BUCHNER, CASPER V LIEBIG, GEORGE P. AND SCHUT, JOHN ADAM MARCH 1866 COUNTY OF ST. LOUIS

572/2

OLD 653/18 AFFIRMED

INVOLVED:

PROMISSORY NOTE

1 State of Missouri } B. Be it remembered that on
County of Saint Louis } the 30th of July 1863 there was filed in the office of the Clerk of the Saint Louis Circuit Court a petition which is in the words and figures following to wit.

Casper Buchner Pltff } In the Circuit Court for
vs } Saint Louis County
George P. Liebig & } September Term 1863.
John Adam Schut. }

Petition

Plaintiff states that the defendants George P. Liebig and John Adam Schut on the ninth day of July 1861 made executed and delivered their certain negotiable promissory note of that date which is herewith filed and marked exhibit A to the plaintiff and thereby promised to pay to the order of this plaintiff Caspar Buchner six months after the date of said note the sum of Five hundred Dollars for value received negotiable without defalcation or discount and with interest at the rate of ten per annum, And afterwards and at the maturity of said note the same was presented to the defendants for payment and payment thereof demanded but said note was wholly neglected and refused to be paid. Plaintiff further states that he is the lawful owner and holder of said note, and that the whole of said note, principal, and one year and twenty days interest to date of this petition remains unpaid and therefore prays for judgment for said amount and his costs in this behalf expended

Billings and Brockmeyer
attys for Pltff.

State of Missouri } ss. Casper Buchner plaintiff
County of Saint Louis } being duly sworn upon his oath states that the foregoing petition, and the matters and things as therein stated he believes to be true

Sworn & subscribed to before me this 30th day of July 1863. W. C. Huffman
Clk L. C. Co

Caspar Buchner

Coun

State of Missouri } ss. On the filing of which petition
County St Louis } the following Summons was issued

Summons

County of Saint Louis, — ss.

The State of Missouri

To the Sheriff of Saint Louis County — Greeting

We command you to Summon George P. Liebig and John Adam Schut. to appear before the Judge of our Circuit Court on the First day of the next term thereof to be held in the City of Saint Louis, within and for the County of Saint Louis, on the last Monday of September next then and there to answer the complaint of Casper Büchner as set forth in the annexed petition, and have you then and there this writ — Witness Stephen Rice, Clerk of our said Court, with thereof hereto affixed, at office in the City of Saint Louis this 30th day of July eighteen hundred and sixty three — Stephen Rice Clk

Seal

3.

There is indorsed on said writ the following Return of Sheriff

Sheriffs Return

Executed this writ in the County of Saint Louis on the 12th day of August 1863 by delivering a copy of the writ and petition as furnished by the Clerk to George P. Liebig

John C Vogel Sheriff.
by Julius W. S. Kurlbaum Dep.

And further executed this writ in the County of Saint Louis on the 14th day of August by delivering a copy of the writ as furnished by the Clerk to John Adam Schnit {Schnitz}

John C Vogel Sheriff
by Julius W. S. Kurlbaum Dep.

And on the 23rd day of November A D 1863 the following Answer of Defendants was filed.

Answer of Defendants Liebig

Defendant George P. Liebig for Answer to plaintiffs petition admits that he made and executed the note sued on in plaintiffs petition and described therein: but defendant denies that said note was wholly refused to be paid, but states that on said note and interest due thereon he has paid the sum of Eighty Dollars to said plaintiff.

Defendant denies that the whole of said note principal, and one year and twenty days interest to date of petition filed in this Cause is due or remains unpaid. And asks judgment for his Offset of Eighty Dollars.

Dewoock & Cornwell
attys for Def.

State of Missouri } ss.
County of Saint Louis } John A Schuetz agent for the defendant. George P. Liebig above named being duly sworn on oath says the above answer and matters therein are true as he believes

Sworn to and subscribed before me this 23rd day of November 1863. } John Adam Schuetz.

Stephen Rice Clk

And on the same day the following answer of Defendant Schut was filed

Ans of Schut

Defendant John Adam Schut for his separate Answer to plaintiffs petition admits the making of a note for five hundred Dollars dated Saint Louis July 9th 1861 at six months after date and payable to order of Caspar Buchner with interest at the rate of ten per cent per annum which note was signed by George P Liebig, and defendants says his name was signed to said note on the face thereof but only as indorser, it being expressly understood by all parties that he merely indorsed said note of $500 and that he did not sign the same as a maker thereof. Defendant says further that on said note and interest there has been paid the sum of Eighty Dollars which he pleads by way of sett off, and asks judgment for the same

5th

Defendant prays that for want of Protest and notice thereof to him as said endorser this suit may be dismissed as to him with his costs

Peacock & Cornwell
attys for def Schut.

State of Missouri } ss.
County of St Louis } John Adam Schut being duly sworn on oath says the above answer and the matters therein are true as he believes

John Adam Schut.

Sworn to and subscribed before me this 23rd day of November 1863.

Stephen Rice Clk.

And at the February Term 1864 and on the 10th of February 1864 the following further proceedings were had herein

On Note

Now come the parties, by their respective attorneys and waiving a Jury submit this cause to the Court upon the pleadings and proofs and the Court having duly heard and considered the same, finds that the defendants are indebted to the plaintiff in the sum of Five hundred and forty nine dollars and Sixteen cents. It is therefore considered by the Court, that the plaintiff recover of the defendants the debt aforesaid as found and his costs herein expended and have execution therefor, judgment to bear interest at ten per cent per annum from this date until paid.

And on the 13th day of February A D Eighteen hundred and Sixty four there was a motion for a new trial filed herein

And at the same Term and on the 22nd day of March A D 1864 the following order was made herein

The defendants motion for a new trial being heard and fully considered by the Court is overruled

And at the Same Term and on the 1st day of June A D 1864 the following further entry was made herein:

The defendants file a bill of Exceptions and an affidavit for an appeal and an appeal is allowed them to the Supreme Court from the judgment herein rendered and they thereupon file an appeal bond which is approved by the Court

Said Bill of Exceptions is as follows.

Bill of Exceptions

Be it remembered that on the trial of the above entitled cause, Plaintiff introduced in evidence the note sued on (marked "A"

Note

$500 00 Gold Saint Louis July 9th 1861.

Six months after date we promise to Pay to the order of Casper Buckner Five hundred $\frac{00}{100}$ Dollars for value received negotiable and payable

without defalcation or discount and with
interest at the rate of ten per cent. per annum.

George P. Liebig
John Adam Schutz

and rested

George P. Liebig witness

Defendant then introduced as a witness George P. Liebig who being sworn, plaintiff objected to him as a witness, which objection was overruled, when plaintiff excepted, witness then stated that he knew the parties to this action was present when the note was signed by Schutz, plaintiff loaned him (witness) some money and he (witness was to give him his note, plaintiff wanted other security, and he agreed to take defendant Schutz as an indorser. this was the general understanding. (plaintiff objected to the statement ("this was the general understanding") as incompetent) plaintiff came in the room where they the defendants were with the note already written and directed both witness and defendant Schutz where to sign it and they signed it as directed Judge Moody then asked the witness whether defendant signed as a surety and witness answered yes. Plaintiff objected to the testimony of witness Liebig as being incompetent and offered to cross examine him with the view of proving that a part of the money for which the note was given was received by Schutz and also offered to produce witness to prove the same fact, all of which was deemed unnecessary by the Court.

This being all the Testimony offered in the Case the following instructions were asked - On the part of the defendant Numbered, One & two

Instructions asked for and Refused

1. A defendant whose name is signed on the face of a note sued on and is sued as a joint maker has a right to show that it was understood between the holder, the maker and himself that he was to endorse the note and was to be held as an endorser.

Refused

2 If it appear from the evidence that John A Schultz signed his name to the note sued on intending to be bound as an endorser and it was so understood by the holder the present plaintiff then in such Case, if there is no evidence of any protest and notice to such defendant he should be discharged

which the Court refused to give to which refusal defendants excepted.

And the Case having been submitted to the Court a verdict was rendered for plaintiff to which defendants objected and then and there excepted - Afterwards and in due time defendants filed their motion for a new trial (marked B")

Motion for A New Trial

Now at this day come the defendants above named and move the Court to set aside the judgment rendered in the above entitled

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cause and to grant them a new trial for the following reasons.

1st Because the verdict & judgment was against the law

2nd Because the verdict and judgment was against the evidence.

3rd Because the verdict and judgment was against the law and evidence.

4th Because the judgment as to Schutz was wrong, he should have been dismissed.

5th Because the judgment is for too great a sum of money.

6th Because the Court erred in refusing to grant the instructions asked by defendants

E. Peacock & Cornwell
attys for Defs.

which being considered by the Court is overruled to which defendants objected and then and there excepted. defendants therefore tender this their bill of exceptions which they pray may be signed sealed and made part of the record which is done accordingly

James B Moody
Judge (Seal)

Said affidavit for an appeal is as follows

Affidavit for Appeal

John A Schutz one of the defendants above named comes and moves the Court to grant an Appeal in above entitled cause to the Supreme Court and states that the appeal is not taken for vexation and delay but because he believes

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he is aggrieved by the judgment of the Court.

John Adam Schultz

Sworn to and subscribed before me
this 1st day of June 1864

Stephen Rice Clerk.

Said Appeal Bond is as follows.

Appeal Bond

Know all men by these presents, That we John A Schultz as principal, and John Steer & Samuel Hale as sureties, are held and firmly bound unto Caspar Buchner in the sum of Twelve hundred dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs executors and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated at Saint Louis this First day of June A D 1864.

The Condition of the above obligation is such, that whereas George P. Liebig and John A Schultz have appealed from the judgment rendered against them and in favor of Caspar Buchner, in the Saint Louis Circuit Court for the sum of Five hundred and forty nine Dollars, and sixteen, cents together with costs.

Now, if the said appellant will prosecute his appeal, with due diligence, to a decision in the Supreme Court; and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the Saint Louis

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

Approved
James O Moody
Judge

John Adam Schuetz (seal)
John Steer (seal)
Saml Hale (seal)

State of Missouri }
County of Saint Louis } ss.
I Josiah Thornburgh Clerk of the Circuit Court certify the foregoing to be a true and complete transcript of the record and proceedings in the above entitled cause as fully as the same remains of record in my office

In testimony whereof I hereto set my hand and affix seal of said Court at office in the City of Saint Louis this 19th day of September A D 1864

Josiah Thornburgh Clk

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No ~~[illegible]~~

75 (18)

March T. 1866.

Casper Büchner
appellee

vs

George P. Leibig and
John Adam Schut
appellant

Appeal to Supreme Court

Filed Sept 27. 1864
A. W. Mead Clk

Billings & Brockmeyer
for Appellee

Peacock & Cornwell
for appellant

$10.00/100 paid by Schut
Fee 4.00 paid by Schut

Asst of Errors filed
1866 April 23d Statement & Br. of Appt. filed
" May 7th Respondents Brief filed.
" " 8th Sub. on Briefs filed.
" " 28th Affirmed.

Caspar Buchner Res Deff.
vs
George P. Liebig &
John Adam Schuetz

IN SUPREME COURT,
October TERM, 1864

AND now come the said Appellant and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellants assign the following, to wit:

1. ~~That said Court admitted improper and illegal testimony offered by~~
2. ~~That said Court rejected proper and legal testimony offered by~~
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Defendants below - Appellants here
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the plaintiff when it should have been rendered for the Defendants or at least one of them Schuetz
10. That said Court overruled the motion for a new trial, made by Defendants

Peacock & Cornwell
Attys for Defs

And now come the plaintiff appellee and for joinder in error say, that there is no error in the record and proceedings of said Court in said cause, as assigned by said defendants, appellants

J G Woerner
for pef.

Supreme Court

October Term 1864

Caspar Buchner

vs

Geo P Liebig &

John A Schlitz

Assignment of

Errors

Filed Oct. 21st 1864

R. W. Mead

Clk

Pascoe & Cornwell

Attys for defs

Caspar Buchner pltff and } In the Supreme
vs } Court March 7. 1866
George P. Liebig def } State of Missouri
John Adam Schuetz def } County of St. Louis

Statement of the case

This was an action on a promissory note purporting to be made by both defendants, payable to the order of plaintiff at six months after date. the note was signed on the face of the same first by defendant Liebig & then by Schuetz.

Defendant admits the making of the note as alleged and claims a credit of Eighty Dollars

Defendant Schuetz admits the making of a note by Liebig. but says that though he signed his name on the face of the note, he was only to be bound as an endorser, it being expressly understood by all parties that he did not sign the same as maker, but only as an endorser & also claims the credit of Eighty Dollars paid on said note & asks to be dismissed for want of Protest & notice.

The case was tried before the Judge of the Circuit Court without a Jury and defendant Liebig was admitted a witness by the Court for his Codefendant Schuetz, and stated that he witness was to give plaintiff his note for money loaned him, plaintiff wanted other security & agreed to take defendant Schuetz as an endorser, this was the general understanding - Plaintiff came in the room where defendants were with the note

already written and directed both witness and defendant Schuetz where to sign it and they signed it as directed - The Judge here asked the witness whether Schuetz signed as a Surety and he answered "yes"

Two instructions were asked by defendant Schuetz which were overruled to which said defendant excepted

Whereupon a verdict was given for plaintiff. Afterwards the defendants filed their motion for a new trial which was overruled to which they excepted

Defendant Schuetz appealed the case to this Court and presents the following reasons why the judgment of the Circuit Court is erroneous as to him -

1st. It has long been settled that a party presumptively liable on a note as a maker can show that he did not sign as maker, but as an endorser and that such was the understanding of the parties at the time

Story on Prom Notes page 479.
Lewis vs Harvey 18 Mo Rep. 74
Schneider vs Schiffman 20 Mo Rep 571

As to whether the endorsement is on the face or back of the note, we presume requires no argument. The object of the law is to get at the intention of the parties

If such be the law then the first instruction asked on the part of the defence was improperly refused provided the facts made out a case such as was

set up by defendant Schuetz in his answer.

As Liebig one of the defendants and the real maker of the note was admitted by the Court to testify in behalf of his codefendant Schuetz (though against the objection of plaintiffs Counsel, though for what reason does not appear,) this Court for want of the reasons to the contrary must presume that the Court below acted rightly.

Therefore treating the testimony of Liebig as competent. the facts as set up by defendant Schuetz were certainly established, and there is nothing to rebut the proposition except the question asked the witness by the Court as to whether Schuetz signed as "Surety", and he answered "Yes", this though he distinctly states that the understanding was that Schuetz signed as endorser.

The difference between "Surety" and "Security", that is between the popular word "security" and the technical word "Surety" could scarcely have been comprehended by the witness and from the context it is plain that he understood the word as meaning that Schuetz was to be security for him, as he says that "plaintiff wanted other security", therefore we contend it was considerable of a strain on the part of the Court below to cast aside all the testimony of the witness when he uses popular language and when he answers "Yes" to an interrogation of the Court put in technical language to say that such language only shall be considered testimony unless this conclusion be correct, the instruction first asked by defendant Schuetz must have been granted and necessarily a judgment must have been rendered for defendant Schuetz for want of

a protest & notice or demand & notice.

If the first instruction be proper under the proof then the second must inevitably follow, as there was no proof or pretense of a demand and notice.

It is contended therefore on the part of appellant that under the circumstances he is entitled to have the judgment reversed ~~and~~

E Peacock
Atty for Appellant

No 89
Supreme Court
Caspar Buchner
vs
George P. Liebig &
John Adam Schuetz

Statement & brief of
Appellant Schuetz

Filed April 24/66
C. T. Fillmore
CCR

E Peacock
Atty for Appellant

Caspar Buechner
vs.
George P. Liebig and
John Adam Schuetz

In the Supreme Court
No 89 March T.
1866

I. The note sued on is a joint note, and expresses ~~consideration~~ value received by both makers. The liability of Schuetz is absolute and ~~absolute~~ positive. The authorities cited by appellants are irrelevant.

II. The instructions were properly refused, as not applicable to the evidence under the issues.

III. Even if the law were as claimed by appellants, plaintiff was entitled to judgment, the evidence of Liebig being insufficient to rebut the liability of Schuetz. The judgment should be affirmed, with interest and costs

J. G. Woerner
for plf appellee

Supreme Court
No 89
March T 1866

Caspar Briestner
vs
George B. Liebig
John Adam Schmitz

Brief of appellee

J G Warner
Atty for app'ee

Filed May 7 1866
O. T. Fitzback
Clk

Casper Buchner
vs
Geo P Liebig & John A Shut

In Sup Ct Mo
Mch T. 1866

Opinion of the Court.

This was an action against the defendants as joint makers of a promissory note. The defendant Schutz stated in his answer that he signed the note as indorser and asked to be discharged because there was neither protest nor notice, Upon the trial Liebig was introduced as a witness for his Co-defendant, and stated that the plaintiff loaned him the money and agreed to take Shut as indorser on the note; in reply to a question from the Court he then said that Shut signed the note with him as security, The Court rendered judgment for plaintiff. There is no error in the record

Judgment affirmed

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Casher Buchner
v
Leibig & Schutz

Opinion of the
Court
Wagner

Filed May 28 1866
O F Fishback
Clk

Affirmed