

12709

No. _____

Supreme Court of Illinois

Hunter, et al

vs.

Bryden

71641  7

Allen Hunter

vs

William Byrd

12709

1859

1
Be it Remembered, that on the 18th day of
A.D. 1858, There was filed in the Clerk's Office of the County
Court of Peoria County, a Declaration and Precipe
in Words and Figures following.

To Wit.

"County Court of Peoria County

"April Term A.D. 1858

"State of Illinois }
"Peoria County } ss.

"William Bryden the plaintiff in this
"Suit, Complains of Allen Hunter and Cyrus Reed the Def-
"endants in this Suit of a plea of Trespass on the Case upon
"promises for that whereas heretofore to Wit on the twenty sixth
"Day of January A.D. 1858 at Chillicothe to wit at the County
"of Peoria aforesaid the said Defendants made their certain
"promissory Note in writing and then and there delivered to
"said the Plaintiff and thereby then and there promised to pay
"to the Plaintiff Six hundred and ninety four Dollars and
"Seventy one Cents with half the Current rate of interest
"on New York Thirty Six days after the date thereof and
"period has now elapsed and thereupon in consideration
"of the premises the said Defendants promises to pay to
"Plaintiff the said Sum of Money in the said promissory
"note specified according to the tenor and effect thereof and
"also for that Whereas aforesaid to Wit on the sixteenth day

2

"of March A.D. 1858. to wit at the County aforesaid the
 "said Defendants were indebted to the Plaintiff in the
 "Sum of One Thousand Dollars for money then
 "then lent by the Plaintiff to the Defendants at their
 "request. And in the Sum of One Thousand Dollars
 "for Money then and there paid by the Plaintiff for the use
 "of the Defendants at their request. And in the Sum of
 "One Thousand Dollars for money then and there received
 "the Defendants for the use of the Plaintiff.
 "And in the Sum of One Thousand Dollars for money
 "to be due to the Plaintiff from the Defendants
 "omit then and there stated between them
 "And whereas the Defendants afterwards to wit on the day
 "and Year and at the County last aforesaid in consideration
 "of the premises; promised to pay to the Plaintiff the said Several
 "Sums of Money in the Several Counts of this Declaration
 "mentioned respectively on request Yet (though often re-
 "quested so to do) the said defendants have not paid the
 "said Several Sums of Money Nor either of them nor any
 "part thereof to the damage of the Plaintiff One thousand
 "Dollars therefor he says &c.

Purple & Pratt

Plffs Atty

Copy of Note Sued on

\$ 694 ⁷¹/₁₀₀

Chillicothe Jan 20th 1858

"Thirty Six days after date we or either of us
 "do to pay to the order of William Bryant Six hundred
 "and ninety four ⁷¹/₁₀₀ Dollars Value Received with date
 "of Current rate of Exchange on New York

Allen Hunter
 Cyrus Reed

3

Account sued on
Allen Hunter & Cyrus Reed

To William Bryden Dr.

To Money lent.

1000.00

" " Paid

1000.00

" " had & Received

1000.00

" " Due on Settlement

of Amount

1000.00

\$ 4000.00

William Bryden

vs

Allen Hunter

Cyrus Reed.

County Court Peoria County
Next Term A.D. 1858.

Please issue Summons in above
entitled Cause to Shff Peoria County, against above
named Defendants

Plaintiff's Damages \$ 1000.00.

To Clerk County Ct.

Peoria County.

Purple & Pratt.
plffs Attys

Endorsed

Dec Pre - 10

William Bryden

vs

Allen Hunter

Cyrus Reed

Filed March 18 1858.

Chas H. Little CLK

per Geo H. Little
Jury

Geo H. Little
Jury

And afterwards, To Wit. on the same Day, There was issued
out of the County Court of said County, a Summons,
which is in Words and Figures, following
To Wit.

State of Illinois }
Peoria County, } ss.

The People of the State of Illinois to the Sheriff of
Peoria County - Greeting:

We Command you that you summon

Allen Hunter and Cyrus Reed

if they shall be found in your

County, personally to be and appear before the County Court of said
Peoria County on the first day of the next Term thereof, to be
holden at the Court House ^{in Peoria} in said Peoria County, on the first
Monday of April next 1858, to answer unto

William Bryden

in a plea of Trespass on the Case upon Promises
to the damage of the said plaintiff as he says in the sum of
one Thousand Dollars.

And have you then and then this Writ with an endorsement
thereon, in what Manner you shall have executed the same.

Witness, Charles Kettelle, Clerk of our said County

And the Seal thereof, at Peoria, aforesaid, this 18
day of March A.D. 1858.

Cha Kettelle Clerk

per Geo Kettelle & Co. Clerk

- On Which, there is the following Endorsement -

County Court Summons

Peoria County Court.

Bryden

vs

Hunter et al.

of Illinois
Peoria County.

we duly served the within
copy of same to the within

Allen Hunter and
Cyrus Reed

and return Commanded

4. 23/58.

J. W. Smith Sheriff

S. Service

1.00

3.00

20

Delage.

4.20.

County Court etc. 18 day of

4. 1858

Chas Kettelle Clerk

4

And afterwards, To Wit. on the 5th day of April
 there was Filed in the Clerk's Office of the County Court of
 County, a Plea, which is in Words and Figures, following

To Wit

Allen Hunter
 Cyrus Reed
 Als.

William Bryden

Peoria County Court
 April Term AD 1858.

And now comes The said defendants,
 by their Attorneys, Lindsay & Lander. And say Action now
 because they say they did not promise in manner and
 form as alleged by plaintiffs in said Declaration men-
 tioned and of. Thus they put themselves upon the Country

And for further plea in this behalf. defendants say action
 now. because they say that the Consideration for which
 said Note was given has wholly failed in this as said
 note was given for a remnant of a Stock of goods to
 which the Plaintiff had no title to. And was not the ow-
 ner. of said Stock of Goods at the time he sold the same
 to defendants. And received note in lieu thereof, As said
 goods, Wares and Merchandize were on the 10th day of
 March last past replevied from the possession of the de-
 fendants, by one John Smith. And his title as owner of
 Stock of Goods has been proven and established in a
 Court having jurisdiction of said Subject matter
 in said Action of Replevin, with a Verdict in favor of
 And a Judgment of the Court awarding and declaring the
 Ownership of said goods Wares & Merchandize in and to
 John Smith the Claimant And of this the defendants
 put themselves upon the Country.

And Defendants for further plea in this behalf defend-
 ants say Actio Non, because they say that said note
 was obtained by false and fraudulent representations
 by falsely and fraudulently stating to defendants that
 person or persons had any claim for demand of said
 stock of goods and induced defendants to purchase
 said goods when in truth and fact said person
 was not the owner of said goods then and now
 is, and that he knew that he was not the owner
 the same as he had before that time made a
 false sale of said goods to the said John Smith
 thus defrauding said plaintiff out of said promissory
 note by such fraudulent and false representations
 And of this the Defendants are ready to verify
 Whereupon they pray judgment.

Lindsay Lander for
 Defendants.

Endorsed

William Bryden
 vs.
 Allen Hunter
 Cyrus Reed

Filed April 5 1857
 C. H. Hinkle Clerk
 per Geo. W. Hinkle
 Duly

And afterwards, To Wit. on the 7th day of April 1857
 there was filed in the Clerk's Office of the County of
 Iowa County, a Replication, which in words and
 is as follows.

To Wit.

3
William Bydew
vs.
Allen Hunter
Cyrus Reed

County Court Peoria County
April Term AD 1858

And now Comes the said Plaintiff
And as to the said Plea of the Defendants above
pleaded says preclude now because he says the
seduction of said Note did not at the time
and has not failed wholly or in part as the
Plea is above set forth And of this the Plaintiff
himself upon the County. &c.

Purple & Pratt

Plffs Attys.

And as to the said Plea of the said Defendants by
them Thirdly above pleaded the Plaintiff says
preclude now because he says that the said
not obtained by false and fraudulent representations as
in and by said Plea is above supposed and of this the
Plaintiff puts himself upon the Country &c.

Purple & Pratt

Plffs Attys.

Endorsed

Bydew
vs.
Hunter Et al
Replication

Filed April 7. 1858.
Chas Little Clerk
per Geo H. Kunkin
Sprey

6 And afterwards To Wit, on the 7th day of April 1858.
in the Clerk's Office as aforesaid, there was filed the
Verdict of the jury, empanelled to try this Cause, and
which is as follows.
To Wit.

Wm Bryden
vs.

Allen Hunter } We the jury find a Verdict of
Plaintiff and assess the damages
Seven Hundred and Six dollars. 00/100 cents.

Endorsed

Verdict jury

Filed April 7 1858

Chas Hittelle Clerk

Geo Hittelle

Atty.

And afterwards To Wit on the 10th day of April 1858.
There was filed in the Clerk's office of Peoria County
aforesaid a Bill of Exceptions, which, in words
is as follows

To Wit.

State of Illinois
Peoria County

William Bryden
vs.

Allen Hunter
Cyrus Reed

Peoria County Court
April Term A.D. 1858

6 This Cause came on to be heard at said Court, before Hon^{ble} Wellington Smith, Judge of said Court, and jury.

The Plaintiff offered in evidence the following note.

To Pay
\$694⁷¹/₁₀₀ Chillicothe Jan 26th 1855
Thirty Six days after date we or either of us
promise to pay to the Order of William Bryden
Six Hundred & Ninety Four. & ⁷¹/₁₀₀ Dollars
Value Received with half of current rate of Exchange
on New York
Allen Hunter
Cyrus Reed
Due _____

The defendants Attorneys Lindsay & Sanders moved
to exclude said note from the Consideration of the jury
upon the ground of variance between the said note
and the Declaration as the said note was signed by
Allen Hunter and Cyrus Reed, and the one set out in the
Declaration was described as being signed by Allen
Hunter and Cyrus Reed. The Plaintiff then in-
troduced one Harding as a witness & proved that
said note was signed by Allen Hunter, instead of
Hunter and said Harding testified that said
Hunter signed said note, as it was in his hand and
he had seen him write several times. And that his
hand writing well, and that he made that kind of a
mark to his name.

The defendants moved to exclude from the consideration
of the jury. The evidence of said Harding
upon the ground that a variance, between the note and
declaration existed, that the note should be excluded

7
as evidence, and could not be established by proof of the hand writing of defendant.

All of which ~~was~~ Motions so made by defendants were overruled by the Court and excepted to by defendants.

The defendants then moved to exclude the Evidence moving the issue of Exchange which Motion was overruled by the Court and excepted to by the defendants.

The jury rendered a verdict for the sum of Seven hundred and six dollars $84/100$ cents. And the Court rendered a judgment against defendants for that amount. Whereupon the defendants entered a Motion for a new trial, upon the following grounds.

To wit

William Bryden

vs.

Allen Hunter

Cyrus Reed

Defendants come and move the Court for a new trial in this cause for the reasons following

- 1 The Court erred in admitting the Note in evidence.
- 2 Court erred in allowing Plffs proof showing the date of exchange.
- 3 Court erred in allowing said Plffs to explain the signature of Allen Hunter and allowing said Plffs to touch said signature.
- 4 The Verdict is against the Evidence.
- 5 The Verdict is against law.
- 6 Verdict is rendered for too much.

Lindsay & Lander

7 Whereupon the Court overruled said motion for a new trial and the defendants excepted to said ruling of the the Court. and and prayed an appeal to the Supreme Court.

Wellington Couchs
County Judge.

Proceedings of the County Court Peoria County; State of Illinois began and held at the City of Peoria in said County on Monday April 5th 1858. being the first Monday of said month for judicial and other business.
Present Hon Wellington Couchs Judge
Charles Pettelle Clerk
and Francis W Smith Sheriff.

Wednesday April 7th 1858.

William Bryden
vs. Assumpsit.

Allen Hunter
and Cyrus Reed.

This day came the said Plaintiff by [unclear] and Pratt his Attorneys and the said defendants by [unclear] and Sanders their Attorney, thereupon it was ordered by the Court that a jury be called to try said Cause. Whereupon a jury of twelve good and lawful men, to-wit: Daniel McClure, J. H. Fisher, John Melan, J. Marzall, B. C. [unclear], George Ford, William R. [unclear], [unclear], Matthew Faggart, G. B. Cutter, F. M. Carlston, and [unclear] Smith, who were duly chosen, tried and sworn, and heard the Evidence in the case upon their oaths do say, "We the jury find a Verdict for Plaintiff and assess the damages at Seven Hundred and Six dollars and 84th 100th cents."

Thereupon the said defendant entered his motion for new trial for reasons on file, which was overruled by the Court. Therefore it is Comanded by the Court, that the said William Bryden do have and recover of and from the said William Reed the sum of, (\$706.84) Seven Hundred and Six dollars. and Eighty four Cents his Damages as aforesaid and also his Costs and Charges about the suit in this behalf. Expended and that he have Execution therefor. Thereupon the said defendants an Appeal of this Cause to the Supreme Court, is Ordered to be allowed on their Entering into and paying the penal Sum of Fifteen Hundred dollars, Condition according to Law, within Twenty days Security to be approved by the Clerk or Court.

Whereupon, Afterwards, To Wit, on the 23^d day of April A.D. 1858, there was filed in the Clerk's Office of the County Court of said County. An Appeal Bond, which is as follows
To Wit.

I know all Men by these Presents that we allan Bonds as Principals & Hiram Alwood as Security are held and firmly bound unto William Bryden in the penal Sum of Fifteen Hundred dollars (to be paid money) for the payment of which said sum he made the bind ourselves our heirs Executors and Administrators jointly severally and jointly to the presents Within our hands and Seals this 23^d day of April A.D. 1858.
The Condition of the above Obligation is such that

8

at the April Term of the County Court of Boone County
 in the State of Illinois 1858. the said William Bryden
 recovered a Judgment in said Court in a certain action
 of Assumpsit against said Allen Hunter for the
 Sum of Seven Hundred and Sixty Dollars, damages
 & Costs of Suit from which said Judgment the said
 Hunter has taken an Appeal to the said
 session of the Supreme Court in the State of Illinois.
 NOW if the said Allen Hunter shall pay or cause to be
 paid to said William Bryden. Whatever Judgment
 Costs, interest and Damages may be. Recovered in said
 Supreme Court in case said Judgment shall be aff-
 irmed and shall also duly prosecute his said Appeal
 then this Obligation to be void. Otherwise to be void
 remain in full force and effect.

Allen Hunter
 William Atwood

Approved

W. Loucks C. J.

Filed April 23rd 1858.

Charles H. Wells Clerk

Geo. H. H. H. H. H.

State of Illinois }
Deoria County } I Charles Kelleck Clerk of the
County Court of Deoria County in
and forth State of Illinois. Do hereby certify
That the foregoing is a True Full and perfect
Transcript from the files and Records of my office
a certain Cause wherein William Snyder is
Plaintiff and Allen Hanks and Cyrus Reed
are Defendants.

Witness my Hand and the
Seal of our said County Court at Deoria
the 28th January A.D. 1839

Chas Kelleck
pr Geo. H. Kelleck

State of Illinois, ss

Allin Hunter }
Cyrus Reed }

vs
William Pryden }

3^d Term
Supreme Court, State of Illinois,
April AD 1859.

Appeal from
County Court Price
Court.

And now come the said Allin Hunter
and Cyrus Reed by Spidway & Fowler
attorneys and say that ^{in the Request & Petition of} they are Messrs
said Court
And Manifold Errors and assign for
Error

1 The Court Erred in rendering
Judgment against defendant,

2. The Court Erred in allowing
said note to be read in evidence because
of the variance between it and the note
set out in the declaration

3^d The Court Erred in allowing
Plaintiff's proof of the rate of exchange

5th The Judgment was rendered
for much

6th The Court Erred in rendering

the motion for a new trial for the
reasons in such motion set forth

Wherefore for the reason
aforesaid the said Allen Hunter
and Cyrus Reed pray that the said
Judge may and does of such
brief brief may be removed set
aside, and for naught had held and
returned

Lindsay & Fowler
for appellants

25th
1 Snyder
vs,
Hancher Etal

Transcript of Proceeds
in said case with
Deputy Comr. of
Almon

Filed April 26. 1839
L. Leland
Clerk

Recd. \$5.50 of Leland
and Fowler for this case

WILLIAM BRYDEN, } SUPREME COURT ILLINOIS.
^{vs.}
 ALLEN HUNTER & CYRUS REED. } THIRD GRAND DIVISION.

This action was commenced in the county court in and for Peoria county, State of Illinois, at the April term, A. D. 1858.

At said term, the plaintiff, by Purple & Pratt, attorneys, filed a declaration in assumpsit on the following promissory note, to wit:

Copy of Note sued on.

\$694 71.

Chillicothe, Jan. 26, 1858.

2

Thirty-six days after date, we or either of us promise to pay to the order of William Bryden, six hundred and ninety-four and 71-100 dollars, value received, with half of current rate of exchange on New York.

ALLEN HUNTER.
 CYRUS REED.

WILLIAM BRYDEN } COUNTY COURT, PEORIA CO.
^{vs.} } APRIL TERM, A. D. 1858.
 ALLEN HUNTER & CYRUS REED. } ASSUMPSIT, DAMAGES \$1,000.

Please issue summons in above entitled cause to Sheriff of Peoria county, against above named defendants.

To Clerk county court Peoria county.

PURPLE & PRATT,
 Plff's Att's.

And afterwards, to wit, on the same day, there was issued out of the county court of said county, a summons, which is in words and figures following.

4

And afterwards, to wit, on the 5th day of April, A. D. 1858, there was filed in the Clerk's office of the county court of said county, for plea, the general issue, by Lindsay & Lander, Defendants' attorneys.

And afterwards, to wit, on the 7th day of April, 1858, in the Clerk's office aforesaid, there was filed the verdict of the jury empaneled to try this cause, and which is as follows, to wit:

WILLIAM BRYDEN, vs. ALLEN HUNTER.

6

We, the jury, find a verdict for the plaintiff, and assess the damages at seven hundred and six dollars, eighty-four cents.

6

And afterwards, to wit, on the 10th day of April, 1858, there was filed in the Clerk's office of Peoria county aforesaid, a Bill of Exceptions, which in words, &c., is as follows, to wit:

STATE OF ILLINOIS, PEORIA COUNTY.

WILLIAM BRYDEN,	}	PEORIA COUNTY COURT.
vs. ALLEN HUNTER & CYRUS REED.		APRIL TERM, A. D. 1858.

This cause came on to be heard at said term of said Court, before Hon. Wellington Loucks, Judge of said Court, and jury.

The plaintiff offered in evidence the following note, to wit:

\$694-71.

CHILLICOTHE, Jan. 26th, 1858.

Thirty-six days after date, we or either of us promise to pay to the order of William Bryden, Six Hundred and Ninety-Four 71-100 Dollars, value received, with half of current rate of exchange on New York.

Due —

ALLEN HUNTE,
CYRUS REED.

The defendants' attorneys, Lindsay & Lander, moved to exclude said note from the consideration of the jury, upon the ground of variance between the said note and the declaration, as the said note was signed by Allen Hunte and Cyrus Reed, and the one set out in the declaration was described as being signed by Allen Hunter and Cyrus Reed.

The plaintiff then introduced one Harding as a witness to prove that said note was signed by Allen Hunter instead of Allen Hunte, and said Harding testified that said Allen Hunter signed said note, as it was in his handwriting. He had seen him write several times, and knew his handwriting well, and that he made that kind of an "r" to his name.

The defendants moved to exclude from the consideration of the jury the evidence of said Harding, upon the ground that a variance between the note and declaration existed; that the note should be excluded as evidence, and could not be established by proof of the handwriting of defendant. All of which motions so made by defendants were overruled by the court and excepted to by defendants.

The defendants also moved to exclude the evidence proving the rate of exchange, which motion was overruled by the court and excepted to by the defendants.

The jury rendered a verdict for the sum of seven hundred and six dollars and eighty-four cents, and the court rendered a judgment against defendants for that amount. Whereupon defendants entered a motion for a new trial, upon the following grounds, to wit:

WILLIAM BRYDEN,
 vs.
 ALLEN HUNTER & CYRUS REED. }

Defendants come and move the court for a new trial in this cause, for the following reasons:

1. The court erred in admitting the note in evidence.
2. Court erred in allowing plaintiff's proof showing the rate of exchange.
3. Court erred in allowing parol proof to explain the signature of Allen Hunter and allowing parol proof touching such signature.
4. The verdict is against the evidence.
5. The verdict is against law.
6. Verdict is rendered for too much.

LINDSAY & LANDER,
 For Defdts.

Whereupon, the court overruled said motion for a new trial, and the defendants excepted to said ruling of the court, and prayed an appeal to the supreme court.

WELLINGTON LOUCKS, [seal]
 County Judge.

Whereupon afterwards, to wit, on the 23d day of April, A. D. 1858, there was filed in the Clerk's office of the County Court of said county an Appeal Bond, which is as follows, to wit:

A bond was filed by defendant, and approved of by the Court, with Hiram Atwood as security, in the sum of fifteen hundred dollars.

STATE OF ILLINOIS,)
 PEORIA COUNTY. }

I, Charles Kettelle, Clerk of the County Court of Peoria county, in and for the state of Illinois, do hereby certify that the foregoing is a true, correct and perfect transcript from the files and records of my office, in a certain case wherein William Bryden is plaintiff, and Allen Hunter and Cyrus Reed are defendants.

Witness my hand and the seal of our said County Court, at Peoria, this 28th day of January, A. D. 1859.

[SEAL.]

CHAS. KETTELLE, Clerk,
 per GEO. H. KETTELLE, Deputy.

WILLIAM BRYDEN, vs. ALLEN HUNTER & CYRUS REED.	}	STATE OF ILLINOIS, SUPREME COURT—3D GRAND DIVISION, APRIL TERM, A. D. 1859.
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And now come the said Allen Hunter and Cyrus Reed, by Lindsay & Fowler, attorneys, and say that in the records and proceedings of said County Court there are manifest and manifold errors, and assign for error

1st. The court erred in rendering judgment against the defendants.

2d. The court erred in allowing said note to be read in evidence, because of the variance between it and the note set out in the declaration.

3d. The court erred in allowing the testimony of Harding touching the signature of said note.

4th. The court erred in allowing plaintiff's proof of the rate of exchange.

5th. The judgment was rendered for too much.

6th. The court erred in overruling the motion for a new trial, for the reasons in such motion set forth.

Wherefore, for the errors aforesaid, the said Allen Hunter and Cyrus Reed pray that the said judgment and decree of said county court may be reversed, set aside, and for naught had, held and esteemed.

LINDSAY & FOWLER,
 for Appellants.

Wm. J. Mydan
NS
William J. Mydan

Abstract

Filed April 22. 1869
L. Leland
Clerk

Hunter in declar-
ation - and Hunter
in note - is it vari-
ance - Please find if you
Proof by witness that
it was his manner of
signing -

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

ALLEN HUNTER and CYRUS REED vs. WILLIAM BRYDEN.

POINTS AND BRIEF OF DEFENDANT.

1. It does not appear that the exceptions of the defendant below were taken at the time the decisions objected to were made; or at what time said exceptions were taken, or when the bill of exceptions was signed.

2d. There is nothing erroneous in the decisions of the Court. The execution of the note by Allen Hunter was not in issue. It could not be controverted unless he denied the execution thereof under oath.

Pickering vs. Pulsifer, 4 Gilman, 79.

3. The evidence showed beyond controversy that the note was signed by *Allen Hunter*, in his own hand writing.

N. H. PURPLE, *Def'ts Att'y*.

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

ALLEN HUNTER and CYRUS REED vs. WILLIAM BRYDEN.

POINTS AND BRIEF OF DEFENDANT.

1. It does not appear that the exceptions of the defendant below were taken at the time the decisions objected to were made; or at what time said exceptions were taken, or when the bill of exceptions was signed.

2d. There is nothing erroneous in the decisions of the Court. The execution of the note by Allen Hunter was not in issue. It could not be controverted unless he denied the execution thereof under oath.

Pickering vs. Pulsifer, 4 Gilman, 79.

3. The evidence showed beyond controversy that the note was signed by *Allen Hunter*, in his own hand writing.

N. H. PURPLE, *Def'ts Att'y*.

250-45
Huntley & Reid

27

Bryden

Brief

by Defendant

Filed Oct. 26. 1859
Helena
Mh.

Submitted by both
parties on abstracts
and briefs