

No. 13524

# Supreme Court of Illinois

<sup>1</sup>  
Bl~~x~~nn, et al.

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vs.

Evans.

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

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No. 258.  
1860

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Blinn  
vs  
Ewins

135

Proper

STATE OF ILLINOIS.  
IN THE SUPREME COURT.

APRIL TERM, A. D. 1860.

JONATHAN BLINN, <i>et al.</i> ,	}	<i>An Appeal from the Superior Court of Chicago.</i>
Appellants,		
<i>vs.</i>		
ALBERT S. EVANS,		
	Appellee.	

ABSTRACT OF RECORD.

THIS is an action of assumpsit, brought by the appellee against the appellants.

Page 2.

The declaration is against the defendants as partners, the appellants and one Cyrus Adams, and contains the common counts for goods wares and merchandize; money lent; and money had and received; for interest; and upon account stated.

7. The defendants plead the general issue.
8. The defendants, Eddy and Blinn, file an affidavit that they have a good defence.
11. A jury is waived and the cause submitted to the court for trial.
11. The Court find the issues for the plaintiff.



Page 11.

Defendants Eddy and Blinn enter a motion for a new trial, for the reasons :

- 1st. That the verdict was against the law.
  - 2nd. That the verdict was against the evidence.
  - 3rd. That the verdict was against the law and the evidence.
- Which motion was overruled by the court.

Exceptions thereto were taken by the defendants, and judgment rendered for the plaintiff for the sum of \$1,060.81 and costs.

12. From which judgment the defendants Eddy and Blinn pray an appeal to the Supreme Court, which is allowed upon their filing the proper bond.
13. The bill of exceptions shows the following to be all the evidence in the case.
14. Witness Bailey testifies that the firm of Bailey & Mead had a note signed "Adams, Blinn & Co.," for \$955.82, dated June 23, 1857, payable in sixty days, which was left for collection at George Smith & Co.'s Bank. That Adams, Blinn & Co. never contracted any debt with the firm of Bailey & Mead, except they held the aforesaid note, which they received from Cyrus Adams, in payment or extension of a note of said Adams, with Philander Eddy as security, received for goods sold to Adams in 1856. The note of Adams, Blinn & Co. was paid at maturity.
15. Eddy said, before we took this note, that if we would take a note to run sixty days with the company's name, Blinn extra, it would be all right, and would be paid. I had no conversation with Blinn on the subject.
16. Robert Rayney testified that he was in the employ of George Smith & Co. at the time the above mentioned note was due, in June, 1857. That it was paid by the plaintiff on the day that it matured, and was delivered up to him when paid. It was the custom of the Bank so to do, and witness presumes notice was in this case given to the payors, by message or by post.
16. Alexander Leslie testifies that the same note was in the Bank of George Smith & Co., that he has looked at memorandums made by him of notices, and knows that notice was sent to defendants by postman or through the post office.



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Alexander Lile testifies that he saw plaintiff in his own store, September 11th, 1857. Saw Mr. Adams there; saw a note signed by Adams and others; can't recollect the other names; it was for near a thousand dollars, and was past due. Adams expressed himself satisfied with the manner in which the business had been done, and commenced figuring.

On cross-examination, witness testifies: I know it was Mr. Adams from his being introduced to me at the time. Adams seemed satisfied with what had been done; I saw no money paid; my recollection is not distinct; something was said but I cannot say what.

Here the plaintiff rested.

17. When on behalf of defendants, O. K. A. Hutchinson testifies: I heard a conversation between plaintiff and Mr. Chickering defendant's attorney. Plaintiff said he took the money he got for a note he got discounted, and paid the note of Adams, Blinn & Co., at Smith's Bank, with it; I understood the note he got discounted was a note of Adams, or Adams, Blinn & Co.; I think it was Mr. Lee he got the money from; Lee's name was mentioned in that connection; I don't know the amount of the note, nor when it was due.

18. Joseph L. Mead testifies: I am of the firm of Bailey & Mead; I attend the office business; we never sold any goods to Adams, Blinn & Co.; never had any account with them; a note was given us by Adams, with P. Eddy as surety, and this note was taken up by the note of Adams, Blinn & Co.

18. George Watson testifies: I discounted a note purporting to be made by Cyrus Adams and Philander Eddy, with Blinn as guarantor on 22nd August, 1857; Lee got the note from the plaintiff and the note came from Lee to me; this is the note (here it is set forth); Evans stated to me that the proceeds of the note were used to take up Adams, Blinn & Co.'s note at George Smith & Co.'s Bank, and that he paid the note at the request of Adams, and afterwards paid to Adams the balance of the money, less commissions, and gave him the note of Adams, Blinn & Co.; Blinn and Eddy have both pronounced their names to this note which I discounted, to be a forgery.

21. Here J. W. Chickering, a witness called by the plaintiff, testifies that he is acquainted with the hand-writing of Philander Eddy and Jonathan Blinn, and in his opinion their signatures to the

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note spoken of by Watson, are not genuine. It was also proved that the defendants were partners from January 4th to September 11th, A. D. 1857, doing business under the name and style of Adams, Blinn & Co., at South Haven, in the State of Michigan, and Chicago, in the State of Illinois. Adams spent most of his time in Michigan, and Eddy and Blinn resided in Chicago.

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Afterwards the appellants perfected their appeal by filing a bond in accordance with the order of the court.

THE POINTS made by the Appellants are:—

1st.

The note of Adams, Blinn & Co., having been given by Adams for his individual indebtedness to Bailey & Mead, it was not in the hands of the payees a legal obligation against the copartnership. And the plaintiff, even if he had paid this note to them at maturity, upon Adams request, could only be substituted to the rights and remedies of Bailey & Mead; he does not stand as a *bona fide* purchaser of a negotiable instrument for value before it was due. The note was not sold to the plaintiff, nor was it ever assigned to him by the payees thereof; at the utmost he is only subrogated to the rights of the original holder of the note.

2nd.

But the plaintiff never paid out any money of his own upon the transaction. All he did was to take the money he had previously received from or through Adams, and apply it as he was by Adams directed. He was only the agent of Adams to receive the money from Watson, through Lee, and pay it over as ordered by Adams. He has suffered no damage; he has expended nothing in the transaction, and therefore has no cause of action against the defendants.

J. W. CHICKERING,

*Attorney for Appellants.*



258-123

Chm. et al.

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Exms

Abstract

Filed Apr 25-1862

Richard

Clark



Jameson & Morse, Printers, 14 La Salle Street, Chicago.

STATE OF ILLINOIS.  
SUPREME COURT.

ALBERT S. EVANS,  
*Appellee.*  
vs.  
PHILANDER EDDY AND  
JONATHAN BLINN, *et al.*  
*Appellants.*

} April Term A. D. 1860,  
at Ottawa.

POINTS MADE AND AUTHORITIES CITED BY COUNSEL FOR APPELLEE.

It appears from the Record in this cause, that the plaintiff below brought his action against the defendants, in the Court below, to recover for money paid for the use and benefit of the said defendants.

The facts upon which the plaintiff based his right to recover were substantially as follows :

On the        day of        A. D. 1857, the appellants, Eddy and Adams, were indebted to the firm of Bailey & Mead, upon a promissory note given by Adams as principal, and Eddy as surety, for goods theretofore sold by Bailey & Mead to Adams.

That at the maturity of this note, it not being paid, Eddy was applied to for the reason, and stated substantially that if Bailey & Mead would take the note of the defendants (Adams, Blinn & Co.) in payment of the note they then held, it would be paid, which they accordingly did.

The note so taken was for \$955 82-00 and interest, dated the twenty-third day of June, A. D. 1857, and due at sixty days, made by Adams, Blinn & Co. to Bailey & Mead, payable at Geo. Smith & Co.'s, Chicago, which they soon thereafter placed in the Bank of Geo. Smith & Co. for collection.

That about ten days before the maturity of the note Geo. Smith & Co. notified Adams, Blinn & Co., the defendants, that the note was there for collection and of the day of its maturity.

Of all this it does not appear that the appellee had any knowledge whatever. It appears that Adams, Blinn & Co. were partners under the name of Adams, Blinn & Co., from the fourth day of January, A. D. 1857, to the eleventh day of September, A. D. 1857.

That at the maturity of the note of Adams, Blinn & Co. the appellee went to the Bank of Geo. Smith & Co. and paid the note, took it up and afterwards delivered it to Adams, of the firm of Adams, Blinn & Co.

That this was done with the knowledge and at the request of Adams, Blinn & Co.

This it seems was the ground of the appellees claim in the Court below and certainly entitles him to recover.

It further appears from the Record, that about the time the appellee paid and took up the note of Adams, Blinn & Co., Cyrus Adams delivered to the appellee what purported to be a judgment note, made by Cyrus Adams and Philander Eddy, to the order of Jonathan Blinn.

That the names of Eddy to and Blinn upon this note were forgeries.

It further appears that Evans procured this forged note to be discounted.

That the forged note was never paid, but was produced in Court by the plaintiff below and delivered up to the defendants upon the trial.

That the appellee paid the money for which recovery was had in the Court below there is no doubt. That it was paid at the request and for the benefit of the defendants, there is no doubt.

The judgment, therefore, ought to stand, unless the defences, or some one of them, relied upon by the appellants, are tenable.



The first ground of defense is, that the note of Adams, Blinn & Co., which was paid and taken up by the appellee for and on behalf of the appellants, was given to take up a note of Eddy & Adams, and not for a debt of the firm of Adams, Blinn & Co. Our answer to this is,

1st. There is nothing in the Record to show that the appellee knew anything about the consideration of the note.

2d. He was not bound to know this.

3d. No matter for what it was given if it was assented to by the firm.

A. It was given by the express assent and request of two of the firm, Eddy & Adams.

B. The knowledge of the existence of the note was brought home to the firm before its maturity, by the notice given by Geo. Smith & Co.

C. The request of the firm, through Adams, its agent, and one of its members, was an express recognition of the validity of the note.

4th. If the note was a fraud upon the firm, and Adams & Eddy, or either of them, wrongfully procured the appelle to take it up it is one of those frauds for which the firm is responsible.

*Story on Part. 161. Sec. 108.*

*5 Mass. R. 75 and 331.*

II.—Another defense relied upon to reverse the judgment is that the note was not paid at the request of the firm, but of Adams only.

To this we answer,

1st. The note taken up was the note of the firm and the firm knew of its existence.

a. Notice to one of the firm is notice to all.

b. Express notice was given by George Smith & Co.

c. The note was delivered to the firm; for delivery to one of the members of the firm, for the firm, is a delivery to the firm.



2d. The note being the note of the firm, and they knowing that it was in the bank for collection, their not going there to take it up at its maturity, but receiving the note after it was taken up and availing themselves of the payment, are circumstances from which the law implies a request.

3d. The firm actually and expressly requested the appellee to pay and take up the note, through Adams, one of the members thereof.

III.—Another ground of defence is, that the appellee was repaid the money paid by him by the forged note of Adams & Eddy, endorsed by Blinn. To this we answer,

1st. This forged note was never paid, but was delivered up to the defendants on the trial; if, therefore, it had been a genuine note, or had been binding on the defendants, it was no payment.

2d. The note being forged, a fraud was practiced upon the plaintiff, and the firm, through this fraud, obtained the money of the appellee.

a. The firm cannot be allowed to retain this money and set up the fraud of one of its members to defeat our recovery.

b. This was a fraud practiced by one of the members of the firm in the transaction of the business of the firm, to wit, in the payment of its notes, and for this fraud, by virtue of the co-partnership, the appellants are responsible.

See authorities above cited.

3d. The forged note was made payable to Jonathan Blinn, and the name of Jonathan Blinn on the back of the note is a forgery. The note, therefore, was never transferred to the plaintiff and he never had title thereto.

IV. Another ground of defense is, that this money was refunded to the plaintiff below by the money which he received on the sale of the forged note to Watson or Lee. To this we answer,

1st. If the appellee received this money by the sale of a forged note and he has already restored it, or if he has not, is under a legal obligation to refund it.

2d. The question is not whether the appellee has ever obtained money from another party, fraudently or otherwise, but whether the appellants have ever repaid to the appellee the money he paid for them at their request.

3d. The appellee never assigned or transferred the note. The title thereto never passed from the defendant, Jonathan Blinn, if he in fact ever had title thereto.

In conclusion, we say that the appellants had the money for which the appellee recovered, and there is no violation of law and certainly not of equity or justice, in affirming this judgment.

WALKER, VAN ARMAN & DEXTER,  
*Counsel for Appellee.*



258-123

Jonathan Bliss

by

Albert S. Evans

Appellous points

Filed April 25, 1860  
L. Leland  
Clerk



STATE OF ILLINOIS.  
SUPREME COURT.

ALBERT S. EVANS,

*Appellee.*

*vs.*

PHILANDER EDDY AND  
JONATHAN BLINN, *et al.*

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That at the maturity of this note, it not being paid, Eddy was applied to for the reason, and stated substantially that if Bailey & Mead would take the note of the defendants (Adams, Blinn & Co.) in payment of the note they then held, it would be paid, which they accordingly did.

The note so taken was for \$955 82-00 and interest, dated the twenty-third day of June, A. D. 1857, and due at sixty days, made by Adams, Blinn & Co. to Bailey & Mead, payable at Geo. Smith & Co.'s, Chicago, which they soon thereafter placed in the Bank of Geo. Smith & Co. for collection.

That about ten days before the maturity of the note Geo. Smith & Co. notified Adams, Blinn & Co., the defendants, that the note was there for collection and of the day of its maturity.

Of all this it does not appear that the appellee had any knowledge whatever. It appears that Adams, Blinn & Co. were partners under the name of Adams, Blinn & Co., from the fourth day of January, A. D. 1857, to the eleventh day of September, A. D. 1857.

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It further appears from the Record, that about the time the appellee paid and took up the note of Adams, Blinn & Co., Cyrus Adams delivered to the appellee what purported to be a judgment note, made by Cyrus Adams and Philander Eddy, to the order of Jonathan Blinn.

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15. Eddy said, before we took this note, that if we would take a note to run sixty days with the company's name, Blinn extra, it would be all right, and would be paid. I had no conversation with Blinn on the subject.

16. Robert Rayney testified that he was in the employ of George Smith & Co. at the time the above mentioned note was due, in June, 1857. That it was paid by the plaintiff on the day that it matured, and was delivered up to him when paid. It was the custom of the Bank so to do, and witness presumes notice was in this case given to the payors, by message or by post.

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J. W. CHICKERING,

*Attorney for Appellants.*



258-123

Blum et al

B

Essex

Abstract

Filed Apr 25 1860

Leland

Clerk

120  
United States of America  
State of Illinois Cook County Jr.

Now before the Honorable  
Judges of the Superior Court of Chicago within and  
for the County of Cook and State of Illinois at a  
regular term of the said Superior Court of Chicago  
begun and holden at the Court House in the  
City of Chicago in said County, on the first  
Monday being the Sixth day of June in the year  
of our Lord One thousand eight hundred and  
fifty nine, and of the Independence of the  
United States of America the Eighty third,

Present The Hon. John W. Wilson,

Chief Justice of said Court

Sam H Higgins and

Grant Goodrich Judges

Charles Haver Prosecuting

Attorney. John Gray

Sheriff of Cook County.

Attest

Walter Kimball Clerk

Be it Remembered that herefore to wit on the  
Nineteenth day of October in the year of our Lord  
one thousand eight hundred and fifty eight  
Ernest Albert S. Evans by his Attorneys Nathan  
Van Arman and Walter Kimball filed in the office of  
the Clerk of the Cook County Court of Common



Please his certain declaration in words and figures as follows to wit,

State of Illinois }  
Cook County } ss.

The Cook County Court of  
Common Pleas of the  
Northern Term A.D. 1858-

Albert S. Evans Plaintiff in this suit  
vs. Walker Van Arman and Luther Hie's  
Attorneys Complainers of Cyrus Adams-  
Isaiah Blinn and Philander Eddy  
(Partners doing business under the name  
firm and style of Adams Blinn & Co.)  
Defendants who are summoned in a  
plea of trespass on the case on promises,

For that whereas, the said defendants  
heretofore to wit, on the Eighteenth day  
of October in the year of our Lord one  
thousand eight hundred and fifty  
eight at Chicago in the county  
aforesaid were indebted to the said Plain-  
tiff, in the sum of Fifteen Hundred Dollars  
of lawful money of the United States of  
America, for diverse goods, wares and  
merchandise, by the said plaintiff before  
that time sold and delivered to the



3  
said defendants and at the special in-  
stance and request of the said defendants  
and being so indebted to the said plaintiff  
the said defendants in consideration thereof,  
afterwards to wit; on the same day and year  
and at the place aforesaid, understood,  
and then and there faithfully promised  
the said plaintiff well and truly to pay  
unto the said plaintiff the said sum of  
money last mentioned, when the said defen-  
dants should be thereunto afterwards requested.  
And whereas also, the said defendants after-  
wards, to wit, on the same day and year, and  
at the place aforesaid, in consideration that  
the said plaintiff had before that time, at the  
like special instance and request of the  
said defendants sold and delivered to the  
said defendants divers other goods, wares and  
merchandise of the said plaintiff the <sup>said</sup> defendants  
then and there understood and faithfully promised  
the said plaintiff that the said defendants  
would well and truly pay unto the said  
plaintiff so much money as the last aforesaid  
goods wares and merchandise, at the time  
of the sale and delivery thereof were reasonably  
worth, when the said defendants should be  
thereunto afterwards requested; and the said  
plaintiff avers that the said goods wares and



merchandise last mentioned, at the time of the sale and delivery thereof, were reasonably worth the further sum of Fifteen Hundred dollars of like lawful money aforesaid, to wit: at the place aforesaid, wherof the said defendants afterwards, to wit, on the same day and year and at the place aforesaid were indebted to the said plaintiff in the further sum of Fifteen Hundred Dollars of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendants and at the like request of said defendants. And for other money by the said plaintiff before that time paid, laid out and expended for the said defendant and at the like request of <sup>the</sup> said defendants. And for other money by the said defendants before that time had and received by and for the use of the said plaintiff. And also in the further sum of Fifteen Hundred Dollars for so much money before that time, and the due and payable from the said defendants to the said plaintiff, for interest upon and for the forbearance of divers large sums of money before then due and owing from the said defendants to the said plaintiff, and by the said plaintiff foreborne to the said defendants for divers long spaces



of time, before then elapsed, at the like special  
 instance and request of the said defendants  
 and being so indebted, the said defendants in  
 consideration thereof, afterwards, to wit, on the  
 same day and year, and at the place aforesaid,  
 undertook and then and there faithfully prom-  
 ised the said plaintiff well and truly to pay  
 unto the said plaintiff the said several sums  
 of money in this count mentioned, when  
 the said defendants should be thereunto  
 afterwards requested. And whereas also the  
 said defendants afterwards, to wit, on the  
 same day and year, and at the place  
 aforesaid, accounted together with the said  
 plaintiff of and concerning divers other sums  
 of money, before that time due and owing  
 from the said defendants to the said plaintiff  
 and then and there being in arrears and unpaid,  
 and upon such accounting, the said de-  
 fendant then and there were found to be in  
 arrears and indebted to the said plaintiff in  
 the further sum of Fifteen Hundred dollars  
 of like lawful money, <sup>as</sup> aforesaid. And being  
 so found in arrears and indebted to the said  
 plaintiff the said defendants in consideration  
 thereof, afterwards, to wit, on the same day and  
 year, and at the place aforesaid, undertook,  
 and then and there faithfully promised the said



Plaintiff well and truly to pay unto <sup>the</sup> said plaintiff the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested.

Nevertheless, the said defendants (although often requested etc.) has not <sup>yet</sup> paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff but to pay the same or any part thereof to the said plaintiff the said defendants have hitherto altogether refused and still do refuse to the damage of the said plaintiff

Fifteen Hundred Dollars, and therefore the said plaintiff brings suit etc,

Walker, Van Arman and Dexter  
Plffs. Attorneys, —

Adams Bros & Co.

Due of with Albert S. Evans	Do.
" Money lent and advanced	\$1500 =
" " paid laid out and expended	\$1500 =
" " had and received to & for use of said Plff.	\$1500. =
" Goods ware and merchandise sold	\$1500 =
" Labor and Services	\$1500 =
" Balance due on accounts stated	\$1500 =

Walker, Van Arman & Dexter  
Plffs. Attys. —



7th  
And afterwards, to wit, on the second day of  
November in the year aforesaid <sup>Jonathan Blinn and</sup> ~~came~~ ~~Attorneys~~  
~~Philander Eddy~~ and filed in the office of the Clerk  
of the ~~Chicago~~ <sup>Said</sup> Court of Common Pleas a  
certain Plea and Affidavit of Merits  
in words and figures as follows, to wit,

State of Illinois  
Cook County Court of J.C.  
Common Pleas

of Term of  
November  
A. D. 1858

Robert S. Lewis

vs

Cyrus Adams.

Jonathan Blinn &

Philander Eddy

Action assumpsit

And Jonathan Blinn and  
Philander Eddy two of the defendants in the  
suit entitled as above came and defended  
the wrong and injury when so, and say  
that they did not undertake or promise in  
manner and form as the said Plaintiff hath  
thereof declared against them. And of this  
they put themselves upon the Country so.

J. W. Chittling  
Atty.

Defts. Blinn and Eddy  
J. Blinn, Philander Eddy.



State of Illinois  
Cook County: ss,

Jonathan Blinn & Philander Eddy  
two of the defendants in the suit entitled as  
above being duly sworn do upon their oaths  
say (severally each for himself) that they have  
a good defence upon the merits of the  
said action as they verily believe -  
And that the aforesaid Plea by them pleaded  
as above is true -

G. D. Wolf  
J. P.

J. Blinn  
Philander Eddy.

And afterwards to wit on the twenty first day of  
February in the year of our Lord Eighteen hundred  
and fifty nine came Cyrus Adams and  
filed in the office of the Clerk aforesaid his  
certain Plea in words and figures as  
below to wit.

Cook County Court  
of Common Pleas }

Cyrus Adams  
Impleaded with  
Jonathan Blinn and  
Philander Eddy }



Ats

Albert S. Evans

State of Illinois }  
Cook County } p.

And the said Defendant Cyrus Adams by Clarkson and Free his Attorneys comes and defends the wrong and injury &c. And says that he did not undertake and promise <sup>in</sup> ~~and~~ Manner and form as the said Plaintiff hath above thereof complained against them and of this he puts himself on the country &c.

Clarkson and Free  
Attys. for Adams.

And afterwards to wit on the twenty first day of February in the year of our Lord eighteen hundred and fifty (nine) said day being one of the days of the February term of said Court the following among other proceedings was had and entered of Record to wit. -

Albert S. Evans

vs

Cyrus Adams

Jonathan Blinn

& Philander Eddy

Asst.



This day comes the said Plaintiff by Walter,  
 Van Arman and Dexter his attorneys and  
 the said <sup>Jonathan Bliss & Philander Eddy</sup> defendants by John W. Chickering  
 their attorney, <sup>and the said defendant Cyrus Adams by Charles W. Bliss his attorney</sup> also come and by their  
 agreement made here in open Court  
 a jury is raised and this cause  
 submitted to court for trial,  
 And the Court having heard the al-  
 legations and proofs submitted by  
 said Plaintiff and defendants and  
 arguments of counsel and not  
 being well advised in the premises  
 takes time to consider of the same.

And afterwards, to wit, on the sixth day  
 June in the year of our Lord Eighteen  
 Hundred and fifty nine, said day  
 being one of the days of the June term  
 of the Superior Court the following among  
 other proceedings was had and entered  
 of Record to wit,

Albert J. Coans

vs  
 Cyrus Adams, Jonathan Bliss  
 and Philander Eddy.

Assessment,  
 And now again



comes the parties to this cause by their  
 respective attorneys as aforesaid and the  
 Court upon submission of the parties  
 having had the issues joined in this  
 cause under advisement since the 21<sup>st</sup> <sup>of</sup> <sub>the</sub>  
 day of February of the February term  
 last past of this court and due de-  
 liberation being thereupon had and the  
 Court being now fully advised in the  
 premises finds issues for said plain-  
 tiff and awards his damages herein  
 to the sum of one thousand <sup>and sixty</sup> dollars and  
 eighty one cents, and thereupon said  
 defendants <sup>Edley & Blum</sup> submit their motion herein  
 for a new trial in this cause and  
 the Court being fully advised over-  
 rules said defendants motion for a  
 new trial, whereupon said defendants  
 enter their exceptions.

Therefore it is considered said plaintiff  
 do have and recover of the said defen-  
 dants his damages of one thousand and  
 sixty dollars and eighty one cents in  
 form aforesaid by the Court here found  
 and awarded and also his costs and  
 charges in this behalf expended and  
 have execution therefor.



4 1212

And afterwards to wit on the Eighteenth day of June in the year of our Lord Eighteen Hundred and fifty nine said day being one of the days of the June Term of the Superior Court, the following among other proceedings was had and entered of Record, to wit, -

Albert S. Evans.

vs.

Resumpsit,

Gus Adams, Jonathan Blinn  
and Philander Eddy

And now again comes the said defendants Jonathan Blinn and Philander Eddy by J. W. Chitturing Their Attorney and on his motion leave is given defendants, to file reasons for new trial herein this day as of sixth instant, And thereupon defendants having heretofore entered their exceptions herein, pray an appeal herein to the Supreme Court, which is allowed, on filing their appeal bond in sum of Two Thousand dollars with security to be approved by a Judge of this Court in thirty days and bill of exceptions to be filed within                      days.



And afterwards to wit on the Twenty  
third day of June in the year of our  
Lord Eighteen Hundred and fifty nine  
said day being one of the days of the  
June term of the Superior Court, the  
following among other proceedings was  
had and entered of Record, to wit,

Albert S. Evans

vs

Appl.

Cyrus Adams, Jonathan Blinn  
and Philander Eddy.

And now again comes  
said defendants Jonathan Blinn and  
Philander Eddy by J. W. Chickering their  
attorney and on his motion leave is  
given said defendants to file Bill of  
exceptions herein and appeal bond with  
Morgan S. Keith as security, by sixth day  
of July next.

And afterwards to wit on the First day  
of July in the year of our Lord Eighteen  
Hundred and fifty nine came said Eddy  
& Blinn and filed in the office of the Clerk of  
the Superior Court of Chicago a certain  
Bill of Exceptions in words and figures



14th as follows to wit.

State of Illinois }  
Superior Court of Chicago } S. S.

Of the June Term A. D. 1857.

Albert S. Evans

vs

Cyrus Adams et al

in dispute

Be it remembered that on  
the trial of this cause the plaintiff to sustain the  
issues on his behalf introduced as witnesses.

Remondier Bailey who testified as follows.

I am one of the firm of Bailey  
and Mead. They had a Note of Defendants  
(Adams Blain & Co.) dated June 23<sup>rd</sup> A. D. 1857  
for \$955.82 payable in 60 days with interest  
which was left for collection at George Smith  
& Co. Bank.

Adams Blain and Co. never  
contracted any debt with me or with my  
~~firm~~ <sup>the firm or with my firm</sup> from except on their note as herein  
after mentioned. Cyrus Adams gave us a  
note with Philander Ridd as security for  
goods sold Adams in the year 1856 and  
the note of Adams Blain & Co. was given to  
take up that note. This note of Adams  
Blain & Co. was paid at maturity and we



15<sup>th</sup> to get the money.

This note of Adams Blair & Co. was given us by Cyrus Adams in renewal of his note on which Philander Eddy was security. Mr. Eddy said to me before taking the note of Adams Blair & Co. if we would take a note to run so close with the Company's name. Blair extra in addition it would be all right and would be paid.

I had no conversation with Blair on the subject. I had the note of Adams & Eddy and asked Eddy why it was not paid and that Adams would give the note of Adams Blair & Co. therefor - Eddy replied as above stated if we took their note it would be all right and would be paid.

I think I showed the note to him (Eddy) after it was taken, am not positive.

He understood the note was to renew the old note I told Eddy that Adams said he would give Adams Blair & Co. note for the note of Adams and Eddy and Eddy said it would be all right and would be paid or words to that effect. The original note of Adams & Eddy was given for groceries which went across the Lake into Michigan.

Robert Ramsey testified as follows



16th I am in the employ of George Smith Esq. In June 1857 there was a note placed in that Bank by Bailey and Mead for collection signed Adams Blinn & Co. for \$942.56 it matured August 25<sup>th</sup> 1857 the note was paid by the Plaintiff on the day it matured and was delivered up when paid to him. It was the uniform custom of the Bank to give notice to the payors of notes by messenger or by post. I presume notice was given in this case. I thought it was strange Coane was paying another mans note.

Alexander Leslie testified as follows.

I was clerk of George Smith Esq. in 1857, a note of Adams Blinn and Co. was there for collection. The note was dated June 23<sup>rd</sup> 1857 for \$955.86 payable in 60 days with interest, notice was given 10 days before due to defendants. I have looked at memorandum made by me of notices and know that notice was sent to defendants by Postman or through the post office.

Alexander Lile, testified as follows.

I know Mr. Coane the Plaintiff. On Friday September 11<sup>th</sup> 1857 I saw Plaintiff in his office in this City - saw Mr. Adams there - and saw a note signed by Adams



17 1/2

and others - can't recollect the other names  
it was for near a thousand dollars and  
was just due. Mr. Adams expressed  
himself satisfied with the manner in which  
the business had been done and commenced  
figuring in relation to true balance.

O. crop examination  
witness says I know it was Mr. Adams from  
his being introduced to me at that time - Adams  
seemed to be satisfied with what had been  
done - I saw no money paid. My recollection  
is not distinct. - Something was said but  
I cannot say what.

Chicago August 25<sup>th</sup> 1857

Pay note of Adams Plinn & Co. - Receiv  
Nine hundred and seventy two 5/100 dollars  
and charge same to account of  
\$972. <sup>56</sup>/<sub>100</sub> - A. S. Coans

Now the Plaintiff restes his case when the  
defendant produced as witnesses.

O. K. A. Hutchinson was testified

I heard a conversation  
between Plaintiff and Mr. Chickering (de-  
fendant's attorney). I heard Plaintiff say  
that he took the money he got for a note  
which he got discounted and paid the note



19-  
\$1100

Chicago

1857

Sixty days after date for value received we jointly and severally promise to pay to Jonathan Blinn or order at the office of Daniel Clifton & Co. Chicago Illinois the sum of eleven hundred dollars with interest at the rate of  $\sim$  per cent per annum for money loaned.

Cyrus Adams  
Philander Eddy

Know all men by these presents that whereas the subscribers Philander Eddy and Cyrus Adams are justly indebted to Jonathan Blinn upon a certain Promissory note bearing date herewith for the sum of Eleven Hundred dollars and  $\sim$  cents made payable at the office of Daniel Clifton & Co. to the said Jonathan Blinn or order and due sixty days after date.

Now therefore in consideration of the premises and of the sum of one dollar to us in hand paid by the said Jonathan Blinn the receipt whereof is hereby acknowledged we do hereby make, constitute and appoint William H. Davis or any attorney in any Court of Record to be our true and lawful attorney prolocally for us and in our name, place and stead to appear before any justice



of the Place or in any court of Record in term  
time or vacation in any of the States or Territories  
of the United States at any time after the date  
hereof to waive service of process and then and  
there confess a judgment in favor of the said  
Jonathan Blinn or his assigns upon the said  
note for the above sum or for as much as appears  
to be due according to the tenor and effect of  
said note with interest thereon together with  
costs also for five per cent attorney's fee to be  
added to the amount due in entering up  
Judgment, also to file a Cognovit for the  
amount that may be due with an agreement  
therein that no writ of Error or appeal shall  
be prosecuted upon the judgment entered by  
virtue hereof nor any bill in equity filed to  
interfere in any manner with the operation  
of such judgment and to release all errors  
that may intervene in the entering up of such  
Judgment or issuing the execution thereon  
and also to consent to immediate execution  
upon such Judgment & hereby testifying and  
confirming all that our said attorney may do by  
virtue hereof.

Witness our hands and seals  
this twentieth day of August

A.D. 1857. Geo Adams  
Melander Eddy.

Endorsement  
Geo. Adams



Coans stated to me that the proceeds of this note were used to take up Adams Blinn Co.'s note at George Smith Off<sup>r</sup>. Bank and that he paid that note at the request of Adams and afterwards paid to Adams the balance of the amount less commissions and gave him the note of Adams Blinn Co. Blinn & Eddy have both pronounced their names on and to this note which I dis-counted to be a forgery.

Here the defendants rested and the Plaintiffs then produced as a witness S. W. Chickering who testified in relation to the note spoken of by witness Watson as having been discounted by him; I am acquainted with the hand writing of Philander Eddy and Jonathan Blinn the signatures of Eddy and Blinn to and upon this note are not genuine in my opinion.

It was also proved that the defendants were co-partners from the 4<sup>th</sup> day of January until the 11<sup>th</sup> of September A. D., 1857 doing business under the name and style of Adams Blinn & Co. in the lumbering business at Port Haven in the State of Michigan and at Chicago in the State of Illinois.

Adams spent the most of his time in Michigan and Eddy and Blinn resided



12th in Chicago.

Which was all the evidence in the case.

The parties waived a jury and the case was tried by the Court who found a verdict for the Plaintiff whereupon the defendants moved the Court for a new trial for the following reasons.

State of Illinois  
Cook County ss.

In the Superior Court  
of Chicago.

Line Term

A. D. 1859.

Albert S. Evans

vs

Cyrus Adams et al.

} Assumpsit.

And the said defendants Eddy and Blinn came and moved the Court for a new trial in the case for the following reasons -

1<sup>st</sup> The verdict by the Court is against the Law.

2<sup>nd</sup> The verdict is against the evidence

3<sup>rd</sup> The verdict is against the Law and the evidence in the case

Checking Atty. for defendants  
Eddy and Blinn



132 which motion for a new trial was overruled  
by the Court.

And to this decision of the Court  
in overruling the motion for a new trial  
the said defendants then and there excepted  
and forasmuch as the matters aforesaid are  
not apparent upon the record in this cause,

The defendants pray that this  
their bill of exceptions may be sealed and  
made a part of the Record therein

Which is accordingly done.

John W. Wilson *seal*

The foregoing bill of exceptions is correct-  
and is to be filed "nunc pro tunc" as of  
the 1<sup>st</sup> day of July A. D. 1859.

J. W. Chickering Atty. Gts.

Walker, Van Arman & Dexter  
Attys. for Plffs.

From all men



215 And afterwards to wit on the same day  
of July in the year aforesaid the said  
Philander Eddy and Jonathan Blinn filed  
in said cause their appeal bond in words  
figures as follows to wit

Know all men by these presents that W. E.  
Philander Eddy and Jonathan Blinn  
of Chicago in the County of Cook and  
State of Illinois as principals and  
Morgan S. Keith of the same place as  
sureties are held and bound unto  
Albert S. Evans of the same place in the  
penal sum of two thousand dollars  
lawful money of the United States for the  
payment of which well and truly to be  
made we do jointly and severally and  
firmly bind ourselves and our respective  
heirs, executors and administrators by  
these presents, sealed with our seals  
and dated this <sup>14th</sup> twenty fifth day of June  
in the year of our Lord one thousand &  
eight hundred and fifty nine.

The condition of the above  
obligation is such that whereas the said  
Albert S. Evans lately and at the present



from thereof A. D. 1857 of the Superior  
Court of Chicago recovered a judgment  
against the above bounden Philander  
Eddy and Jonathan Blinn together with  
one Cyrus Adams for the sum of Ten  
hundred and sixty \$/100 dollars besides  
costs of suit - And whereas the above  
bounden Philander Eddy and Jonathan  
Blinn have prayed an appeal therefrom  
to the Supreme Court of the State of Illinois -

Now if the above bounden  
Philander and Jonathan shall duly  
prosecute their said appeal, and in  
case the foresaid judgment shall in  
and by the said Supreme Court be  
affirmed shall pay the judgment costs,  
interest and damages that may be awarded. Then and in that case the above  
obligation shall be void and of no effect,  
otherwise the same shall be and remain  
in full force and effect.

Witness my hand and seal

this 1st day of

June 1857

at Chicago, Ill.

Philander Eddy (Seal)

J. Blinn (Seal)

Morgan L. Keith (Seal)



State of Illinois  
County of Cook } S.S.

I Walter Kimball Clerk of the Superior Court of Chicago, in and for said County, (formerly the Cook County Court of Common Pleas), do hereby certify that the foregoing is a full true and complete transcript of all the pleadings on file in my office, and of the proceedings and judgment entered of Record in said Court in a certain case wherein Abbot S. Evans is plaintiff and Cyrus Adams Jonathan Blinn & Philander Eddy are defendants.

In testimony whereof I hereto subscribe my name, and affix the Seal of said Court, at the City of Chicago in said County this 13<sup>th</sup> day of April A.D. 1860.

Walter Kimball Clerk





State of Illinois: Spring term  
Supreme Court R A & 1860 -

Nathan Blinn  
Philander Eddy Appellants  
vs  
Albert J. Cook Appellee  
Appeal from the  
Superior Court of  
Chicago -

### Assignment of Errors

And now comes the appellants by J. W. Chickering their attorney and say that there is manifest error in the proceedings & judgment aforesaid upon the face of the record thereof, in account of which errors the said judgment ought to be reversed -

And for a specification of such errors the appellants shew to the Court the following -

1. The Court below erred in granting the appellants motion for a new trial -

2. The Court below erred in rendering judgment in favor of the appellee and against the appellant -



and for these and other manifest errors  
in the said proceedings and judgment  
the appellants pray that the same  
may be reversed - set aside and  
for nought held  
and that they may have  
judgment for their costs

J. M. McWhorter  
Atty for Appellants



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up, line

Cyrus Adams et al

Appellants

Filed Oct. 19 1860

L. Deland

Clk.

\$5.50.

checking