

No. 14384

Supreme Court of Illinois

Wright

vs.

Meade et al.

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 250.

14384

IN THE SUPREME COURT.

APRIL TERM, A. D. 1862.

JOHN F. WRIGHT,
APPELLANT,
ads.
JAMES M. MEAD,
SAMUEL A. STOWELL
and
LEVERETT C. STOWELL,
APPELLEES. } *Appeal from Iroquois.*

ABSTRACT OF RECORD.

- Rec. page 1 Placita of November Term, 1861.
- 1 Precipe filed and Summons issued, July 29, 1861.
- 2 Bond for costs filed July 29, 1861.
- 4 Summons served August 15th, 1861.
- 4 Declaration filed November 19th, 1861.
- First count Common Count for goods sold and delivered.
- 5 Second count, same, money loaned.
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- 7 Fourth count, cash paid, laid out, &c.
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- 8 Copy of account sued upon.
- 9 First plea general issue filed November 21st, 1861.
- 10 Second, special plea, performance, and notice of setoff, &c.

Similiter to 1st plea, replication to 2d plea.

12 Trial by the Court without a jury, Nov. 22d, 1861, and Judgment for Plaintiff for \$215.30.

15 Motion for new trial filed and overruled by the Court. Defendant excepts Judgment, Dec. 18th, 1861. Appeal prayed for and allowed, and duly perfected on the same day, Dec. 18th, 1861. Bill of exceptions filed Dec. 18th, 1861.

EVIDENCE.

16 Plaintiff called as a witness, Franklin Blades, who testified that, "Sometime last summer he presented the account to Defendant, which account reads in the words and figures following: "754:"

"STATEMENT.

"New York, May 15, 1861.

"Mr. J. F. Wright,

"In account with

James M. Mead,
Samuel E. Stowell,
Leverett C. Stowell. }

"MEAD, STOWELL & CO.,
"14 Courilandt Street.

" July 2	To M'd'ze, 6 mos. - - - - -	\$209 88
	" Interest, - - - - -	5 42
		<hr/>
		\$215 30

And that said Defendant said it was right, and he would pay it, which was all the evidence offered or given.

CHESTER KINNEY & S. G. BOVIE,

Attorneys for Appellant.

²⁵⁰
Supreme Court

John F. Wright
Appellant
vs

James M. Mead
Samuel A. Stowell
& Gerritt C. Stowell
Appellees

~~Process of Appellate~~
Abstract

Filed April 23-1862
L. Ireland
Clerk

Kinney & Borio
Appets attys

AP. ...
...
...
A. G. SMITH, Printer, Republican Office, Middleport.
5' ...

SUPREME COURT OF ILLINOIS.

APRIL TERM, 1862.

JOHN F. WRIGHT,
APPELLANT,
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JAMES M. MEAD,
SAMUEL A. STOWELL
and
LEVERETT C. STOWELL,
APPELLEES.

} *Appeal from Iroquois.*

POINTS OF APPELLANT:

First. The Plaintiffs below sued as individuals in the names of James M. Mead, Samuel A. Stowell and Leverett C. Stowell, and failed to allege a partnership, nothing upon the face of the papers showing that they were partners, or in what manner they were jointly interested in the account sued upon. They may have proved a cause of action against the Defendant in favor of Mead, Stowell & Co, but they failed to show, by any proof, that the three persons in whose names the suit was brought constituted the firm of Mead, Stowell & Co. On this proof they were not entitled to Judgment.

- 24 Ill. R., 109.
- 2. Greenleaf's Ev., Page 456, Sec. 478.
- 5. Wendell, R., 475.
- 3. Campbell, R., 240 and Note.
- 3. Starkie's Ev., 1070.
- Cowp., 569.
- 5. Term R., 709.
- 2. Watts, R., 225.
- 2. Greenleaf, Sec. 483.

Second. At Common Law the most strict and perfect proof was required, even in case the suit was brought in the name of the firm, or in the names of the individuals composing the firm. That rule has not been changed, only so

far as our Statute has modified the same, "Unless parties sue as partners, they must make proof as at Common Law to maintain an action."

24th Ill. R. 109.

Third. Had it appeared on the face of the papers that the claim sued upon was due a firm, the defendant could have taken issue upon the question of partnership had there been proof of partnership, the defendant could have rebutted the same by proof. Defendant was in Court, defending himself against the claim of three individuals, and not against the claim of a firm. Defendant could neither plead in abatement, or plead specially, or make proof denying or rebutting an issue not tendered in the Plaintiff's Declaration, or by proof on the part of the Plaintiff. Courts are not permitted to presume a partnership. It is admitted that if the plaintiffs had properly sued as partners, the question of partnership should be raised and put in issue by plea in abatement, verified 21 Ill., 524, 12 Ill., 124.

Fourth. The Bill of Particulars set out in the Declaration, is in favor of one party, and the one proved on the trial is in favor of another.

See Record, at page 4, 8, 17.

Defendant was called upon to defend as against the cause of action alleged in the Declaration and none other.

Fifth. This Court has decided fully the questions involved in this case, at page 109, 24, Ill. R.

The Supreme Court of New York decided the same point in 5, Wend., 475.

The rule is uniform in all the Courts.

Sixth. The Judgment is not sustained by the evidence, for the foregoing reasons.

Seventh. The Court erred in overruling the motion for a new trial.

CHESTER KINNEY & S. G. BOVIE,

For Appellant.

1119 250
Supreme Court

John F. Wright
Appellant
vs

James M. Myer
• Samuel A. Stouck
& Loren W. C. Stouck
Appellees

• Points of Appellant

•
Filed Apr. 23 - 1862.
L. Ireland
Clerk

Kinney & Binio
Appellees attys

IN THE SUPREME COURT.

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16 Plaintiff called as a witness, Franklin Blades, who testified that, "Sometime last summer he presented the account to Defendant, which account reads in the words and figures following: "754:"

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Samuel E. Stowell,
Leverett C. Stowell. }

" MEAD, STOWELL & CO.,
"14 Courilandt Street.

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CHESTER KINNEY & S. G. BOVIE,

Attorneys for Appellant.

Supreme Court

John F. Wright
Appellant
vs

James M. Meach
Samuel A. Storer
& Lucett C. Storer
Appellees
Abstract & c

Filed April 28-1862
L. Deland
Clerk

Kenny & Birie
Appellants Attys

A. G. SMITH, Printer, Republican Office, Middleport.

SUPREME COURT OF ILLINOIS.

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JAMES M. MEAD,
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Appeal from Iroquois.

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First. The Plaintiffs below sued as individuals in the names of James M. Mead, Samuel A. Stowell and Leverett C. Stowell, and failed to allege a partnership, nothing upon the face of the papers showing that they were partners, or in what manner they were jointly interested in the account sued upon. They may have proved a cause of action against the Defendant in favor of Mead, Stowell & Co, but they failed to show, by any proof, that the three persons in whose names the suit was brought constituted the firm of Mead, Stowell & Co. On this proof they were not entitled to Judgment.

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24th Ill. R. 109.

Third. Had it appeared on the face of the papers that the claim sued upon was due a firm, the defendant could have taken issue upon the question of partnership had there been proof of partnership, the defendant could have rebutted the same by proof. Defendant was in Court, defending himself against the claim of three individuals, and not against the claim of a firm. Defendant could neither plead in abatement, or plead specially, or make proof denying or rebutting an issue not tendered in the Plaintiff's Declaration, or by proof on the part of the Plaintiff. Courts are not permitted to presume a partnership. It is admitted that if the plaintiffs had properly sued as partners, the question of partnership should be raised and put in issue by plea in abatement, verified 21 Ill., 524, 12 Ill., 124.

Fourth. The Bill of Particulars set out in the Declaration, is in favor of one party, and the one proved on the trial is in favor of another.

See Record, at page 4, 8, 17.

Defendant was called upon to defend as against the cause of action alleged in the Declaration and none other.

Fifth. This Court has decided fully the questions involved in this case, at page 109, 24, Ill. R.

The Supreme Court of New York decided the same point in 5, Wend., 475.

The rule is uniform in all the Courts.

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Seventh. The Court erred in overruling the motion for a new trial.

CHESTER KINNEY & S. G. BOVIE,

For Appellant.

147-250
Superior Court

John F. Wright
appellant

vs
James M. Mead

Samuel A. Stone
& Serrett C. Stone
appellees

Prints of appellant

Filed Apr 23-1862

Le Ireland

Clerk

Kimney & Bone
appellate attys

IN THE SUPREME COURT.

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		<hr/> \$215 30

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CHESTER KINNEY & S. G. BOVIE,

Attorneys for Appellant.

743²⁵⁰
Supreme Court

John F. Wright
Appellant
vs

Jaynes M. Meach
Samuel A. Storace
vs
• Lerrett C. Storace
Appellee

Abstract

Filed April 23-1862
L. Ireland
Clerk

Kimmy & Bonie
Supts Atty

IN THE SUPREME COURT.

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CHESTER KINNEY & S. G. BOVIE,

Attorneys for Appellant.

250
Supreme Court

John F. Wright
appellant
vs

Est James M. Mead
Samuel A. Stovell
+ Lerrett C. Stovell
appellants

Abstract

Filed Apr. 23 - 1862
L. Leland
Clerk

Kearney & Bovie
App'ts Atty's

A. G. SMITH, Printer, Republican Office, Middleport.

SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

JOHN F. WRIGHT,

vs.

JAMES M. MEADE,
SAMUEL A. STOWELL,
LEVERETT C. STOWELL.

} *Appeal from Iroquois.*

POINTS FOR APPELLEES.

The only point made in this case is on the sufficiency of the evidence to entitle the Plaintiff, in the Court below, to recover.

There of course can be no question that where, in case of several plaintiffs, there is no averment in the declaration of partnership, they cannot recover as *partners* unless the partnership be proved. Neither can they recover jointly, unless they prove a contract with *all*.

The attention of the Court is particularly called to the statement set forth in the abstract—(misprint of the middle letter of Samuel—see rec. p. 16). The evidence is that this statement was presented to Wright, and that he said it was right and would pay it.

This statement contains the full names of the parties, Plaintiffs, as set out in the declaration. This, in the estimation of the Circuit Court, was sufficient, in the absence of any proof to the contrary, to entitle the Plaintiffs to recover.

Is not the inference reasonable from this evidence, that there was an acknowledgment by Wright, that these parties, whose names are set out in full, in the statement, constitute the firm of Meade, Stowell & Co.? This was evidence tending to show that these Plaintiffs constituted that firm; and there was no rebutting evidence introduced. As this is a question turning upon the sufficiency of the evidence, and not upon competency, we submit, for the Appellees, without citation of authorities or any further argument.

JOINER & BLADES,

for Appellees.

149 2.50
Wright
25

Mende et al.

Pts. for Appuley

Filed May 17, 1912
L. Leland
MR

Priner & Glades
for Appuley

SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

JOHN F. WRIGHT,

vs.

JAMES M. MEADE,
SAMUEL A. STOWELL,
LEVERETT C. STOWELL }

Appeal from Iroquois.

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JOINER & BLADES,

for Appellees.

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24th Ill., R. 109.

Third. Had it appeared on the face of the papers that the claim sued upon was due a firm, the defendant could have taken issue upon the question of partnership had there been proof of partnership, the defendant could have rebutted the same by proof. Defendant was in Court, defending himself against the claim of three individuals, and not against the claim of a firm. Defendant could neither plead in abatement, or plead specially, or make proof denying or rebutting an issue not tendered in the Plaintiff's Declaration, or by proof on the part of the Plaintiff. Courts are not permitted to presume a partnership. It is admitted that if the plaintiffs had properly sued as partners, the question of partnership should be raised and put in issue by plea in abatement, verified 21 Ill., 524, 12 Ill., 124.

Fourth. The Bill of Particulars set out in the Declaration, is in favor of one party, and the one proved on the trial is in favor of another.

See Record, at page 4, 8, 17.

Defendant was called upon to defend as against the cause of action alleged in the Declaration and none other.

Fifth. This Court has decided fully the questions involved in this case, at page 109, 24, Ill. R.

The Supreme Court of New York decided the same point in 5, Wend., 475.

The rule is uniform in all the Courts.

Sixth. The Judgment is not sustained by the evidence, for the foregoing reasons.

Seventh. The Court erred in overruling the motion for a new trial.

CHESTER KINNEY & S. G. BOVIE,

For Appellants.

Supreme Court
John F. Wright
app'tts
ads

James M. Mead
Samuel A. Sturcell
• Lorence C. Sturcell
appellus

• Points of Appellant
•

Filed April 23 - 1862
L. Ireland
Clerk

• Kinney & Bon's
app'cts attys

A. G. Saffin, Printer, Republican Office, Middletown.

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For Appellunt.

Supreme Court

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appellant

vs

James M. Mead
Samuel A. Stowell
& Everett C. Stowell
appellees

Points & Brief

Filed Apr. 23 - 1861
L. Deland
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Kimney & Bond
appellate attys

SUPREME COURT.

THIRD GRAND DIVISION.

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There of course can be no question that where, in case of several plaintiffs, there is no averment in the declaration of partnership, they cannot recover as *partners* unless the partnership be proved. Neither can they recover jointly, unless they prove a contract with *all*.

The attention of the Court is particularly called to the statement set forth in the abstract—(misprint of the middle letter of Samuel—see rec. p. 16). The evidence is that this statement was presented to Wright, and that he said it was right and would pay it.

This statement contains the full names of the parties, Plaintiffs, as set out in the declaration. This, in the estimation of the Circuit Court, was sufficient, in the absence of any proof to the contrary, to entitle the Plaintiffs to recover.

Is not the inference reasonable from this evidence, that there was an acknowledgment by Wright, that these parties, whose names are set out in full, in the statement, constitute the firm of Meade, Stowell & Co.? This was evidence tending to show that these Plaintiffs constituted that firm; and there was no rebutting evidence introduced. As this is a question turning upon the sufficiency of the evidence, and not upon competency, we submit, for the Appellees, without citation of authorities or any further argument.

JOINER & BLADES,

for Appellees.

250

Night
of
Meade et al.
pts. for appelles

Given May 17, 1842
J. Seaman
CR

Prines & Slades
for appelles

SUPREME COURT.

THIRD GRAND DIVISION.

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JOHN F. WRIGHT,

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Wts. for Appleby

Filed May 17. 1862
Leland
CR

Wines & Glades
for Appelles

THE
OFFICE OF THE
RECORDS AND
GENERAL SERVICES
OF THE DISTRICT OF
COLUMBIA
WASHINGTON, D. C.
20540

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THIRD GRAND DIVISION.

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} *Appeal from Iroquois.*

POINTS FOR APPELLEES.

The only point made in this case is on the sufficiency of the evidence to entitle the Plaintiff, in the Court below, to recover.

There of course can be no question that where, in case of several plaintiffs, there is no averment in the declaration of partnership, they cannot recover as *partners* unless the partnership be proved. Neither can they recover jointly, unless they prove a contract with *all*.

The attention of the Court is particularly called to the statement set forth in the abstract—(misprint of the middle letter of Samuel—see rec. p. 16). The evidence is that this statement was presented to Wright, and that he said it was right and would pay it.

This statement contains the full names of the parties, Plaintiffs, as set out in the declaration. This, in the estimation of the Circuit Court, was sufficient, in the absence of any proof to the contrary, to entitle the Plaintiffs to recover.

Is not the inference reasonable from this evidence, that there was an acknowledgment by Wright, that these parties, whose names are set out in full, in the statement, constitute the firm of Meade, Stowell & Co.? This was evidence tending to show that these Plaintiffs constituted that firm; and there was no rebutting evidence introduced. As this is a question turning upon the sufficiency of the evidence, and not upon competency, we submit, for the Appellees, without citation of authorities or any further argument.

JOINER & BLADES,

for Appellees.

[Faint handwritten notes and signatures at the bottom of the page, including "John F. Wright" and "James M. Meade"]

143

250

Miguel
ref

Meade et al.

for Appellee

Dated May 17, 1862

L. Glance
cm

Primer & Glance
for appellee

Al G. Sarru, Printer, Republican Office, Middleport.

SUPREME COURT OF ILLINOIS.

APRIL TERM, 1862.

JOHN F. WRIGHT,
APPELLANT,

ads.
JAMES M. MEAD,
SAMUEL A. STOWELL

and
LEVERETT C. STOWELL,
APPELLEES.

Appeal from Iroquois.

POINTS OF APPELLANT.

First. The Plaintiffs below sued as individuals in the names of James M. Mead, Samuel A. Stowell and Leverett C. Stowell, and failed to allege a partnership, nothing upon the face of the papers showing that they were partners, or in what manner they were jointly interested in the account sued upon. They may have proved a cause of action against the Defendant in favor of Mead, Stowell & Co, but they failed to show, by any proof, that the three persons in whose names the suit was brought constituted the firm of Mead, Stowell & Co. On this proof they were not entitled to Judgment.

- 24 Ill. R., 109.
2. Greenleaf's Ev., Page 456, Sec. 478.
5. Wendell, R., 475.
3. Campbell, R., 240 and Note.
3. Starkie's Ev., 1070.
- Cowp., 569.
5. Term R., 709.
2. Watts, R., 222.
2. Greenleaf, Sec. 483.

Second. At Common Law the most strict and perfect proof was required, even in case the suit was brought in the name of the firm, or in the names of the individuals composing the firm. That rule has not been changed, only so

far as our Statute has modified the same, "Unless parties sue as partners, they must make proof as at Common Law to maintain an action."

24th Ill., R. 109.

Third. Had it appeared on the face of the papers that the claim sued upon was due a firm, the defendant could have taken issue upon the question of partnership had there been proof of partnership, the defendant could have rebutted the same by proof. Defendant was in Court, defending himself against the claim of three individuals, and not against the claim of a firm. Defendant could neither plead in abatement, or plead specially, or make proof denying or rebutting an issue not tendered in the Plaintiff's Declaration, or by proof on the part of the Plaintiff. Courts are not permitted to presume a partnership. It is admitted that if the plaintiffs had properly sued as partners, the question of partnership should be raised and put in issue by plea in abatement, verified 21 Ill., 524, 12 Ill., 124.

Fourth. The Bill of Particulars set out in the Declaration, is in favor of one party, and the one proved on the trial is in favor of another.

See Record, at page 4, 8, 17.

Defendant was called upon to defend as against the cause of action alleged in the Declaration and none other.

Fifth. This Court has decided fully the questions involved in this case, at page 109, 24, Ill. R.

The Supreme Court of New York decided the same point in 5, Wend., 475.

The rule is uniform in all the Courts.

Sixth. The Judgment is not sustained by the evidence, for the foregoing reasons.

Seventh. The Court erred in overruling the motion for a new trial.

CHESTER KINNEY & S. G. BOVIE,

For Appellant,

Supreme Court

John F. Wright
Appellant
vs

James M. Muel
Samuel A. Stone
& Serenite C. Stone
Appellees

Points of Appellant
"

Filed Apr. 23 - 1863
L. Island
Clerk
Kinney & Bowie
Appellts attys

IN THE SUPREME COURT.

APRIL TERM, A. D. 1862.

JOHN F. WRIGHT,
APPELLANT,
ads.
JAMES M. MEAD,
SAMUEL A. STOWELL
and
LEVERETT C. STOWELL,
APPELLEES. } *Appeal from Iroquois.*

ABSTRACT OF RECORD.

- Rec. page 1 Placita of November Term, 1861.
- 1 Precipe filed and Summons issued, July 29, 1861.
- 2 Bond for costs filed July 29, 1861.
- 4 Summons served August 15th, 1861.
- 4 Declaration filed November 19th, 1861.
- First count Common Count for goods sold and delivered.
- 5 Second count, same, money loaned.
- 6 Third count, money loaned, &c.
- 7 Fourth count, cash paid, laid out, &c.
- 8 Fifth count, balance of account, &c.
- 8 Sixth, goods, wares and merchandize.
- 8 Seventh count, money had and received.
- 8 Copy of account sued upon.
- 9 First plea general issue filed November 21st, 1861.
- 10 Second, special plea, performance, and notice of setoff, &c.

Similiter to 1st plea, replication to 2d plea.

12 Trial by the Court without a jury, Nov. 22d, 1861, and Judgment for Plaintiff for \$215.30.

15 Motion for new trial filed and overruled by the Court. Defendant excepts Judgment, Dec. 18th, 1861. Appeal prayed for and allowed, and duly perfected on the same day, Dec. 18th, 1861. Bill of exceptions filed Dec. 18th, 1861.

EVIDENCE.

16 Plaintiff called as a witness, Franklin Blades, who testified that, "Sometime last summer he presented the account to Defendant, which account reads in the words and figures following: "754:"

" STATEMENT.

" NEW YORK, May 15, 1861.

" Mr. J. F. WRIGHT,

" In account with

James M. Mead,
Samuel ~~H.~~ Stowell,
Leverett C. Stowell. }

" MEAD, STOWELL & CO.,
"14 Courilandt Street.

" July 2	To M'd'ze, 6 mos. - - - - -	\$209 88
	" Interest, - - - - -	5 42
		<hr/>
		\$215 30

And that said Defendant said it was right, and he would pay it, which was all the evidence offered or given.

CHESTER KINNEY & S. G. BOVIE,

Attorneys for Appellant.

143 250
Supreme Court

John F. Wright
appellant
vs

James M. Miguel
Samuel A. Stowell
& • Lerent G. Stowell
appellees

• Abstract

Filed April 23-1862
L. Deland
clerk

Kearney & Davis
counsel atty

A. G. Smith, Printer, Republican Office, Middletown.

SUPREME COURT OF ILLINOIS.

APRIL TERM, 1862.

JOHN F. WRIGHT,
APPELLANT,

ads.
JAMES M. MEAD,
SAMUEL A. STOWELL

and
LEVERETT C. STOWELL,
APPELLEES.

} *Appeal from Iroquois.*

POINTS OF APPELLANT.

First. The Plaintiffs below sued as individuals in the names of James M. Mead, Samuel A. Stowell and Leverett C. Stowell, and failed to allege a partnership, nothing upon the face of the papers showing that they were partners, or in what manner they were jointly interested in the account sued upon. They may have proved a cause of action against the Defendant in favor of Mead, Stowell & Co, but they failed to show, by any proof, that the three persons in whose names the suit was brought constituted the firm of Mead, Stowell & Co. On this proof they were not entitled to Judgment.

- 24 Ill. R., 109.
- 2. Greenleaf's Ev., Page 456, Sec. 478.
- 5. Wendell, R., 475.
- 3. Campbell, R., 240 and Note.
- 3. Starkie's Ev., 1070.
- Cowp., 569.
- 5. Term R., 709.
- 2. Watts, R., 222.
- 2. Greenleaf, Sec. 483.

Second. At Common Law the most strict and perfect proof was required, even in case the suit was brought in the name of the firm, or in the names of the individuals composing the firm. That rule has not been changed, only so

far as our Statute has modified the same, "Unless parties sue as partners, they must make proof as at Common Law to maintain an action."

24th Ill., R. 109.

Third. Had it appeared on the face of the papers that the claim sued upon was due a firm, the defendant could have taken issue upon the question of partnership had there been proof of partnership, the defendant could have rebutted the same by proof. Defendant was in Court, defending himself against the claim of three individuals, and not against the claim of a firm. Defendant could neither plead in abatement, or plead specially, or make proof denying or rebutting an issue not tendered in the Plaintiff's Declaration, or by proof on the part of the Plaintiff. Courts are not permitted to presume a partnership. It is admitted that if the plaintiffs had properly sued as partners, the question of partnership should be raised and put in issue by plea in abatement, verified 21 Ill., 524, 12 Ill., 124.

Fourth. The Bill of Particulars set out in the Declaration, is in favor of one party, and the one proved on the trial is in favor of another.

See Record, at page 4, 8, 17.

Defendant was called upon to defend as against the cause of action alleged in the Declaration and none other.

Fifth. This Court has decided fully the questions involved in this case, at page 109, 24, Ill. R.

The Supreme Court of New York decided the same point in 5, Wend., 475.

The rule is uniform in all the Courts.

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Seventh. The Court erred in overruling the motion for a new trial.

CHESTER KINNEY & S. G. BOVIE,

For Appellant.

¹¹¹³
Supreme Court

John F. Wright
att^y

James M. Myce

Samuel A. Stone

• Serrett C. Stowell
att^y

Points of Appellant

Kenny & Boove
att^y

Supreme Court of Illinois
Third Grand Division
April Term 1862

John F. Wright
Appellant
vs
James M. Mead Et al
Appellees
Appeal from
Inquiry

Argument for Appellant
By Chester Kimney

This court has decided in 24 Ills
R. at page 109. That "unless
parties sue as partners, they must
make proof as at common law
to maintain the action"

That case is precisely in point,
The plaintiffs in this case have seen
fit to come into court in their
individual names, without even
alleging in their declaration
that they were partners or in any
manner jointly interested in
the claim sued upon.

Where plaintiffs are partners
and bring suits it becomes very
necessary at common law that
they should make the most certain

and positive proof of the existence of the partnership. -

This court having decided that such proof must be made as at common law it becomes our duty and province to show by reason and authority that no such proof was made in this case. Greenleaf lays down this rule as a common law rule

"It is a general rule, that when
" the action is by several plaintiffs
" they must prove either an express
" contract by the defendant with
" them all, or the joint interest of
" all in the subject-matter of the
" suit. - - But it must appear,
" that all who sue were partners at
" the time of making the contract"

2 Greenleaf's Ev. Sec 478

"Where they sue as plaintiffs, they
" may well be held to some strictness
" of ^{proof} because they are consent of all
" the means whereby the fact of part
" nership may be proved. -"

2 Greenleaf's Ev. Sec 483.

3^o Campbell R. 240. Lord Ellenborough held the same rule and cited from Greenleaf Ev.

2^d Watts Penn R. 222, Sergeant J.
says "But when the note is pay-
able or indorsee specially to a firm
the contract is with them only,
and it has often been ruled, that
in an action by such payees
or indorsees, strict evidence must
be given that the firm consists of
the persons who sue as plaintiffs
on the note, — — Non Assumpsit
puts in issue every part of the
plaintiffs title

The same view is sustained by
the following authorities.

In 5 Wendell 473
the same rule is laid down by C. J.
Savage and is directly in point in
this case. He says, "The next question
is whether there was sufficient evi-
dence to show that the plaintiffs
comprised the firm to whom the
note was payable given. The note
being payable to Wm. Greger Darling
so it becomes necessary to show
that they are the payees. When a
note or bill is payable to a firm
strict proof is required that the
firm consists of the plaintiff on the
record, —

See also on the same point

Chitty on Bills 505

3 Starkie Evd 1067-70

"More evidence is required to show
"the partnership of the plaintiffs
"than that of defendants. Because
"the plaintiffs are cognizant of all
"the means by which the fact of
"the partnership is capable of being
"proved"

~~5 Green~~

5 Wurd 478

3 Starkie Ev 1070

Collier on Partnerships Perkins Ed Sec 673.

See Collier on partnerships at page
641. Sec 683. We find this rule

"In actions by partners to recover
"partnership demands, unless the
"contract which is the foundation
"of the action has been expressly
"made with all the members of the
"firm - it will be incumbent
"on the plaintiffs to prove that they
"all were partners at the time of the
"contract, otherwise as we have seen
"they will be nonsuited - Thus, in
"an action on a bill made payable
"or indorsed specially to the firm
"the promise being only to pay a
"certain firm strict evidence must

" be given that the firm consists
" of the persons who are plaintiffs. -
" And if a note be payable to a
" firm of A, B & Co and A, B, &
" C, D, are thereon, they must prove
" that they were the component members
" of the firm at the time the note
" was given.

In Evans vs Mann,

Cooper 569 We again find this
general rule in regard to pleading
" Pleading the general issue to an
" action brought by two persons, alleg-
" ing themselves to be partners under
" a particular name, admits the
" existence of some partnership of
" that name; Still it must be
" proved that the plaintiffs were the
" persons composing that partnership
" at the time the contract was made

In Norcross vs Clark 15 Maine
R. 80. The court Shapley J. Says
" Partnerships may, and often do,
" exist, doing business under the
" same name of partnership name,
" while the persons composing the firm
" are wholly changed. While the plea
" (general issue) admits the existence
" of a firm of that name, it remains

" to be found that the plaintiffs
" were the persons composing that firm
" at the time the contract was made
" The would not admit that Otis
" Norcross was one of the firm, when
" the contract was made, because
" that firm name may be lawfully
" used by others after he has ceased
" to be one of the persons composing
" the firm"

We call particular attention to
this case, as Reported in 15 Maine R,
80. The note sued upon was in
these words.

" For value received, we Ransom
" Clark as principal + David Greely
" as surety, promise to pay Otis
" Norcross & Co an order three hundred
" and one dollars & six cents in one
" year from date with interest"

" Ransom Clark"

" David Greely"

In that case it will be seen that
the partnership was alleged in
the declaration, hence appeared
upon the face of the papers.
The rule then seems from that
case to be this.

" When an action is brought by

"two (or more) alleging themselves to
"be partners under a particular
"name, pleading the issue does
"not admit that the plaintiffs
"were the persons composing that
"partnership when the contract
"declared on was made"

18 Maine R. 80.

Collier on Partnerships page 641. (note 1 & 3)

" " " " 630 See 667

Chetty on Bills 389.

Apply these well settled rules to the
case at bar. In this case there
was nothing upon the face of the
papers showing partnership, no allega-
tion of joint or partnership interest
and all the evidence in the case
is the evidence of Franklin Black
the attorney for plaintiffs. That he
presented the account and the
defendant said it was right, and
he would pay it. The account
as presented was due Mead Stuel
& Co. By the evidence as appears in
the Record as preserved by the bill
of exceptions. Who composed the
firm of Mead Stuel & Co. Had the
plaintiffs alleged that they the persons

bringing the suit composed the
firm of Mead Stowell & Co it might
not perhaps as this court say (in
24 Ill R. 109) have been necessary
to have made proof of the partnership.

Had they so done as to bring
the question of partnership or joint
interest in the plaintiffs properly
before the court, the defendant then
could and would have taken issue
thereon by a direct & proper plea.
The plaintiffs are non-residents of
this State, and it is unknown
as far as any allegation in the
declaration, or proof shows whether
James M. Mead Samuel A. Stowell
& Serrett C. Stowell composed at
the time of making the contract
or at any other time the firm of
"Mead Stowell & Co". The court in
order to allow the plaintiffs to
amend as it were a patch up
a fatal defect in their declaration
and proof, permitted Blakes to
produce and present to the court
a certain account, which the
court examined & actually used
and treated as evidence, and then
refused to certify in the Bill

of Exceptions that the same
was produced & read in evidence
and at the same time, has allowed
said account to be copied
into and made a part of the
same Bill of Exceptions. For the
purpose as would appear of having
the same before this court, and at
the same time call it evidence
The true position is that if it
is not evidence it proves nothing
If it is evidence it was read in
the court in admitting it, and
again it is not the account
declared upon as a copy thereof

The court had to indulge a
presumption, in order to make
out a case in favor of the plff
heretofore unknown in legal pro-
ceedings - Can this court proceed
from a close examination of the
full & complete record in this case
containing all the inserting and
copying therein of accounts and
suggestions even of one of the attys
Franklin Blackie who was the sole
witness therein how the court below
has come to the conclusion that the
plaintiffs James M Mead Samuel A.

Stonell & Lennett C. Stonell was at the time of making the contract sued upon the Comproment and individuals, members and identical persons constituting the firm of Mead Stonell & Co. And that too in the face and eyes of the full and complete decision of this court on the very identical point involved in the case at bar. As suggested by the court at the time, "That Supreme Courts sometimes make foolish decisions, admitting the bearing of the their recent decision of this court upon the point, and its application to the case, but not to the court."

As far as the amount involved in this particular case is concerned it is of no great of importance. But when viewed as a question of practice in this state as to pleading in such cases and as evidence and proof of partnerships, under our statute it becomes a matter of no small importance to the profession, but of peculiar importance to some

district courts. Have the plaintiffs
in this case shown themselves
entitled to recover according
to the Statute, we apprehend
not as under the Statute
the parties must sue as part-
ners, or in case they fail so to
do they must make the proof
at Common Law. Now from
and examination of the record
it appears the suit is brought
in the individual names of
three parties, and not as partners
hence they have not brought them-
selves within the Statute.

In the second place, persons
having failed to sue as partners
or in any way show upon the face
of their papers a joint interest
or a right to sue. - Have they
made the proof incumbent upon
them to make of partnership as
at common law, the plaintiffs
in that respect entirely failed to
make any proof and made no
attempt even to prove the fact.

There is no chance to argue as to
that point, They may take the
position that the bill of items

set out in the Record shows that upon its face it had the names of James M. Mead, Samuel A. Stoddell & Lorenz C. Stoddell, & from the fact that such names were upon said account, that the court below had the right to presume a copartnership. If a copartnership can be proved in that way, and if there be a compliance with the rigid and well established rules laid down by all courts and elementary writers, that "Where copartners sue" (even where they allege partnership) "the most strict proof is required to show copartnership at the time the contract was made," on the part of the plaintiffs.

If such a rule is to be established as the law in this state then it would be well for partners to comply with it by at all times having their accounts made out upon their business cards, with the individual names of the members of their firm, as under the ruling of the circuit in this case, it would raise

so strong a presumption that
the plaintiffs were partners, as
to entitle them to recover.

Business having the advantage
in that way of proving a very
necessary fact to be proved, in
such cases, it would also ~~have~~
~~there~~ be a good means of adverti-
sing, by the circulation of the
cards of the firm, As said by
the counsel for the Appellees "it
is the means by which the firm
is known, that may be true in
some respects. But the Appellant
insists that if circuit courts are
to receive such instruments as
evidence conclusively establishing
partnerships, that the plaintiffs
at least in such cases shall
attach thereto a certificate that
the card offered in evidence is
their true and genuine card.

We beg this Court to excuse us
for treating the matter in this light
in as much as it will be insisted
by the Appellees attys that the
appearance of the same names
upon the account as copied in
the record, as there in which the

Suit was brought sufficiently established the partnership.
I have now cited all the authorities upon this point that I deem necessary, and no doubt more than the Court will find time to examine. There seems to be but one rule, in all our Courts upon that point, and that is the well established and long fixed common law rule, which is now adopted by this Court, as laid down by Greenleaf which seems to be rule in England as well as in all the States. I will again copy from 2 Greenleaf Sec 478 page 456

"It is a general rule that when the action is by several plaintiffs they must prove either an express contract by the defendant with them all, or the joint interest of all in the subject of the suit. If they are jointly interested as partners they may sue jointly upon a contract made by the joint agent of all though the names of all are not expressed in the instrument

But it must appear, that all who sue were partners at the time of making the contract,

Such proof was not made in this case, and finally no ~~proof~~ proof.

On this point alone the judgment should be reversed.

There was no proof sufficient to establish the right of the plaintiffs (even had they proved a partnership and joint right to recover at all) to recover interest, and the court erred in rendering judgment for interest thereon, without any proof of custom.

We desire to call the attention of the court particularly to the evidence in this case as the same is found page 16 & 17. of Record, which is in the following words:-

Franklin Blacker who after being sworn, says, "Some time
"last summer he presented
"the account to defendant, which
"account, reads in the words
"and figures following:-

754) (Statement)

New York May 18, 1861

John F. Wright

James M. Muel
Samuel A. Stowell
Lorenz C. Stowell
" "

In account with
"Mead Stowell & Co"
" 14 Canal Street

July 2 ^d To Balance 6 Mos	209, 88
Interest	<u>5, 42</u>
	215, 30

and that defendant said it was right, and he would pay it, which was all the evidence given in said cause,

On which evidence and that alone the court below rendered judgment for two hundred & fifteen dollars & 30 cents,

There was no evidence what the 209, 88, or the 5, 42 meant there was no proof that it was dollars & cents or weight,

They declare of course for goods, wares & c but defendant denies that is full in his plea, It was incumbent on the plaintiffs to show consideration, and explain what the

figures mean. Did they then show by their proof that the plaintiffs sold and delivered to the plaintiff defendant goods ware & merchandise, Did they show by any evidence that defendant at any time saw the bill or at any time examined the same. Did or does the evidence offered show that the figures on the face of the bill meant that the goods sold in value were worth in dollars the number written, was there any evidence to show the legal rate of interest in New York, or that there was any law or custom allowing interest, It may as well be said that the figures mean pounds as dollars and cents, If the evidence in this case makes the defendant, liable, because 1st The plaintiffs are partners as is proved by the fact that they have written their names in full across the face of the bill, and 2^d Because they have written upon the face of their bill certain figures, and such figures mean so many dollars, a part of which

plaintiffs have seen fit to call
interest, without showing any
rate time, custom legal right
so to claim and recover interest

If the rule applies as to proof
of partnership, a man may
make out his bill on a poll
list, and if defendant on the
same (as was proved in this
case) being present to him &
he says it is ~~all~~ "right and
he will pay it" that in accor-
dance to the theory of the Court
below makes all the voters in
the election district partners &
is sufficient proof on which
they can all join and bring
suit and sustain the same
as partners, without any other
proof— And in such case if
certain figures are written
therein without any sign
indeed or evidence as to the
meaning thereof, such fig-
ures must be presumed by
courts to mean dollars, and
such other figures must be
presumed to mean interest
on such dollars and judg-

must must be evidence for
the sum total of such
figures, in dollars & cents

Another difficulty arises
here, It will be seen by the
court examining the Record
(at pages 9-10-+11) that the
defendant, filed two pleas in
this case. 1st General issue &
2^d Payment & Notice of setoff,
which pleas fully rebut the cause
alleged in their declarations, and
had they joined the claims for
which they declare as indi-
viduals, the defendant would
perhaps been able to rebut all
such. But instead of so doing
the court allowed them to recover
without any proof that warrants
it on a claim due other and
different parties, to Mac, Stodd
Who against which the defend-
ant could not set off his demands

It will also be seen by this
court at page 8 of Record
that the account sued upon
and set out in the declara-
tion is not in favor of the same

parties nor for the same causes
accounts.

Defendant was in court to
defend himself against the claim
made in the Declaration in
favor of James M. Mead Samuel
A. Stedell, & Loretta C. Stowell,
and not against Mead Stowell
and Company.

From all the author-
ities cited in the Points for the
Appellant, and herein, it is
confidently believed that this
cause should be reversed on
some form or five errors assigned
by the Appellant.

The case of
John F. Wright
Appellant }
vs
Edwin Curtis &
Joseph Baker
Appellees }

————— " ————— In this case
nearly all the points raised
in the foregoing case are
raised.

The only difference being that this last named cause was upon a note, and like the other cause suit was brought in the individual. To save the time of your Honor we simply desire that the causes and reasoning as well as the law cited in this case may be examined in connection with the last case, and we desire to call particular attention to the points filed in both cases.

The authorities above cited that we will call the attention to in this cause, are

- | | | | |
|----|------------|-------------|--------------|
| | 24 | All R. | 109. |
| 2 | Greenleafs | Ev | Sec 478 |
| " | " | " | page 483 see |
| 3 | Campbell | R | Page 240 |
| 2 | Watts | Purr | R. " 222. |
| 5 | Wendell | R. | " 475. |
| | Chitty on | Bills | " 503. |
| 3 | Starkie | Ev | " 1070 |
| | Colyer on | Partnership | Sec 673 |
| | " | " | " 685 |
| | Corwin | | Page 369 |
| 15 | Maine | | " 80 |

With these suggestions we
submit the case in connec-
tion with our printed
prints on file.

C. Timmer
Atty for Koppert

With these suggestions we
submit the case in connec-
tion with our printed
prints on file.

C. Timmer
Atty for Koppert

102
249 & 250

John T. Wright
vs
James M. Mace
+ c

Sumo

vs

Edwin Curtis
+ c

Argument for
Appellant,

Filed May 9, 1862

L. L. [unclear]
cm

The People of the State of Illinois.

To all to whom these presents shall come Greeting:
 Know Ye, that We have having caused to be inspected
 the Records and proceedings of our Circuit Court in
 and for said Jroquois County do find there certain
 Records and proceedings in the words and figures
 following to-wit,

United States of America

State of Illinois ss.

Jroquois County

Plas before the Honorable
 Charles R. Starr Judge of
 the Twentieth Judicial Circuit and Presiding Judge
 of the Jroquois County Circuit Court in the State
 of Illinois at a term of the said Jroquois County
 Circuit Court begun and held at the Court House
 in the Town of Middleport in said Jroquois County
 on the Third Tuesday (the same being the Nineteenth
 day) in the Month of November in the year of our
 Lord one thousand Eight hundred and Sixty one.
 Present:

Now, Charles R. Starr Presiding Judge of the twentieth Judicial Circuit
 Charles C. Wood States attorney of the twentieth Judicial Circuit
 Luther Helick Sheriff of Jroquois County, Illinois
 Thomas Cummins clerk of the Jroquois County Circuit Court

Be it Remembered that heretofore
 to-wit on the 29th day of July A D 1861 there was
 filed in the office of the Clerk of the Circuit Court of said
 County a certain "Precipe for Summons" which
 Reads in the words and figures following to-wit,

State of Illinois
Jogquois County

Circuit Court Jogquois County
November Term A D 1861

James W. Meade
Samuel A. Stowell
Leverett C. Stowell } Plaintiffs

is
John F. Wright } Defendants

"The clerk of said Court will issue a summons in the above cause directed to the Sheriff of Jogquois County in a plea of trespass on the case on promises returnable at the November Term of said Court A D 1861 to the damage of the Plaintiff of Two hundred dollars
"James F. Blades Plaintiff Attorney"
In Testimony Whereof
July 26th 1861

And afterwards to wit on the said 29th day of July there was filed in the office of the clerk of the said Circuit Court a certain "Bond for costs" which reads in the words and figures following to wit

James W. Meade
Samuel A. Stowell
Leverett C. Stowell

vs
John F. Wright

Jogquois Co, Circuit Court

"We do hereby enter ourselves security for costs in this cause and acknowledge ourselves ^{bound} to pay or cause to be paid all costs which may accrue in this action either to the ^{opposite} party or

to any of the officers of this court in pursuance
of the laws of this State

Dated July 25th 1861

John R. Blades
- Geo. B. Jones

And Afterward to wit, on the said 29th
day of July A. D. 1861 there was issued out of
the office of the Clerk of the said Circuit Court a
certain writ of "Summons" which Reads in the words
and figures following to wit:

State of Illinois
Rockwell County ss.

The People of the State of Illinois
Do the Sheriff of said County Greeting:

That you Summon John P. Wright 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 the town of Middleport in said Rockwell
County on the third Tuesday of November next
to answer James M. Meade Samuel A. Storrell
Levett C. Storrell in a plea of trespass in the
case upon premises to the damage of them the
said Plaintiffs as it is said in the sum of
Five hundred Dollars and have you then and
then this writ



Witness Thomas Munnum clerk of our said court
And the seal thereof at Middleport this
29th day of July A. D. 1861
Thomas Munnum clerk

And which said writ of Summons was endorsed as follows to wit

James M. Meads vs. Etat.

Circuit Court of Summons vs John F. Wright

Served the Writ by reading to John F. Wright the 15th day of August, 1861

Des. Service .50 Luther Hellock
 " Mileage 5 Sheriff
 " Ret 10) .65

And afterwards to wit on the Ninth day of November A.D. 1861 there was filed in the office of the Clerk of the said Circuit Court a certain Statement which reads in the words and figures following to wit

" Statement "
 " New York May 15 1861 "

Mr J F Wright
 James M. Meads }
 Samuel A. Stowell }
 Everett C. Stowell }
 In Account with Meads, Stowell & Co
 14 Courtlandt Street

July 2 To Bal. b/By	209.88
" Interest	5.42
	215.30

And afterwards to wit on the 9th day of November A.D. 1861 there was filed in the office of the Clerk of the Circuit Court a Declaration which reads in the words and figures following to wit

State of Illinois
 In and for the County of Sangamon
 Sangamon County Court November Term A. D. 1861

James M. Meade, James A. Stowell
 & Lovett C. Stowell Complain of John P. Wright
 Having been summoned & of a plea of trespass on
 the case on promises. For that Whereas the said
 defendant herebefore to wit on the second day of
 July in the year of our Lord one thousand one
 eight hundred and sixty at New York territory at
 in the County aforesaid was indebted to the said
 Plaintiffs in the sum of two hundred and fifty dollars
 and cents of lawful money of the United States of
 America for diverse goods wares and merchandise
 by the said Plaintiffs before that time sold and
 delivered to the said defendant. And at the special
 instance and request of the said defendant and
 being so indebted to the said Plaintiffs the said
 defendant in consideration thereof afterwards to wit
 on the same day and year and at the place afore
 said undertook and then and there faithfully pro
 mised the said Plaintiff well and truly to pay
 unto the said Plaintiffs the said sum of money
 last mentioned when the said defendant should
 be thereunto afterwards requested. And Whereas
 also the said defendant afterwards to wit on the
 same day and year and at the place aforesaid
 in consideration that that the said Plaintiffs had
 before that time at the like special instance
 and request of the said defendant sold and
 delivered to the said defendant divers other
 goods wares and merchandise of the said

Plaintiff the said defendant then and there understood and faithfully promised the said Plaintiff that the said defendant would well and truly pay unto the said Plaintiff so much money as the last aforesaid goods Wares and Merchandises at the time of the Sale and delivery thereof were reasonably worth when the said defendant should be therunto afterwards requested and the said Plaintiffs aver 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 Two hundred & fifty Dollars of like lawful Money aforesaid to wit at the place aforesaid whereof the said defendant afterwards on the same day and year and at the place aforesaid had notice. And Whereas also the said Defendant afterwards to wit on the same day and year and at the place aforesaid was indebted to the said Plaintiffs in the further Sum of Two hundred & fifty dollars of like lawful Money aforesaid for Money before that time lent and advanced by the said Plaintiff to the said defendant and at the like request of said defendant and for other Money by the said Plaintiffs before that time paid laid out and expended for the said defendant and at the like request of said defendant. And for other Money by the said defendant before that time had and received to and for the use of the said Plaintiff. And also in the further Sum of Two hundred &

3

fifty dollars for so much money before that time and then due and payable from the said defendant to the said Plaintiffs for interest upon and for the forbearance of diverse large sums of money before then due and owing from the said defendant to the said Plaintiffs and by the said Plaintiffs forborne to the said defendant for diverse long spaces of time before then elapsed at the like special interest instance and request of the said defendant. And being so indebted the said defendant 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 Plaintiffs well and truly to pay unto the said Plaintiffs the said several sums of money in this count mentioned when the said defendant should be thereunto afterwards requested. And whereas also the said defendant afterwards to wit on the same day and year and at the place aforesaid accounted together with the said Plaintiffs of and concerning diverse other sums of money before that time due and owing from the said defendant to the said Plaintiffs and then and there being in arrears and unpaid and upon such accounting the said defendant then and there found to be in arrears and indebted to the said Plaintiffs in the further sum of three hundred dollars of like lawful money as aforesaid, and being so found in arrears and indebted to the said

Plaintiffs the said defendant 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 Plaintiffs well and truly to pay unto the said Plaintiffs the said sum of money last mentioned when the said defendant should be therunto afterwards requested, notwithstanding the said defendant (although often requested etc) has not yet paid the said 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 Plaintiffs the said defendant has hitherto altogether refused and still does refuse to the damage of the said Plaintiffs Five hundred Dollars and therefore the said Plaintiffs being suit etc.

James J. Blades
Atty. for Plffs.

Copy of account in which suit is brought
John D. Wright
1860
To Jas. M. Meade, Samuel A. Storrell &
Levett C. Storrell Dr.

To	Goods sold and delivered	209 88
"	Cash loaned	250 00
"	Cash paid laid out & expended	250 00
"	Interest for forbearance of money	250 00
"	Balance of account rendered	300 00
"	Goods sold & Merchandise	250 00
"	Money had & received	250 00

And which said Declaration was endorsed as follows

James M. Meade Samuel A. Storrell
"and Levett C. Storrell"

"is"

"John F. Wright"

"now"

"Filed this 9 day of November 1861"

"Thomas Munson clerk"

"Jenney & Blodget"

"Attorneys for Plaintiffs"

And afterwards forth on the 21st day of November A.D. 1861 there was filed with the clerk of said Circuit Court certain Pleas which read in the words and figures following to wit

State of Illinois

Waukegan County ss

Dequois County Circuit Court

"Decr A.D. 1861"

John F. Wright

vs

James M. Meade

Samuel A. Storrell &

Levett C. Storrell

"And the said John F. Wright

by Henry & Bove attys comes and defends &c and says that he did not assume and promise in manner and form as the said Plaintiffs hath declared against him and of this he puts himself upon the Country; And the said doct^r like &c"

And for a further Plea in this behalf said defendant
by Henry J. Davis his atty. comes and defends the
wrong and injury &c. and says that the said Plaintiffs
their action aforesaid against the said defendant
ought not to have or maintain because the said
defendant says that after the said supposed
promises and undertakings of the said defendant
and before the commencement of the said action of
the said Plaintiffs against the said defendant
in this behalf to wit on the first day of July
a 1861 at the City of New York to wit at the County
of Broome aforesaid the said defendant paid
to the said Plaintiffs the said several sums of money
in the declaration of the said Plaintiffs mentioned
and this he is ready to verify wherefore he prays
Judgment &c. The Plaintiffs will also take notice
that the defendant on the trial of this cause
will give in evidence and insist that the Plaintiffs
at the commencement of this suit were and still
are indebted to the defendant in the sum of
five hundred dollars for the price and value of
goods before that time bargained and sold by the
defendant to the Plaintiff at his request, and
also in the sum of five hundred dollars for
the price and value of goods before that time
sold and delivered by the defendant to the Plain-
tiffs at their request and also in the sum of
Two hundred for the price and value of work
before that time done and materials for the
same provided by the defendant at their
request and also in the sum of five hundred

lent by the defendant to the Plaintiffs at their request and also in the sum of five hundred dollars for money before that time

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Dollars for money before that time received by the Plaintiffs for the use of the defendant And also in the sum of five hundred dollars for money found to be due from the Plaintiffs to the defendant on an account before that time stated between them and that the defendant will set off on said trial so much of the said several sums of money so due and owing from the said Plaintiffs to the said defendant against any demand of the said Plaintiffs to be proved on the said trial as will be sufficient to satisfy and discharge such demand and will also then and there demand a judgment against the said Plaintiffs for the balance of said several sums of money due to the said defendant according to the Statute in such case made and provided

"Kinney & Bovic
"Defendants, Atty's."

And afterwards to wit on the 22d day of November A.D. 1861 there was filed with the clerk of said circuit court a joinder & Replication which read in the words and figures following to wit

James W. Meade
Saml. A. Storrell
Lewell C. Storrell
of
John F. Wright

In the Oregon circuit court
Nov Term A.D. 1861

And the said Plaintiffs as to the Plea of the said defendant by him & above pleaded & whereof he hath put himself upon

the country doth the like

"Joiner & Blades
"Atty. for Plffs."

And the said Plaintiffs as to the plea of the
said defendant by him 2nd above pleaded
& the notice therunto appended say precludi
non because they say that the said defendant
did not & has not paid the said several sums
of money as by him in that Plea & Notice alleged
& of this they put themselves upon the country &
"Joiner & Blades"

And afterward to-wit on the 22^d day
of November A. D. 1861 the same being one
of the regular days of the November Term of
the Illinois County Circuit Court for said year
1861 the said court being then duly organized
and sitting as a court for the transaction of
judicial business certain proceedings were had
and entered of Record by order of said court in
the words and figures following to-wit

James W. Meade
Samuel A. Storrell ^{and}
Leocott C. Storrell

vs

John F. Wright

"Assumpsit"

"347"

"This day came the Plaintiffs
into court by their attorney and on motion it is
ordered that Joiner & Blades the Sureties on

the Bond for costs in this cause be discharged from further liability, as such Sureties and on motion a bond for costs with George B. Jones as Security thereon is hereby approved by the court,

"And now come the parties to this cause by their respective attorneys the Plaintiffs by Jones & Blades their attorneys and the defendant in person and by Muney & Bovic & Fletcher his attorneys and by agreement a Jury for the trial of this cause is waived and the cause is hereby submitted to the court for trial.

"And the Court having duly considered the evidence offered by the Plaintiffs and the argument and objections of defendant counsel ordered that the Plaintiffs in this cause do have judgment for the Sum of Two hundred and fifteen dollars and thirty cents.

It is therefore considered and ordered by the Court that the Plaintiffs do have and recover of and from the defendant the said Sum of Two hundred and fifteen dollars and thirty cents damages together with their costs and charges in and about their suit in this behalf expended and that they have Execution therefor against the said defendant.

"And now come defendant's Attorneys and enter their exception to the decision of the court in rendering judgment as aforesaid and also enter defendant's motion for a New Trial in this cause."

And Afterwards to wit on the 18th day of December, A D 1861 it also being one of the regular days of the November Term of said Proquois County Circuit Court for said year 1861 the said Court being then duly organized as aforesaid certain other proceedings were had and entered of Record by order of said Court in the Words and Figures following to wit

James W. Meade
Gammal A. Stowell^{and}
Geverell W. Stowell

vs
John F. Wright

Apumpsis

= 247

And now come the parties to this cause by their attorneys and the Motion for a new trial heretofore entered in this cause coming up for argument it is ordered by the Court that said Motion be overruled.

And now come defendant attorneys and enter their exception to the overruling of said Motion and enter a motion for an appeal in this cause to the Supreme Court of this State

Whereupon it is ordered by the Court that an appeal be granted on condition that Defendant do within thirty days from this date enter into a Bonds conditioned according to law in the sum of five hundred dollars with Alvin Caroun, Hamilton Jefferson and Hiram Pratt or any two of them Sures Securities thereon,

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" And on motion it is further ordered that
that the defendant do file his Bill of excep-
tions within thirty days from this date "

Be it Remembered that hitherto
to wit on the 4th day of December A. D. 1861
there was filed with the clerk of said court
certain points for new Trial which reads
in the word and figures following to wit

State of Illinois
Wagons County P.P.

James W. Weads	} November Term of the Wagons Circuit Court A. D. 1861
Samuel A. Storrell &	
Leveret C. Storrell	
John F. Wright	} The defendant moves

the Court for a new Trial in the above cause
for the following Reasons

- 1 The Judgment is against the law and evidence
- 2 Plffs. failed to prove Partnership as at
" Common Law

"Kinney & Boon"
" Attys. for deft."

And afterwards to wit on the 15th
day of December A. D. 1861 There was filed
with the clerk of the ^{and} Circuit Court a certain
"Bill of Exceptions" which reads in the words
and the words and figures following to wit

State of Illinois In the Troquois Circuit
Troquois County S. Court of the November
" Term A. D. 1861

James M. Meade
Gannet A. Storrell
Levett C. Storrell
John S. Wright } Bill of Exceptions

Afterwards tried at
a circuit court held at the Court House in the
town of Middleport in and for the county of
Troquois in said State on the day of November
A. D. 1861 Before Hon. Charles R. Starr one of the
Circuit Judges appointed to hold the said term
of court according to the form of the Statute
in such case made and provided. The aforesaid
issue so joined between the parties as aforesaid
came on to be tried before the said Charles R.
Starr Judge as aforesaid by consent of parties
without a jury at which day came there as
well the said Plaintiffs as the said defendant
by their respective Attorneys aforesaid and upon
the trial of the said issue the counsel for the
said Plaintiff to maintain and prove the
said issue on the part of the said Plaintiff
produced and offered as a Witness one
Franklin Blader who after being sworn tes-
tified as follows to wit. " My some time
last Summer he presented the account to
defendant, which account read in the words
and figures following:

"754" "Statement" "New York May 15 1861"

"Mr J. P. Wright"

"In Account with Meade, Storrell & Co"

James M. Meade }
Samuel A. Storrell }
Levent C. Storrell }

"14 Courtland Street"

July 2. Dr Mdys. & Moz. " 209.88 "

"Interest" " 5.42 215.30 "

"And that said defendant said it was right and he would pay it, which was all the evidence given had or received in the said cause

Whereupon the said issue was then and then submitted to the court and to the said Circuit Judge and the said Judge did then and then declare & deliver his opinion, that the Plaintiffs were entitled to judgment and that they have and recover judgment against said defendant for the sum & amount of Two hundred and fifteen dollars and Thirty cents and costs of suit. To which Ruling decision & finding the defendant by his attorney in due time for and manner then and then excepted. Whereupon said defendant by his counsel made a motion for a new trial then and then of said issue in said cause which motion was founded upon the following grounds and for the following cause to wit

" I "

The judgment is against the law and evidence

" II "

The Plaintiffs failed to prove Partnership as at Common Law "

But the said court held decided & then & there
 declared & rendered his decision on said motion
 made for a new trial as aforesaid by the said
 defendant and then and there overruled said
 motion and referred refused to grant and
 allow said defendant a new trial, to all
 of which said decisions, rulings & findings
 the said defendant by his counsel did then and
 there except in due time and form except.

And inasmuch as the said
 several matters so produced and given in evi-
 dence on the part of the said parties and in
 as much as the several objections, exceptions and
 rulings of said court do not appear by the
 records of the verdict & proceedings aforesaid
 the said counsel for the defendant did then
 and there propose their aforesaid exceptions
 to the opinions, rulings, findings & decisions of
 said court, and requested him to put his seal
 to this Bill of Exceptions containing the several
 matters so produced and given in evidence
 and the objections and rulings thereon as
 aforesaid according to the form of the
 Statute in such case made and provided,
 And thereupon the said Circuit Judge at the
 request of the said counsel for the said
 defendant did sign & put his seal to this
 Bill of Exceptions Pursuant to Law in
 such cases this 18th day of December A.D. 1861
 Kinney & Bowie & } C. R. Star (seal)
 Fletcher, depts. Atty. }

6
 And the said Petitioner remembered that heretofore
 to-wit on the 17th day of ~~December~~ ^{January} A D 1862
 there was filed with the clerk of said circuit
 court a certain "Bonds" which reads in the
 words and figures following to-wit

" Know all men by these presents that we
 John F. Wright, Alvin Cannon, and William Pratt
 are held and firmly bound unto James M. Meade
 Samuel A. Storrell & Lovett C. Storrell in the
 equal sum of five hundred dollars lawful
 money of the United States for the payment of
 which well and truly to be made we bind
 ourselves our heirs administrators and assigns
 firmly by these presents

" Witness our hands and seals this 6th
 day of January A. D. 1862

" The condition of the above obligation
 is such that whereas the said James M. Meade
 Samuel A. Storrell & Lovett C. Storrell on the
 15th day of December A D 1861 at the November
 term of the Rogers' County Circuit Court then
 being holden did recover a judgment against
 the above bounden John F. Wright for the
 sum of two hundred and fifteen dollars
 and thirty cents and costs of suit from which
 judgment the said John F. Wright has taken
 an appeal to the Supreme court of the state
 of Illinois ~ Now if the said John F. Wright
 shall prosecute his said appeal with effect
 & with due diligence and shall pay whatever
 judgment costs & interest and damages

in case the judgment shall be affirmed shall hereafter be rendered against him by the said Supreme Court then and in that case this obligation shall become void otherwise to remain in full force and effect

John F. Knight (seal)

Alvin Carson (seal)

Hiram Pratt (seal)

State of Illinois
 In and for said County of Inoquois County I, Thomas P. Mumma
 Clerk of the Circuit Court
 do hereby certify that the above and fore-
 going is a true complete and perfect transcript
 of the Record of the Proceedings of the Inoquois
 County Circuit Court in said cause therein
 entitled wherein James W. Meade, Samuel
 Stonell & Lovell Stonell are Plaintiffs and
 John F. Knight is Defendant and that said
 Transcript contains a full true and perfect
 copy of all the papers filed in said cause
 forming any part of the Record of said Court
 in said cause

In attestation of which I have
 hereunto set my hand and affixed
 the Seal of said Court at my office in
 Middleport in said County this 21
 day of March A. D. 1882

Thomas P. Mumma
 Clerk

James M. Mead
Samuel A. Stone
& Lemuel C. Stone

Supreme Court
April Term 1862
3^o Grand Jurors

John F. Wright ^{vs} Appellee
Appellant } Assignment of Errors

And now comes the
said Appellant by Chester Kinney
& Stephen G. Burie his Attorneys and
says that the following errors are
manifest in the proceedings of
this cause upon the face of the
Record.

I

The court erred in rendering judgment
for the plaintiff.

II

The judgment is against law

III

The judgment is against evidence

IV

There is nothing upon the face of the
papers showing partnership on the
plaintiff. They sued as individuals

V

There is no proof of partnership ^{of plaintiffs} &
the court erred in rendering judgment
without such proof of partnership

VI

The court erred in admitting the bill
of items as a count in evidence

VII

There was no evidence of any corrupt nature, or indebitness.

VIII

The court erred in allowing interest without any proof

IX

The court erred in overruling motion for new trial

X

The court erred in this that there was neither an allegation on the face of the papers, or proof of fraud, and the court should have dismissed the cause for want of such allegation or proof

XI

The judgment is not sustained by the evidence, and should have been for the defendant.

Christo Kuning
vs. G. B. B. B.
Appellee's Atty

And now comes the said Appellee by G. B. B. B. their atty & say that in the record of proceedings aforesaid & in the rendition of judgment aforesaid there is no error therefore they pray
Judge

G. B. B. B.
att. for appellee

James W Meade
Samuel A Storrell
Gerritt C Storrell

vs

John P. Wright

Records

Filed April 23-1862
L. Leland
Clerk

Honey Beech & Fletcher
Deft. Attys.