same was without defendants consent He therefore prays that Plaintiffs suit be dismissed & that said defendant have Judgement for his costs

Jno S Mitt

By Jno Dompshaw his attorney

Jno S Pitt defendant makes oath and says the foregoing answer and the matters as therein stated he believes to be true

Jno S Pitt

Sworn to and subscribed before me this 11 day of February 1859

Henry Pitt

Notary Public

And afterwards the following was entered of Record to wit

February Term Thursday 17th February A D 1859

Peter Blanyour Plff

Against

Merit L Young et al Defts

Now here at this time upon the application of the defendant this cause is placed at the foot of the docket for this day -

Peter Blanyour Plff

vs

Merit L Young and John S Pitt Defendants

Now here at this time on the application of defendant

John S. Tutt by his attorney. This cause is continued to the next Term of this Court

It is therefor considered by the Court that the plaintiff recover of and from the defendant John S Tutt his cost and charges of continuance and thereof have execution -

And afterwards the following was entered of Record to wit

June Term Wednesday June 15th AD 1859

Peter Blanejour Pltff
v
Merit L Young Defts

Now here at this time on application of the defendant by his attorney this cause is placed at the foot of the docket for this day -

Peter Blanejour Pltff
v
Merit L Young and
John S Tutt Deft

By agreement of the

parties by their respective attorneys this cause is set for trial on Friday next
And afterwards the following was entered of Record to wit

June Term Friday 17th June AD 1859

Peter Blanegar Plff
vs
Merit L Young and
John S Trett Defts

Now here at this time on application of the defendants by their attorney this cause is continued to the next term of this Court

It is therefore considered by the Court that the plaintiff recover of and from the defendants his costs and charges of continuance and have thereof execution

And afterwards to wit ~~at the~~ at the October Term AD 1859 of our said Court. begun and held at the Place aforesaid. on Monday the 10th day of October AD 1859 the Hon James Dompham being

their sole Judge thereof. where and where the following proceedings were had. to wit

October Term Tuesday 11th October AD 1859

Peter Blanegoer Pltff
vs
Mert L Young and
John S Tutt Defts

During the progress of the trial of this cause Charles Hamilton one of the Jurors was by agreement of the parties. excused from further service -

Peter Blanegoer Pltf
vs
Mert L Young and
John S Tutt Defts

Now here at this time this cause comes for a hearing. and the issue being joined by agreement of the parties. by their respective attorneys the same is submitted to be tried by the following Jurors to wit John Light James L Evans Joseph Pence B F Newhouse M Bowman -

D Linn, A Hatherway, J. J. Ellis B Hedges And Charles Hamilton Jr good and and lawful men who being first duly Elected tried and sworn will and truly to try the issue joined between the parties and a true verdict to give according to the law and the evidence after hearing all the testimony ad=duced by both parties, the argument of the Counsel, and receive the instructions of the Court retire to consider of their verdict and now here again return in to Court and for verdict say "we the Jury find for the plaintiff in the sum of Two Hundred and ~~fifty~~ eighty Eight Dollars and sixty cents. ($288.60)

James L. Graves Foreman

It is therefore considered by the Court that plaintiff recover of and from the Defendants the said sum of Two Hundred and Eighty Eight 60/100 Dollars so found as aforesaid together with his costs and charges in this ~~suit~~ behalf expended and have ~~the~~ for thereof execution

And afterwards the following was entered

of Record - to wit

Peter Blanegour Pltff
vs
Merit L Young and
John S Tutt Defts

Now here at this time comes the defendant John S. Tutt by his attorney. and files a motion for a new trial -
which motion for new trial is in the words and figures following to wit

Blanegour
vs
Tutt & Young

The defendant Tutt moves the Court to set aside the verdict & grant a new trial. for the reason that the Court erred in the instructions & because the Court erred in excluding important testimony

Dorsphan & Lawson
attys for Deff

And after wards the following was entered of Record to wit

October Term Monday 24th October AD 1859

Peter Blanejoer Pleff
vs
Meet L Young et al Defts
Now here at this time come the parties by their attorneys and the motion for a new trial filed herein is taken up and argued and the same is overruled by the Court

And afterwards the following was entered of Record to wit

October Term Tuesday 25 October AD 1859

Peter Blanejoer Pleff
vs
Meet L Young et al Defts
Now here ~~at this time~~ comes the defendant, by their attorney, and files his motion in arrest of Judgment

Which motion is in the words and figures following to wit

P Blanejoer

vs

M L Young & Jno S Tutt

The Defendant Tutt comes & moves the Court to arrest the Judgement in this Cause

Because the instructions of the Court was against the law Because the instructions of the Court were calculated to mislead the Jury

Because the Verdict was contrary to the evidence -

Because the Jury found contrary to the instructions of the Court

Donisphan & Lawson
Attys

And afterwards the following was entered of Record to wit

October Term Tuesday 27th October AD 1859

Peter Blumgoer Pfff

vs

Mont L Young Nal Dfts

Now here at this time comes the parties by their respective attorneys and the motion in arrest of Judgement filed herein is taken up and argued and the same is

overruled by the Court,

And afterwards the following was entered of Record to wit

October Term Thursday 17th November AD 1859

Peter Blanjour Pltff
vs
Merit L Young et al Defts

Now here at this time leave is granted by the Court to the defendant to file affidavit. Bond and Bill of Exceptions on or before Monday 26th December 1859.

And afterwards the following was entered of Record to wit

October Term Monday 26th December AD 1859

Peter Blanjour Pltff
vs
Merit L Young and
John S Tull Defts

Now here at this time comes the defendant John S Tull by his attorney and files his affidavit

for an appeal to the Supreme Court of the State of Missouri -

which affidavit is in the words and figures following to wit -

Peter Blanjour Plaintiff
vs ≡ affidavit for appeal
Merit L Bonny & Jno S Tutt Defendants
In the Western Court of Common Pleas

The defendant Jno S Tutt being duly sworn states that he believes that he has been injured & agrieved by the decision of the court in this cause & that he prays an appeal to the Supreme Court on account thereof. & not for vexation or delay

Jno Sro Tutt

Sworn to & subscribed before Henry Tutt Judge of the Probate Court of Buchanan County Missouri this 23 November 1857

Henry Tutt
Probate Judge

Seal

And afterwards the following

was entered of Record to wit

Peter Blanjour Pltff
v
Merit L Bonny and
John S. Tutt Defts

Now here at this time comes the defendant John S. Tutt by his attorney and files his Bond for an appeal to the supreme Court of the State of Missouri-

Which Bond is in the words and figures following to wit

Know all men by these presents that we John S Tutt as principal and Henry Tutt & William Redenbough as securities are held & firmly bound unto Peter Blanjour in the sum of Six Hundred Dollars for the payment of which well & truly to be made we bind ourselves our heirs executors & administrators firmly by these presents signed and sealed by us this 23rd day of November 1859.

The condition of this obligation is such that whereas John S Tutt has appealed to the supreme Court of the State of Missouri from a judgement of the Weston Court of Common Pleas rendered at the October Term 1859 for Platte County in a suit in which Peter Blumjour is plaintiff & Merritt L Young & John S Tutt are defendants. Now if the said Jno S. shall well & truly prosecute his appeal with due diligence to a decision in the supreme Court & shall perform such judgment as shall be given by the supreme Court or such as the supreme Court may direct the Court of Common Pleas to ~~find~~ give & if the judgement thereof or any part of it affirmed that he will comply with & perform the same so far as it may be affirmed & will pay all damages or costs that shall be awarded by the supreme Court by the appellant

Jno Sro Tutt (Seal)
Henry Tutt (Seal)
William Kellenbaugh (Seal)

And afterwards the following was entered of Record to wit

Peter Blanejour Peff
v
Merit L Young and
John S Tutt Defts

Now here at this time comes the Defendant John S Tutt by his attorney and files his ~~answer~~ bill of Exceptions and asks that the same ~~a~~ may be signed sealed and made part of the Record in this Cause. which is accordingly nowhere done -

Which Bill of Exceptions is in the words and figures following to wit

Peter Blanejour Plaintiff
v } Bill of Ex
Merit L Young &
John S Tutt defendants
Oct Term 1859

Be it Remembered that at this term this cause came on for trial on petition of Plaintiff & answer of John S Tutt

when the plaintiff offered the Bill of Exchange in testimony as follows

$250 — Weston Mo Dec 3 1857

At Sight after date — promise to Pay to the order of M L Young Two Hundred & fifty Dollars for value received. Negotiable and payable without defalcation or dis=count with Interest from maturity at the rate of — per cent per an=num

To S. Turner & Co } Mo Stro Tutt
Weston Mo }

(Endorsed on Back) M. L. Young & Closed his Case. The defendant Tutt offered Dr Bonifant as a witness who testified That about two years since he was present when the drawer of the draft & the payee were engaged in gaming with Cards in the City of Weston & at which time Young won of Tutt several hundred dollars, but he didn't see the same paid or know how is was paid except some hearsay of Young & Tutt —

Defendant offered to prove by

the witness that the next day after such game was played that he heard a conversation between Bonny & Dutt, in which Bonny said Dutt had given him a draft on S I James & Co. for five Hundred & fifty dollars in full payment of the amount won by Bonny from Dutt on the previous evening by Bonny & that he was going to get the money on it, to this the plaintiff objected which objection was sustained by this Court & to which the defendant Dutt then excepted.

Defendant asks or Bonfant if he understood from Bonny that a draft for $250.00 given by Dutt to Bonny was given for the gaming he had witnessed on the previous evening. Plaintiff objected to the question and answer & objection sustained by the Court, to which defendant excepted at the time.

Defendant then introduced Jno Pomphrey who stated that he saw a game of Cards between Bonny & Dutt. the defendants

about the month of December 1857 in which Tutt won several Hundred dollars from Young & Yerry said he would deliver up to Tutt a Draft that Tutt had given him for a gaming consideration before that time. (This testimony was excluded by the Court to which the defendant then excepted. This was all the testimony offered. "The Plaintiff asked the following instructions which were given

Blanejour Plf

v

Tutt Defendant

Plaintiff moves the Court to instruct the Jury as follows

1. That the plaintiff is entitled to recover for the amount of the Bill of Exchange with interest and four per cent additional damages for protest unless the defendant has made a legal and proper defence thereto.

2. That such a defence to be

Geoin

Geoin

Geoin

lawful. the Jury must believe from the evidence that the bill of exchange ~~made~~ sued on was executed for money won at Cards by Bonny from Tatt, which fact it is incumbent on defendant to establish by proof

3. The bill of Exchange is to be considered as executed for a valid consideration and they will so find unless the defendant has proved that the consideration of the bill sued on was for money won at Cards.

4. The declarations of Bonny are excluded from the Jury so far they occurred anterior to the assignment

To which the defendant then excepted. Defendant then asked the following instructions, which was refused & to which he then excepted.

Defendant then asked the following instructions which was refused & to which he then excepted

Blanejour
v
Tutt

The Court instructs the Jury in behalf of the defendants.

That if they Jury believes from the evidence that the consideration of the draft or bill sued on was for money won at gaming they will find for the defendant.

Given
Obj

the Jury then returned & returned the following verdict

We the Jury find for the Plaintiff in the sum of $288.60

James L. Graves foreman

when upon the Defendant filed his motion for a new trial which was in the words and figures following

Blanejour
v
Tutt & Young

The defendant Tutt moves the Court to set aside the verdict & grant a new trial for the reason that the Court erred in the

instructions & because the Court Erred in excluding important testimony

Dornphan & Lawson
Attys for Deff

which was our ruled & to which the Defendant excepted. on which the Defendant filed his motion in arrest of the Judgement in words & figures following.

P. Blumgour
v
M L Young & Jno S Tutt

The Defendant Tutt comes & moves the Court to arrest the judgement in this case.

Because, The instructions of the Court was against the law

Because the instructions of the Court were calculated to mislead the Jury

Because the verdict was contrary to the evidence

Because the jury found contrary to the instructions of the Court

Dornphan & Lawson
Attys

which was overruled by the Court & to which the defendant then excepted. These were all the proceedings & upon which the defendant then presents his Bill of Exceptions. which is signed & sealed by the Court

Jas Dompham Judge (Seal)

Statement from the fee Book of Clerk –

Clerks fees	Wolf	$15,50
" "	Price	" 6,25
Court "	Dompham	" 2,00
Marshal "	Hood	" 6,95
Transcript		10,65
Certificate & Seal		50
Postage –		24
		$42.09

State of Missouri
County of Platte set

I James A Price Clerk of the Western Court of Common Pleas within the County and State aforesaid. do hereby certify that the above foregoing and annexed is a full true and perfect Transcript of the Record and proceedings

had in the foregoing entitled Cause, as fully as the same now remains of Record in my said office.

In testimony whereof I have unto set my hand and affix the seal of said Court, the same being a Court of Record, at office in the City of Weston this 17th day of July AD 1860

J. A. Price Clk

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5. ~~55.~~

Peter Blanjour

vs } Transcript

John S. Tutt ~~et al~~

and M L Young appts

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filed October 2 Oct 1860

(Clerk's fee $10. paid)

Wm E Dunscomb

Clerk

Donighan & Lawson for appts

Westin Com Pleas

12th

Peter Blanjour Appellee } From the
v } Weston Court of Common
Merit Young & } Pleas - Platte county
John Tutt } Appellant

The Appellant John S Tutt for assignment of errors Says -

1st The Court erred in refusing proper evidence

2d The Court erred in giving Pltffs instruction to the Jury

3d The Court erred in refusing Defts instruction,

4th The Court erred in overruling Defts motion for new trial & arrest of Judgment

Doniphan & Merryman
for Appellant

52

Peter Blanjour
D } assignment of
} errors –

M L Young &
John S. Tutt

filed Jan. 24th 1861.
Wm E Dunscomb
Clerk

Peter Blanchon Appellee

vs

Mint L Young &
Jno S. Hill Appellants.

This was a suit by an innocent endorsee of a bill of exchange endorsed for value in good faith before it was dishonored.
The defense is that the consideration was for money won at cards by the endorser and payee of said bill from the drawer Hill.
On the trial in the Court below the defendants and appellants offered ~~to prove~~ in evidence the declaration of defendant Young the endorser of said bill. Appellee objected and the Court sustained the objection and instructed the jury to disregard all the declaration of Young.
Judgment was rendered for plaintiff upon the Verdict of the jury and defendants appeared.
Appellee submit the following points.

Barnes, Wolf & Barnes for Appellee

1. The declaration of Young to be material under any circumstances must be shown to have been made while he was the owner and in the possession of the draft. This is not

shown by the record.

2. The ~~defendants~~ appellants do not pretend that the appellee was any other than an innocent endorsee for value without notice and in such case it can not be sustained that the declarations of the assignor are admissible, especially where the note was negotiated before it was dishonored

1. Greenl. on Evid § 190. page 231.

3. Our Statute ~~will~~ not be construed so as to defeat the rights of an innocent purchaser without notice. It gives to the maker of notes ~~or~~ executed for gaming Considerations the right to one within three months to vacate annul & set aside Notes & judgments founded upon such Considerations, but it was not intended that any maker of such a note should suffer it to remain in circulation for a whole Year and then avoid it even if in the hands of an innocent purchaser for value without notice. ~~in the Action~~ endorsed before Maturity.

4. In the hands of an innocent endorsee for value, without notice and before Maturity, this bill is neither void nor are the declarations of the endorser ma-

trial.

5. The declarations of Jane are immaterial on another ground. He was a party defendant to the record, and as such his admissions were inadmissible for himself or his co defendant.

Burnes Wolf & Burnes
attys for Appellee

P. Blanchour Appellee

vs

Jno S. Mtt Appellt.

Brief of Appellee

filed Jany. 25th 1841

Wm E Dunscomb

Clerk

Blanchour
v
Tutt &c

The plaintiff sued Tutt as drawer and Young as endorser of a bill of exchange, which was indorsed by Young to the plaintiff.

Young failed to answer. Tutt answered that the bill was given without consideration, it being for a sum won by Young from him in gaming with cards.

Verdict and judgment were given for the plaintiff

The Court instructed the jury that the plaintiff was entitled to recover unless the bill of exchange was executed for money won at cards by Young from Tutt. - As no other defence was made this instruction properly declared the law.

At the trial the defendant Tutt offered to prove declarations made by the other defendant Young, but without showing the time when they were made with reference to the time of the transfer of the bill to the plaintiff, and without showing any knowledge of them by the plaintiff. The declarations of Young were objected to as evidence and rejected by the Court. The Court also instructed the

jury that "the declarations of Young are excluded from the jury so far as they accrued anterior to the assignment".

There was no error in rejecting this testimony. Declarations made by the indorser of a bill of exchange affecting the validity of the bill, and not known to the indorsee ~~and~~ are not evidence against the indorsee

Judgment affirmed

Barton Bates

Judge Bay & Dryden concur.

Blanchon

vs

Tutt

Opinion Bates

Affirmed

Filed July 29/62

Blanchard Respondent for [illegible]

[illegible]

Tutt & Young } appellant

The Counsel for appellant submit as a brief the opinion of Judge Ewing in this case. And further ask the Court to pass on one more question in the case and that is: Whose the declarations of Young competent testimony for Tutt, if they were made while he was the owner of the bill: we think they are competent testimony. Suppose Young had never negotiated the Bill and had sued Tutt in his own name we think in that case his confessions would be competent. Then the transfer of it did not change the law so far Tutt was concerned nor his defence nor the rule of evidence.

The fact of Young being made a party to the suit does not effect Tutts defence nor the rule of testimony. Young being only an endorsee of the bill. And the law makers did not intend by giving the endorsee a windy against all the parties in one suit to change the rule of evidence

1st Greenleaf sec 198)

Merryman

for appellant

Blanco

Blanco [illegible]

[illegible]

Tuttle

Brief of

Mengmore

Peter Blanjour

v. Z appeal from Weston Common Pleas

John S. Tutt & M. L. Young appellants.

This was an action on a bill of Exchange drawn by defendant Tutt in favor of Young, and by him endorsed and delivered to plaintiff. The bill was payable at sight, and was duly presented for payment, which being refused, it was protested, and this suit is against Young & Tutt, the drawer & endorser.

The defence was that the consideration of the bill was for money won at cards.

The defendant offered evidence tending to sustain the defence set up in the answer, which was excluded; and a part of this evidence consisted of the declarations of Young, but whether before or after he ~~received~~ transferred the bill to plaintiff does not clearly appear.

The question is whether the defence relied on, is available against the plaintiff as a holder of the bill for value and without notice of the consideration for which it was given.

The statute declares that all judgments by Confession, Conveyances, bonds, bills, notes and securities where the consideration is money or property won at any game

or gambling device shall be void and may be set aside and vacated by any Court of competent jurisdiction upon suit brought for that purpose by the person so confessing, giving, entering into or executing the same or by his executor &c or by any creditor heir or devisee purchaser or other person interested therein 2 R.S. p 819. It is also provided that the assignment of any bond bill, note, judgment conveyance or other security shall not affect the defence of the person executing or confessing the same &c

In Bowyer v Bampton Strange Rep 1155. the question arose upon the Statute 9 Anne to which ours is similar, and it was held that the plaintiff, who was indorsee of a gaming note, could not maintain the action against the maker, although he gave a full and valuable consideration and was not privy to, or had notice that any part of the money for which the notes were given had been lent for the purpose of gaming. ~~&c &c~~ also Low v Walker 1 Doug 735. Peacock v Rhodes Doug. 636. There are but few cases in which a bill or note is void in the hands of an innocent indorsee for valuable

consideration, and among these exceptions to the general rule, is ~~an~~ where the consideration is money won at play. The English statutes against usury and gaming (and which have been generally adopted throughout the United States) are peremptory and make the bill or note absolutely void 3 Kent. 95. A negotiable note given for a gaming consideration is void in the hands even of an innocent holder for value Unger v Bras 13 Penn 601; ~~Routh v Agricultural Bank~~ Lucas v Waul et al 12 S & M 161.

The declarations of Young were inadmissible + evidence for his codefendant, because they related to a matter in which

Judgment reversed, and the cause remanded. Judge Napton concurring — Judge Scott absent.

and the instructions ~~of~~ the Court concede this.

The Court erred however in excluding the ~~decla~~ evidence of Young declarations made while he was the holder of the bill

Blanjour
v
Tutt & Young