

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

LORENZO EGLESTON

vs.

CHARLES T. P. BUCK, for use, &c.

} *Appeal from La Salle Co. Court.*

APPELLEE'S POINTS AND AUTHORITIES.

I. Under the first error assigned I insist,

1st. That Buck had an interest in the goods sold to plaintiff, which fact was disclosed to plaintiff before the purchase. (See Neef's testimony, pages 21, 22 and 23 of the Record.) It was *not*, therefore, a sale of Corning & Co.'s goods, but a sale of goods in which Buck had an interest for which plaintiff agreed to pay Buck \$700.

2d. That, although the transaction showed a special bargain, yet it being fully performed on our part, and nothing remaining to be done by Eggleston but the payment of the money agreed to be paid, that (*i. e.* the money) can be recovered by Buck on the common or *indebitatus assumpsit* counts; and this would be so even if Buck had no interest in the goods sold; *a fortiori*, where he had such interest as shown by the proof in this case.

1 Saund. Pl. & Ev. 180.

Stone vs. Rogers, 2 Meeson & Welsby, 448.

Poulter vs. Kellingbeck, 1 Bos. & Puller 397.

Marchington vs. Vernon, 1 Bos. & Pul. 101—note.

Schermehorn vs. Vanderheyden, J. R. 140.

Buller's Nisi Prius, 139.

2 Smith's Leading Cases, 15 n.

II. The question presented by the second error assigned is not before this court. It does not appear but what a bill of particulars was filed in accordance with the order of the court below. The bill of particulars is no part of the Record, and is not embodied in the bill of exceptions, nor was any exception to it taken below.

III. The same suggestions apply to the third error assigned.

The additional errors assigned by leave of the court present the same question as the first.

The attention of the court is called to the fact that the printed abstract in the case is wrong in its statement of the evidence, in this that it states that the witness, Neef, was called by *defendant*, and testified that he sold the goods to the *plaintiff*, &c. The reverse of this is shown by the Record. Neef was called by the *plaintiff*, and testified that he sold the goods to the *defendant*, &c., an inadvertance in making the Abstract.

W. H. L. WALLACE,

Counsel for Appellee.

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Eggleson

Buck

Apples Points

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Filed May 1st 1860
L. Leland
Clerk