

12494

No. _____

Supreme Court of Illinois

Bartholomew, for use of.

vs.

Bartholomew.

1. Pleas before the Circuit Court at a term thereof begun and held at the Court house in the City of Peoria in and for the County of Peoria in the State of Illinois, before the Honorable the Judge of the sixteenth Judicial Circuit in the said State of Illinois to wit;

State of Illinois
Peoria County } Be it Remembered that on the tenth day of March A.D. 1856, there was filed in the office of the Clerk of the Circuit Court of Peoria County a transcript of a judgment of R. M. Smith, a Justice of the Peace in said County & of the proceedings in a certain cause before him, which is in the words & figures following to wit:

Noyes D. Bartholomew	{	State of Illinois, Peoria Co
for the use of		Feb. 14. 1856
Peter Bartholomew		Justice Court before R. M. Smith
A. C. Bartholomew		J.P.

Demand	\$46.35	{	Suit brought on a note of the following description to wit: dated Nov. the 18 th 1841. Twelve months after date for value received I (or we) promise to pay Noyes D. Bartholomew or order for the use and benefit of Peter Bartholomew, the sum of twenty five dollars with six per ct. interest from date.
J.P. cost	\$1.12		
Const. cost.	45		
Witness fee	2.00		

A. C. Bartholomew
Summons issued to H. G. Wickwire Const. returnable the

2.

23rd day of Feb. 1856 at 10 o'clock A.M. Summons returned in due time, endorsed served the within Summons by reading the same to defendant this 18th day of Feb. 1856.

Parties appeared at the time specified. Defendant claimed a non suit upon the ground that the said Betsy Bartholomew was deceased, and that lawful steps had not been taken to secure the payment of said note, which was granted.

Judgment is entered against plaintiff for costs, charged at \$3.55.

Plaintiff comes this 24th day March 1856 and prays for an appeal to the Circuit Court of said County, which appeal is hereby given, plaintiff having given bond for costs,

Also on the same day and date there was also filed in the clerks office of said County a note attached to the transcript of said Justice of the Peace in words & figures following to wit:

Peoria County Nov. 18, 1841. Twelve months after date for value received I or we promise to pay to Noyes D. Bartholomew or order for the use and benefit of Betsy Bartholomew the sum of twenty five dollars with six per. cent. interest from date
A. C. Bartholomew.

Also on the same day to wit the tenth day of March A.D. 1856 the following Summons was filed in the clerks office of said Court by said Justice to wit:

State of Illinois } The People of the State of Illinois
Peoria County } to any Constable of said County Greeting

3.

You are hereby commanded to summon A. C. Bartholomew to appear before me at my office in Southport on the 23rd day of Feb. at 10 o'clock A.M. to answer the complaint of Noyes D. Bartholomew for the use of Betsey Bartholomew for a failure to pay him a certain demand not exceeding 100 dollars, and hereof make due return as the law directs Given under my hand and seal this 14th day of February 1856

R. M. Smith J.P. Seal

Endorsed as follows to wit:

Served the within Summons by reading the same to defendant this 18th day of Feb. 1856

fus 45^{cts} }

H. G. Wickwire Const.

Also on the same tenth day of March A.D. 1856 there was filed by said Justice in the Clerk's office of said Circuit Court an appeal Bond which is in the words and figures following to wit:

Know all men by these presents that we Noyes D. Bartholomew and Noyes E. Bartholomew are held and firmly bound unto A. C. Bartholomew in the penal sum of seven & ¹⁰⁰/₁₀₀ dollars, lawful money of the United States for the pay 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 14th day of March A.D. 1856. The condition of the above obligation is such that whereas the said A. C. Bartholomew did on the 23rd day of February A.D. 1856 before me R. M. Smith a Justice of the Peace for the County of Peoria recover a judgment for

costs against the above bounden Noyes D. Bartholomew for the sum of three ⁵⁵/₁₀₀ dollars from which judgment the said Noyes D. Bartholomew has taken an appeal to the Circuit Court of the County of Peoria aforesaid and State of Illinois. Now if the said Noyes D. Bartholomew 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.

Noyes D. Bartholomew *Seal*

Noyes E. Bartholomew *Seal*

Approved by me at my office in Southport this 4th day of March 1856

R. M. Smith J.P.

Whereupon the Clerk of the Circuit Court of Peoria County issued a Summons to the Sheriff of said County on the 11th day of March, which is in the words and figures following to wit:

The People of the State of Illinois, to the Sheriff of Peoria County Greeting: We command you to summon A. D. Bartholomew if he may be found in your County, to appear before our Circuit Court on the first day of the term thereof to be held at Peoria within and for the said County of Peoria on the 2nd Monday of May next then and there in our said Court to answer unto Noyes D. Bartholomew for the use of Betsey Bartholomew in a suit lately appealed from before R. M. Smith one of the Justices of Peace of said County of Peoria and make return of this writ with an endorsement of the

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time and manner of serving the same on or before the first day of the term of the said Court to be held as aforesaid.
Seal Witness Jacob Gale, clerk of our said Court and the seal thereof at Peoria this 11th day of March in the year of our Lord one thousand eight hundred and fifty six. Jacob Gale, clerk

Upon which the said Sheriff made his return in words and figures following to wit:

Served on A. C. Bartholomew by reading to him this writ
March 13th 1856
D. D. Irons, Sheriff
By A. R. Kidwell Deputy.

Proceedings at a term of the Circuit Court begun and held at the Court house at the City of Peoria in and for the County of Peoria in the State of Illinois on the second Monday of May in the year of our Lord one thousand eight hundred and fifty six it being the twelfth day of said month. Present the Honorable Jacob Gale Judge of the sixteenth Judicial Circuit in the State of Illinois David D. Irons Sheriff and James L. Barkman clerk to wit:
Thursday May 29th A.D. 1856

Noyes D. Bartholomew

for the use of Betsey Bartholomew

vs

A. C. Bartholomew

} Appeal from J.P.

by the agreement of parties this cause is continued to the next November term of this Court.

56. Upon which on the 28th day of November A.D. 1856
there was filed in the clerk's office of said Court an affidavit
& motion which are in the words & figures following to wit:
State of Illinois } Noyes D. Bartholomew for the use
Peoria County } of Betsy Bartholomew
vs
A. C. Bartholomew }

N. H. Purple being sworn says that he has been
informed and believes the same to be true that Betsy Bar-
tholomew the person for whose use this suit is brought was dead
before the commencement of this suit; he received this in-
formation from the defendant and other persons who resided in
the immediate neighborhood of the said Betsy and where she
was reputed to have died, in Peoria County Illinois

N. H. Purple

Sworn to this 28th Nov 1856

Enoch P. Sloan, clerk

Defendant enters a motion that the name of Betsy B. Bar-
tholomew be stricken from the docket Nov. 28, 1856

Purple for def.

And Afterwards to wit on the 28th day of November A.D.
1856 the plaintiff filed in the clerk's office of said Court
his motion for a new trial in said cause which is in the
words and figures following to wit:

Noyes D. Bartholomew } Circuit Court
vs Betsy Bartholomew } Peoria County Ills
vs } Nov. Term A.D. 1856
Ambrose C. Bartholomew } On appeal

47.

Plff moves for a new trial in this cause for the reasons following:

1. The Court admitted improper evidence for defendant.
2. The Court refused proper instructions asked by plff.
3. The Court gave improper instructions on the part of the defendant.
4. The verdict of the jury is against the weight of evidence.
5. The verdict of the jury is against the law.

Peoria Nov. 28, 56

Cooper & Reynolds for plff.

Proceedings at a term of the Circuit Court begun and held at the Court house in the City of Peoria in and for the County of Peoria in the State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty six it being the seventeenth day of said month. Present the Honorable Elisha N. Powell, Judge of the sixteenth Judicial Circuit in the State of Illinois. David D. Irons Sheriff and Enoch P. Sloan, Clerk to wit:

Friday November 28th A.D. 1856

Noyes D. Bartholomew,
for the use of Betsey Bartholomew

vs
A. C. Bartholomew

} Appeal from J.P.

This day came the parties by their respective attorneys, and the defendant by N. H. Purple his attorney entered a suggestion of the death of said Betsey Bartholomew, filed the affidavit of said Purple in proof thereof and entered a motion that the name of said Betsey Bartholomew be

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stricken from this cause. The Court being sufficiently advised
in the premises overruled said motion. It is ordered by the
Court that a jury be empaneled to try the issues in this
cause, whereupon came a jury of twelve good and lawful
men to wit: James H. Dooley, John Mc Carthy, James
B. Neff, Alfred G. Curtin, Ralph Hamlin, William A.
Herron, John B. Warner, Moses Stringer Jr. Edwin Matthews,
James Debor, John Kirkman and John Reynolds, who
being duly chosen tried and sworn well and truly to try
the issues in this cause and true verdict give according
to evidence do say, we of the Jury do find the issues for
the defendant. The plaintiff entered a motion for a new
trial in this cause for reasons on file.

Monday December 15th A.D. 1856
Noyes D. Bartholomew for the
use of Betsey Bartholomew

vs
A. C. Bartholomew

} Appeal from J.P.

This day came on to be heard the
motion of the plaintiff for a new trial in this cause and
the Court being fully advised in the premises overruled
said motion. Therefore it is considered that the said A. C.
Bartholomew go hence without day and have and recover
of the plaintiff his costs and charges by him about his
defense in this behalf expended as well in this Court as
in Court below and that execution issue therefor.

above referred to, which said receipt is in the words and figures following:

(a leafy)

"Received of N. C. Bartholomew three doll. and twenty five cents it being in full of all accounts notes whatso ever up to this date.

Newburg August 23, 1847

N. C. Bartholomew "

To the reading of which in evidence to the jury the plaintiff by his counsel objected. But the Court overruled said objection and permitted said receipt to be read in evidence to the jury. To the overruling of which objection and permitting said receipt to be read in evidence to the jury the plaintiff by his counsel then and there excepted. There was no other evidence, on either side offered in the case. The plaintiffs then asked the following instructions to the Jury which were given by the Court viz:

1. That a receipt tho' prima facie evidence is not conclusive evidence of payment and may be rebutted by other evidence and if the jury believe from the facts & circumstances in evidence before them in the case that it was not the intention of the parties by the receipt offered in evidence to cut off the note offered in evidence the jury are at liberty to disregard said receipt.

2.

That the facts that the receipt read in evidence is for a much less amount than the note and that the note itself was still left in the hands of the party to whom it was given without explanation; and that said

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receipt is given by N. D. Bartholomew alone, while the note is made to him for the use & benefit of Betsey Bartholomew are all facts proper for the Jury to consider in determining the application of the receipt, and if the Jury believe from the evidence that it was not the intention of the parties to cut off said note by said receipt, they will find for the plaintiff.

and also the following additional instructions which were refused to be given viz:

3 That the party for whose use a note is given is the party alone interested and that the legal party is a mere technical one wholly uninterested and without control over the property.

4 That it is entirely for the jury to determine what was the intention of the parties in making said receipt and this intention they are at liberty to infer from the facts shown by the papers in evidence.

And the defendant asked the following instructions

1. That the receipt given in evidence in this case is conclusive evidence of the payment of the note unless the plaintiff has shown that the note in question is not included in the receipt.

2. That in this case there is no evidence that the note in question is not included in the receipt (except the note and receipt.)

3rd. That the papers in this case do not show any fact which tends to prove that the note in this suit is

excluded from the receipt.

All of which were given as asked except that numbered 2, which was modified by the court by adding the words "except the note and receipt" to which decision of said court in refusing said instructions asked by the plaintiff and in giving said instructions for the defendant, the plaintiff by his counsel excepted. The jury then retired and soon after returned into court with a verdict for defendant which said verdict is in the words and figures following to wit:

We the Jury find ^{for} the defendant or no cause of action.

And thereupon the plaintiff enters his motion for a new trial as follows to wit:

Noyes D. Bartholomeo
vs
Betsey Bartholomeo

Circuit Court
Peoria County Ills
Nov. Term A.D. 1856

Ambrose C. Bartholomeo

On appeal

Plff. moves for a new trial in this cause for reasons following:

1. The court admitted improper evidence for defendant
2. The court refused proper instructions asked by plff.
3. The court gave improper instructions on the part of the defendant.

4. The verdict of the jury is against the weight of evidence

5. The verdict of the jury is against the law.

Peoria Nov. 28. / 56

Cooper & Reynolds for plff.

which said motion is upon argument overruled

by the Court, and judgment rendered for the defendant upon said verdict. To which decision of the Court in overruling said motion and in rendering judgment for the defendant the plaintiff then and there excepted and prays that this his bill of exceptions may be signed sealed & made of Record by the Court which is done.

E. N. Powell (Seal)

State of Illinois }
Peoria County } 2

I, Enock Sloan, clerk of the circuit Court in and for said county and state do certify that the foregoing is a correct transcript of the proceedings in the cause wherein Noyes S. Bartholomew for use of Peter Bartholomew was is plaintiff and Ambrose C. Bartholomew is defendant as the same remains of record on file in my office.

I witness whereof, I hereto set my hand and seal ~~the~~ of said Court this 17th day of April 1857

Enock Sloan, clk

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And now comes the plaintiff in error in this cause and says that manifest error in the record proceedings and judgment herein, hath intervened to his prejudice. in this =

1. Said Circuit Court erred in permitting the receipt offered by the defendant to be read in evidence to the jury on the trial of said cause.
2. Said Court erred in refusing said instructions numbered 3 & 4 asked by the plaintiff =
3. Said Court erred in the instructions given to the jury for the defendant =
4. The verdict of the jury is against the weight of evidence =
5. Said verdict is against law =
6. Said Court erred in overruling the plaintiff's motion for a new trial and in rendering judgment against the plaintiff on said verdict. Wherefore and for other errors appearing in said Record, the plaintiff prays that the said judgment & proceedings herein may be reversed, annulled and for nought held and esteemed =

Cooper & Reynolds
for plff in error =

And the defendant says there is no error in said Record

M. Cruple left & settled

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Bartholomen-
as. =
Bartholomen-

Record =

Filed Apr 24 1857
S. Leland
Clerk

Supreme Court of Illinois, 3d Grand Division.

APRIL TERM, A. D. 1857.

NOYES D. BARTHOLOMEW for the
use of Betsey Bartholomew
vs.
A. C. BARTHOLOMEW. } ERROR TO PEORIA.

ABSTRACT OF RECORD.

On the 14th February, 1856, the plaintiff in error sued the defendant in error before a J. P. of Peoria county, on the following note, viz :

"Peoria county, Nov. 18, 1841.—Twelve months after date, for value received, I (or we) promise to pay to Noyes D. Bartholomew, or order, for the use and benefit of Betsey Bartholomew, the sum of twenty-five dollars, with six per cent. interest from date."

(Signed)

"A. C. BARTHOLOMEW."

Judgment was rendered by the Justice for the defendant, and plaintiff appealed to the Circuit Court of said county, in which Court, at the November Term, 1856, the cause was tried by a jury and verdict rendered for defendant. Plaintiff moved for a new trial, for reasons following:

1. Improper evidence admitted for defendant.
2. Refusal of proper instructions asked by plaintiff.
3. Improper instructions given for defendant.
4. Verdict against evidence.
5. Verdict against Law.

Which motion the Court overruled and rendered judgment for defendant, and the plaintiff excepted.

The bill of exceptions filed in the cause, shows that when the cause was called for trial the defendant's counsel gave notice, verbally, that he would offer to read in evidence a receipt in words and figures, following :

"Received of A. C. Bartholomew, three doll and twenty-five cents, it being in full of all accounts, notes whatsoever up to this date.
Newburg, August 23, 1847. N. D. BARTHOLOMEW."

On the trial the plaintiff read to the jury without objection, the note above described, and rested his case. The defendant then offered in evidence said receipt without proof of execution, and for the purpose of showing a full acquittance and discharge of the note—to the reading of which to the jury, the plaintiff objected—but the Court overruled the objection and allowed the receipt to be read, and plaintiff excepted. This was all the evidence on either side.

Plaintiff then asked the following instructions, which were given.

1. That a receipt, though prima facie evidence, is not conclusive evidence of payment, and may be rebutted by other evidence, and if the jury believe from the facts and circumstances in evidence before them that it was not the intention of the parties by the receipt offered in evidence, to cut off the note, the jury are at liberty to disregard said receipt."

2. That the facts, that the receipt is for a much less amount than the note; that the note itself was still left in the hands of the party to whom it was given, without explanation, and that said receipt is given by N. D. Bartholomew, alone, while the note is made to him for the use and benefit of Betsey Bartholomew, are all facts proper for the jury to consider in determining the application of the receipt; and if the jury believe from the evidence that it was not the intention of the parties to cut off said note by said receipt, they will find for the plaintiff.

Plaintiff also asked the following instructions, which were refused.

3. "That the party for whose use a note is given is the party alone interested, and that the legal party is a mere technical one, wholly uninterested and without control over the property."

4. "That it is entirely for the jury to determine what was the intention of the parties in making said receipt, and this intention they are at liberty to infer from the facts shown by the papers in evidence."

The Court then instructed the jury as follows, for the defendant :

1. That the receipt given in evidence in this cause is conclusive evidence of the payment of the note, unless the plaintiff has shown that the note in question was not included in the receipt.

2. That in this case there is no evidence that the note in question is not included in the receipt (except the note and receipt.)

3. That the papers in this cause do not show any fact which tends to prove that the note in this suit, is excluded from the receipt.

To the giving of which instructions for the defendant and refusing to give those numbered 3 and 4 for plaintiff, the plaintiff then and there excepted.

The jury then found for the defendant. Plaintiff moved for new trial which motion was overruled as above stated, and judgment rendered against plaintiff for costs, to which plaintiff excepted and brings his writ of error to this court and assigns for error on the record,

1. The admitting of said receipt in evidence.
2. Refusing instructions 3 and 4 asked by plaintiff.
3. The giving of said instructions for defendant.
4. That the verdict of the jury is against the evidence.
5. Said verdict is against law.
6. Error in overruling motion for new trial and rendering judgment on said verdict against the plaintiff.

COOPER & REYNOLDS.

on said verdict against the plaintiff.

6. Error in overruling motion for new trial and rendering judgment.

7. Said verdict is against law.

8. That the verdict of the jury is against the evidence.

14. 3. The giving of said instructions for defendant.

5. Refusing instructions 3 and 4 asked by plaintiff.

1. The admitting of said receipt in evidence.

of error to this court and assigns for error on the record,

against plaintiff for costs, to which plaintiff excepted and brings his writ

13 which motion was overruled as above stated, and judgment rendered

The jury then found for the defendant. Plaintiff moved for new trial

excepted.

13 five those numbered 3 and 4 for plaintiff, the plaintiff then and there

to the giving of which instructions for the defendant and refusing to

prove that the note in this suit is excluded from the receipt.

8. That the papers in this cause do not show any fact which tends to

not included in the receipt (except the note and receipt).

5. That in this case there is no evidence that the note in question is

note in question was not included in the receipt.

ence of the payment of the note, unless the plaintiff has shown that the

1. That the receipt given in evidence in this cause is conclusive evi-

The Court then instructed the jury as follows for the defendant:

at liberty to infer from the facts shown by the papers in evidence:

tion of the parties in making said receipt, and this intention they are

4. That it is entirely for the jury to determine what was the inten-

ting/retained and without control over the property."

11 interested, and that the legal party is a mere technical one, wholly

8. That the party for whose use a note is given is the party alone

plaintiff also asked the following instructions, which were refused.

not of said note by said receipt, they will find for the plaintiff.

have from the evidence that it was not the intention of the parties to

either is determining the application of the receipt; and if the jury be-

benefit of Betsey Bartholomew, are all facts proper for the jury to con-

D. Bartholomew, alone, while the note is made to him for the use and

it was given without explanation, and that said receipt is given by M.

note; that the note itself was still left in the hands of the party to whom

8. That the facts that the receipt is for a much less amount than the

given to cut off the note, the jury are at liberty to disregard said receipt,

that it was not the intention of the parties by the receipt offered in evi-

ding, police from the facts and circumstances in evidence before them

pieces of payment, and may be rebutted by other evidence; and if the

1. That a receipt, though prima facie evidence, is not conclusive evi-

Plaintiff then asked the following instructions, which were given:

these are all the evidence on either side.

10 objection and allowed the receipt to be read, and plaintiff excepted.

which to the jury, the plaintiff objected—but the Court overruled the

showing a full acquittance and discharge of the note—to the reading of

which said receipt without proof of execution, and for the purpose of

8 above described, and rested his case. The defendant then offered in ex-

On the trial the plaintiff read to the jury without objection, the note

Newburg, August 23, 1841.

M. D. BARTHOLOMEW.

10 it being in full of all accounts, notes whatsoever up to this date.

"Received of M. D. Bartholomew, three doll and twenty-five cents,

ing:

he would offer to read in evidence a receipt in words and figures follow-

8 was called for, that the defendant's counsel gave notice, verbally, that

The bill of exceptions filed in the cause, shows that when the cause

1 and, and the plaintiff excepted.

Which motion the Court overruled and rendered judgment for defend-

5. Verdict against plaintiff.

4. Verdict against defendant.

13 3. Improper instructions for defendant.

0 3. Refusal of plaintiff to prove receipt for defendant.

1. Improper evidence admitted for defendant.

1 for defendant. Motion made for a new trial, for reasons following.

December Term, 1856, the cause was tried by a jury and verdict rendered

appealed to the Circuit Court of said county, in which Court, at the No-

judgment was rendered by the Justice for the defendant, and plaintiff

(Signed) "M. D. BARTHOLOMEW."

this dollar, with six cent. interest from date."

for the use and benefit of Betsey Bartholomew, the sum of twenty-

3 the receipt, I (or M. D. Bartholomew) do hereby certify that the sum of

"Pocahontas county, Nov. 13, 1841.—Twelve months after date, for as-

1 and in error, before a J. P. of Pocahontas county, on the following note, viz:

On the 14th February, 1856, the plaintiff in error and the defend-

Abstract of Record.

M. D. BARTHOLOMEW.

use of Betsey Bartholomew

NOTES D. BARTHOLOMEW for me

APRIL TERM, V. D. 1851.

Supreme Court of Illinois 3d Grand Division.

Bartholomew, for me, do

Bartholomew

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Noyes D. Bartholomew } Supreme Court =
vs. Betsey Bartholomew } 3^d Grand Division, Ill.
as. } April Term A.D. 1857
Amrose C. Bartholomew }

Error to Pecunia =

Brief for Plaintiff =

The points made on this record arise from the admission in evidence of the receipt offered by the defendant in bar of the plaintiff's claim. And the instructions given for the deft and refused to the plff, relative thereto.

The suit is founded upon a note for \$25. dated Nov. 18/41, given by deft to the plaintiff in Error for the use & benefit of Betsey Bartholomew =

To bar this claim & cut off the note the deft was allowed to read to the jury the following receipt: "Received of A. C. Bartholomew three doll and twenty five cents it being in full of all accounts, notes & whatso- ever, up to this date." "Newburg August 23. 1847 = N. D. Bartholomew"

On the part of the plaintiff it is con- tended - That whatever might be the effect of this receipt as evidence of a settlement between the parties and payment of notes & accounts due from the defendant to the plaintiff in his own right it was not evidence legitimately tending to prove the payment of the note sued on, which was held by the plaintiff in a fiduciary character =

As to this note the plaintiff is the mere trustee of Betsey Bartholomew, And if the parties intended to bar recovery on the said note by the receipt, it is fair to presume some specific reference would have been made to the note in the receipt itself. And, at the

least there should have been some proof to connect the receipt with the note, especially when the amount purporting to be paid is different and so much less.

A receipt does not operate by way of estoppel, but only as indicatinf the intention of the parties to include the particular demand within it =

Had judgment been obtained on the note it will not be pretended that a receipt of this character, but specifying judgments as demands intended to be learned, could have been admitted to prove payment of such judgment =

In such case the party equitably interested on the record above, could have receipted against the judgment = 15 Am. 293 notes.
12 Ill. 137 = Freeman's Clif. 1231-2 & 1396 =

But however this be, it is insisted that the court Erred in refusing instructions ~~for~~ asked by plaintiff, and in giving those asked by defendant =

The 4th instruction asked by plaintiff, and which was refused, is in these words -

"That it is entirely for the jury to determine what was the intention of the parties in making said receipt, and this intention they are at liberty to infer

"from the facts shown by the papers offered in
"Evidence" =

This instruction we think is law and should
have been given = The intention of the parties in making
the receipt is the point to be determined; and if this
intention can be reasonably inferred from the papers
submitted to the jury in evidence, it is certainly their
^{of the jury} province to do so = The necessity of the instruc-
tion as asked will be more apparent when con-
sidering those given for defendant =

The instructions given for defendant are all
deemed objectionable =

The first sets out that the receipt
is conclusive evidence of the payment of the note
"unless the plaintiff has shown that the note is
not included in the receipt."

Not to repeat what has
already been said as to the hearing of this receipt,
upon the note read in evidence, the language
of this instruction is calculated to mislead =

A receipt is not conclusive but
only prima facie evidence of payment =
Greenl. Ev. 1. Sec. 305 =

The instruction is moreover
inconsistent & contradictory = For if conclusive evi-
dence of payment, the plaintiff would be estopped

from proving in the face of the receipt that the note was not paid = And in any event, the jury must infer from it, a higher and more positive character of evidence as necessary to overcome the receipt than is really required =

The second instruction was asked in this form = "That in this case there is no evidence that the note in question is not included in the receipt." The court added this qualification & gave it as follows: "Except the note & receipt."

Now, it is submitted, that if the instructions needed this qualification it should not have been given at all = For what is added is wholly inconsistent with what was asked = But, with the added words, the instruction was still improper as the case stood; as there was at least one fact before the jury not arising upon the face of either the note or receipt, which the court had before instructed the jury it was proper for them to consider in determining the application of the receipt, and which was undoubtedly a circumstance proper to be considered, and in evidence before the jury = We allude to the possession of the note remaining with the plaintiff =

Possession of notes & mortgage by a mortgagee is prima facie evidence of their payment =

5 Gilm. 231 =

2^d, it is conceived, where the note still remains with the paper it is a circumstance tending to show that it is not paid. And this undoubtedly agrees with the uniform practice in all business transactions of the kind =

But is it the 3^d instruction given for the defendant that is mainly objected to? That instruction is as follows =

"That the papers in this case do not show any fact which tends to prove that the note in this suit is excluded from the receipt."

This instruction when taken in connection with the 2nd (last above recited), took the whole case from the jury, and compelled them to find for the defendant =

It will be seen that this 3^d instruction is not only wholly inconsistent with the 2nd instruction given for the plaintiff, but even contradicts in terms the 2nd instruction for the defendant as qualified by the Court and in ^{effect} ~~fact~~ instructs precisely as was asked by the defendant in said 2nd instruction =

With such confusion palpably reigning in the mind of the Court and pervading the instructions given, it would be strange if the jury were not misled or driven to find against the law & the evidence.

It is deemed unnecessary to do more than briefly call the attention of the Court to the points arising & relied on in the case = All the

points made on the motion for new trial
raise no new question it be pass them with-
out discussion =

Cooper & Reynolds
for self in error

¹⁸⁷
Bartholomew
vs.

Bartholomew
Plaintiff's Brief

Filed May 11. 1857
S. Leland
Clerk

Supreme Court of Illinois, 3d Grand Division.

APRIL TERM, A. D. 1857.

NOYES D. BARTHOLOMEW for the
use of Betsey Bartholomew
vs.
A. C. BARTHOLOMEW. } ERROR TO PEORIA.

ABSTRACT OF RECORD.

On the 14th February, 1856, the plaintiff in error sued the defendant in error before a J. P. of Peoria county, on the following note, viz :

"Peoria county, Nov. 18, 1841.—Twelve months after date, for value received, I (or we) promise to pay to Noyes D. Bartholomew, or order, for the use and benefit of Betsey Bartholomew, the sum of twenty-five dollars, with six per cent. interest from date."

(Signed)

"A. C. BARTHOLOMEW."

Judgment was rendered by the Justice for the defendant, and plaintiff appealed to the Circuit Court of said county, in which Court, at the November Term, 1856, the cause was tried by a jury and verdict rendered for defendant. Plaintiff moved for a new trial, for reasons following:

1. Improper evidence admitted for defendant.
2. Refusal of proper instructions asked by plaintiff.
3. Improper instructions given for defendant.
4. Verdict against evidence.
5. Verdict against Law.

Which motion the Court overruled and rendered judgment for defendant, and the plaintiff excepted.

The bill of exceptions filed in the cause, shows that when the cause was called for trial the defendant's counsel gave notice, verbally, that he would offer to read in evidence a receipt in words and figures, following:

"Received of A. C. Bartholomew, three doll and twenty-five cents, it being in full of all accounts, notes whatsoever up to this date.
Newburg, August 23, 1847. N. D. BARTHOLOMEW."

On the trial the plaintiff read to the jury without objection, the note above described, and rested his case. The defendant then offered in evidence said receipt without proof of execution, and for the purpose of showing a full acquittance and discharge of the note—to the reading of which to the jury, the plaintiff objected—but the Court overruled the objection and allowed the receipt to be read, and plaintiff excepted. This was all the evidence on either side.

Plaintiff then asked the following instructions, which were given.

1. That a receipt, though prima facie evidence, is not conclusive evidence of payment, and may be rebutted by other evidence, and if the jury believe from the facts and circumstances in evidence before them that it was not the intention of the parties by the receipt offered in evidence, to cut off the note, the jury are at liberty to disregard said receipt."

2. That the facts, that the receipt is for a much less amount than the note; that the note itself was still left in the hands of the party to whom it was given, without explanation, and that said receipt is given by N. D. Bartholomew, alone, while the note is made to him for the use and benefit of Betsey Bartholomew, are all facts proper for the jury to consider in determining the application of the receipt; and if the jury believe from the evidence that it was not the intention of the parties to cut off said note by said receipt, they will find for the plaintiff.

Plaintiff also asked the following instructions, which were refused.

3. "That the party for whose use a note is given is the party alone interested, and that the legal party is a mere technical one, wholly uninterested and without control over the property."

4. "That it is entirely for the jury to determine what was the intention of the parties in making said receipt, and this intention they are at liberty to infer from the facts shown by the papers in evidence."

The Court then instructed the jury as follows, for the defendant:

1. That the receipt given in evidence in this cause is conclusive evidence of the payment of the note, unless the plaintiff has shown that the note in question was not included in the receipt.

2. That in this case there is no evidence that the note in question is not included in the receipt (except the note and receipt.)

3. That the papers in this cause do not show any fact which tends to prove that the note in this suit, is excluded from the receipt.

To the giving of which instructions for the defendant and refusing to give those numbered 3 and 4 for plaintiff, the plaintiff then and there excepted.

The jury then found for the defendant. Plaintiff moved for new trial which motion was overruled as above stated, and judgment rendered against plaintiff for costs, to which plaintiff excepted and brings his writ of error to this court and assigns for error on the record,

1. The admitting of said receipt in evidence.
2. Refusing instructions 3 and 4 asked by plaintiff.
3. The giving of said instructions for defendant.
4. That the verdict of the jury is against the evidence.
5. Said verdict is against law.
6. Error in overruling motion for new trial and rendering judgment on said verdict against the plaintiff.

COOPER & REYNOLDS.

on said verdict against the plaintiff.

6. Error in overruling motion for new trial and rendering judgment.

7. Said verdict is against law.

8. That the verdict of the jury is against the evidence.

9. The giving of said instructions for defendant.

10. Refusing instructions 3 and 4 asked by plaintiff.

11. The admitting of said receipt in evidence.

12. Of error to this court and assigns for error on the record,

against plaintiff for costs, to which plaintiff excepted and prays his writ

against motion was overruled as above stated, and judgment rendered

The jury then found for the defendant. Plaintiff moved for new trial

excepted.

13. Five these numbered 3 and 4 for plaintiff, the plaintiff then and there

to the giving of which instructions for the defendant and refusing to

prove that the note in this suit, is excluded from the receipt.

14. That the papers in this cause do not show any fact which tends to

not included in the receipt (except the note and receipt.)

15. That in this case there is no evidence that the note in question is

note in question was not included in the receipt.

16. That the receipt given in evidence in this cause is conclusive evi-

dence of the payment of the note, unless the plaintiff has shown that the

The Court then instructed the jury as follows for the defendant:

at liberty to infer from the facts shown by the papers in evidence."

17. That the receipt in question and receipt, and this instruction they are

entirely for the jury to determine what was the inten-

unintended and without control over the property."

18. That the receipt in question is a mere technical one, wholly

plaintiff also asked the following instructions, which were refused.

19. That the receipt in question, they will find for the plaintiff.

20. That the receipt in question, they will find for the plaintiff.

21. That the receipt in question, they will find for the plaintiff.

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74. That the receipt in question, they will find for the plaintiff.

75. That the receipt in question, they will find for the plaintiff.

76. That the receipt in question, they will find for the plaintiff.

77. That the receipt in question, they will find for the plaintiff.

Noyes, H. Bartholomew &
for the use of Betsy
Bartholomew.

^{vs}
A. C. Bartholomew

In Supreme
Court.

Appeals from
Pavia County

This Suit was originally instituted
before a Justice of the Peace upon a note
which is as follows

" Pavia County Nov. 18. 1841

Twelve months after date for
Value Received I (or we) promise to pay
to Noyes, H. Bartholomew for the use and
benefits of Betsy Bartholomew the sum of
twenty five dollars with six per cent interest
from date.

A. C. Bartholomew,

The Justice gave Judgment for the
Plaintiff and Defendant appealed to the
Circuit Court.

Before the Cause was called for
trial in the Circuit Court the defendant
filed an affidavit of the death of
Betsy Bartholomew and entered a
motion that her name be stricken
from the Record, which Motion was
overruled.

And also that on the trial
the defendant would sit up and
offer in evidence as a defence in
the Cause, a certain Receipt which

is as follows.

Receipt of A. C. Bartholomew
Five Doll. and twenty five Cents, it being
in full of all accounts & notes whatsoever
up to this date

Newbury Aug. 23. 1847.

A. C. Bartholomew,

On the trial the Plaintiff gave in evi-
dence the Note aforesaid, and the Defen-
dant the Receipt aforesaid, which
was all the evidence in the case

Several instructions were
asked by the parties;

The substance of all
the instructions given was, that in
the absence of all other proof the
Receipt was conclusive evidence
of the payment of the Note.

The Jury found for the Defendant
and the question in the case is whether
the verdict was right; and whether
there was any thing erroneous in the
instructions

The law is that a receipt in full
of all demands is prima facie evidence
of the payment of a note or other claim
of a prior date.

When no other Evidence is offered
by way of a rebutter - and the
note and Receipt only are given in
Evidence - The Receipt is necessarily
Conclusive.

It is immaterial that it
is expressed in the note that it
is for the use of another - The payee
is the holder and has the legal title
to the note, and it can only be paid
and collected in his name. If any
other person has an equitable interest
in the money, such person has a
claim only which can be enforced against
the Payee, the legal owner.

It is not for the Maker of
the note to look to the application of
the money; If he pays to, and gets
a receipt from the legal owner and
holder of the note this is all he
is required to do.

In this case the party (Elizabeth Bar-
tholomew) for whose use the suit
was instituted was dead before
the commencement of the suit; and
her name should have been stricken
from the records. She had neither
the legal title to the note, nor any
equitable interest to be protected

and the Case in Court would stand
precisely in the position, that it would
have done had her name not appeared
in the Records.

A Receipt in full of all demands
is Conclusion, unless Explained
or Rebutted by other proof.

L. Herkies Evidence p. 954-956.

Notes, D. Bartholomew
and Betty Bartholomew

A. C. Bartholomew

Argument

Reply

Filed May 4. 1857

L. Deland
Clerk.

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Bartholomew

Barth^{ol}olomew

1857

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