No. 8790

Supreme Court of Illinois

Walters

vs.

Trustees

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No 26 Walter
vs
Trustees of Schools

November term of Supreme Court 1850

Error to Jefferson Circuit Court

This was a cause that originated before a justice of the Peace against the pltff in error, summons being had on the ~~Walter alone~~ him alone, being unsued with others, & tried in the Court below on an appeal, on a plea of non est factum - without the intervention of a jury - On the trial pltff introduced in evidence the promissory note sued on, & also introduced John R Witherspoon as a witness who testified in substance as follows - that he said Witness had seen said note before & knew all about it - that it was a note brought to, and handed to Witness as School Commissioner of Jefferson County by Andrew R Adams - in lieu of an other note, which Witness held as such Commissioner, against the said Andrew R Adams - & the said Walter & others that said Walter was not present when the said Adams handed the note sued on to Witness, Witness further stated, that the pltff in error paid him as such Commissioner the amount of money which appeared to be credited on said note & that Witness indorsed it as a credit thereon - Witness further stated that pltff in error afterwards told him - that Dewit had told him Walter before any this was paid on said note by Walter - that the said Adams had forged his Walter's name & the said Dewitt name to a note & gave the same to Witness in lieu of the old note

Which Walter with others had signed as the sureties of the said Adams

On cross & examination by Walter below Witness stated — that he did not show the said note sued on to the said Walter at the time that he Walter paid to Witness the amount which Witness credited upon said note sued on (as being paid by said Walter) — Witness further testified there was nothing said about what note the said amount of money paid by said Walter to Witness was to be credited on, — but that there was no other note at the time in his hands against the said Walter

The old note which the said Walter had executed with said Adams & others was delivered over by Witness to the said Auditor & Adams at the time, that he the said Adams delivered to Witness the said note sued on — Witness further stated that all the names to said note sued on appeared to have been written by the same person & that Witness does not believe, that the name of Wm Walter to said note sued on is not in the hand writing of the said Walter; nor does Witness know, whether said Walter intended the amount of money paid to Witness by said Walter should be credited on the said note sued on — for Witness does not know whether or not said Walter knew that the old note upon which the said Walter with others were the securities

of the said Walter & Adams had been taken up by the said Adams, at the time that he the said Walter paid the amount, Credited by Witness — Witness knows that Walter was not present when said Adams gave to Witness the said note and on, here the evidence ~~Cost~~ Closed. And the Court rendered Judgment against the said Plff in Error on said note and costs

Whereupon the Plff in Error entered his Motion for a new Trial — which Motion was overruled by the Court which was Excepted to by said Walter

Plff assigns the following Errors

1st In refusing a new Trial

2nd In rendering Judgment for Plff

3 In rendering Judgment against ~~against~~ all of the defendants when there was but Walter served

Brief of Points — 1st

1st On a Plea of non est factum the onus of proof is thrown upon the Plff

2nd That altho a Party may adopt an instrument to which his name has been forged — yet the evidence is not sufficient to prove an adoption on the part of the Plff in Error

3rd The appellate Court will grant a new Trial in a Case, altho it has been submitted to the Court, without the intervention of a Jury — where the judgment of the Court appears to be manifestly unjust from the evidence

4th The Court below could not legally render Judgment against parties that are not in Court by Summons or otherwise — 5th The judgment as rendered is for the amount of note & interest at 12 per cent, & the Clerk

(8790-B)

Walton
vs
Trustees of Schools

Abstract & Brief

For the opposite party

Walters v. Trustees of Schools.

The defendant having verified his plea of non est factum by affidavit, the plaintiffs were bound to prove the execution of the note. The affidavit was not evidence for the defendant, but, under the statute, it had the effect merely to put the execution of the instrument in issue. To maintain the issue on this part, the plaintiffs had only to prove, that the defendant was liable as maker for the payment of the note. The proof showed that the signature was not in his handwriting. It was not his note, therefore, unless he had originally authorized his name to be subscribed as one of the makers, or, participating in the consideration and aware of the circumstances under which the note was made, he had subsequently ~~authorized~~ ratified the unauthorized act of another in putting his name thereto. The Circuit Judge was of the opinion, from the other facts of the case, that the defendant became a party to the note in one of these ways. We are not prepared to hold, that he erred in coming to such a conclusion. Part payment of a note by the person, in whose name it purports to be made, is sufficient proof, prima facie, of its execution by him. Unexplained, such an act is a strong and unequivocal recognition of the genuineness of the note. It is a solemn admission that he executed the note, and is liable for its payment. It dispenses with proof either that the signature is genuine, or that it was subscribed to the note by his authority. Here, the defendant made a payment to the School Commissioners, which was credited on the note in controversy. It was the only obligation that the Commissioners then held against him. There had been another note in his hands, but it had been given up, and this note substituted in its place. Before the payment was made, the

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defendant was informed by his co-surety, that a new note, purporting to be signed by the same parties, had been given to the Commissioner in lieu of the old one. It was a fair inference, from these circumstances, that he designed the payment to be applied on the new note, and not on the old one, which he had good reason to be believe had been cancelled.

The judgment of the Circuit Court is affirmed, with costs.

Walker v. Trustees &c.

Opinion

Reat.

State of Illinois }
Jefferson County } ss

Before me John H Watson an acting Justice of the Peace in and for said County personally appeared Wm H Alathes and after being duly sworn on his Oath says that a note payable to John R Satterfield Trustee of Town 2 S R 2 E for fifty dollars dated 1st day of January 1842 and signed with the names of A K Adams Wm H Alathes & John Dewitt is not his note, that he never signed said note or authorized any other person to sign it for him to the best of his recollection & belief.

Subscribed and sworn to before me this 3rd day of November A.D. 1842
John H. Watson J.P.

Wm. H. Watson

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Trustees
vs } affts
Walter

W. H. Walker } Appeals
vs } Term of the Jefferson
Trustees of Schools } Circuit Court 1857.

Be it remembered that on the trial of the above styled cause the plaintiffs produced & offered in evidence the note herein sued on; and James John R. Satterfield who upon his oath, states that he had seen said transfer, and knew all about it. That it was a note brought to and handed to him as School Commissioner in and for said County, by Andrew K. Adams, in lieu of another note, which he held as School Commissioner against the said Andrew K. Adams and the said defendant Walker. That the said defendant was not present when the said Andrew K. Adams handed the note sued on to witness. Witness further stated that the defendant paid him as such Commissioner the amount of money, which appears to be credited on said note, and that witness indorsed it as a credit thereon. Witness further stated that Jeff Williams told him that Irwin had told him before any thing was paid on said note by deft. Defendant that the said Andrew K. Adams

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had forged his, defendants name and the said Irwin's name to a ~~new note in lieu of the said first note which the said defendant~~ and given the paper to witness, in lieu of the old note which deft. with others had signed as the securities of the said Andrew K Adams.

On Cross Examination Witness stated that he did not show the said note sued on to the said defendant at the time that he the said defendant paid to witness the amount which witness credited upon said note as being paid by said defendant. Witness further stated there was nothing said about what note the said amount of money paid by said defendant to witness as aforesaid was to be credited on; but that there was no other note at that time in his hands against the said defendant. The old note which the said defendant had executed with Andrew K Adams & others, was delivered over by witness to the said Andrew K Adams at the time that he the said Andrew K Adams delivered to witness the said note sued on. Witness further stated that all the names to said note sued on appear to have been written by the same person, and that he does

not believe that the name of the said defendant to said note sued on is in the handwriting of the said defendant; nor does witness know whether said defendant intended that the amount of money paid to witness by said defendant should be credited on the said note sued on; for witness does not know whether or not said defendant knew that the old note upon which the said defendant built was the securities of the said Andrew R. Adams, had been taken up by the said Adams at the time that he, the said defendant paid the amount credited to said commission ~~the said Adams delivered to witness the said~~ witness.

Witness knows that said defendant was not present when said Adams gave to witness as aforesaid, the said note sued on. This was all the evidence introduced in the cause aforesaid.

Be it further remembered that this cause was submitted to the Court for trial by consent of parties, without the intervention of a jury, and that the Court rendered judgment against the said defendant for the sum of [illegible] dollars; whereupon the defendant by his Counsel entered his motion for a new trial for the following reasons: 1st That the judgment of the Court is contrary

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to law and evidence &c. 2nd That the judgment of the Courts is contrary to the evidence which motion for a new trial was overruled by the Court; to which opinion of the court in overruling the motion for a new trial, the defendants by his Counsel excepts; and prays that the Hon'ble Wm A. Deming, presiding Judge of said Circuit Court may sign seal and allow this his bill of exceptions, which is accordingly done.

W.A. Deming /Seal/

It is agreed by the Counsel for the plaintiff and defendants that the foregoing bill of exceptions is correct.

Signed Sly Hicks atty for pltff

R.H. Wingate & R. Pangle for deft

Jno R Walker

vs } Appeal

Trustees of Schools

Bill of Exceptions

Filed the 2

[Boxed]

Wm H Walker
ats
Trustees of Schools &c

Ca Sp Ac

At next term
of the Jefferson
Circuit Court
A D 1850

Sir the said defendant by ~~his a~~ in his own proper person
Comes & defends the coming & injury
when &c ct &c and for plea says
actio non because he (supposed) the
promissory note sued on herein is not
his act and deed, this he is ready
to verify wherefore he prays
judgment &c

Travers & Sam. William H Walker
Attys for Defty

State of Colorado
Jefferson County } ss

This affiant the
defendant in the above & like
cause after being first duly sworn
deposes & says that the above plea
is true in substance & fact to the
best of his knowledge

William H Walker

Sworn to & subscribed
before me this 24th of
August 1850
John Wilbanks, Clerk
By F. D. Preston, D. C.

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Walter
vs
Justus } appeal

Plea of
non est factum

Filed the 23d Aug.
1850
John Wilbanks
Clerk

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