

8805

No.

Supreme Court of Illinois

B. Neely

vs.

James G. Lewis

71641 7

Supreme Court 1st Div
B. Neely

for

James G. Lewis
for the use of A. S. R. & Co.

Appeal from Pope

May 1st Dec. 1818

8805⁴⁷

State of Illinois
Pope County

1/2 set
Pleas before the Honorable William

A. Jennings Associate Justice of the Supreme Court of the
State of Illinois and Presiding Judge of the third Judicial
Circuit of said State at the Court house in Galena
on the 20th November A.D. 1848. The judge not being
present to open Court on the 19th of said month.

James G Lewis for the use
of Township No fifteen South
Range Seven East in Pope
County Ill

Plaintiff

against
John G Neely and
Benjamin Neely

Defendants.

Be it remembered that heretofore
to wit; on the 31st day of July 1848 the plaintiff
filed in Clarks office of the circuit Court aforesaid
the following Petition to wit;

James G Lewis for the use of
the inhabitants of Township
No fifteen South Range 7
Seven East in Pope County
Illinois

action of debt

debt \$123.

Damages \$100.

vs
John G Neely and
Benjamin Neely

The clerk will please issue summoning
in this cause returnable to next term of this court.

Thos G. C. Davis atty for Plff

And on the same day to wit the 31st day of July, 1848,
the plaintiff also filed in the Clarks Office of the circuit
Court.

court affirmed his declarations in the cause against said defendants in these words;

"State of Illinois vs "Octavius James of the Pope Court
Pope County" Setⁱⁿ Court A. D. 1848

James G Lewis for the use of the inhabitants of Township No fifteen South of Range Seven (7) East in Pope County Illinois complains of John G Neely and Benjamin Neely summoned &c of a plea of debt. For that whereas the said defendants hereafter to wit; on the 2^d day of February A. D. 1846 at the County of Pope in the State of Illinois made then certain sealed promissory note which said sealed promissory note bearing date a certain day and year therein mentioned to wit; the day and year aforesaid the said plaintiff brings into Court here; whereby the said defendants jointly and severally One year after date thereof promised to pay the said plaintiff (by the style of Treasurer of Township No fifteen S R 7 E) the sum of One hundred and twenty three dollars with interest at Eight per cent per annum until paid, half yearly in advance; which said sum of money in said sealed promissory note specified has long since been due and payable for the use aforesaid. Yet the said defendants (although often requested) have not as yet paid the said sum of money in the said sealed promissory note specified, nor has either of them paid the same or any part thereof to the said plaintiff for the use aforesaid or now = over. But to pay the same have hitherto wholly refused and still do refuse to the damage of the said plaintiff for the use aforesaid of One hundred dollars, and therefore he brings his suit &c. Thos G. Davis atty for plff and on the same day to wit the 31st day of July 1848. the plaintiff filed in the Clerk's Office aforesaid the note

in his said declaration mentioned, which is in words and figures as follows to wit; "One year after date we jointly and severally promise to pay James G Lewis Treasurer of Township No. 15 S R 7 E the sum of One Hundred and twenty three dollars no cents bearing eight per cent interest from date until paid payable half yearly and in advance we further agree that in case additional security shall be required for the forsaid sum of money or any part thereof the same shall be given to the satisfaction of the said Treasurer or his successor in office as witnesses of our hand this the 2 of February 1846.

John G Neely *Seal*

Benjamin Neely *Seal*

Seal

On which said notes the following credit is entered to wit; " interest paid up to the first of August 1848
James G Lewis "

And on the 5th day of September A D 1848 the following summons issued out of the Clerk's Office of said court in words and figures as follows to wit;

The People of the State of Illinois To the Sheriff of Pope County Greeting: We command you that you summon John G Neely and Benjamin Neely if they shall be found in your county to be and appear before the judge of our circuit court in and for the County of Pope in the first day of the next term thereof to be commenced and holden at the court house in the town of Golconda in said County on the 19th day of October next, to answer unto James G Lewis for the use of the inhabitants of Township No. 15 S R 7 E in Pope County in a plea of debt \$123. damages \$100.

3
as he says and have you then there this to wit.

Witness John Ramm Clerk of our said
court at his Office in Golconda this
5th day of September in the year of
our Lord One thousand Eight hundred
and forty Eight and the seal of said
court affixed.

Mr Ramm clk

which said Summons was returned by the Sheriff
of said Pope County, with the following return endorsed
thereon to wit; "Served on Benjamin Neely, J G Neely
not found in my County. Oct 8th 1848.

Wm. M. Finney Shff. P. by Ill.

And on the 20th October A D 1848, the defendants
~~filed the following pleas to wit;~~ Benjamin Neely filed
the following pleas to wit.

Benjamin Neely impleaded
with John G. Neely

ads

James G Lewis

in debt.

and the said Benjamin pleading
separately comes and defends &c and says as his own.
Because he says that previous to and at the time in plain-
-tiffs declaration mentioned to wit the date of the said note
he the said plaintiff as treasurer of T 15 S R 7 E had
and held a school note drawn by the said John G
Neely who was principal therein and himself and one
William H Neely as his securities. That it was agreed
between said plaintiff and the makers of said note
to renew the same by their giving another note for that
purpose and thereupon at the time aforesaid the said
John G. Neely and said defendant made said note in

plaintiffs declaration mentioned and the said William
H. defendants Co security not being present the same was
then and there left with said plaintiff to obtain the
signature and seal of the said Co security thereto
which when obtained said note was then to be in lieu
of and satisfaction of said first note but the signature
and seal of said Co security has never been obtained
to said note where by the maker of said ~~note~~ first note
having failed to renew the same the said note in
plaintiffs declaration mentioned is of no force or effect
and this he is ready to verify. Wherefore &c

And for further plea in this behalf said
defendant pleading separately as aforesaid say, actio
non Because he says that previous to and at the time
of the date of said note in plaintiffs declaration
mentioned, said plaintiff as treasurer of T 15 S R 7 E
had and held a school note drawn by the said John
J. Neely, this defendant and One William H. Neely that
it was agreed between said plaintiff and the maker
of said note to renew the same by their giving another
note in lieu or satisfaction of the same and thereupon
at the time aforesaid the said John J. and this defendant
made said note in plaintiffs declaration mentioned
and as the said William H. was not present at the
time, said note was delivered to said plaintiff to obtain
the signature and seal of the said William H. Neely
thereto in pursuance of said agreement to renew said first
note, but the signature and seal of the said William H.
was not obtained thereto by means where of said first note
was not renewed and said note in plaintiffs declaration
mentioned is null and void and this he is ready to
verify. Wherefore he prays judgment and his costs
&c

Wesley Sloan atty for
defendant Ben. Neely

Demand & Joinder,

And on the second day of the circuit court continued and held as aforesaid on Friday the 20th day of October A.D. 1848. came the plaintiff ^{by} Davis his attorney and the said defendant Benjamin Neely by Sloan his attorney, whereupon the said defendant Benjamin Neely pleading separately for himself files two special pleas to plaintiffs declaration, and the said plaintiff demurs to said pleas, and issues being joined thereon and the court having heard argument ~~thereon~~ on the same and being fully advised in the premises the said demurs to said pleas are sustained and the said defendant failing to make further defenses, it is therefore adjudged ordered and decreed that said plaintiff recover of the said defendant Benjamin Neely the debt and damages in said declaration mentioned the same being uncertain, it is ordered that the clerk assess the same and report in writing, who now reports the debt to be \$123 and the damages to be \$12.03, making in all the sum of \$135.03. It is therefore considered by the court that the said plaintiff receive of the said defendant Benjamin Neely the said sum of One Hundred - and thirty five dollars and three cents the debt and damages aforesaid and also his costs and charges about his suit in this behalf expended and may have Execution therefor. And the said defendant Benjamin Neely prays an appeal to the Supreme Court which is allowed by his entering in to in the sum of Three Hundred dollars in twenty days with Charles Neely as security."

And on the 3^d day of November A.D. 1848 the said defendant Benjamin Neely and Charles Neely his security, at

the clerk's Office of said court Entered in Bond which is on
file and is in words and figures as follows to wit:

Know all men by these presents that we Benjamin Neely
and Charles Neely of the County of Pope and State of
Illinois are held and firmly bound unto James G Lewis
for the use of the inhabitants of Township 15 S R 7 E
in Pope County in the penal sum of Three hundred dollars
current money of the United States for the payment of which
well and truly to be made we bind ourselves our heirs Ex-
ecutors and Administrators jointly severally and firmly
by these presents, Witness our hands and seals this third
day of November A D 1848. The condition
of the above obligation is such that whereas the said
James G Lewis for the use of the inhabitants of Township 15
S R 7 E in Pope County did on the 21 day of October A
D 1848 in the circuit court in and for said County receive a
Judgment against the above bounden Benjamin Neely for
sum of One Hundred and thirty five dollars and three
cents from which said Judgment of the said circuit court
the said Benjamin Neely has prayed for and obtained
an appeal to the Supreme Court of said state. Now
if the said Benjamin Neely shall duly prosecute his said
appeal with effect and shall moreover pay the amount
of the Judgment cost interest and damages rendered
and to be rendered against him in case the said judg-
ment shall be affirmed in the said Supreme Court then
the above obligation to be void otherwise to remain
in full force and virtue.

Benjamin Neely
Charles Neely

Test
Test

State of Illinois
Pope County

Jo:ts

I John Ramm Clerk of the
circuit

Circuit Court of said County do hereby certify that the
preceding four pages contain a complete transcript of
the record and proceedings in the cause above mentioned
wherein James G Lewis for the use of the inhabitants of T¹⁵
S R J E in Pope County Mo. is Plaintiff and John G Neely
and Benjamin Neely defendants as the same appears of
record and on file in my Office

In Testimony whereof I have hereunto
set my hand and the Judicial Seal
of said Court at Colcord this
27th day of November A.D. 1848
Jno. Raym. Clk.

Mount Vernon December Term Supreme Court 1848

Benajah Neely (impleaded
with John G. Neely) Appellant

v.

James G. Lewis for use of the inhabitants of
Township 15 South Range 7 East in Pope County Mo.

Appellee

Appeal from Pop.

Benajah Neely by States his counsel
comes and says that in the record and proceedings and in the rendition
of judgment in the Circuit Court of Pope County there is manifest
error. And for Special Assignment of Error he says:

First That the Circuit Court erred in sustaining the plaintiff's dem-

error to the ^{first} plea of defendant below and in the rendition of judgment thereon for the plaintiff below.

Secondly The Circuit Court erred in sustaining the demurrer of the plaintiff below to the second ^{plea} of the defendant below, and in the rendition of judgment thereon ^{for the plaintiff}.

Thirdly The Circuit Court rendered ^{final} judgment for the plaintiff below when it should have rendered judgment for the defendant. Wherefore for the errors aforesaid he prays judgment and that the same may be reversed, annulled and for nothing esteemed and that he may be dismissed hence with his reasonable costs.

Walter B. Seates for Appellant.

Joiner in error

Thos G. Davis for
Appellee

Copies of Record
Pope c c cant

Samy & Lewis rec of
215 & Rye Appella

13

John & Mary X

Benjamin Muly. Appella
Appeal from Pope

Filed Dec. 4. 1848.

John Milbank & Ch
P Lewis & Lewis & Co

Handwritten text, possibly a signature or stamp, located in the upper right quadrant of the page.

Bengah Neely }
vs }
Jas G. Lewis }

Supreme Court Dec Term 1848
Abstract

This was an action of debt in the usual form brought by Lewis for the use of the inhabitants of Town 15 S. R & E. in Pope county upon the following note "one year after date we jointly and severally promise to pay James G. Lewis Treasurer of T. 15 S. R & E. the sum of \$123. at 8 per cent in advance from date payable half yearly in advance & sealed by said plaintiff & one John G. Neely who was principal & plaintiff but a security-dated 2 Feb 1846

Service being had upon plaintiff only - he pleaded in substance:

First plea

That previous to the time of executing said note, Defendant Lewis held a school note executed by John G. Neely as principal, and plaintiff and William H. Neely as his securities that it was agreed between the Defendant Lewis and John G. & Wm H. Neely & this plff that to renew the said note by giving another note for that purpose, by the same parties that plff and John G. Neely only being present at the time of executing the note sued on - they signed & sealed & delivered the note sued on, and delivered it to Lewis to procure the signature of Wm H. Neely in pursuance of said agreement to renew - and that the said note was to stand in lieu & renewal of the former note when signed & sealed by said Wm H. Neely. But the signature & seal of said Wm H. Neely was never obtained and said note sued on being only delivered as an escrow was null & void

Second plea

is in substance as the first, only varying a little in phrasing. To these pleas Lewis demurred - which was sustained by the Court - and final judgment rendered for him for \$135.03 & costs - from which judgment plaintiff appealed

Points

First

Delivery being essential to the validity of a deed - a qualified delivery - as an escrow, is not sufficient to enable the payee to sue on it

2nd

A delivery subject to a condition, or for a special purpose is inchoate, and incomplete until the condition be performed or the contingency happen, or the special purpose be accomplished
2 Pet Cond Rep 92 Pawling v U.S

No 10

Amagah Nohy

Jos. G. Lewis

Abstract of Bries

Filed Dec 6th 1848

John Buchanan & Co

per Lewis & Lewis & Co

Benajah Neely
vs
Jas G Lewis

Supreme Court Decmbr Term 1848

Abstract

This was an action of debt in the usual form brought by Lewis for the use of the inhabitants of Town 15-S-N 7-E in Pope County upon the following note "one year after date we jointly and severally promise to pay James G Lewis Treasurer of T15-S-N 7-E the sum of \$123. at 8 per cent in advance from date payable half yearly in advance & sealed by said plaintiff and one John G Neely who was principal & plaintiff but a security; dated 2^d Feb 1846.

Service being had upon plaintiff only - he pleaded in substance -

First plea

That previous to the time of executing said note defendant Lewis held a school note executed by John G Neely as principal, and plaintiff. And William H Neely as his securities. That it was agreed between the defendant Lewis and John G Neely and W^m H Neely and this defendant plaintiff to renew the said note by giving another note for that purpose by the same parties. That plff and John G Neely only being present at the time of executing the note sued on, they signed and sealed the note sued on, and delivered it to Lewis to procure the signature of W^m H Neely in pursuance of said agreement to renew - and that the said note was to stand in lieu and renewal of the former note, when signed & sealed by said W^m H Neely. But the signature & seal of said W^m H Neely was never obtained - and said note sued on being ^{only} delivered as an escrow was null & void.

Second plea is in substance as the first, only varying a little in phraseology.

To these pleas Lewis demurred - which was sustained by the Court, and final judgement rendered for \$135.03 + costs - from which judgement plff appealed.

First

Points ^{the validity of}
Delivery being essential to a deed - a qualified delivery, or as an escrow, is not sufficient to enable the payee to sue on it.

2nd

A delivery subject to a condition, or for a special purpose, is incomplete and incomplete, until the condition be performed, or the contingency happen, or the special purpose be accomplished.

Remond & Co
Las G. Lewis
Abstract & Brief

Filed 6th Dec 1849
J. M. Hawk & Co
p. Lewis & Co, &c

Benajah Neely

James G. Lewis

Supreme Court Dec Term 1848

Abstract

This was an action of debt in the usual form brought by Lewis for the use of the inhabitants of Town 15 S R 7 E in Pope County upon the following note "One year after date we jointly and severally promise to pay James G. Lewis Treasurer of T 15 S R 7 E the sum of \$123. at 8 per cent in advance from date payable half yearly in advance and sealed by said plaintiff and one John G. Neely who was principal and plaintiff but a security; dated Feb 1st 1846"

Service being had upon the plaintiff only - he pleaded in substance

First plea

That previous to the time of executing said note, defendant Lewis held a school note executed by John G. Neely, as principal & plaintiff and Wm H. Neely as his securities. That it was agreed between the defendant Lewis and John G. and Wm H. Neely and this plaintiff to renew the said note by giving another note for that purpose by the same parties. That plff and John G. Neely only being present at the time of executing the note sued on, they signed & sealed the note sued on, and delivered it to Lewis to procure the signature of Wm H. Neely in pursuance of said agreement to renew - and that the said note was to stand in lieu & renewal of the former when signed & sealed by the said Wm H. Neely. But the signature and seal of said Wm H. Neely was never obtained - and said note sued on being only delivered, as an escrow was null and void

Second plea

is in substance of the first varying only a little in phraseology. To these pleas Lewis demurred - which was sustained by the Court and final judgment rendered for \$135.03 & costs - from which judgment plff appealed

Points

First

Delivery being essential to the validity of a deed - a qualified delivery or as an escrow, is not sufficient to enable the payee to sue on it

2^d

A delivery subject to a condition or for a special purpose is incomplete and incomplete until the condition be performed or the contingency happen - or the special purpose be accomplished

Benajah Welch
to
Sas G. Lewis

Abstract of Brief

John Doe & 1848

John Melcher & 1848

John Lewis & 1848