

No. 13899

# Supreme Court of Illinois

Boilvin et al

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vs.

Moore et al.

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WILLIAM C. BOILVIN  
AND  
A M O S L. M E R R I M A N,  
*Appellants,*  
vs.  
HENRY MOORE AND OTHERS,  
*Appellees.*

SUPREME COURT,  
THIRD GRAND DIVISION  
OF ILLINOIS.  
APRIL TERM, 1858.

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APPEAL FROM PEORIA.

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Action of Assumpsit. Declaration contained common counts. Plea general issue. Cause tried Nov. term, 1857, before E. N. Powell, Judge, without jury, and judgment for appellees of \$291 83. Edward B. Norton testified that he was clerk for plaintiffs, who were manufacturers of nails at Wheeling, Va., and that on 29th March, 1855, plaintiffs shipped a lot of nails to John W. King, Peoria, by steamboat, enclosed invoice in letter and sent per mail; to the invoice a bill of lading and draft upon King for his acceptance at six months; which letter was as follows: Dear Sir—We now ship your nails, ordered through E. M. Norton, and hand invoice and bill of lading of same herewith. We enclose draft for same as customary with us, which please return with acceptance made payable if you conveniently can at some banking house in St. Louis, &c. That it was the custom of plaintiffs to sell at six months, the purchaser giving an acceptance of date of shipment, which custom applied to Illinois and all other places to which shipments were made. John W. King nor any one else ever offered to pay for the nails that I know of. Think I would have known it if he had. Plaintiffs again wrote King, demanding payment Oct. 11, 1855. They received no reply, and wrote to King again Dec. 8, 1855, all directed to John W. King, Peoria, Ill. No reply was ever received to any of these letters.

Philo L. Kimberly testified to the shipping of the nails on Fanny Fern for Peoria.

Edward M. Norton testified that as agent of plaintiffs he personally sold

the nails specified in order in Peoria, Illinois, (which order was signed Jno. W. King,) to a man as I supposed from the manner in which his name was written John W. King. I had no personal acquaintance with him. I took orders from all sorts of persons without personal acquaintance, confining myself to enquiries as to their ability to pay, and looking to the orders I receive for the name of the party and place of shipment. I presented the order to plaintiffs, who filled it and shipped to Peoria. The order was given Feb. 1, 1855, delivered to plaintiff Feb. 14, 1855, and the nails were shipped March 29, 1855—not shipped earlier on account of close of navigation. The signature at bottom of order is in the handwriting of the party who gave the order; whether it is Hing, or Sting, or some other name I cannot say. I know the party was a dealer in Peoria, and I took the order from himself personally at his own store. The terms of payment were six months time. A draft of the date of shipment was to have been accepted, payable six months after date. No payment for the nails was ever made, nor no note or other obligation received.

The above evidence was contained in depositions.

The following facts were admitted: That plaintiffs sent an order upon defendants to M. McReynolds for the nails in spring of 1856, which order was not accepted. That no such person as John W. King has been known to *reside* in Peoria either at date of the order or since. That the nails were never received by King, but were received by defendants, who were warehousemen in Peoria, from the steamboat Tiber, in April, 1855, in store for the consignee, and charges paid by defendants at time of receiving them. That the nails remained in store until spring of 1856, when the nails were sold to pay charges—sold for \$425, and charges on them \$133 17. That defendants had no authority from or ever saw or knew John W. King, but the nails were left with them by steamboat Tiber, together with bill of lading. That no persons except plaintiffs have ever demanded the nails or the proceeds thereof.

MANNING & MERRIMAN,

*Attorneys for Appellants.*

