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Harris Vs. Robinson

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Decided On : 1846

Appeal No. : 45 U.S. 336

Appellant : Harris

Respondent : Robinson

Judgement :

Harris v. Robinson - 45 U.S. 336 (1846)
U.S. Supreme Court Harris v. Robinson, 45 U.S. 4 How. 336 336 (1846)

Harris v. Robinson

45 U.S. (4 How.) 336

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF ALABAMA

SYLLABUS

In the case of a protested note, it is not necessary for the holder himself to give notice to the endorser, but a notary or any other agent may do it.

The object of the rule which requires the nonce to come from the holder is to enable him, as the only proper party, either to fix or waive the liability of endorsers.

Where a note was handed to a notary for protest by a bank and it did not appear whether the bank or the last endorser was the real holder of the note, and the notary made inquiries from the cashier and others not unlikely to know, respecting the residence of the prior endorsers, and then sent notices according to the information thus received, it was sufficient to bind such prior endorsers.

If the last endorser was the holder, the cashier of the bank was his agent for collecting the note, and the evidence showed that in fact the last endorser knew nothing more than the cashier.

The cases on this subject examined.

The facts being found by a jury, the question whether or not due diligence was used is one of law for the court.

If due diligence is used in sending the notice to the endorser, it is immaterial whether it is received or not.

This was action brought by the endorsee (Robinson) against an endorser (Harris) of a promissory note.

Robinson the plaintiff below, was a citizen of the State of Tennessee, and Harris a citizen of Alabama.

The note was as follows.

"$1,600 0/00. Eight months after date, we promise to pay Matth. Burks, or order, sixteen hundred dollars, payable and negotiable at the Planters' Bank of the State of Tennessee at Nashville, for value received. Dated in Lincoln county, Tennessee, 20 November, 1837."

"[Signed] JOHN P. BURKS & Co."

"[Endorsed] Matth. Burks, Benj'n D. Harris J. Robinson."

The note not being paid at maturity, Robinson, in September, 1839, brought his action against Harris in the District Court of the United States for the Northern District of Alabama, which, after several interlocutory proceedings, came on for trial at May term, 1843.

The jury, under the instructions of the court, found a verdict for the plaintiff in the sum of two thousand and sixty-two dollars and sixty-six cents. It is impossible to give a clear idea of the instructions of the court without reciting all the circumstances of the case to which the instructions referred. They are all stated in the bill of exceptions, which is as follows.

" *The Bill of Exceptions* "

" I n the District Court of the United States of America"

" *for the Northern District of Alabama"*

"In this case, the plaintiff brought his action against defendant

Page 45 U. S. 337

as endorser of a promissory note, and introduced the deposition of Alpha Kingsley, which is as follows."

" *Deposition of A. Kingsley* "

" The said Alpha Kingsley, being about the age of sixty years and being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing else but the truth, makes oath, deposeth, and saith that he resides in the City of Nashville in the State of Tennessee, and more than one hundred miles from Huntsville aforesaid, the place of trial of this cause; furthermore he saith I am now a notary public of Davidson County in the State of Tennessee, and was such on 23 of July, 1838, duly qualified according to the laws of said state; that on that day there came into my hands, as notary public, a promissory note, a true copy of which is herewith enclosed, marked A, and is made a part of this my deposition; that at or about three o'clock of the said 23 July, 1838, I presented said promissory

note at the counter of the Planters' Bank of Tennessee, at Nashville, where the same was payable, and demanded payment thereof, and was answered by the teller of said bank that it would not be paid, whereupon, as notary public aforesaid, I did protest said promissory note, as well the drawers as the endorsers thereof, and duly recorded the same in my notarial book, and on the evening of the said 23 July, 1838, I deposited in the post office at Nashville, Tennessee, in time to go by the first mail leaving Nashville after said demand and protest, notices of said demand and protest, directed to John P. Burks & Co., Matth. Burks, and Benjamin D. Harris Madison County, Alabama, to each separately; a copy of the notice so sent to Benjamin D. Harris is herewith to be enclosed, marked B, and is made a part of this my deposition. I was not, when these notices were forwarded, acquainted with the residence of any of the parties thus protested, or their nearest post office, and I made inquiry of those I thought were [not] unlikely to know where would be the proper place to which to direct notices to them; I applied, I recollect, to Nicholas Hobson, cashier of the Planters' Bank, who informed me they lived in Madison County, Alabama, but could not say where their nearest post office was; I also applied to Joseph Estell, who had resided in Madison County and also had a very general acquaintance there; he likewise informed me that they all lived in Madison County, but did not know their nearest post office. I knew of no other source from whence to derive information as to where to direct, and accordingly directed said notices 'Madison County, Alabama,' knowing that, from the general rules of the Post Office Department, they would be sent to Huntsville, the county seat."

" [Signed] ALPHA KINGSLEY"

Page 45 U. S. 338

" *Copy of Note* "

" *(Copy of the note, referred to in Alpha Kingsley's deposition"*

" *as marked A)"*

" $1,600 0/00. Eight months after date, we promise to pay Matth. Burks, or order, sixteen hundred dollars; payable and negotiable at the Planters' Bank of the State of Tennessee, at Nashville, for value received. Dated in Lincoln county, Tennessee, 20 November, 1837."

" [Signed] JOHN P. BURKS & Co."

" [Endorsed] 'Matth. Burks, Benj'n D. Harris J. Robinson.'"

"(Copy of the notice, made part of Alpha Kingsley's deposition -- B)"

"Nashville, 23 July, 1838"

" Mr. BENJAMIN D. HARRIS: "

" Please to take notice that a note drawn by John P. Burks & Co., payable at the Planters' Bank of Tennessee at Nashville eight months after date to the order of Matt. Burks, by him, you, and J. Robinson endorsed, for the sum of sixteen hundred dollars, dated 20 November, 1837, was this day protested by me for nonpayment, and the holder looks to you for payment as endorser thereof."

" Respectfully, your obedient servant."

"ALPHA KINGSLEY, *Notary Public* "

"And defendant introduced the deposition of N. Hobson, which is as follows."

" *Deposition of N. Hobson* "

" Interrogatories to Nicholas Hobson, on the part of the defendant."

" 1. Were you acquainted with the defendant, Benjamin D. Harris in the years 1837 and 1838?"

" 2. Do you know whether said Benjamin D. Harris resided in Tennessee or Alabama, in 1837 and 1838?"

" 3. Have you any recollection of ever telling Alpha Kingsley, notary public, that the said Benjamin D. Harris resided in Madison County, Alabama, in 1838?"

" 4. Were you acquainted with the plaintiff, James Robinson? If so, state where he resided in 1837 and 1838."

" First. I was not acquainted personally with Benjamin D. Harris in 1837 and 1838."

" Second. I do not know whether said Harris resided in Tennessee or Alabama in 1837 and 1838."

" Third. I have no recollection of A. Kingsley's having applied to me in reference to this particular case; he often made application

Page 45 U. S. 339

to me in regard to the residence of persons living in Alabama; I know that there are a great many of the name of Harris residing in Madison County, Alabama, and from the fact of the drawers of the note living in Madison County, I may have told the notary public what my belief was as to the residence of Mr. Harris, but not from any personal knowledge I had of his residence."

" Fourth. I was acquainted with the plaintiff, James Robinson he resided in Nashville in the years 1837 and 1838."

"[Signed,] N. HOBSON"

"Also, the deposition of Joseph Estell, which is as follows."

" *The Deposition of Joseph Estell* "

" *Question by defendant.* Were you acquainted with the defendant in the years 1837 and 1838?"

" *Answer.* I was, and for some time before."

" *Question by same.* Do you know whether the defendant resided in Tennessee or Alabama in 1837 and 1838?"

" *Ans.* I understood that he resided in Alabama in 1837 and 1838. I never saw him in Alabama, and how it was that I understood that he resided in Alabama in these years I cannot now recollect, but such was my belief of his place of residence."

" *By same.* Have you any recollection of telling Alpha Kingsley, notary public, that the defendant resided in Madison County, Alabama, in 1838?"

" *Ans.* I have no recollection that I ever told Alpha Kingsley that the defendant resided in Madison County, Alabama, in the year 1838; Mr. Kingsley has often inquired of us -- that is, of my brother, while living, and myself -- as to the residence of persons in Alabama, but my recollection does not serve me as to the name of any of those about whom he made inquiries."

" *By same.* Were you acquainted with James Robinson? If so, state where he resided in 1837, 1838."

" *Ans.* I was acquainted with James Robinson; he resided in Nashville, Tennessee, in the years 1837 and 1838."

" [Signed] JOSEPH ESTELL"

"Defendant also introduced Joseph Bradley as a witness, who proved that previous to the maturity of said note, plaintiff had directed to him at Huntsville, Madison County, Alabama, notices to all the parties to the note, requesting him to hand them to the defendant and the other parties, the notices being intended to remind them when the said note would fall due. Witness directed the notices to the post offices of the parties respectively, and to defendant at his post office at Cross Roads, Madison County, Alabama; but the notices of protest of said note were not sent to witness; witness acted as plaintiff's friend in the matter; there was no evidence

to show, that the notary knew who was the holder of the bill, or where he resided."

"The court instructed the jury, that if they believed that the notary made the inquiries stated in his depositions, and sent notice to defendant as therein stated, he being ignorant of his true residence, that the notice was sufficient to charge the defendant, and that, under the circumstances of the case as proved, it was not necessary to make inquiry of the holder of the note as to the residence of the endorser, to which instructions the defendant excepts, and prays the court to sign and seal this bill of exceptions, which is done accordingly."

"WM. CRAWFORD [SEAL]"

Page 45 U. S. 344

MR. JUSTICE WOODBURY delivered the opinion of the majority of the court.

Under the bill of exceptions in this case, the proper practice in some important particulars respecting notices of nonpayment of promissory notes and bills of exchange is involved. It appears that the defendant was endorser of such a note, and at the trial the court instructed the jury that if they believed that the notary made the inquiries stated in his depositions, and sent notice to the defendant as therein stated, he being ignorant of his true residence, that the notice was sufficient to charge the defendant, and that, under the circumstances of the case as proved, it was not necessary to make inquiry of the holder of the note as to the residence of the endorser; to which instructions the defendant excepts.

The substance of the inquiries which were made, as shown in the depositions, was that the note, being "payable and negotiable at the Planter's Bank of the State of Tennessee, at Nashville," the notary, after presenting it and payment being refused, inquired of those "not unlikely" to know the residences or nearest post offices of the endorsers, as they were not known to him. He recollects, as one of whom he inquired, the cashier of the bank, and was informed by him that Harris lived in Madison County, Alabama, but that he did not know his nearest post office. The notary made similar inquiries of a Mr. Estell, who had resided in Madison

County, but was found to be ignorant of the defendant's nearest post office; and the notary adds, that, knowing "no other source from whence to derive information as to where to direct" the notice, he "accordingly directed" this and others "to Madison County, Alabama, knowing that, from the general rules of the Post Office Department, they would be sent to Huntsville, the county seat."

The only "other circumstances of the case as proved," to which the judge probably refers, are, that the name of the present plaintiff appears on the back of the note as the last endorser; that he was then an inhabitant of Nashville; and that Joseph Bradley, a witness for the defendant, testified, that before the note reached maturity, he, then living at Huntsville, received notices from Robinson for Harris and the other endorsers, "requesting him to hand them to the defendant and the other parties," in order "to remind

Page 45 U. S. 345

them when said note would fall due," and that he directed the notice for Harris to his post office at Cross Roads, in Madison County.

It is further stated, as a part of the case, "there was no evidence to show that the notary knew who was the holder of the bill, or where he resided."

These being the facts as proved concerning the inquiries and circumstances to which the judge refers, he properly considered it a question of law, whether, upon those facts, if believed by the jury, it was necessary to make inquiry of the holder himself as to the residence of the endorsers, and whether the notice as given was in all respects sufficient to charge the defendant. *Bank of Columbia v. Lawrence,* 1 Pet. 583; *Bryden v. Bryden,* 11 Johns. 187; *Hadduck v. Murray,* 1 N H. 140.

It is to be regretted that some other facts were not agreed or referred to the jury, such as the distance of the residence of the defendant, as well as of the Cross Roads post office, from Huntsville; whether he was accustomed to receive letters at the former place; and who in truth was the holder of the note at the time it fell due. But the judge properly submitted to the jury whatever facts the parties chose to present; and it is usually the best course thus to submit complicated questions

of law and fact, accompanying them, however, with due legal instructions as to the rules which ought to govern. 3 Kent's Comm. 107. Then the instructions can as easily be revised as if the case was withdrawn from the jury, and, what is very desirable, the rules as to commercial paper can be preserved as uniform over the commercial world, and the holders of it have, as they ought to have, a fixed standard, on a like state of facts, for protecting as well as knowing their rights. 11 Johns. 187; 1 D. & E. 168; 1 N.H. 140.

The first objection that has been raised under the instructions or ruling of the court is that the notice does not appear to have been given by the holder of the note. There is no evidence here to indicate any person except Robinson or the bank as the holder at that time, and probably at the trial it was taken for granted to be one of them, without making any point concerning it to the court or jury. Whichever it was, there is no pretense but that the notary came into possession of the note from the agent of the holder lawfully, and with a view, as agent, to make the demand, and if not paid to give due notice. When notes are left at banks for collection, the notaries may often be ignorant of the names of the holders, as the notes are handed to them by the cashier. He would as properly do this business when employed by an agent of the holder, as by the holder himself; and having the note in either of these ways, he would be competent in law to deliver it up if paid, or, if not paid, to give notice of that fact to the endorsers. It has been adjudged, that any agent of the holders may give notice. Chitty on Bills, 527; *Bank of Utica v. Smith,* 18

Page 45 U. S. 346

Johns. 239, in point; *Stewart v. Kennett,* 2 Camp. 177, by Lord Ellenborough, 178; 3 Kent's Comm. 108; *Stanton v. Blossom,* 14 Mass. 116; 7 *ibid.* 486; 9 *ibid.* 423.

The agent to collect the note may do it. *Mead v. Engs,* 5 Cowen 303; 3 Bos. & Pull. 599; 2 Taunt. 38; 15 East 291; 9 East 347; 1 Camp. 349; *Ogden v. Dobbin,* 2 Hall's 112.

And in 9 Yerger 255, it was decided that a notary public is a suitable agent for this purpose. It was done by a notary of the agent in 2 Hall, 112.

The meaning of the rule that the holder must give notice is not that he may not do it by an agent, as any other commercial act, but that it shall not be given by some other party on the bill not standing in the relation in which the holder does, and who has no right to give it and try to make the endorser responsible when the holder may be willing to waive a resort to him. *Tindal v. Brown,* 1 D. & E. 170; 7 Ves.Jr. 597; 1 Esp. 333. In this case the notice is express, that "the holder looks to you for payment as endorser" of the bill, and the notary had the note in his possession, 11 East 117; 2 Camp. 178, in order to make demand and give notice in behalf of the holder.

The only remaining questions which are material are, whether any farther inquiry, and especially of the holder of the note, ought to have been made by the notary, as to the residence of the endorsers, before dispatching the notices, and whether the notices sent were sufficient, considering the information he obtained, and his ignorance of the true residence of the endorsers. It was a part of the evidence, that the endorsers lived remote in another state, and that the notary was ignorant of the exact places of their abode.

Under such circumstances, he was undoubtedly bound to make inquiries of persons likely to be acquainted with their residences. This he did, and, among them, of the cashier of the bank, the person most likely to be acquainted with the place of abode of those making paper negotiable and payable at the bank, and of another person who had lived in the same county with the endorsers, and not getting entire certainty from either, he sent the notices, addressed as accurately as his information enabled him, to the county where they lived, and from the capital of which the notices would be likely to be forwarded to the endorsers.

This, in most cases, might be sufficient as to inquiry, and especially where nobody was known to reside near who was able and bound to give fuller and more accurate information on that subject. It would usually satisfy a jury that the due diligence had been exercised which, and which only, the law imposes. Chitty on

Bills, 525, 8th Amer. ed; 2 Camp. 461. But it is argued in this case, that the holder probably lived in Nashville, and could and ought to have been resorted to on this occasion for such information.

Page 45 U. S. 347

Chitty on Bills 525. This argument is not without force, and might be insuperable if the notary knew who the holder was, and did not obtain otherwise all the intelligence on this subject which the holder probably possessed. But the evidence not showing that he knew him, did he resort to the holder's agent, and obtain from him all the information on this point which the holder himself was likely to have possessed?

Supposing the bank to have been the holder, the cashier, its agent, was resorted to, and doubtless gave all the intelligence in possession of the bank on this subject.

But supposing Robinson to have been the holder, which is the only other probable presumption on the evidence, and which is contended for by the defendant, and then the cashier was doubtless his agent to collect the note, and received from Robinson all he knew as to the residences of the prior endorsers, and communicated it to the notary when applying to him on the subject. This is not only the general inference from what would be likely to take place on such occasions, but is strengthened in this case from the testimony of Bradley, on the part of the defendant, saying that Robinson a short time prior, had sent notice to him at Huntsville for these parties, stating when the note fell due, and that he requested him to hand them to these endorsers. From this it is obvious that Robinson supposed they resided in Huntsville, or he would have sent the notices to a different place; and he would not probably have desired a resident of Huntsville to hand them to the endorsers, unless he believed they lived in the same place.

There can be little doubt on this evidence that the real holder whether the bank or Robinson did give to the cashier all the information the holder possessed on this subject, and that the cashier communicated the same to the notary, and that the

latter would have obtained no more had he known and resorted to the holder in person, and that the cashier, in conforming to this information, by addressing notices to Madison County, supposing that, by the rules of the post office department, they would be sent to Huntsville, the county town, did all which duty required of him.

Beside the light flung on this subject, and favorable to this conclusion, by some of the general positions in the authorities cited at the bar, there are several precedents which bear more directly on a state of facts such as exists in this case, and which deserve special notice, as they fortify the correctness of the views we have presented.

In *Stewart v. Eden,* 2 Caines 121, the court ruled that the holder was bound to inquire no further than a reasonable and prudent man should, and said, "We do not exact from him every possible exertion," or inquiry. Only "ordinary diligence" is required in inquiring. *Catskill Bank v. Stall,* 15 Wend. 367. Only "reasonable diligence." *Fisher v. Evans,* 5 Binney 543. So in *Chapman*

v. Lipscombe, 1 Johns. 294, where a bill was drawn and dated in New York City, on persons there, and accepted, but protested afterwards for nonpayment, and it did not appear that the holder knew where the drawers lived, but sent two notices to them, one addressed to New York and one to Norfolk, it was held that they were good, though the drawer in fact lived in Pertersburg.

In that case, inquiry was made at the banks and elsewhere, and notice was sent in conformity with the information received; but he did not inquire of the acceptors, who lived in New York, and could have told him correctly where the drawers lived.

In 3 Kent's Comm. 107 it is laid down, that notice need not always be sent to the post office nearest to the endorser's residence.

It suffices, if sent to the nearest which can be ascertained on due inquiry. And in 26 U. S. 1 Pet. 578, and 27 U. S. 2 Pet. 551, where a notice like this was

addressed to the endorser, as belonging to the county in which he lived, the same rule is recognized. It is true that there the party in fact resided near the county seat, or received some of his letters there, about which there is no particular proof here, but it is said to be proper to address a notice in that way, "if after due inquiry it is the only description within reach of the person sending the notice."

It is enough to send the notices to the place where the information received reasonably requires him to send them. 2 Car. & Payne 300; 1 Barn. & Cressw. 243; *Bank of Utica v. Davidson,* 5 Wend. 587. If the place it reaches is the wrong one, he is then not in fault. 5 Yerger 67. All his duty in this case is to use "ordinary diligence" on the subject, and not to insure at all events that the notice actually reaches the endorser. 26 U. S. 1 Pet. 582; 35 U. S. 10 Pet. 581.

In *Barr v. Marsh,* 9 Yerger 255, it was held that the holder was not bound or presumed to know where the endorser lived. But it was enough if the agent of the endorsee or holder made due inquiry, and directed the notices to the places indicated by the information, though wrong. It was the best that could be done under the circumstances. *Nichol v. Bate,* 7 Yerger 307; *Dunlap v. Thompson,* 5 Yerger 67. Where so many post offices exist, the residences of parties change so often, and people live so remote from each other, as in this country, it would clog the circulation of negotiable paper if the holder or his agent was bound to know every alteration in the residence of endorsers. The inquiries were at the bank, and of other persons, in the case of *Barr v. Marsh,* much as in this instance.

In *Sturges v. Derrick,* Wightwick Exch. Cas. 77, an inquiry was made of the son of an endorser as to his residence, and he did not know it, and the court held, that "sufficient diligence had been used." And in *Stuckert v. Anderson,* 3 Wharton 116, the case itself on examination shows that an inquiry of the officers

of the bank where the note was discounted is deemed sufficient, if there be no others near who are likely to know more as to the residence of the endorsers.

Some cases, it is true, have been more stringent, such as 13 Johns. 434, and 3 Camp. 262; but they do not contradict our conclusions, as in the first one the notice was sent to a wrong place quite remote, and the inquiry is said to have been limited; while in the last, no inquiry was made except at the "house" where the bill was payable. Most of the cases referred to on this point, of due diligence in making inquiry, are rather cases as to due diligence in respect to the time when the notices are sent.

Some of those, as bearing on this, allow a very liberal time to make inquiries where the residence is remote, 2 Barn. & Cressw. 246; 8 *ibid.* 393; 2 Dowl. & Ryl. 385; 2 Mood. & Ry. 359; and only require the notice to be sent as soon as information is obtained under proper exertion, 1 Barn. & Cressw. 245; Gow's 81; 2 Camp. 462. And some go so far as to excuse giving notice at all, if the place of residence at the time is unfixed, 4 Camp. 285, or cannot be ascertained, 35 U. S. 10 Pet. 580, and 22 U. S. 9 Wheat. 591, before quoted. In the case now under consideration, then, the conclusion seems well sustained, that reasonable inquiries were made as to the residences of the endorsers, and notices promptly dispatched, by a proper agent, in conformity with the information received. Whether the notices were actually received or not, and whether, if received, it was not as soon as if they had been directed to the Cross Roads post office, does not appear, nor is it material, as the circumstances before mentioned show due diligence, and thus make out a sufficient case, whether the notices ever reached the endorsers or not. Let the judgment below be affirmed.

MR. JUSTICE Mc LEAN.

I dissent from the opinion of the court in this case with regret.

The circuit court instructed the jury

"hat if they believed that the notary made the inquiries stated in his deposition, and sent notice to the defendant, as therein stated, he being ignorant of his place of residence, that the notice was sufficient to charge the defendant, and that under the circumstances of the case, as proved, it was not necessary to make inquiry of

the holder of the note as to the residence of the endorser."

The note was given by John P. Burks & Co. to Matth. Burks, for sixteen hundred dollars, in eight months from its date, payable and negotiable at the Planters' Bank of the State of Tennessee, at Nashville. It was endorsed by Matth. Burks, Benjamin D. Harris the defendant below, and also by J. Robinson the plaintiff. The note does not appear to have been negotiated at the bank. A. Kingsley, the notary, made a demand of payment at the bank when

Page 45 U. S. 350

the note become due, but it does not appear who delivered it to him. Notices of nonpayment were directed by the notary to Matth. Burks and Benjamin D. Harris the two first endorsers, to Madison County, Alabama.

He did not know where these endorsers resided, but Hobson, the cashier of the bank, to whom he applied for information as to their place of residence, informed him that they lived in the above county and state. Similar information was communicated to him by Joseph Estell, but neither of these individuals knew the post offices nearest to the respective endorsers.

Bradley, a witness, stated, that, previous to the maturity of the note, Robinson directed to him, at Huntsville, Madison County, Alabama, notices to all the parties to the note, requesting him to hand them to Harris and the other parties, stating the time when it would become due. And that witness directed the notices to the respective post offices of the parties. To Harris he directed the notice to the post office at "Cross Roads," Madison County, Alabama.

On this state of facts, the court instructed the jury, "that the notary was not bound to inquire of the holder as to the residence of the endorsers."

The notary did not act for himself, but as agent of the holder; and it was proved that Robinson who appears to have been the holder, resided in the same town with the notary, and knew the proper direction for the notices. Now the holder is bound to give the notice himself, or through his agent, and can he evade the law

by employing an agent who is ignorant of the residence of the endorser, which is known to himself. He knows where the endorser resides; is he not then bound to direct the notice as the law requires? It is a new principle in the law of agency, that the knowledge of the principal shall not affect him, provided he can employ an agent who has no knowledge on the subject. The holder is bound to communicate to the notary all the knowledge he has, so that the notice may be properly directed. And if this be not done, and the notice is improperly directed, the holder loses his recourse against the endorser. This seems to me to be clear of all doubt.

In the case of *Preston v. Daysson,* 7 La. 7, it was held

"That the holder of a bill or note ought not to avail himself of the ignorance of the notary as to the residence of the endorsers in giving them notice of protest; if he knows, he must disclose their residence, or it seems that his neglect will discharge the endorsers."

And this is the case now before the court.

There was no proof that the notary knew where Robinson, the plaintiff below, resided, but it is proved that he lived in the same town, his name being on the note, and from the fact that the notary gave no notice to him, as endorser, it is clear that he knew he was

Page 45 U. S. 351

the holder. In *Hill v. Varrell,* 3 Greenl. 233, it was held "that where the residence of the drawer of a bill is unknown to the holder, he ought to inquire of the other parties to the bill if their residence is known to him." And in *Hartford Bank v. Stedman,* 3 Conn. 489,

"where the holder, who was ignorant of the endorser's residence, sent the notice to A., who was acquainted with it, requesting him to add to the direction the endorser's place of residence, it was held sufficient."

"If the holder of a bill uses reasonable diligence to discover the residence of an endorser, notice given as soon as this is discovered is sufficient." *Preston v.*

Daysson, 7 La 7. In *Beveridge v. Burgis,* 3 Camp. 262, Lord Ellenborough said

"Ignorance of the endorser's residence may excuse the want of due notice, but the party must show that he has used reasonable diligence to find it out. Has he done so here? How should it be expected that the requisite information should be obtained where the bill was payable? Inquiries might have been made of the other persons whose names appeared upon the bill,"

&c.; In *Bateman v. Joseph,* 12 East 433,

"In an action by an endorsee against the payees and first endorser of a bill, it appeared the plaintiff received notice of its dishonor on 30 September, in time to give notice to the defendant on that day; he gave no notice, however, until 4 October, to excuse which, his clerk proved that the plaintiff did not know the defendant's residence until that day. Lord Ellenborough left it to the jury, whether the plaintiff had used due diligence to find the defendant's residence."

In Story on Promissory Notes, 370, note 1, it is laid down

"That merely inquiring at the house where a bill is payable is not due diligence for finding out an endorser. Inquiry should be made of some of the other parties to the bill or note, and of persons of the same name."

And again, in page 368, note:

"To excuse the not giving regular notice of the dishonor of a bill to an endorser, it is not enough to show that the holder, being ignorant of his residence, made inquiries upon the subject at the place where the bill was payable; he should have inquired of every other party to the bill."

There is no pretense that the bank was the holder of this bill. For the evidence showed that the notary did inquire of the cashier of the bank where the endorsers resided. But the court charged, that, under the circumstances, it was not necessary for the notary "to make inquiry of the holder of the note as to the residence of the endorser"; the court, therefore, referred to Robinson as the holder, and not to the bank. This charge is wholly inconsistent with the supposition

that the note was discounted by the bank, for then it would have been the holder, and the proper inquiry, as to the residence of the endorsers, was made of it. The note bears no marks of its having been discounted. That Robinson

Page 45 U. S. 352

was the holder appears from the notice he gave to the parties when the note would become due, from the fact that he was not notified as an endorser, and also that he commenced suit as the holder, after the dishonor of the note.

The turning point in the case is whether the holder, in failing to give the proper direction to the notices by this agent, the notary, is not answerable for the knowledge he possessed of the residences of the endorsers, which he failed to communicate to the notary. I care not whether or not Robinson knew the post offices of the endorsers. He had communicated with them through Bradley, the witness, and if the notices had been thus sent, the law required nothing more.

It will be observed, that the cases cited show the duty of the holder as to giving notice. And it is believed no case has been reported, except the one cited from Louisiana Reports where it has been supposed that a principal having knowledge of the residence of the endorsers could excuse himself from giving notice to them by a want of such knowledge in his agent. That the notary knew Robinson was the holder is conclusively shown, as before remarked, by not treating him as an endorser. His name was upon the note as an endorser, and he must have understood the purpose for which the endorsement by him was made.

All the authorities say the holder is bound to use reasonable diligence to ascertain the residence of the endorser, and when he attains that knowledge, is he not governed by it? And if so, is he not equally bound to communicate it to his agent whom he may employ to give the notice? A denial of this principle will overthrow the doctrine of notice, as established for more than half a century.

I think the judgment should be reversed and the cause remanded for a *venire de novo,* in the circuit court.

MR. JUSTICE Mc KINLEY dissented also.

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