

STATE OF ILLINOIS.
IN THE SUPREME COURT.

APRIL TERM, A. D. 1860.

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

ABSTRACT OF RECORD.

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

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

7. The defendants plead the general issue.

8. The defendants, Eddy and Blinn, file an affidavit that they have a good defence.

11. A jury is waived and the cause submitted to the court for trial.

11. The Court find the issues for the plaintiff.

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

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

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

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

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

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

Here the plaintiff rested.

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

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

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

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

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

24.

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

THE POINTS made by the Appellants are:—

1st.

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

2nd.

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

J. W. CHICKERING,

Attorney for Appellants.

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