

12208

No. _____

Supreme Court of Illinois

Parks

vs.

Brown

71641  7

State of Illinois } Pleas before the Honorable Edwin
LaSalle County } S. Leland, Presiding Judge of the
} ninth Judicial Circuit of the
State of Illinois at a term of the Circuit Court in and
for said ^{LaSalle} County commenced and held at the Court
House in Ottawa on Monday the fourteenth day
of November A.D. 1833 the same being the second
Monday in said month of November & the seventy
eighth ^{year} of American Independence.

Present

The Honorable Edwin S. Leland, Presiding Judge	
Philo Lindley	Clerk
W. H. L. Wallace	State Attorney
Richard Thorne	Sheriff

Be it remembered that hereupon to wit on the
12th day of July A.D. 1833 papers were filed in the
office of the Clerk of the Circuit Court of said
LaSalle County, of which the following are
copies

(Copy of Note)

"Four months after date for value received I
promise to pay to the order of Nathaniel Brown
One hundred dollars at the Northern Rail
Road Office in Chicago.
Nov. 4. 1832. R. G. Parks.

(On the back of said Note was the following in pencil (mark)
"O. T. Bagley"

(Copy of copies)

State of Illinois } The People of the State of Illinois, To any
 LaSalle County ss. } Constable of said County - Greeting.
 You are hereby commanded to take
 the Body of R G Parks and bring him forthwith
 before me, unless special bail be entered, and if such
 bail be entered you will then command him to app-
 ear before me at my office in LaSalle on the 20th day
 of June AD 1833 at 1 o'clock P.M. to answer the Complaint
 of Elisha Bazley for a failure to pay him a certain
 demand not exceeding one hundred dollars and
 hereof make due return as the law directs.

Given under my hand and seal this 14th day
 of June AD 1833. Nicholas Duncan J.P. ^{Deputy}

(On the back of said Capias was the following to wit)

"Capias No 944. Nathaniel Brown, for the use of Elisha
 Bazley vs. R G Parks. Demand \$100.00 Costs due '56 1/4.
 I William N Beales acknowledge myself special
 Bail for the within named R G Parks. Wm N Beales
 this 14 day of June 1833. Served by reading to R G
 Parks and taking William N Beales as special Bail
 this 14 day of June 1833. R B Logswell Constable

Fees for serving	35 cts
Taking Bonds	50 cts
	85 "

(Copy of Affidavit)

"Nathaniel Brown } Justice Court before
 for the use of } Esqr. Duncan.
 Elisha Bailey }
 vs. }
 R G Parks }

Lasalle County } Alfred Putnam being duly sworn
State of Illinois } upon his oath says that he is
} the Attorney for the Defendant
in the above entitled Cause that he is somewhat
acquainted with the pecuniary circumstances of
said Defendant that said Defendant is to his know-
ledge & has been for sometime last past doing
an extensive business in the name & by the style
of "R G Parks & Co" that he has had various dealings
with said Defendant at sundry times & that said
Defendant has always paid this Affiant promptly
according to his agreements for all services rendered
by this Affiant & that he verily believes said Parks
to be worth sufficient property subject to execution
to satisfy all claims or demands which the said
Plaintiff may have against him. Wherefore the said
Defendant Prays that the said Cause may abate &c.
Subscribed & sworn to J. A. Putnam Jr
June 20th 1833. Nicholas Duncan J.P. "

(Copy of Affidavit for Execution)

" State of Illinois } Trial on Monday, June 20th 1833.
Lasalle County, ss. } Before Nicholas Duncan Justice
} of the Peace, in City of Lasalle Ill.

Elisha Bagley } Elisha Bailey after being first duly
vs } sworn does depose and say that he
R G Parks } believes that the debt will be lost
} unless an Execution issue forthwith
after the judgment in the above case is rendered.
Subscribed, sworn and Elisha Bagley
Subscribed to this 14th day of
June A.D. 1833. Daniel Mesgrove J.P. " "

(Copy of Transcript)

" Nathaniel Brown } 1853. 14th day of June.
 for the use of } On oath of J. Elisha Bagley
 Elisha Bagley } a Capias was issued returnable
 vs. } (in Case of Bail) on the 20th day
 R G Parks, } O'clock P.M. delivered to R B Cogswell
 justices fees } Constable.

Oath of plff	6 ¹ / ₄	Demand for Note made by defen-
Capias	18 ³ / ₄	dant to said Nathaniel Brown on
Docket entry	12 ¹ / ₂	the 4 th day of November 1832 for
Entg M ^o bail	25-	One hundred dollars payable
1 Oath	6 ¹ / ₄	at the Northern Rail Road
Entg judg ^t	25-	Office in Chicago \$ 100. 00
Ent appeal	25-	1853-14 th day of June said writ
Transcript	25-	returned endorsed "I William
	\$ 1.43 ¹ / ₄	N Beales acknowledge myself

Cans to fees
 On Capias .850
 Special bail for the within
 named R G Parks (signed) Wm N Beales
 This 14th day of June 1833 deemed
 by reading to R G Parks and taking Wm N Beales as
 Special Bail (signed) R B Cogswell const.

1833 20th day of June L M Hewlett appeared for defendant
 and moved a dismissal assigning that there was no
 grounds for issuing said Capias. - which motion was
 overruled, It was adjudged and determined that
 said Plaintiff have and recover of said R G Parks the
 sum of One hundred dollars debt and one dollar and
 ninety one cents costs, 1833 25th day of June deft prayed
 an appeal and filed an appeal bond executed by him
 self and L Eggleston which bond I did approve
 this cause is therefore appealed to the Circuit Court
 State of Illinois } I the subscriber a justice of the peace in
 LaSalle County 85 } and for said County do Certify that

the foregoing transcript with the papers annexed contain
a full & perfect copy of the proceedings and judgment
from my docket before me in the above entitled
Cause. Dated this 4th day of July 1853.

Nicholas Duncan J.P.

Filed July 12, 1853.

P. Lindly Clerk.

(Copy of an Appeal Bond Filed July 12th 1853)

"Know all men by these presents that we R. G. Parks
and L. Eggleston are held and firmly bound
unto Elisha Bagley in the penal sum of Two hundred
and four dollars for the payment of which well and
truly to be made we bind ourselves our heirs and
administrators jointly severally and firmly by
these presents. Witness our hands and seals this
25th day of June 1853.

The Condition of the above
obligation is such that whereas Nathaniel Brown
(for the use of said Elisha Bagley) did on the 18th
day of June 1853 before Nicholas Duncan a justice
of the peace for the County of LaSalle recover a
judgment against the above bounden R. G. Parks
for the sum of One hundred dollars debt and One
Dollar ninety one cents costs from which judgment
the said R. G. Parks has taken an appeal to the Circuit
Court of the County of LaSalle & State of Illinois. Now
if the said R. G. Parks shall prosecute his appeal
with effect and shall pay whatever judgment
may be rendered by the Court upon dismissal or
trial of said appeal then the above obligation to
be void otherwise to remain in full force and effect.

Approved by me at my office

this 25th day of June 1853,

Nicholas Duncan,

R. G. Parks

L. Eggleston

Filed

Filed

(And afterwards to wit, on the 12th day of July A.D. 1833
the following summons was issued.)

"State of Illinois } The People of the State of Illinois to the
Ladell County, ss. } Sheriff of Said County - Greeting.
We command you to summon Nathaniel
Brown for the use of Elisha Bagley if to be found in
your County, personally to be and appear before the
Circuit Court of Said County on the first day of the
next term thereof to be holden at the Court House
in Ottawa on the 14th day of November next to prosecute
his suit which he instituted against R. G. Parks
and recovered judgment before Nicholas Duncan
Esq. a justice of the peace of Said County on the
20th day of June 1833 for the sum of One hundred
dollars besides costs from which Said judgment
the Said R. G. Parks has taken an appeal to the
Circuit Court of Said County and further to do
and perform whatever Said Court may there
and there consider in the premises. And have
you then and there this writ.



Witness Philo Lindley Clerk of said
Court and the Seal of said Court
at Ottawa this 12th day of July 1853
P. Lindley Clerk

(And also on the back of said summons was the following, to wit) "Not found in my County -
 Aug^t 24th 1853. W^m Thorne ^{Ret. J. C.} Shff^y Filed August 25th 1853.
 "Appearance of appellee entered in this Cause by his Attorney
 J^d Sample & W^m S. Jenkins"

(Copy of Bond Filed June 20th 1839)

~~Know all men by these presents that we Rollin
C Parks and Lorenzo Eggleston of the County of
LaSalle and State of Illinois are held and firmly
bound unto Nathaniel Brown for the use of
Elisha Bayley in the Penal sum of Two~~

And afterwards to wit; on Monday the 14th
day of November 1833, the same being one
of the days of the November term of said Court,
the following order was made and entered
of record viz;

"Nathaniel Brown for the use of Elisha Bayley vs R C Parks	} } } } Appeal } This day J. Jenkins } Esq comes and enters his appearance as attorney for the Plaintiff "
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And afterwards to wit; on Wednesday Dec, 21st
1833 the same being one of the days of said
November term. The following further order
was made and entered of record viz;

"Nathaniel Brown for the use of Elisha Bayley vs R C Parks	} } } } Appeal } "It is ordered by the Court } that this Cause be continued."
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And afterwards to wit; on Wednesday May 24th

1854 the term being one of the days of the
May term of said Court for the year 1854 the
following further order in said Cause was
entered & read as follows:

Nathaniel Brown for the
use of Elisha Bagley }

vs

R. G. Parks. }

Appeal

This day comes the Plaintiff
by Jenkins his Attorney and
the defendant by Chumadero & Taylor his Attorneys
and by agreement of parties a jury is waived and this
Cause submitted to the Court for trial and after hearing
the evidence the Court finds the issues in favor of the
plaintiff and assess his damages at one hundred
dollars. Thereupon the defendant's Counsel move
the Court for a new trial, which motion is overruled
by the Court. It is therefore considered
by the Court that the plaintiff have and
recover of the defendant the said sum of One hundred
dollars for his damages and his costs and charges
by him herein expended and that he have execution
therefor.

And again on Monday May 27th 1854 the
term being one of the days of said May term
of said Court the following final order was
made in said Cause to wit:

Nathaniel Brown
for the use of
Elisha Bagley }

vs

R. G. Parks. }

Appeal

This day the defendant

again comes by his Council and prays an appeal to the Supreme Court which is granted upon condition that defendant within thirty days from that date file an appeal bond herein payable to the plaintiff in the penal sum of two hundred dollars with Lorenzo Eggleston as his security."

(On the 24th day of May 1834, the following Bill of Exceptions was filed to wit:)

"State of Illinois }
LaSalle County, ss. } In the Circuit Court May Term 2d 1834.

Nathaniel Brown for the
use of Eliza Bayley

vs

R G Parks.

On Appeal from Justice Court.

Be it remembered that

this Cause came on to be tried in said Circuit Court on the 24th day of May 1834 before the Honorable Edwin S Leland Judge a jury being waived by agreement of parties. The plaintiff offered in evidence a Note in the words and figures following to wit: "Four Months after date for value received I promise to pay to the order of Nathaniel Brown One hundred Dollars at the Northern Rail Road office in Chicago. Nov. 4. 1832"

(Signed) "R G Parks"

And which Note was endorsed on the back "Nathaniel Brown" The defendants Counsel objected to the introduction of said Note in evidence which objection was sustained by the Court on account of said endorsement. The Plaintiffs Council then in the presence of the Court erased the endorsement of "Nathaniel Brown" from the back of said Note

& again offered said Note in evidence to the admission of which defendants Counsel objected which objection was overruled by the Court and said Note with said endorsement erased admitted in evidence by the Court to which Defendants Counsel then and there excepted. The Pl. offered no other evidence. The defense then called L. P. Jenkins Esq. Plaintiffs Counsel in Court - as a witness who was sworn and testified that he was retained in this case by a man who called himself Bailey and stated that he lived in Chicago and that he understood from Bailey that he owned or was interested in the Note but could not say that Bailey had stated so in direct terms.

The witness stated that the suit had been commenced & the note placed on file before he was retained in the case, that he never was retained by Brown and did not know him.

Defendant gave in evidence the Transcript from the justice of the peace on which this case was appealed - Also an affidavit sent up with the papers from the justice of the peace as follows viz:

"State of Illinois	}	23	For trial on Monday June 20 th 1833
"LaSalle County Ill.			
"Elisha Bailey	}	}	Before Nicholas Duncan justice of the Peace.
"			
"H. G. Parks	}	}	In City of LaSalle Ill.
"			
"Elisha Bailey	}	}	Elisha Bailey being
"			
"H. G. Parks	}	}	first duly sworn does depose
"			
"The debt will be paid unless an execution issue	}	}	and say that he believes that
"forthwith after the judgment in the above case			
"is rendered.	}	}	Elisha Bailey
"Sworn and subscribed to this			
"14 day of June 1833. Daniel Cosgrove, JP	}	}	
"			

The foregoing was all the evidence given on the trial
Upon agreement the Court the Court decided that
the Attorney Jenkins having appeared for the Plaintiffs
& struck out the endorsement and there being no
evidence that the suit was ~~commenced~~ ^{commenced} & prosecuted
against the will of the Plaintiffs that he could
recover on the note whether it belonged to Bailey
or not. found for the plaintiff, and assessed his damages
to one hundred dollars To which decision and finding
of the Court the Defendant then & there excepted.

Thereupon the Defendant moved the Court for a
new trial and assigned for reason, 1st That the
finding is against the evidence, 2^d That the finding
is against law, which motion being heard was over-
ruled by the Court to which decision of the Court
overruling said motion for a new trial the Defendant
then & there excepted. Thereupon the Court rendered
judgment on said finding to which judgment the
Def^t then & there excepted.

And the said Defendant now here prays the Court
to sign & seal this his Bill of exceptions which is
done accordingly in open Court

May 24th 1837,

E. S. Leland Secy
Judge ss "

(And afterwards on the 28th day of June Ad 1837, the
following Bond was filed, to wit:)

"Know all men by these presents that we Rollin G
Parks and Lorenzo Eggleston of the County of LaSalle
and State of Illinois are held and firmly bound
unto Nathaniel Brown for the use of Elisha Bayly
in the penal sum of Two hundred dollars for
which payment well and truly to be made we

bind ourselves our heirs & jointly and severally
firmly by these presents. Signed with our seals
& dated this 15th day of June 1833.

The condition of the above obligation is such
that whereas the said Nathaniel Brown for the use
of Elisha Bagley did at the May Term AD 1832 of the
Circuit Court Court in & for LaSalle County in said
State State recover a judgment against the above
bounden Rollin G Parks for the sum of One hundred
Dollars besides costs of suit from which judgment
the said Rollin G Parks has prayed and taken
an appeal to the Supreme Court of the said State
of Illinois. Now if the said Rollin G Parks shall
pay said judgment & costs together with interest
and damages in case said judgment shall be
affirmed in said Supreme Court and shall also
duly prosecute his said appeal so by him taken
as aforesaid then this obligation to be void otherwise
to remain in force.

R G Parks

Seal

L Eggleston

Seal

State of Illinois I John F. Nash Clerk of the
LaSalle County p 3 Circuit Court in and for
said County and State do
hereby certify that the above and foregoing is a
true, full, perfect and complete record in the case
of Nathaniel Brown for the use of Elisha Bagley vs
R. G. Parks as the same appears of record in my
office

In Testimony Whereof I have hereunto
set my hand and the Seal of said
Court at Ottawa this 6th day of June
AD 1833

J. F. Nash Clerk

Nathaniel Brown Jr.
the use of
Elisha Bailey

R. G. Parks

Complete Record

Filed June 9th 1858,
L. Toland Clerk.

31 folios

fees \$ 3.45

Rt Parks
Nathaniel Brown for
use of Eliza Bayley

In this cause, the
appellant comes and says that
in the record and proceedings afore
said there is manifest error
in this Court below

- 1st That the Court allowed the plain
tiff's attorney to strike out the endor
sement from the note read on upon
the trial.
- 2 That the Court below permitted
said note to be read in evidence
in the Cause
- 3 That said Court found a ver
dict in favor of plaintiff upon
said note.
5. That said finding was against
the evidence
- 6 That said finding was against
law.

Wherefore
for pray.

Now comes the said appellee by D.P.
Sutkins his attorney And for answer
to the above several assignment of errors
says that there is no error in said
Record upon to —

D.P. Sutkins atty
for Appellee

Park 67

Now for use of
Bailey

assignment of
Evan.

Filed July 11. 1855
L. Island Ch.

N. Brown appellee }
vs } Error
R. G. Parker appellant } Supreme Court
At Ottawa June Term 1885

This case is scarcely distinguishable from the Case of Kyle vs Thompson that found in 2^d Scammon on Page 432 - Except that in this Case endorsement was in blank - the name of the payee alone being endorsed across the back of the Note - And that at the time of trial said endorsement was stricken out - in this case - The atty for appellee says that was a mere dictum of the Court and decides nothing - perhaps that is so - But the fact that - that was an early decision, and the Court never having since intimated any thing against it, is pretty good evidence that they were willing to abide by it - By the current of decision bearing on this question - in other States - I apprehend this Court will not consider this question settled finally either way - so they will be free to give an unbiased decision of what they consider the true rule ought to be - Again I wish to call the attention of the Court to the fact that in every Case cited & I think in every Case to be found where the Court has held that the assignment could not be stricken out on trial - the Assignment was full & complete to cut

= an Person =

Now is there or can there be any distinction on that account - The Statute says when the payee shall endorse it (negotiable paper) It shall absolutely transfer and vest the property thereof in each and every assignee or assignees successively Now suppose there is no assignee or assignees - who does the legal property of the paper rest with - It is true that any Person becoming the owner & getting possession of the paper has a right to make an assignee of himself or any one else he may select -

But suppose he does not do so - And suppose the payee of a Note writes his name across the back of a Note and gives it to some one who is interested with him or not in the paper to give to a Lawyer for Collection - so as to enable the Lawyer to bring suit in the name of some resident of the State if you please - Must the atty make an assignee & sue in his name or may he erase the payee's name from the back of the note & bring suit in his name and if he may so do - is it all important that that erasure shall take place before suit commenced

Now what was the evidence in this case? Substantially this? That after this suit was commenced before the Justice of the Peace, a man calling himself by the name of Bayley Employed the

Witness as attorney to attend to the case
on behalf of Pltff & that said Bayley
claimed some interest in the note
or that witness so understood him
although not expressed in direct
terms — Does this evidence preclude
the bringing of the suit in the name
of the payee = What is the character
of a Blank Indorsement — Is it not
in effect saying to the world when so
put into circulation — I authorize any
Person into whose hands this may properly
come to nominate & make an assignee
instead of the ~~payee~~ payee exercising
that right himself — Now must the
holder exercise the authority conferred
or is it like almost any other authority
conferred subject to be exercised or de-
clined as the Party in interest may
elect — It strikes me the Court will
say that it is not an authority that
must be exercised by the holder
and that the assignment is not com-
plete until that authority is exercised
so as absolutely to vest the legal prop-
erty in the holder — so as to compel
him to bring the suit in his own
name — Besides does the evidence show
the ownership of the note to have been in
the man Bayley — I think not — But rather
having a tendency to show that Bayley had
some interest in it — how much or of what
kind is left to conjecture — It is true that
~~the~~ I who was the witness and acting atty
for the Pltff objected to giving the testimony

set forth - but my objection to testifying was over ruled by The Court -

But the bill of exceptions being silent on this point I cannot use it here

I now submit to The Court the following propositions

1st The evidence does not show Bayley to have been the owner of the Note at the time suit was brought -

2^d If he was the owner; He was not, and could not be the assignee in fact of the Note until the assignment actually made -

The endorsement of the Name of the Payee on the back of the Note was simply a delegation of Power to any other Proper Person to make an assignee - which might be done or declined by the Party in interest and if declined it simply has the effect to release the payee as an endorser

D. P. Jenkins
Atty for Appellee

67

Brown appales
No 67 ads { Error
Parks Appellant

Argument

34
17 000

D. P. Jenkins
atty

67

R. G. Parks

vs.

C. A. Brown for se.

12208

1855