Barrett, Richard F. vs. Wheeler, Jonathan 1854 St. Louis 345/3

571/2

W owed Smith, Solomon $1200

W gave note to Barber, R who was to pay Smith

B never did + assigned to Barrett

Ryland affirmed

Barrett had to know what circumstances were (note already overdue)

Scott dissents

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* Court of Common Pleas St Louis County *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Court of Common Pleas held in and for the County of Saint Louis

wherein Jonathan Wheeler was plaintiff and Richard J. Barrett was defendant

in an ~~action of~~ civil action manifest error hath intervened, to the great damage of said defendant as by his complaint we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in March inst. ~~next~~, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the ninth day of March in the year of our Lord one thousand eight hundred and fifty four

Wm S. Glanville,

CLERK.

$1.50 paid depts. atty Bircher.

(8)

State of Missouri } ss
County of St Louis } I. Charles W Hicks
Clerk of the St Louis Court of Common Pleas
herewith transmit a full and complete
Transcript of the Record & proceedings in
the Case of Wheeler against Barret
as fully as the same remains in My Office

In testimony whereof I hereto set
My hand and affix My Official
Seal at Office in the City of St Louis
this Ninth day of March AD 1854

State of Missouri }
County of St Louis } Be it remembered that heretofore to Wit, on the 28th day of May A.D. 1853, there was filed in the Office of the Clerk of the Court of Common pleas, in and for said County a petition in words & figures following, to Wit.

Jonathan Wheeler plaintiff } In the St Louis Court of Common pleas
v. } February term 1853
Richard T. Barrett defendant }

County of St Louis – The plaintiff states that on the fifteenth day of March 1850, he and his wife Ann Wheeler by their deed dated the day and year last aforesaid conveyed to one Philip O'Mauro the following described property, to Wit "a tract of land in what was formerly North St Louis, now in the City of St Louis, being part of lot number two hundred and forty eight in Block Number Sixty one, according to a plat now on file in the Recorders Office of St Louis County marked B. and made by Joseph C. Brown, one of the Commissioners, in a suit for partition between the heirs of William Christy deceased, beginning at the North side of Warren street, and the east side of fifth street, at the junction of said streets thence northwardly with fifth street forty feet, thence eastwardly and parallel with Warren street one hundred and fifty feet, to a medium point between fourth and fifth streets, thence southwardly and parallel with fifth street forty feet to Warren street thence westwardly with Warren street one hundred and fifty feet more or less to fifth street, the place of beginning, in trust however to secure the payment of the Note hereinafter mentioned and described and with power of Sale in order to pay said Note if the

2 same was not paid at maturity. The plaintiff further states that on the day and year aforesaid, he also (8) executed and delivered to one Robert Barber, who was made the Cestui que trust in said deed, his negotiable promissory note, dated the day and year aforesaid, payable to the order of said Robert Barber to become due in one year from said date, for the sum of one thousand, three hundred and seventy five Dollars, with interest from date at the rate of six per Cent per annum, which note, after the maturity thereof to wit about the month of September AD 1857, was endorsed and assigned, and said deed of trust was also at the same time delivered to the defendant Richard F. Barrett, who is now the holder and in possession thereof. The plaintiff further states that the obtaining said note and the deed of trust, securing the payment of the same to the plaintiff from the said Barber, practised a fraud upon him - that they were obtained from him by false pretenses and promises held out by the said Barber, to plaintiff, and were entirely without Con=sideration, excepting the said false pretences & promises of said Barber, which pretences and promises the said Barber wholly failed to fulfil and perform. The purposes and Consideration for which the said note and deed of trust were made, executed and delivered were as follows, Viz - the plaintiff was indebted, by note secured by deed of trust upon the real estate herein before described, to one Solomon Smith, in the sum of twelve hundred dollars becoming due on the 2d day of June 1856, and fearing that he could not make said payment at the maturity of said last mentioned note, the plaintiff during the month of March AD 1856, applied to said Barber who was a

money lender to raise the necessary funds for that
3 purpose; that said Barber thereupon agreed to raise
the said funds, and to pay said last mentioned note
at its maturity, upon the making, execution and
delivery to him of said note for $1375.00 secured by
the deed of trust, above named whereby the said
Barber would receive the sum of one hundred and
seventy five dollars, and six per centum of $1375.00
for the use of said sum of twelve hundred dollars from
the 2nd of June 1850 to the 15th March 1851, that
thereupon putting faith in the representations and
promises of said Barber, plaintiff made and delivered
to said Barber said note for 1375.00 and secured the
payment of the same by executing and delivering
said deed of trust, and at the same time took from
said Barber his written receipt for said note, and showing
the undertaking and promises of the said Barber as
aforesaid. Said receipt is in the handwriting and
signed by said Barber and is herewith filed and
marked Exhibit "A" And plaintiff states that there
was no other consideration for said note and deed of
trust, than as above stated. The plaintiff states that
after the making executing and delivery of said note
and deed of trust to said Barber he left the City
and returned to St Joseph Missouri where he then
resided, giving himself no further trouble or uneasiness
about said note to said Smith, believing that he had
made ample & certain provision for its payment. that
from time to time, and long after said note held
by said Smith became due, plaintiff paid to said
Barber the interest becoming due on said note held
by said Barber, and also, usurious interest after the
maturity of the said last mentioned note for the
pretended forbearance of said Barber in not enforcing

the payment of said last mentioned note under the power in said deed of trust contained; that plaintiff was informed by said Barber that his plaintiffs said note to Smith had been paid by said Barber in accordance with his said undertaking and agreement and that plaintiff always supposed and believed that the same was paid until some time in February 1852 when said Smith wrote to him that such was not the case, and asking plaintiff to provide for the payment of the same. And plaintiff further states that said Barber did not pay said note held by said Smith, or any part thereof, at its maturity, nor has he since paid it, or any part thereof, but the same now remains due, wholly unpaid and is a charge and incumbrance upon the plaintiffs said real estate hereinbefore described. The plaintiff therefore says that the said first mentioned note and deed of trust are wholly without consideration and consequently void and of no effect, but plaintiff further says that the existence of said deed of trust first mentioned, and the same being duly recorded and appearing on its face to be in due form and valid has cast a cloud upon the title of the plaintiff to his said real estate; that he has already sustained much inconvenience and damage therefrom for the reason that the said apparent incumbrance has abridged and lessened his means of obtaining credit, and that he would suffer serious loss, if obliged to sell said real estate, while said deed of trust remains apparently a lien thereupon as aforesaid. Plaintiff further states that he fears future trouble, litigation, and damage if the said note first mentioned remains uncancelled in the hands of any third person. Plaintiff further states that said Barber has deceased since the endorsement

of said Note, and that his estate is wholly insolvent
5 The plaintiff therefore prays that by the order judgment
and decree of this Honorable Court the said defendant
Richard H Barrett may be ordered to deliver up to
plaintiff the said Note first aforesaid, & that he or
all persons claiming under him, may be forever
restrained and enjoined from transferring said
Note and from attempting to enforce the collection
thereof by suit or otherwise and for such other and
further relief, as may to the Court seem meet.
Plaintiff states that neither of defendants were in any
wise connected with or privy to the fraudulent acts
of said H Barber as aforesaid, and that they have
acted innocently and in good faith in the premises
Krum & Harding attys for plaintiff

State of Missouri }
County of St Louis } Jonathan Wheeler plaintiff being duly
sworn upon his oath states that he believes the fore=
going petition & the matters therein as stated to be
true Jonathan Wheeler
Subscribed & sworn to before me this 11th day of Feby
1853. Jeremiah Langton Justice of the peace within and for
said County

Exhibit "A"

Received St Louis March 15th 1850 of Jonathan
Wheeler his Note at twelve months for thirteen
hundred and seventy five dollars, to be negotiated and
the proceeds of said Note to be appropriated in
payment of a certain Note executed by him to Solomon
Smith for twelve hundred dollars, secured by deed
of trust and falls due on the 2d day of June next
as can be seen by referring to the records
R H Barber.

6 and therefore, on the day and date of filing said petition, to wit on the 28th day of May AD 1853. the defendant filed his Answer in words & figures following, viz

Jonathan Wheeler plaintiff

vs

Richard F. Barret Deft

} Court of Common Pleas

The defendant Richard F. Barret for Answer states, that he has no knowledge sufficient to form a belief, as to whether the said Barber in obtaining said note and deed of trust from the plaintiff practised a fraud upon him or not, nor whether they were obtained from him by the false pretenses and promises of the said Barber, nor whether said

Answer

Note and deed of trust, were executed and delivered to said Barber entirely without Consideration, nor whether the purposes and Consideration for which the said Note and deed of trust were made, executed and delivered, were as stated in plaintiffs petition. Defendant therefore calls for full proof of all and each of the preceeding allegations. Defendant admits the Exhibit marked "A" annexed to plaintiffs petition is in the handwriting & and was signed by said Barber, and defendant supposes contains the agreement of the parties. The defendant has no knowledge sufficient to form a belief whether plaintiff paid said Barber any interest on said Note nor whether he paid said Barber usurious interest after the maturity of said Note for the pretended forbearance of said Barber to sue on said Note, nor whether said Barber informed plaintiff that his plaintiffs Note to Sol: Smith had been paid off, nor whether the Note to Sol Smith has, or has not in fact been paid off; therefore defendant calls for full proof of each and all of the preceeding allegations

of plaintiff. The defendant denies that the said
7 Note and deed of trust executed by plaintiff to
defendant, are wholly without Consideration, and
Void and of no effect, but defendant states that
plaintiff on the 15th day of March 1850, executed
and delivered to the said Robert Barber his said
Negotiable and promissory Note for the sum of thirteen
hundred and seventy five dollars, payable twelve Months
after the date thereof, at the Bank of the State of
Missouri in St Louis, with six per Cent interest thereon
from date, and that the said Barber for a Valuable
Consideration, endorsed and delivered the same to the
defendant - said Note is hereto annexed and made
part of this petition, and marked exhibit "B", defendant
states that the said Note and the amount thereof with
the accruing interest thereon is wholly due to defendant
and he asks judgment for the same. Richard F. Barrett
The defendant Richard F. Barret makes oath and
says that he believes the above Answer, and the Matters
therein as stated are true. Richard F. Barret.
State of Missouri. County of St Louis ss. Richard F.
Barret the above named defendant being by me
duly sworn makes oath and says that he believes the
matter contained in the above Answer to be true.
Witness my hand and seal this 29th day of April 1853
James P. Goff Notary public

Exhibit "B"

$1375.00 St Louis Mo March 15th 1850

Twelve months after Date I promise to pay
to the Order of R. Barber, Negotiable and payable at
the Bank of the State of Missouri in St Louis
Thirteen hundred and Seventy five 00/100 Dollars, without
defalcation or discount, and for Value received with six
per cent interest from date. Jonathan Wheeler

endorsed "R. Barber" (6)

8 And afterwards to Wit, on the 28th day of May AD 1853. the parties by their respective attornies, filed their Agreed Case in words & figures following, to Wit

Jonathan Wheeler } St Louis Court of Common pleas
vs } Feby term 1853
Richard F. Barret } Agreed Case

The following facts are hereby agreed upon in the above entitled Cause

Agreed Case 1st. That previous to the 15th day of March 1850. the plaintiff made and delivered to one Solomon Smith his negotiable promissory note for the amount of $1200 becoming due and payable on the 2d day of June 1850. that the payment of the said note was secured by a deed of trust executed by said plaintiff and his wife conveying the real estate described in plaintiffs petition to the trustee named in said deed, with the usual power of sale, in case of the non payment of said Note at its Maturity

2nd. That on the 15th day of March 1850 plaintiff made an arrangement with one Robert Barber to raise money for the purpose of paying said note held by Smith at its maturity, that said arrangements was as follows viz, that plaintiff should make and deliver to said Barber his negotiable promissory note for $1375 due in one year from said date and secured by a deed of trust, upon the same real estate above mentioned, made by said plaintiff and wife to said defendant Philip C Mauro, that said Barber should procure the said last mentioned note to be discounted, and should apply the proceeds thereof to the payment of said note for $1200 becoming due on the 2d day of June 1850 - that in accordance with said arrangement, said plaintiff

did execute and deliver to said Barber his said note for $1875 taking from said Barber a written receipt setting out the purpose for which said note was so made and delivered and the manner in which the proceeds were to be applied as aforesaid, said receipt is filed with and attached to plaintiff's petition That excepting the purpose and object aforesaid, and the agreement of said Barber to comply therewith that there was no consideration for said note, and that said plaintiff and his wife, also executed and delivered to one Philip C Mauro their deed of trust upon said real estate, securing the payment of said note for 1875 at its maturity.

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3d That said Barber did not pay said note to Smith at its maturity, nor has he, or any one since paid it, but that it still remains unpaid, and said first mentioned deed of trust remains unsatisfied and is a lien and charge upon plaintiffs said real estate, and the power of sale therein contained is subject to be enforced at any time.

4th. That said Barber did not negotiate said note for $1875 until about the month of September A.D. 1857 and after its maturity, when he endorsed and assigned it, and also delivered said second mentioned deed of trust to said defendant Barret who took the same in good faith without knowing the facts relative to the making thereof, and for a valuable consideration.

And that said Barret is now the holder and in possession of said last mentioned note and deed of trust

5th - That said endorsement and assignment was made without the knowledge of the plaintiff, that plaintiff never derived any benefit or advantage therefrom

and that said Barber was deceased since the endorsement and delivery of said Note to said defendant Barret and that his estate is wholly insolvent. Such relief as shall be deemed proper by the Court to be granted

Krum & Harding attys for plff
Aylett & Buckner atty for R. T. Barret deft

State of Missouri } ss
County of St Louis } Chester Harding Jr. one of the attorneys of plaintiff makes Oath and says, that the Controversy between the parties to the above entitled Cause is a real Controversy; that the decision thereof is necessary for ascertaining and adjudicating the questions presented by the above agreed statement of facts & that this suit is prosecuted in good faith for the purpose of ascertaining and adjudicating the rights of the parties in the premises—

Chester Harding Jr.

Subscribed and sworn to before me this 30th day of May 1853. C W Hicks Clerk

And afterwards to wit at the February term 1853 of our said Court and on Friday June 3rd AD 1853 the following proceedings appear of record in said Court of said Cause to Wit.

Jonathan Wheeler
vs
Richard T Barret } Now at this day Come the parties by their Attorneys, and submit this Cause to the Court on the agreed Case filed herein which being heard and the Court being fully advised of and Concerning the premises doth find in favour of the plaintiff. It is therefore Ordered and decreed that the defendant be perpetually enjoined from Negotiating

11 and transferring a certain Note made by said
plaintiff, on the 13th Day of March 1850 payable
twelve months after date to the order of A. Barber
Judgt and by him endorsed for the sum of thirteen
hundred and seventy five dollars - that he and all
other persons be perpetually enjoined from attempt
to enforce the Collection of said Note by action or
actions of law, or otherwise, and that defendant
deliver up said Note for Cancellation to plaintiff
And it is further decreed and ordered that the
plaintiff recover of the Defendant his Costs herein
and that execution therefor.

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39 ~~158~~

(2)

Re argument ordered
March. T. 1855

Jonathan Wheeler
Dep. in Cr.

vs

Richard F. Barret
Pltff. in Error

Error to Com. Pleas.

Transcript

Filed 10th March 1854.
Wm L. Glanville
Clk.

Ex

$4. 25 paid by atty.
A. Buckner, 39 ~~158~~

Rich^d F Barret appellant
vs
Jonathan Wheeler deft

In Supreme Court
Apl Term 1854

The said Rich^d F Barret comes by his attorney and says that in the record and proceeding and also in giving the judgement in the aforesaid suit it is manifestly erred in this -

1st That the court erred in giving a verdict and judgement for the said Wheeler.

2nd That the court erred in perpetually enjoining the collection of the note mentioned in said petition

3rd That the court erred in directing said not to be delivered up and cancelled.

4th That the court erred in giving judgement for the said Wheeler when by the law of the land judgement ought to have been given to the said appellant and this he is ready to verify

Rich^d F Barret
by A Buckner
attorny

Defendant in error, says that there is no error in the record proceedings & judgt of the Court below -

Krum & Harding
for deft in error

138

R F Barrett

vs } Jr Lussem
} Coon

Jonathan Wheeler

assignment of
error
& joinder

Filed 15 April 1854,
Wm L Glanville
Clk

A Buckner

attorney

(31)

Wheeler, deft in error
vs.
Barret. pltff in error

Sup C. Mar T. 1855

Statement.

Previous to March 15. 1850, Wheeler made & delivered to one Sol. Smith, his negotiable promissory note for the amount of $1200, becoming due on the 2d day of June 1850, the payment thereof being secured by deed of trust made by Wheeler, upon his real estate.

On the 15th day of March 1850, Wheeler made an arrangement with one Robert Barber, to raise money for the purpose of paying said note held by Smith at it's maturity; which arrangement was as follows, viz: Wheeler executed & delivered to Barber his negotiable promissory note for $1375, payable to Barber's order in twelve months from date, dated March 15th 1850 & secured by deed of trust on the same real estate. Barber agreed to procure the discount of said note for $1375 & to use the money so obtained in taking up the note becoming due on June 2d 1850 - and excepting for the purpose & object aforesaid & the agreement of Barber aforesaid there was no consideration for said note for $1375.00

Barber did not pay said note for $1200. at it's maturity; nor did he ever afterwards pay it, but it now remains unpaid & is a charge & lien upon said real estate.

In September 1851, about six months after the maturity of said note for $1375., Barber sold & transferred it to Barret, who paid value for it, without the knowledge of Wheeler, who has never derived any benefit or advantage therefrom. Barret is still the holder of said note & the deed of trust securing it's payment.

Barber has deceased since said endorsement & his

estate is wholly insolvent.

Upon these facts, the Court below granted to Wheeler the relief prayed for in his petition. Barret brings the case here by writ of error.

Points & authorities
on behalf of defendant in error

1st The note in question, being over due at the time when it was transferred to the plaintiff in error, was taken by him subject to all defences & equities connected with it.

Story Prom. Notes §178 - 15 Mc 399.

2d The facts of this case are clearly sufficient to annul the note, so far as the defendant in error is concerned, unless the agency of Barber for him ~~Wheeler~~ ~~is sufficient~~ changes the rights & liabilities of the parties. Upon this point, the defendant in error contends;

(a) that, Barbers agency ceased on the 2d of June 1850, when said note for $1200. became due.

(b) that, if Barber's agency continued until the maturity of the note in question, it certainly ceased then, because the time of it's negotiation was, by it's own terms, limited to one year from it's date.

(c) that, when said agency terminated, Barber could not charge the defendant-in-error, by dealings with third persons who had notice, or who are legally presumed to have had notice of such termination of the agency, or who had no right to such

notice -

(d) that, the dishonor of a note is notice to a subsequent purchaser of any infirmity inherent in or equity attaching to it.

3. D & E. p 80 — 2 Caines R. 369 -

and, the purchaser takes it altogether on the credit of the endorser.

5 Pick 312 (at p. 317)

3d — In any aspect of the case, the plaintiff in error can stand in no better position than his endorser.

5. N. H. 159 -

Kimm & Harding
Attys for deft in error

No. 39
Mar T. 1855

Wheeler
vs
Barret

Statement, points
&c for the Court,
by deft in error
Kinn & Harding
pd

Filed 26th March 1855
W. L. Glanville
C

(24)

Wheeler vs Barnet

The Reporter will copy agreed Statement of facts.

From the Statement agreed upon by the parties in this case the question here is upon whom shall the loss fall, on Wheeler or on Barnet?

It seems that Wheeler owed Solomon Smith a sum of money $1200. which was to be paid on 2nd of June 1850. The payment was secured by deed of trust on real estate of Wheeler.

That on 15th of March 1850, Wheeler made and delivered to R. Barber, his negotiable promissory Note for $1375. payable ~~[illegible]~~ twelve months after date to R. Barber or order, with six per cent interest from date. That Barber was to have this note discounted and apply the proceeds thereof to the payment of the note to said Smith becoming due in June. That the payment of this note to Barber was also secured by deed of trust on the same property on which the deed of trust in favor of Smith had been given. That Barber gave to Wheeler the following receipt for this note

"Received St. Louis March 15th 1850 of Jonathan Wheeler his note at twelve months for thirteen hundred and seventy five dollars, to be negotiated and the proceeds of said note to be appropriated in payment of a certain note executed by him to Solomon Smith for twelve hundred dollars, secured by deed of trust and falls due on the 2nd day of June next as can be seen by referring to the records.

R. Barber

That this note of $1375. was given alone for the purpose of getting it discounted in order to pay

the note to Smith — That Barber did not pay the note of Smith at maturity, nor did he even pay it — nor has it been paid —

That Barber did not negotiate the said note for $1375. until some six months after it purported to be due; that is sometime in September 1851 — That he then endorsed ~~[illegible]~~ the note and delivered the deed of trust to Barret, who took the same in good faith without knowing the facts relative to the making thereof for a valuable consideration — That the plaintiff Wheeler had no knowledge of this assignment to Barret; nor had he any advantage therefrom — that Barber is dead and his estate insolvent

This is a proceeding by Wheeler to have the collection of this $1375. note, enjoined; the note cancelled and the deed of trust removed from his property and for general relief —

Upon the agreed case the Court below declared the law for the plaintiff; and decreed that Barret be perpetually enjoined from negotiating and transferring the said $1375. note and that he and all persons be enjoined from attempting by action at law or otherwise to collect the same; and that defendant deliver up the note for cancellation &c —

Now upon whom shall this loss fall? The note being overdue, when Barret got it from Barber, was of itself a sufficient fact to make Barret enquire and ascertain the reason of its dishonor — And although the agreed case shews he took it in good faith and for value, yet he must stand and

can only stand in Barber's place — He must be considered as giving credit and faith to Barber only and to become willing to take the note as Barber held it — The note is payable to Barber or order twelve months after date — Eighteen months after date Barber sells it to Barnet — What principle is there which can be invoked to take this case out of the general rule applicable to such transactions?

It seems on its face to be merely a promissory note in a negotiable form, payable to Barber or his order, for a large sum of money at long credit — What can make us consider the payee in this note, as the mere agent of the maker with unlimited power to dispose of the note unrestrained as to time, or other ~~[illegible]~~ circumstances? — If Barber be the agent of whether at all, he must be considered so, to a special intent and for a specified object, with special and limited authority —

There is in our opinion nothing on the record which takes this case out of the ordinary course of adjudication in promissory notes and bills which come into the hands of third persons after dishonor — It must therefore be controlled by such —

Judge Story says, "if the transfer is after maturity of the note, the holder takes it as a dishonored note, and is affected by all the equities between the original parties, whether he has any notice thereof or not. — The equities here meant are such as attach to the particular note or such as grow out of the transaction which gave rise to the note — Story on Prom. Notes Sec. 178 — In Emmerson vs Crocker 5 New Hamp. 163 the Supreme Court of New Hampshire held that the rule, that wherever one of two innocent persons must suffer by the acts of a third, he who has

enables such third person to occasion the loss, must sustain it. Prevails only in cases of innocent holders, into whose hands the note came in regular course of business before it became payable. If the note be over due at the time the agent so transfers it, the person who takes it must stand in the situation of the agent.

Gullett vs Hoyt & Orton 15 Mo. 400 - "The note being endorsed after due, the endorsee took it subject to all the equities attached to it in the hands of the payee" -

In Furman vs Haskin 2 Caines Rep. 372 - Kent Chief Justice - The Note was payable on demand - it was not negotiated to the plaintiff until nearly 18 months from the period when it was given - The Chief Justice said "The lapse of time must clearly be considered as placing the note in the situation of one due and dishonored; and as imposing on the endorsee the same risk. No person of common prudence will take such a note without inquiring concerning the occasion of its being so long outstanding and it is incumbent on him, to satisfy himself, that it is good. He takes it on the credit of the person from whom he receives it" -

In Brown vs Davies 3 Term Rep. 80 - It was held, that where a promissory note has been indorsed to the plaintiff after it became due, who sues the maker upon it, the latter is entitled to go into evidence to shew, that the note was paid as between him and the original payee from whom the plaintiff received it -

It is needless to multiply authorities upon this point - It is now the settled rule that the person receiving a note over due takes it with all its equities between maker and payee - In this case then

We consider Barrett stands in the same situation as his endorser Barber did - and that being so, the plaintiff Wheeler is ~~[illegible]~~ intitled to have relief against the note -

The judgment of the Court of Commons must therefore be affirmed

Judge Leonard concurring herein

John F. Ryland

39

Wheeler
vs
Barret

Opinion

Ryland

Filed 8 June 1855
W. L. Glenville
Ck

Supreme Court March Term 1855

Jonathan Wheeler

v

Richard F Barret

The defendant Barret asks the Court for a rehearing in this case, for the following reasons to wit:

Your Honor in your opinion after stating the agreed case, ask, "Now upon "whom shall this loss fall? the note "being overdue when Barret got "it from Barber was itself a sufficient "fact to make Barret enquire and "ascertain the reason of its dishonor" Suppose Barret had made the enquire what would he have learned, why that Wheeler had got Barber to endorse and sell a note for him to pay off a note to Sol. Smith, that it was to be sold so as to pay that debt off & release Wheeler's lot from the deed of trust executed to Smith, Wheeler made Barber his agent for a specific object, and although the note was made payable at a specific time and the time had passed, yet Wheeler did not withdraw the note and suffer him to sell after the time which the note became due, Barber's agency had not been terminated by Wheeler and it was his duty to have done so, if he wished the agency to cease, Barret therefore had no right to suppose

that Barber had no authority to sell Wheelers note. It never had been endorsed and circulated in the regular course of trade until it came into Barrits hands —
The doctrine that an over due note is taken as dishonored, only applys to negotiable paper which had in the course of trade passed from the payee and can have no application to this case — Barber was not payee, but Barrit was so in fact and took the note as if it had been executed on the day he purchased it as due, and Wheeler had sold it to him. It is just the same state of case as if Wheeler had drawn up a note with the hope of selling it to Barrit nine months before the day of sale and had not sold it until it expressed to be due on its face.
For the reasons aforesaid the Pfl Barrit respectfully asks for a rehearing in this case
R F Barrit by
his attorney
Aylett Buckner

J. Wheeler

vs.

R. F. Barrett

Motion for
Rehearing

Filed June 23d 1865
W. L. Glenn
Clk

Wheeler
vs
Barrett

In my opinion this judgment should not stand: Admitting that Barrett's taking the note after it was overdue, gave a right to Wheeler to resist on all equities he might against it, in an action by Barrett yet, he has no equity and shows none: His only defence is, that he has been defrauded by his own agent.

It is a ~~[illegible]~~ rule, that when one of two innocent men must sustain a loss caused by a third person that he who has enabled that person to commit the wrong must bear the loss.

Wm Scott

(28)

Wheeler
vs
Barrett

Opinion of
Scott

Filed 23d June 1855
Geo. L. Glanville
Clk.

Richd T. Barrit
ads
Jonathan Wheeler } In Supreme Court
Apl Term 1852.

The evidence in this case shows that Barber was but an accommodation indorser on the note in controversy – that he was not a holder for value, and that he negotiated the note merely as the agent of Wheeler.

~~Barber could have been sued~~ as a joint maker of the note with Wheeler – he was neither payee nor endorsee.

There can be no equities attaching to this note between Wheeler & Barber so as to interfere with Barrit's right to recover on the note – they being but one and the same party to the note – and no equities existing at the time of the transfer to Barrit

It was sold to Barrit for a valuable consideration, and although sold to him after maturity on its face, yet in fact it had no vitality as a negotiable promissory note with its transfer to Barrit – Had Barber sued on note after maturity he could not have recovered because he had not interest in it.

The failure of Barber to negotiate the note until after the time of its maturity worked no injury to him & he has no cause of complaint.

Brief for Appellant —

R. F. Barret Appellant
vs
Jonathan Wheeler Respt. } In Supreme Court March Term 1855

The history of this as agreed by the parties is about this, Wheeler owed Lol Smith a note which was near due, he applied to one Barber a money broker then residing in St Louis but now dead to aid him to procure the money to pay off and take up the note due Smith, and it was agreed between them that Wheeler should draw a negotiable promissory note made payable to Barber and that Barber would endorse it and sell it and when sold would take in the note due Smith. (See Receipt given by Barber to Wheeler and made part of the agreed case) Barber after the time the note profised to be due sold the same to Barret for a valuable consideration, but never took in the note due Smith and shortly thereafter died insol=vent.

Wheeler insists that the note having been transferred to Barret after it purports to have been due, Barret took it subject to all the equities existing between him Wheeler and Barber, On the other hand Barret insists (and in so doing is sustained by the facts of the case as agreed upon) that Barber was merely an accommodation payee and endorser, for Wheeler and acted as the agent of Wheeler in the sale and delivery of the note to him — and that in such state of case there could be no equities existing between the accommodation payee and endorser and the maker Wheeler which could be enforced against him —

A note takes its effect by delivery and from the time of its delivery - the note was placed in the hands of Barber for sale and until transferred to Barrit was not the act and deed of Wheeler and consequently had no validity, if Wheeler had been sued upon said note he could have successfully defended himself under the plea of non est factum - ~~[illegible]~~

The principle asserted upon by Respondent that a note transferred after maturity is affected by all the equities existing between the antecedent parties, can applies in cases where the maker executes and delivers to the payee a negotiable note for a valuable consideration and it is transferred after maturity to a third party. in this case Barber never was a holder of the note for a valuable consideration, it was only placed in his hands for sale and negotiation - Had Wheeler executed and delivered to Barber this note in consideration of Barber's promise to pay the Smith note and the note had been transferred to Barrit after maturity, it might have presented a case embraced within the rule urged by the Respondent, but Barber's Receipt to Wheeler shews a very different state of case, the receipt shews that the note had been placed in Barber's hands for negotiation, and when sold the proceeds were to be applied to the discharge of the Smith note, clearly shewing his position in the transaction

The principal is bound by the acts of his agent when said acts are within the scope of the agents general authority. there was no

limit imposed upon Barber as to the time at which he should sell said note, and the maxim founded in natural justice here applies with its full force, that he who without intention of fraud has enabled any person to do an act which must be injurious to himself or to an other innocent party, shall himself suffer the injury rather than the innocent who placed confidence in him — Barnet is innocent and blameless. if Barber acted in bad faith to Wheeler, he gave him the opportunity to do so and ought rather to suffer than Barnet —

Ayleto Buckner
for Barnet

J Wheeler
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R F Barnt

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Court Mark
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Brief

Aylett Buckner

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