
Hildeburn v. Turner.

SAMUEL HILDEBURN, PLAINTIFF, v. HENRY TURNER, DEFENDANT.

When a bill of exchange is made payable at a bank, and the bank itself is the holder of the bill, it is a sufficient demand if the notary presents it at the bank and demands payment.¹

If, therefore, the protest states this and also that the notary was answered that it could not be paid, it is sufficient. It is not necessary for him to give the name of the person or officer of the bank to whom it was presented, and by whom he was answered.

THIS case came up on a certificate of division in opinion from the Circuit Court of the United States for the Southern District of Mississippi.

The point of difference is fully set forth in the opinion of the court.

It was argued by *Mr. Brent*, for the plaintiff, and *Mr. Bibb*, for the defendant.

Mr. Brent, for plaintiff.

The single question is on the admissibility of the notarial protest; and, if admissible for any purpose, it is competent evidence. The bill of exchange is drawn in Mississippi, payable in Louisiana; and, in such case, the protest is evidence by the law merchant. 2 Pet., 593; 2 Pet., 691; *Waldron v. Turpin*, 15 La., 555; 5 Mar. La., N. S., 513. On this head, I also refer to the statute of Louisiana, 1827 (Bull. & C. Dig., 13, 43), and to 14 La., 394; *Franklin v. Verbois*, 6 Id., 730. The demand is presumed to be made in business hours. *Fleming v. Fulton*, 6 How. (Miss.), 484. I also refer to the decision of this court in *Musson v. Lake*, 4 How., 262, and to *Brandon & Lofftus v. Whitehead*, 4 Id., 127; also to *Bank of the United States v. Carneal*, 2 Pet., 549.

Mr. Bibb, for defendant.

The objection taken to the reading of the protest offered in evidence was, that the protest did not contain a sufficient statement of the presentment of the bill for payment.

The bill was drawn by A. G. Bennett, at Canton, Mississippi, on H. F. Bennett, at same place, in favor of Henry Turner, in New Orleans, for \$995.04, payable at the Mer-

¹ It must, however, appear that the presentment was made at the bank, and it is not sufficient to say merely that it was made to the cashier of the

bank. *Seneca Co. Bank v. Neass*, 5 Den. (N. Y.), 329.

As to what the notary's protest is evidence of, see *McAfee v. Doremus*, ante, *53, and note.

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*70] chants' Bank of New *Orleans twelve months after date. Accepted by H. F. Bennett, indorsed to Samuel Hildeburn by Henry Turner, and to A. H. Wallace & Co., by the indorsee, Hilderburn.

The notary in his protest for non-payment states,—“At the request of the Merchants' Bank of New Orleans, holder,” “I presented said draft to the proper officer at the Merchants' Bank, where the same is made payable, and demanded payment thereof. I was answered that the same could not be paid.” Whereupon he protested, &c.

No person is named to whom he presented the bill for payment.

The notary has undertaken to judge a matter of law, instead of certifying the name of the person supposed to be the proper officer of the bank. Was he the president, or the cashier, or a director? Who was he? What was his name?

The notary presented the bill to an officer of the holder, and demanded payment of the holder's servant or agent.

The notary should have exhibited the bill openly and publicly at the bank, and demanded payment openly and publicly, so that all persons at the bank, or in hearing, might have had notice.

As the presentment of the bill was not to the acceptor, nor to any person in his employ, the demand of payment, at the place appointed in the body of the bill, should have been general and public, so that any person interested might have taken up the bill.

The person, the name of the person, to whom the presentment and demand of payment was made, should have been stated.

See Chitty on Bills and Form of Protest (9 Lond. ed.), 462.

Mr. Chief Justice TANEY delivered the opinion of the court.

This case comes before the court upon a certificate of division from the Circuit Court for the Southern District of Mississippi.

The case stated is this. The plaintiff offered in evidence a bill drawn by A. G. Bennett, at Canton, Mississippi, upon Henry F. Bennett, payable twelve months after date, to the order of Henry Turner, in New Orleans, at the Merchants' Bank there, for nine hundred and ninety five dollars and four cents, which was accepted by the drawee, and indorsed by Turner, the payee, to Hildeburn, the plaintiff. There were also subsequent indorsements upon the bill, which it is not

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material to notice. And in order to show that the bill had been duly presented for payment and refused, the plaintiff offered to read the following notarial protest, upon the back of which was a copy of the bill and acceptance, and the indorsements thereon.

United States of America, State of Louisiana:—

By this public instrument of protest, be it known that, on this fourth day of January, in the year one thousand eight hundred and forty one, at the request of the Merchants' Bank of New Orleans, *holder of the original, whereof [71 a true copy is on the reverse hereof written, I, Jules Mossy, a notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, presented said draft to the proper officer at the Merchants' Bank, where the same is made payable, and demanded payment thereof. I was answered that the same could not be paid. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of said draft as against all others whom it may concern, for all exchange, reëxchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of George Lanaux and Jas. P. Gilly, witnesses.

In testimony whereof, I grant these presents, under my signature, and the impress of my seal of office, at the city [L. s.] of New Orleans, on the day and year first above written.

(Signed.)

JULES MOSSY, *Notary Public.*

The defendant objected to the reading of this protest, upon the ground that it did not contain a sufficient statement of the presentment of the bill for payment. And upon this question the judges of the Circuit Court were divided in opinion, and thereupon ordered it to be certified to this court.

This protest is not altogether in the language usually employed in instruments of that description, but we think it contains enough to show that the presentment and demand were duly made. Undoubtedly, the principles of justice, and the safety of the commercial community, require that such instruments should be carefully examined, and should not be admitted in evidence unless they show plainly that everything was done which the law requires to charge the indorser.

 Miller v. Herbert et al.

But in this case, it appears by the protest that the Merchants' Bank, at which it was payable, was the holder of the bill, and that the notary presented it for payment at the bank, and demanded payment thereof, and was answered that it could not be paid. According to the current of authorities, nothing more need be stated in the protest of a bill of this kind, payable at a bank, and of which the bank is the holder, and it is not necessary to give the name of the person or officer of the bank to whom it was presented, or by whom he was answered. Neither does the statement in this case, that it was presented to the proper officer of the bank, give any additional validity to this protest. For when the law requires the bill to be presented to any particular person or officer of a bank, the protest must show that it was presented accordingly, and it would not be sufficient, to say that he presented it to the proper person or proper officer. In this case, however, the presentment and demand at the place where it was made payable is all that was *necessary, and as this *72] appears to have been done, the protest ought to have been received in evidence, and we shall cause it to be certified accordingly to the Circuit Court.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi, and on the point and question on which the judges of the said Circuit Court were opposed in opinion, and which were certified to this court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof, it is the opinion of this court that the protest offered in this case ought to have been received as evidence; wherefore, it is now here ordered and adjudged that it be so certified to the said Circuit Court.

HENRY MILLER, ADMINISTRATOR OF GEORGE MILLER,
DECEASED, PLAINTIFF IN ERROR, v. BETSEY HERBERT
AND CAROLINE HERBERT, DEFENDANTS IN ERROR.

Under a statute of Maryland passed in 1796, a deed of manumission is not good unless recorded within six months after its date; and this law is in force in Washington county, District of Columbia.
The statutes and decisions of Maryland examined.