

STATE OF ILLINOIS,  
SUPREME COURT,

Third Grand Division.

No. 154.

1850

Woodward

vs

Fuller

Fuller

Prepared  
13/6/50



Olin Woodworth imp. & Co.

<sup>vs</sup>  
Oliver Fuller Charles Perkins  
& Edward Finch

Supreme Court  
of the State of  
Illinois April  
term 1860

Oliver Fuller Charles Perkins & Edward  
Finch sue Olin Woodworth & Eras-  
mus Woodworth in justice court, <sup>from which it was appealed</sup> and  
declare upon a note guaranteed and  
endorsed. Erasmus Woodworth is  
not served with process and Olin  
Woodworth comes and pleads the general  
issue. <sup>On the trial of the appeal in the Court of Common Pleas of the City of Aurora</sup> The plaintiffs then introduce a  
note in words and figures as follows  
to wit "On or before the first day of  
September next, for value received I pro-  
mise to pay E & A Woodworth or bearer  
eighty dollars with interest at ten per  
cent."

W. Aurora Sept. 16 1857

Phillip Smith

Also

We guarantee the payment of the within  
note E & A Woodworth

Also

Pay to O F Fuller & Co

Walker & Gillett,

and further introduced M L Carter who tes-  
tified as follows "I know the defendant



in this case they are partners, know  
their handwriting, should think that  
the signature E & A Woodworth under  
the guarantee of the payment was  
the signature of E & A Woodworth  
And then rested his case, this was all  
the evidence introduced in the case  
the court rendered judgment for the  
plaintiffs for \$93 <sup>82</sup>/<sub>100</sub> to which the de-  
fendant then & there excepted "And"  
appeals to this court.

The Errors assigned are 1<sup>st</sup>

The court  
erred in finding the issue joined for  
the plaintiffs

2<sup>dly</sup>

The court erred in rendering judgment  
for the plaintiffs

The plaintiffs in order to entitle them  
to a judgment must either sue, or  
declare a partners, or must show by  
evidence that the plaintiffs on the  
record constitute the firm of O & F  
Fuller & Co. here in this case they  
do neither



The plaintiffs not having sued as partners or declared as partners have not brought themselves within the requirements of the Statute. They are not even mentioned as partners in the proceedings, and therefore the onus probandi is on the plaintiffs to show partnership.

In the case of *McGregor & Co. v. O'K. & Co. Cleveland* 5<sup>th</sup> Wendell N.Y. Sup. Ct. 477. the court held that where a note or bill is made payable to a firm strict proof is required that the firm is composed of the plaintiffs on the record. In that case there was some but rather slight proof of partnership, but the court held it insufficient, in this case there is none whatever. And stronger proof is required to show partnership of plaintiffs than of defendants, for the reason that it is presumed that they possess all the necessary means & documents to establish partnership. *Starkie's Ev.*, since 1<sup>st</sup> 1867.

Now how is the court to know that the plaintiffs on the



record constitute the firm of O. F. Fuller & Co? The court cannot presume such to be the fact, for there is nothing in the record and the proceedings, <sup>7 evidence</sup> to base such presumption on, they are not mentioned as partners constituting the firm of O. F. Fuller & Co in the summons declaration or anywhere else.

nor will the case of Evans vs William Fisher & et al in 5<sup>th</sup> Gillman's Illinois rep. p. 569 take this case out of the operation of the common law rule and bring it within the Statute for in that case the plaintiffs were described as partners in the proceedings or record, in this case they are not.

If the plaintiffs had even mentioned or used as partners in the summons, the court might have presumed that they are the members of the firm of O. F. Fuller & Co but there is an entire absence of any such averment either in the summons or declaration or any of the pro-



andings of the case except on the  
note introduced in evidence

Nor is the defendant advised  
by the summons or declaration what  
he has to meet in order to "prepa-"  
re his defence, for the note having  
passed from hand to hand finally  
becomes the property of the plain-  
tiffs they sue, but do not advise  
him of the nature of their cause  
of action And he does not see the  
note until it is introduced in  
evidence, then it is too late for him  
to look up witnesses to show, that  
more persons were made plain-  
tiffs than constitute the firm of  
O. & Fuller & Co or more persons  
ought to have been made plain-  
tiffs And therefore a <sup>reasonable expectation</sup> adherence to  
the old common law rule, that the  
plaintiffs must prove partnership  
would be promotive of justice, un-  
less the plaintiffs bring themselves  
within the requirements of the Sta-  
tute by suing or declaring as par-  
tners.

Charles F. Mezes.  
Atty for Appet.



154-139  
Alon Woodward  
vs  
Oliver Fuller & et al.

Argument for  
Appellants

Filed April 25 1860  
L. Belmont  
Clerk

Charles Sumner  
Atty for Appell.



STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

OLIVER FULLER et al., }  
ad vs. }  
ALVIN WOODWORTH. }

THERE is no evidence that the plaintiffs in the record constitute the firm of O. & F. Fuller & Co.

Strict proof is required on that point.

5th Wend, N. Y. Rep., p. 477.

Chitty on Bills, P. 505.

3 Campbell, 240, note.

More evidence is required to show partnership of plaintiffs than that of the defendants.

Starkie's Evidence, p. 1070.

C. J. METZNER,  
*Attorney for Appellant.*



Woodworth

vs

J. Miller et al

Assigns Bank

Filed Apr 24. 1860  
Adelard  
Clark



United States of America  
State of Illinois  
Kane County  
City of Aurora

Sh.  
I was before the  
Honorable Benjamin J. Parks  
Judge of The Court of Common  
Pleas of The City of Aurora at a regular  
Term of said Court begun and held at  
The Court Room in the City of Aurora  
in said County and State on Monday the  
thirteenth day of June A D 1839 One  
Thousand Eight hundred fifty nine.

Present The Honorable Benjamin J. Parks  
Judge of said Court  
" Ethan J. Allen Sheriff of Kane County  
" Charles B. Kelly States attorney pro tem  
Attest James B. Carr Clerk

The Court opened by proclamation

Be it remembered that heretofore to wit  
on the 27<sup>th</sup> day of May A D 1839 there  
was filed in the Office of the Clerk of  
The Court of Common Pleas of The



City of Aurora. a Transcript. summary  
& note which are in the words figures fol-  
-owing To wit:

State of Illinois } Before Lyman Baldwin April  
Kane County } 4<sup>th</sup> 9 A.M. Assumpsit demand  
Oliver Fuller }  
Charles Perkins }  
Edward Finch }  
Erasmus Woodworth & }  
Alvin Woodworth }  
March 30<sup>th</sup> Personally served by

not found in the County  
by J. S. Johnson Const fees 50<sup>c</sup>. April 4<sup>th</sup> suit  
called and continued by agreement of  
Parties until 10 clock P.M. 1 P.M. suit called  
Plff declares on note as follows

\$ 80 Ow or before the first day of September next  
for value Recd I promise to pay E. A. Woodworth  
or bearer Eighty Dollars with ten per cent  
interest

Warren Dec 16<sup>th</sup> 1857. signed Phillip Smith  
On the back of said note was the following  
endorsement We Guarantee the payment  
of the within note also Pay to the order of  
O Fuller & Co.

Def't Pleads general issue William M. Mickel  
sworn on part of Plff. After hearing the



testimony it is considered that the Plff have  
and recover of deft Alvin Woodworth the sum  
of ninety and 50/100 Dollars debt and costs of  
suit & that Ex ifw therefor

Judgment \$90.50 Justice fees \$1.00 mit 50. const 30. \$92.30  
Appealed April 16<sup>th</sup> 1859 transcript Bond &c 1.00  
Judges fees paid \$93.30

State of Illinois  
Kane County 3<sup>rd</sup> The undersigned do hereby  
certify that the above transcript  
and papers attached contain a full and  
perfect statement of all the proceedings had  
before me in the above entitled cause.  
Given under my hand and seal this the 26<sup>th</sup>  
day of May 1859. Lyman Baldwin J. C.

State of Illinois  
Kane County 8<sup>th</sup> The People of the State of Illinois  
to any Constable of said County Greeting  
You are hereby commanded to summon  
Crasmus Woodworth & Alvin Woodworth to appear  
before me at my Office in Aurora on the 4 day  
April A D 1859 at 9 o'clock A.M. to answer the  
complaint of Oliver Fuller, Chas Perkins  
Edward Finch for a failure to pay them a  
certain demand, not exceeding one hundred  
dollars; and thereof make due return as the  
law directs. Given under my hand and



seal this 30<sup>th</sup> day of March A. D. 1859  
Lyman Baldwin (J.S.)  
Justice of the Peace.

on the back of which is the following endorsement  
Iured the within by reading to the within named  
Alvin Woodworth this 31 day of March 1859. C.  
Woodworth not found. J. S. Johnson  
Court fees 30 -

\$ 80.<sup>00</sup> On or before the first of September next  
for value Received I promise to pay C. & A.  
Woodworth or bearer Eighty Dollars with  
interest at Ten (10) per cent

N. Sumra Decr 16<sup>th</sup> 1857 J. S. Johnson

on the back of which are the following endorsement  
"I guarantee the payment of the within  
note C. & A. Woodworth

"Pay to O. J. Fuller & Co Walker & Gillett  
on the face the following

Judgment on this note April 4<sup>th</sup> 1859  
J. Baldwin J.P.

And afterwards I writ on the same day last  
aforesaid. then issued out of the Office of the  
Clerk of said Court the Peoples writ of  
Summons which is in the words and  
figures following To wit:



State of Illinois  
County of Kane ss.  
City of Aurora

The People of the State of  
Illinois to the Sheriff of said County  
Greeting: We Command you, that  
you summon Oliver Fuller, Charles  
Perkins & Edward Finch if they shall be  
found in your county, personally to be and  
appear before the Court of Common Pleas of  
the City of Aurora, in said County, on the first  
day of the next Term thereof, to be holden at  
the Court House in the City of Aurora, in said  
County on the Second Monday of June  
next to stand to & abide by the judgment of said  
Court in a certain appeal taken by Alvin  
Woodworth impleaded with Erasmus  
Woodworth from the judgment of Lyman  
Baldwin Esq a Justice of the peace in  
said City.

And have you then and there this  
mit with an endorsement thereof in what  
manner you shall have executed the same.  
Witness James J. Farr Clerk of our  
said Court, and the seal thereof at Aurora  
aforesaid, this 2<sup>d</sup> day of May 1859  
James J. Farr Clerk

Seal



And afterward Sait: on the 17<sup>th</sup> day of June A D 1839 the same being one of the days of the regular June Term A D 1839 of said Court the following among other proceedings were had and entered of Record in said Court To wit: —

Oliver Fuller, Charles  
Perkins & Edward Finch

67

vs

Appeal

Abner Woodworth impleaded  
with Erasmus Woodworth

This day came the parties to this suit the Plaintiffs by J. R. Wagner their attorney, and the Defendants by Metzger his attorney, waive a jury and submit this cause to the Court for trial, and the Court having heard the evidence adduced, not being fully advised takes time to consider

And afterward Sait: on the 28<sup>th</sup> day of June A D 1839 the same still being one of the days of the June Term A D 1839 of said Court the following among other proceedings were had and entered of Record in said Court To wit:



Oliver Fuller Charles  
Perkins & Edward Finch

6<sup>th</sup>

Alvin Woodworth impleaded  
with Erasmus Woodworth

Appeal

This day this  
cause again coming  
on to be heard and the Court now being fully  
advised finds the issues joined for the Plaintiffs  
and assess their damages at Ninety three  
Dollars & Eighty two cents. Therefore it is  
considered by the Court that the Plaintiffs have  
and recover of the Defendant Alvin Woodworth  
his damages of Ninety three Dollars & Eighty  
two cents (\$93.82) in form aforesaid, apaid  
and also their costs and charges about this  
suit expended and have execution therefor.

The Defendant at the time excepted to  
the finding of the Court and entered his  
motion for a new trial, which motion was  
overruled by the Court - Thereupon the  
Defendant prayed an appeal to the Supreme  
Court of the State of Illinois, which is allowed  
upon Defendants entering into Bonds in the  
sum of Two hundred Dollars with Lyman  
Woodworth as surety. The Bond and bill  
of Exceptions to be filed in thirty days



And afterwards suit: on the 20<sup>th</sup> day of July A D 1859. there was filed in the Office of the Clerk of said Court a certain bill of exceptions which is in the words and figures following To wit:

State of Illinois } Court of Common Pleas of  
Kane County } vs. the City of Aurora June Term  
City of Aurora } A D 1859 before Hon B. J. Parks  
Judge of said Court.

Oliver Stiller. Charles  
Perkins & Edward Finch }

Alvin Woodward imploraded  
with Prasmus Woodward }

Be it remembered  
that on the trial of the above cause at the June  
Term A D 1859. of said Court the plaintiff to  
substantiate his case introduced the following  
witness C. J. Carter. who testified as follows  
I know the defendants in this case. they are  
partners know their handwriting. should  
think that the signature "Or A Woodward" under  
this guarantee of the payment of this note was  
the signature of Or A Woodward.

The Plaintiff then and there introduced



in evidence said note: which is in substance as follows To wit "On or before the first day of September next for value received I promise to pay O<sup>rd</sup> A Woodward or bearer eighty dollars with interest at ten (10) per cent

W. Aurora Dec 16<sup>th</sup> 1851<sup>st</sup> J. H. Zissert

and also the following endorsement "We guarantee the payment of the within note

O<sup>rd</sup> A Woodward

and also "Pay to O. J. Fuller & Co Walker & Gillett and then and there rested his case and this being all the evidence introduced in said cause on the part of the plaintiff and the defendant, the Court rendered judgment for the plaintiff in the sum of ninety three & <sup>82</sup>/<sub>100</sub> dollars and to said defendant Alvin Woodward impleaded with Erasmus Woodward as aforesaid & Charles J. Metzner then and there on the twenty third day of June A D 1839 is still being one of the days of said fine term of said Court entered his motion for a new trial which motion for a new trial after due deliberation said Court overruled to the overruling of said motion and the refusal of the said Court to grant a new trial the said defendant then and there excepted and pray that his bill of exceptions may be signed and sealed by the Court and made part of this record which is done

D. T. Park Esq

Judge of the Court of Common Pleas of the City of Aurora



on the back of which is the following

"I hereby waive the service of a copy of this bill of exception on me and also agree that the bill of exception containing a full & perfect statement of all the evidence introduced in the case

L R Wagner Petys atty

And afterwards to wit: on the 21<sup>st</sup> day of July A D 1859 there was filed in the Office of the Clerk of said Court a bond in said cause which is in the words & figures following to wit:

Know all men by these presents that we Morris Woodworth as principal. Lyman Woodworth as surety are held and firmly bound unto Oliver Fuller. Charles Perkins & Edward Finch in the penal sum of two hundred dollars lawful money for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly by these presents

Witness our hands and seals this 14<sup>th</sup> day of July A D 1859

The Condition of the above obligation is such for whereas at the June Term A D 1839 of the Court of Common Pleas of the City of Aurora, Kane County & State of Illinois said Oliver Fuller, Charles Perkins & Edward Finch did recover a judgment against the above



by and for Alvin Woodward implied debt with Erasmus  
Woodworth for the sum of Ninety three <sup>and</sup> 82 <sup>cents</sup> dollar <sup>and</sup>  
costs from which judgment the said Alvin Woodward  
has taken an appeal to the Supreme Court of the State of  
Illinois Now if the said Alvin Woodward shall well and  
truly prosecute with effect and shall pay said judgment  
costs interest and damages in case said judgment  
shall be affirmed. then this obligation to be void  
otherwise to remain in full force and effect  
Alvin Woodward Seal  
Erasmus Woodward Seal

State of Illinois }  
Nauvoo County } ss. J. James, J. Parr  
City of Aurora } Clerk of The Court of  
Common Pleas. of the City of  
Aurora. in said County and State do hereby  
certify. that the above and foregoing transcript  
is a true and correct copy of the justices transcript  
& summons. & of the note & of the summons. Bill  
of Exceptions. & bond filed in a cause in said Court  
wherein Oliver Huller et. als are Plaintiffs and  
Alvin Woodward &c Defendants and also of all  
orders & the final judgment of the Court entered of  
Record in said cause as appears to us of Record  
Witness my name & the seal of said Court at the City  
of Aurora in said County & State this 20<sup>th</sup> Day of  
March A D 1860 James. J. Parr  
Clerk



Com. Pleas. Aurora  
1864  
Oliver Fuller  
cray

by  
Alvin Woodworth  
impleaded with  
Erasmus Woodworth

Filed April 13, 1860  
L. Leland  
Clerk

Fees for Record.  
30 c. \$ 3.00  
Census 35  
\$ 3 35



Olive Fuller Charles Perkins  
And Edward Guide

atos  
Alvin Woodworth impleaded & Co

} Supreme Court  
of the State of  
Illinois Spring  
Term 1860

And now comes the said Alvin Woodworth  
impleaded & Co appellants in the above case  
And says that in the record And proceeding  
in the above cause are the following errors  
to wit the Court erred in finding the issue  
joined for the plaintiffs. Secondly the Court  
erred in rendering judgment for the plain-  
tiffs.

Charles F. Metzger  
Att'y for Appellants

And now comes the said appellees by  
Plato their attorney to say that  
there is no error in said record  
And proceeding in said cause  
Plato for Defts



Alvin Woodworth  
Appellant

Charles Perkins vs  
Appellee

Filed April 25, 1860  
Leland  
Clerk

Charles F. Metcalf  
Att'y for Appellee



STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

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OLIVER FULLER et al., }  
ad vs. }  
ALVIN WOODWORTH. }

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THERE is no evidence that the plaintiffs in the record constitute the firm of O. F. Fuller & Co.

Strict proof is required on that point.

5th Wend, N. Y. Rep., p. 477.

Chitty on Bills, P. 505.

3 Campbell, 240, note.

More evidence is required to show partnership of plaintiffs than that of the defendants.

Starkie's Evidence, p. 1070.

C. J. METZNER,  
*Attorney for Appellant.*



1541. 139

Woodworth  
vs  
Fuller & Bates  
Deeds

Filed Apr 24, 1860  
L. Leland  
Clerk

C. S. Meyer  
Attorney at Law