

was in Asher Ayers, the agent, a resident of the district in which the suit was brought. The issues thus raised were submitted to the court upon the following agreed statements of facts:

[After stating the case.]

"At the April term, 1882, of the court, the pleas to the jurisdiction (along with a demurrer to the plaintiff's writ) were submitted to the circuit and district judge, a jury being waived by consent of the parties, upon the following admitted facts: Asher Ayers, the agent named in the note sued on, (and set out in the plaintiff's petition,) is a resident of said western division of the southern district of Georgia. The Pacific Guano Company is a corporation having its legal domicile in the state of Massachusetts, and was the holder of the note sued on at the time of the commencement of the suit. The question argued was whether the plaintiff can maintain the action on the note, and whether parol evidence is admissible to show that the note is in fact the property of the plaintiff. (Plea of failure of consideration reserved for trial before jury.)"

*Hill & Harris*, for plaintiff.

*H. M. Holtzclam*, for defendant.

PARDEE, C. J. The agreement of counsel submits to the court two questions: (1) Whether, on the agreed state of facts, the plaintiff can maintain the action. (2) Whether parol evidence is admissible on the trial to show that the note is in fact the property of the plaintiff. The facts agreed on are that Ayres, the agent named in the note, is a resident of this district, and the plaintiff is the holder of the note sued on, and is a corporation domiciled in the state of Massachusetts. The other facts appear in the petition. We are agreed that both questions shall be answered in the affirmative. That a note given to Asher Ayres, agent, may be sued on by the principal, who is the owner and holder, is well settled by all the later authorities. See 12 Am. Dec. 713, 715, and authorities there cited; Daniell, Neg. Inst. § 1187; *Baldwin v. Bank of Newbury*, 1 Wall. 234.

The authority cited by counsel for defendant in 1 Addison on Contracts, § 51, does not apply, as that section relates to equities between the parties in cases of concealed agency.

The case of *Austell v. Rice*, 5 Ga. 472, does not conflict, for the court in that case did not deny the right of the principal to bring the suit, but maintained the right of the payee named also to sue. To the same effect is the extract from the decision of Chief Justice Marshall in *Van Ness v. Forrest*, 8 Cranch, 30, for the point in that case was whether the payee named could sue, and his right was maintained. The admissibility of parol evidence to show that the plain-

tiff is the real owner and holder of the note sued on, when such ownership is put at issue by the defendant, is elementary. And in principle and authority the plaintiff may offer such evidence when in cases like this under consideration it may be held necessary for him to make such proof in order to maintain his action. See Daniell, Neg. Inst. § 1187, and cases there cited.

ERSKINE, D. J., concurred.

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### MERCHANTS' INTERNATIONAL STEAM-BOAT LINE v. LYON.

(Circuit Court, D. Minnesota. May, 1882.)

#### 1. PLEADING—FORMER JUDGMENT AS AN ESTOPPEL.

Where a judgment of record in a former suit is pleaded as an estoppel, which does not on its face show that the verdict was rendered upon the same issues as those in the suit on which it is pleaded, evidence *aliunde* is required to prove that the precise point involved was submitted to the jury.

#### 2. SAME—FORMER JUDGMENT AS A BAR—PROOF ALIUNDE.

Where the answer of the defendant sets up the same defence as the answer in the former suit, admissions by counsel, in connection with the offer of the record as evidence, that testimony upon both defences of the former action was admitted and went to the jury, relieves the uncertainty in the record, and shows that the question raised by the pleadings in the present suit was litigated and determined in the former suit.

This suit is brought upon three promissory notes, aggregating the sum of \$2,300. The defendant is the maker, and they were made payable to the order of A. G. B. Bannatyne, and by him indorsed and delivered to the plaintiff. Before the commencement of this suit the State National Bank of Minneapolis brought an action upon these promissory notes, claiming to be holder and owner thereof, which was tried in this court, and a verdict rendered for defendant and judgment entered. The judgment record is pleaded in the defendant's answer as a bar to a recovery by the plaintiff. The answer in the former case of *Bank v. Lyon* sets up two defences, one of which was that the notes were given without consideration, and testimony was offered and submitted to the jury tending to support both defences, and a general verdict was found for the defendant. The answer of the defendant in the present action sets up the same defences presented by the answer in the former suit, including the one alleging that the notes were given without consideration; and for a further defence sets up the verdict and judgment obtained