

BLACKBURN, THOMAS AND
BENSON, VINSON
ADMINISTRATORS OF ESTATE OF
BENSON, EDEN (DECEASED)

v HARRISON, JAMES

October 1866
Term

St. Louis Circuit Court

OLD
644/12

Judgment affirmed

545/3

AFFIRMED

- SUIT WAS UPON A NEGOTIABLE PROMISSORY NOTE
- CASE BASED UPON "THE STRIKING OUT OF A PART OF THE DEFENDANTS ANSWER"
THE PORTION OF THIS, WAS TO THE TIME WHEN THE NOTE SHOULD BE PAID

State of Missouri
County of St Louis } But Remembred that heretofore
to wit: On the Third day of September last eighteen
hundred and sixty three there was filed
in the Office of the Clerk of the St Louis Circuit
Court a petition in the word and figures
following to wit:

Petition. Thomas Blackburn &
Vinson Benson Adminis } In the St Louis Circuit
trators of the Estate of } Court
Eden Benson Dec'd } September Term 1863
" Plaintiff
James Hanson } County of St Louis, Mo.
Defendant. }

Plaintiff states that the defendant by
his promissory note hereto annexed dated
St Louis June 21. 1861 promised to pay to the
order of said Eden Benson (since dec'd) four
months after date thereof the sum of forty five
hundred and seven dollars and fifty two cents
therein expressed to be for value received negotiable
and payable without defalcation or dis count
payable at the Bank of the State of Missouri.

Plaintiff state that since the making
and delivery of the said promissory note the
said Eden Benson has departed this life
and letters of administration on his estate
have been duly granted to plaintiffs which they

which they bring here in to Court.

Plaintiff state that said Note is entitled to Credits for payments as follows, to-wit:
 August 4. 1863. Ninety Seven dollars Sixty five Cents.
 August 21. 1863. Two Thousand and Six dollars & Sixty nine cents. Which said Credits are entered on the back of said Note.

Plaintiff state that the remainder of said Note amounting and interest are yet due plaintiffs and for which they ask judgment.

Plaintiff state that defendant by his other promissory note also hereto annexed dated at London July 18. 1858 promised to pay to the Order of said Eden Benson four years after the date hereof the Sum of Five Thousand dollars with Six per cent interest after three years, therein expressed to be for value received negotiable and payable without discount or discount, Plaintiff state that since the making and delivery of said Note to said Eden Benson has departed this life, and letters of Administration on his estate have been duly granted to plaintiffs, which they bring here in to Court.

Plaintiff state that the said Note remains wholly due and unpaid to plaintiffs, and plaintiffs also ask for judgment for the said Sum of Five Thousand dollars and interest.

Plaintiffs also states that defendant by his ached promissory note hereto annexed dated at New York July 18th 1858 promised to pay to the order of said Eden Benson five years after the date thereof the sum of five thousand dollars with Six per cent interest after four years, the same to be for value received, negotiable and payable without defalcation or discount.

Plaintiffs state that since the making and delivery of said last mentioned note the said Eden Benson has departed this life and letters of administration on his estate have been duly granted to plaintiffs, which they bring here into Court.

Plaintiff state that the said last mentioned note also remains wholly unpaid and due to plaintiffs, and they ask judgment also for the said sum of five thousand dollars and the interest thereon and for costs of suit.

Wood & Mauro

Attys for Plaintiffs

Thomas Blackburne one of said plaintiffs makes oath and says that the above petition and the matters therein stated he believes to be true.
Thos. Blackburne.

Sworn to and Subscribed before me August 24th 1863. Test. Witness my hand and Seal of Circuit Court. the date last aforesaid at New York

4.

And thereupon on the day after the filing of said petition a summons issued from the Office of the Clerk of said Circuit Court in and from following to wit:

Sund

The State of Missouri, County of St. Louis Jr.

To the Sheriff of St. Louis County

We Command you to Summon James Harrison 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 St. Louis within and for the County of St. Louis on the last Monday of September next then and then to answer the Complaint of Thomas Blackburn Benson Benson Administrators of the estate of Edm Benson dec'd. as set forth in the annexed petition and have you them and there this writ. Seal Witness Stephen Rice Clerk of our said Court with the Seal thereof hereunto affixed at Office in the City of St. Louis this 3rd day of September in the year of our Lord eighteen hundred and Sixty three.

Stephen Rice Clerk.

Upon which Summons the Sheriff made return as follows to wit:

Sheriff Ret.

"Executed this writ in the County of St. Louis on the 4th day of September 1863 by delivering a copy of the writ petition as furnished by the Clerk to James Harrison John Doyle Sheriff. By A. J. Fuller Deputy.

And afterwards to wit: On the second day of January eighteen hundred and sixty four the defendant filed his answer to the petition aforesaid in the words and figures following to wit:

Answered Thomas Blackburn &
Vinson Benson Administrators } In the Circuit Court
of the Estate of } Circuit Court
Edw Benson dec'd } September Term 1863
Plaintiff
James Morrison } State of Missouri
Def. } County of St Louis

James Morrison the above named defendant for answer to plaintiffs petition and to the different counts and causes of action therein mentioned and set forth states that he does not know nor has he any knowledge or information thereof sufficient to form a belief as to whether or not said Edw Benson has departed this life as stated or that said Thomas Blackburn & Vinson Benson or either of them have been duly appointed Administrators or have received letters of the estate of said Edw Benson as alleged, and of all which facts said defendant James Morrison asks their proof.

Defendant further answering states

16.

That the three notes described men-
tioned and set forth in the plain-
tiff's petition were given to one Eden
Benson at the dates therein mentioned
and set forth, for the following Considera-
tion and upon the following State of
facts to wit: Said Benson claimed and
represented himself to be the owner in fee
of a tract of land lying in the County of
Clallaway and State of Missouri containing
about six thousand and two acres, less
four hundred and twenty acres, which
he reserved in the said tract aforesaid, and
that if said def^t James Hamilton would
execute his five notes each for the sum
of five thousand dollars due in two three
four five and six years respectively from
the 18th day of September 1858 he would con-
vey said tract of six thousand & two acres
of land less four hundred and twenty acres
reserved as aforesaid to said defendant
And that as said land was in the
possession of squatters residing upon the
same it was agreed and understood that
said Notes although due at a particular
time on the face thereof were not to become
due and payable until said squatters
could be removed by law or otherwise and

that said Benson agreed and undertook to remove and assist to remove the same and have the possession of said lands fully vested in said Hamilton, and defendant states that in consideration of said promise and representations and undertaking aforesaid said defendant James Hamilton executed said notes mentioned and set forth in said petition of plaintiff. Whereupon said Eden Benson executed his Debt claim due for said lands to said Hamilton and undertook and agreed to deliver the full and actual possession to said defendant of said lands in said County aforesaid. and said notes were delivered by said Hamilton to & received by said Benson upon the express agreement and understanding by and between said Hamilton and Benson that said notes would not become due or payable until said Hamilton was placed in full and actual possession of said tract of land aforesaid, and that the same should bear no interest until said possession was made perfect and complete in said defendant Hamilton.

Defendant further states that said Benson had failed refused and neglected to place said defendant in possession of said

8

tract of land and that the same is still held adversely and occupied by the Squatters who were upon and in possession of the same at the date of the execution of said noted deed upon although said defendant James Munion has done all in his power to obtain the same by instituting actions at Law against the Squatters in said County of Callaway immediately after the purchase and execution of said notes, which suits are still pending having by the defendants therein and the revolutionary conditions of the Country been delayed and undetermined to the present time, Wherefore by reason of the premises aforesaid defendant states that said plaintiffs ought not to have or prosecute their action against him, and that said notes are not due and payable nor any part thereof, and will not be until said defendant is put in actual possession of said tract of land Wherefore he prays judgment for his costs in this behalf expended, and such other and further relief as the Court may deem just in the premises.

Sacklund & Munion
Atty.

State of Missouri
County of St Louis } James Harrison the
proving defendant on his oath states that
he believes ^{the material facts in} the foregoing answers to be true
as they are therein stated.

Ed. Harrison

Sworn to and Subscribed before me July Term
2nd 1864.

I. Rice Clerk.

And afterwards at the February
Term of said Court for the year eighteen
hundred and sixty four the following proceedings
were had in said cause to wit:

February 16. 1864.

Judge P Thomas Blackburn &
Vinton Benson Administrators
of Eden Benson decd. } On Motion
James Harrison }

Now Come the parties by their
respective Attorneys and by leave of Court
the plaintiffs withdraw their motion to strike
out the Answer and file a Motion to
strike out portions of the defendants answer
and the Court having duly heard
and Considered the same doth order that
the said motion be and hereby is Sustained
And the parties waiving a Jury submit the

comes to the Court upon the pleading and proof and the Court having duly heard and considered the same finds the issues herein joined in favor of the plaintiffs and also finds that the defendant is indebted to the plaintiffs, in the sum of fourteen thousand eight hundred and forty six dollars and fifty three Cents. It is therefore considered by the Court that the plaintiffs recover of the defendant the debt aforesaid as found and also their costs and charges in this behalf expended and have execution therefor

May 10. 1864.

Thomas Blackburn &
 Vinton Benson adm^r of
 Eclon Benson

aff^r for aff^r
 filed, aff^r

all? Bond

James Hamison

The defendant files an affidavit for an

appeal and on his Motion an appeal is granted him from the Judgment herein rendered and he thereupon files an appeal bond herein which is approved by the Court.

Which said Affidavit for an appeal is in the words and figures following to wit:

aff^r for
 appeal

James Hamison the above named defendant on his oath says that he is the

Defendant in the above Cause ~~caused~~ and
 that this appeal is not made for vexation
 or delay, but because this affiant believed
 that he is aggrieved by the judgment and
 decision in this Court in the above cause,
 and wishes this appeal to the Supreme Court
 in order that justice may be done in this
 cause.

James Hamilton

Sworn to and Subscribed before me this the 10th
 day of May 1864.

N. Rice Clerk

On the 18th day of February eighteen
 hundred and sixty four the following
 Bill of Exceptions was filed in said Cause
 to wit:

Bill of Ex.	Benson's Administrators	} In the St. Louis Circuit Court. February Term 1864
	James Hamilton	

Bill of Exceptions.

But Reminded that on the 16th day of February
 1864 the Motion of plaintiff to strike out a
 portion of defendant's answer came on to
 be heard before the Court, which motion was
 in letters and figures following to wit:

Motion to	Benson's Adm ^r	} St. Louis Circuit Court Feb 1864
Strike out	"	
Part of Ans.	James Hamilton	

Plaintiffs Came and Moved the Court to Strike out that part of defendant's answer in the record and figures following to wit:

"Defendant further answering states that the rights described and mentioned and set forth in the plaintiff's petition were given to one Eden Benson at the dates therein mentioned and set forth for the following consideration and upon the following state of facts to wit: Said Benson claimed and represented himself to be the owner of a tract of land lying in the County of Calloway and State of Missouri containing about Six thousand and two acres, less four hundred and twenty acres which he reserved in the tract aforesaid and that if said defendant James Harrison would execute his five notes each for the sum of five thousand dollars due in two, three, four, five & six years respectively from the 18th day of February 1858 he would convey said tract of Six thousand and two acres, less four hundred & twenty acres reserved as aforesaid to said defendant, and that as said land was in the possession of Squatter residing upon the same it was agreed and understood that said notes although due at a particular time on the face thereof

were not to become due and payable until
said Squatters could be removed by suit
or otherwise and that said Benson agreed
and undertook to remove and assist to
remove the same and have the possession
of said lands fully vested in said Hamilton
And defendant states that in consideration
of said promises & representations & undertakings
aforesaid said defendant James Hami-
lan executed said notes mentioned and
set forth in said petition of plaintiff,
whereupon said Eden Benson executed
his quit claim deed for said land to said
Hamilton and undertook and agreed to deliver
free full and actual possession to said de-
fendant of said land in said County
aforesaid and said notes were delivered
by said Hamilton to and received by said
Benson upon the express agreement and
undertaking by and between said Hamilton
& Benson that said notes would not become
due and payable until said Hamilton was
placed in full and actual possession of
said tract of land aforesaid and that the
same should bear no interest until said
possession was made perfect & complete
in said defendant Hamilton, Defendant
further states that said Benson had full

refused and neglected to place said defendant in possession of said tract of land and that the same is still held adversely and occupied by the Squatters who were upon and in possession of the same at the date of the execution of said notes sued upon although said defendant James Thomson has done all in his power to obtain the same by instituting actions at law against these Squatters in said County of Calloway immediately after the purchase and execution of said notes, which suits are still pending having by the defendants therein and the revolutionary condition of the country been delayed and undetermined to the present time"

And also that portions of said answer in the words following to wit:

"And that said notes are not due and payable nor any part thereof and will not be until said defendant is put in the actual possession of said tract of land"

For the following reasons,

Because said portions of said answer nor any part thereof sets up any valid or legal answer or defense to plaintiffs cause of action.

Because said portion of said
Answer and the matters and things
therein contained do not constitute any
sufficient defence against plaintiffs
cause of action

Because said portions of said answer
are incompetent, insufficient and illegal
and not responsive to the allegations of
the petition

Wood & Mans Atty for def.
Which Motion was sustained
by the Court to which decision of the
Court in sustaining said Motion and
striking out a portion of said answer the
defendant at the time excepted and prays
the Court to sign and seal this his Bill
of Exceptions, and which is accordingly
done. At London July 18. 1864

James C. Hooley Judge

Appeal
Bond.

Know all Men by these presents
That we James Munson as principal
and John G. Priest & Wm Sauter as Securities
are held and firmly bound unto Hon. Blewett
& Weston Denton Adm^r of Eden Denton in
the sum of thirty thousand dollars for the
payment of which well and truly to be
made we bind ourselves our heirs executors
and administrators jointly and severally

16.

by these presents, Sealed with our Seals
and dated at St Louis this 10th day of
May AD 1864.

The condition of the above obligation
is Such that Whereas the above said
James Hamilton has appealed from the
judgment rendered against him and in fa-
vor of Thos. Blackburn &erson Benson
adm^r of Edwin Benson in the St Louis
Circuit Court for the sum of fourteen thou-
sand eight hundred and Sixty four dollars
and fifty five cts 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 Su-
preme Court and Such as the Supreme Court
may direct the St Louis Circuit Court to
give, and if the Judgment or any part
thereof be affirmed, will comply with &
perform the Same So far as it may be af-
firmed; and pay all damages and costs
which may be awarded against him by the
Supreme Court, then this obligation shall
be void, otherwise it shall remain in full force
and effect.

Approved

James Hamilton
John G. Pruitt
James Moody Esq^r W. A. Smith

(Seal)
(Seal)
(Seal)

State of Missouri
County of St. Louis

I the undersigned Clerk of the
St. Louis Circuit Court Certify the foregoing
to be a true transcript of the Record &
Proceedings aforesaid Court in the Case of
Thomas Blackburn vs Vinton Benson
Adm^r vs James Hamilton, as
the same remain of Record and on file
in my Office. &

In Testimony Whereof I have
set my hand and affixed the
Seal of said Court at office in
St. Louis the 10th day of June
1864.

L. Rice Clerk.

Index.

Petition	p. 1.
Sum ^s to Shiff's Return	4.
Answer.	5
Motion to Strike out Withdrawn, Motion to Strike out parts and Sustained, Sub & Sup ^d	9.
App ^r s Appl filed, Appeal all? Bond app ^r ?	10.
App ^r s for Appeal.	10.
M ^o to Strike out parts and.	11
Appeal Bond.	15.

18
March Term, 1866.

Thomas Blackburn & Vinson
Peterson Administrators of
Eden Benson Decd

vs
James Harrison App'te

Appeal from Circuit Court

Filed October 1, 1867

A. W. Mendel
Clerk

Wood & Mann
for Res

Lackland, Am't
for app'te

Approved by S. C. of
Jans. 5.30 P. M. 1867.

1866

April 7 Cert of Errors filed
" May 7 Resp'ts. brief
" 8 Dismissed by Appellants.

James Ho

Thomas Blackburn
of LC vs Respondent
James Hanson

IN SUPREME COURT,
March TERM, 18 69

W. S. Jones

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 *Appellant* 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
 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
- when it should have been rendered for the
10. That said Court overruled the motion for a new trial, made by

11 That said Court erred in striking of depts answer

12 That said Court erred in granting judgment against said defendant notwithstanding that his answer herein said answer was good support and legal,

Chas Hanson
atty for
James Hanson
Appellant

And now come the *Respondent* and for jointer in error say, that there is no error in the record and proceedings of said *Circuit Court* in said cause, as assigned by said *Appellant*
L. S. Evans Atty

Thomas Blackman
Adm^{or} Resp^t

5

James Hamon Plff
In appeal

Assignment of Errors
by Appellant

C. S. Hamon atk
In Appellant

Filed April 7, 1866
C. S. Hamon
CR

Benson's Administrators
Respondent.
vs
James Harrison
Appellant.

Supreme Court
March Term 1866.

Brief by C. G. Mauro for Respondent.

The Court did not err in striking out a portion of defendant's answer. The portion stricken out does not set up any legal defense to plaintiff's cause of action.

Parsons on Notes & Bills Vol 2 page 301.
and authorities there cited.

Parsons on same Vol 2 pages 538-9

Atwood vs Lewis 6 Mo 392.

Respondent asks the Court to affirm this case
with ten per cent damages

C. G. Mauro
Att'y.

Benson's Administrator

James Harrison

Respectful & Brief
C. G. Wanda
Att.

To be submitted

Filed May 7 1866

C. S. Tutback
clerk

[Faint mirrored handwriting from the reverse side of the page, including the name "James Harrison" and other illegible text.]

[Faint mirrored handwriting from the reverse side of the page, including the name "James Harrison" and other illegible text.]