

No. 12960

Supreme Court of Illinois

Cruikshank

vs.

Comyns

71641  7

STATE OF ILLINOIS,
SUPREME COURT.
Third Grand Division.

No. 104.
1860

*Cross
vs
Comyn*

12960

Proper

*Comyn vs
Cross*

STATE OF ILLINOIS---SUPREME COURT.

Third Grand Division thereof---April Term, 1860.

ALEXANDER CRUICKSHANK;
vs.
JAMES COMYNS. } *Appeal from Recorder's Court
of the City of LaSalle.*

POINTS AND AUTHORITIES.

1st. Cummins and Comyns are not "*idem sonans*" and a certificate of deposit made payable to Cummins, cannot be introduced as evidence in favor of Comyns, without proof showing the persons to be the same.

13 Ills. 651. 17 10 East R. 83. 20 Ills. 46. 2 Spear 46.
4 Bac. Abr. Letter A. Tittle Misnomer p. 752. 2 Spear 45.

2nd. A certificate of deposit made by F. Gunther, Teller, was no evidence of an indebtedness on the part of the plaintiff, without some proof showing or tending to show that he, Gunther, had authority to bind the plaintiff. The execution of the certificate of deposit was not proven.

3d. The defendant was not entitled in any event to bring suit on the certificate of deposit until he had first made a demand for the money. There is no proof showing or tending to show such a demand.

Addison on Contracts Pages 417, 57, 547.

Pothier on Contracts by Evans, Vol. 2. p. 126.

Marzetti vs. Williams, Eng. C. L. R., 415.

4th. The verdict or Judgment of the Court was for too much. All the proof offered by the defendant on the trial below, was the certificate of deposit, for \$53.75, dated Sept. 5th, 1859, and on the 9th day of January, A. D. 1859, the Court rendered a judgment against plaintiff for \$64.54.

5th. The plaintiff was entitled to a new trial.

E. F. BULL,
Plaintiff's Attorney.

104-116

A. Lemick Shank

vs

James Cornyn

Points & Authorities

Filed Apr 21, 1840

L. Delmon

Clerk

E. F. Bull

Ref. aty

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

ALEXANDER CRUIKSHANK, Appellant, } *Appeal from Recorder's*
vs. } *Court of City of La*
JAMES COMYNS, Appellee. } *Salle.*

ABSTRACT OF THE RECORD.

Page of Rec. THIS was an action upon a Certificate of Deposit by appellee vs. appellant, brought before a Justice of the Peace, Sept. 19th, 1859, and taken to the Recorder's Court of the City of La Salle, by appeal.

2 Magistrate's summons and return of constable filed Oct. 3d, 1859.

3 Certificate of deposit for \$53 75-100 currency, *claimed to be* given by appellant to one James Cummins, dated, Peru, Sept. 5th, 1859; payable with 6 per cent. interest, if ten days notice given. Filed Oct. 3d, 1859.

3 Endorsement of magistrate on certificate that he rendered judgment thereon, Sept. 24th, 1859.

3, 4 Execution issued by magistrate, Sept. 24th, 1859; execution filed Oct. 3d, 1859; endorsements of magistrate and constable on back of execution.

4, 5, 6 Transcript of magistrate filed Oct. 3d, 1859, with Clerk of Recorder's Court, which shows the issuing of summons by magistrate, Sept. 19th, 1859; service and return of summons by constable Sept. 20th, 1859; judgment before magistrate rendered Sept. 24th, 1859, in favor of appellee, against appellant, for \$53. 75-100; issuing of execution by magistrate same day, on oath of appellee; delivery of execution to constable, appeal allowed to appellant by magistrate, to Recorder's Court of the City of La Salle; appeal bond with Churchill Cofling as security, approved Sept. 29th, 1859; execution recalled, and that the transcript of judgment papers and certificate of deposit were delivered to Clerk of Recorder's Court City of La Salle.

6 Transcript of judgment before magistrate, filed Oct. 3d, 1859.

6, 7 Appeal bond from judgment before magistrate, filed Oct. 3d, 1859.

7 Summons issued Oct. 17th, 1859, to appellee, by the Clerk of La Salle Recorder's Court of the City of La Salle; service, return and filing same.

10 Tried at January term, 1860, of the Recorder's Court of the City of La Salle. Agreement of parties to submit to Court for

Page of Rec. trial without intervention of jury; finding of Court in favor of appellee for the sum of \$64.50-100.

Motion for new trial by appellant; overruled by Court. Appeal prayed by appellant to Supreme Court, allowed on filing
 11 bond in \$150 by appellant, with Churchill Coffing as security—ten days allowed from rising of Court to file appeal bond, and tender Bill of Exceptions; final judgment rendered by the Court for \$64.54-100.

11 Appeal bond filed Jan. 16th, 1860, with Churchill Coffing as security.

12, 13 Appeal bond for appeal from judgment of Recorders Court to Supreme Court, and filing of same.

14, 15, 16 Bill of Exceptions signed by Judge of Recorder's Court of the city of La Salle, showing that appellee offered in evidence the following certificate of deposit, dated Sept. 5th, 1859, for \$53.-75-100, given by appellant to one James Cummins, which certificate was in the words and figures following, to wit:

"Banking Office of Alexander Cruikshak,
 \$53.75-100. Peru, Ills., Sept. 5th, 1859.

Jas. Cummins, Esq., has deposited in this office the sum of Fifty-three 75-100 dollars, currency, to the credit of himself and subject to his order on return of this certificate, payable in like funds with interest at 6 per cent. per annum, if ten days notice is given. F. GUNTHER, Teller."

To the introduction of which appellant objected, which objection was overruled by the Court, and appellant excepted, and the certificate was read in evidence. Shows that the certificate
 15 was all evidence offered by either party; that the Court found the issue in favor of appellee, and assessed his damages at \$64.54. That appellant made a motion for a new trial, which was by the Court overruled, and that appellant excepted to the decision of the Court, in overruling motion for new trial and in entering judgment for appellee for \$64.54.

17 Certificate of Clerk that same is a complete copy of record.

Errors Assigned.

1st. Court erred in permitting certificate of deposit to James Cummins to be read in favor of James Comyns.

2d. The Court erred in permitting said certificate to be read in evidence without proof that the person executing the same was authorized by plaintiff to do so.

3d. Court erred in permitting certificate of deposit to be read in evidence without proof of demand for money.

4th. Court erred in finding issues in favor of defendant.

5th. Court erred in overruling motion for new trial.

6th. Court rendered judgment for too much upon the proof adduced.

E. F. BULL, Plaintiff's Attorney.

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A. Crumckank
DS:

Jas Comyns

Abst. Record

104-116

Crumckank
as

Comyns

Abstracts

Filed April 18. 1860
L. Leland
Clerk

E. F. Bull
RHS atty

STATE OF ILLINOIS---SUPREME COURT:

Third Grand Division thereof---April Term, 1860.

ALEXANDER CRUICKSHANK,
vs.
JAMES COMYNS. } *Appeal from Recorder's Court
of the City of LaSalle.*

POINTS AND AUTHORITIES.

1st. Cummins and Comyns are not "*idem sonans*" and a certificate of deposit made payable to Cummins, cannot be introduced as evidence in favor of Comyns, without proof showing the persons to be the same.

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4 Bac. Abr. Letter A. Tittle Misnomer p. 752. 2 Spear 45.

2nd. A certificate of deposit made by F. Gunther, Teller, was no evidence of an indebtedness on the part of the plaintiff, without some proof showing or tending to show that he, Gunther, had authority to bind the plaintiff. The execution of the certificate of deposit was not proven.

3d. The defendant was not entitled in any event to bring suit on the certificate of deposit until he had first made a demand for the money. There is no proof showing or tending to show such a demand.

Addison on Contracts Pages 417, 57, 547.

Pothier on Contracts by Evans, Vol. 2. p. 126.

Marzetti vs. Williams, Eng. C. L. R., 415.

4th. The verdict or Judgment of the Court was for too much. All the proof offered by the defendant on the trial below, was the certificate of deposit, for \$53.75. dated Sept. 5th, 1859, and on the 9th day of January, A. D. 1859, the Court rendered a judgment against plaintiff for \$64.54.

5th. The plaintiff was entitled to a new trial.

E. F. BULL,
Plaintiff's Attorney.

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A. G. Mickstauck
vs.

James Conynus
Points & Authorities

Filed Apr 21, 1861
Leland
Clark

E. D. Bull
Pro atty

State of Illinois } } Third Grand Division, April
Supreme Court } } Term Third AD, 1860

Alexander Crumback
Appellant

vs:
James Cummings
Appellee

Appeal from Records
Court of the City of Keokuk

The said Plaintiff
by E. F. Bull his attorney submits to
your Honors the following ~~as~~ reasons
for the reversal of the judgment ob-
tained in the court below in said cause
1st The certificate of deposit offered in evi-
dence upon the trial below by said De-
fendant purports to have been issued
out of the Banking Office of said Plaintiff
signed by one Luther Teller and made
payable to one James Cummings. There
was no proof offered in the court below
on the trial of said cause showing or
tending to show that said James ~~Cum~~
Cummings and said defendant were
one and the same, or that said Defen-
dant was the person to whom said
certificate was issued, neither was there
any assignment or transfer of the cer-
tificate of deposit shown - and there was
in fact no assignment thereof -

Some one of the ~~of~~ above facts ought to have been proved in order to entitle said Defendant to recover upon said Certificate, for although slight differences in the spelling of names will not be considered a fatal variance, yet upon the authority of a case reported in the 20. Ills. pag 46 and cases there cited, also in the 13 Ills. pag 651, 2nd Spear 46. I do not think the Defendant ~~at all~~ ^{successfully} can claim that Compro and Cummins are idem sonans, they are not only spelled differently, but differently pronounced -

2nd Although the Certificate of Deposit purports to have been issued out of the Banking Office of the plaintiff, it is signed by H. Gunther, Teller and there was no proof offered, showing or tending to show that said Gunther was the Teller or clerk of the Plaintiff, or was in his employ, or had any authority whatever to issue said Certificate of Deposit ~~as the~~ for the Plaintiff, and if he possessed no such authority the Plaintiff clearly was not bound by his acts, or liable on the Certificate

The certificate of deposit was not in fact neither does it purport to have been executed by the Plaintiff. It seems to me clear that under such circumstances some proof ought to have been produced ~~aside~~ beside the certificate itself, that would show or tend to show the execution of the same by the Plaintiff or by some person for him, having express or implied authority so to do.

3rd By the terms of the contract as set forth in said certificate, if the Defendant was entitled to recover & upon it in any court, he was not entitled to do so until the certificate itself was returned and a demand made for the money. The certificate reads as follows.

Banking Office of Alexander Crichton & Co.
Per Ills. Sept. 5th 1859

\$5-3.75/100

As Currenium, has deposited in this office Fifty Three 75/100 Dollars, currency, to the credit of himself and subject to his order on return of this certificate, payable in like funds with interest at 6 per

cent per annum, if ten days notice is given.

J. Munster Keller

clearly I think showing that the maker of the certificate, and the person taking the same contemplated ~~that~~ at the time of the execution thereof, that the certificate should be returned and an order or demand for the money therein mentioned, made before the holder or payee of the certificate should be entitled to bring suit thereon. and even if that was not the understanding and express agreement of the parties I insist, ^{that} ~~suppose~~ the authorities cited clearly viz: Addison on contracts pags 57, 417 & 5-47, 2nd Vol. Pothier on contracts by Evans Page 126, and Mangetti vs; Williams 20 Eng. C. L. Reports 415 - Pott v. Clay 16 M & W. 321 -

clearly lay down the rule to be that a Banker is not liable to be sued for money deposited with him as such until a demand for the same has been first made and a refusal to pay, or an order or check for the money so deposited first drawn and presented and a refusal to pay the same

* money deposited with a Banker is money lent to him to be paid when called for by check or otherwise consequently

4th " The Record shows that all the proof offered or produced on the trial of said cause below, by either party, was the said certificate of deposit which was offered by the Appellee, and read by him, objections thereto being made by Appellant and exceptions taken to the decision of the court, and although the certificate calls for \$53⁷⁵/₁₀₀ only, and the amount of demand endorsed on the back of the summons issued by the magistrate was for the same amount, and, ^{although} that the certificate was dated Sept. 5th 1859, and judgment thereon rendered in the court below on the 9th day of January 1860 only about four months after the certificate was issued, still the court below rendered judgment against the Plaintiff for \$64⁵⁴/₁₀₀ full \$10. more than the holder of the certificate would have been entitled to even if interest was allowed on the certificate from the date thereof until the rendition of judgment in the court below, but no interest should have been allowed on the certificate without proof of ten days notice that it before the money was called for.

5th The Bill of exceptions in the Record shows that Plaintiff made a motion for a new trial, ^{which} was overruled and exceptions taken the decision of the court.

The Plaintiff was clearly entitled to a new trial, if for no other reason he was entitled to one ~~on account of~~ for the reason that the proof would not sustain a judgment for the sum of \$64,544, the effect of which might have been avoided by the defendant if there was no other error in the record by entering a remittitur for the excess.

Respectfully

E. F. Bull
Pffs Atty

104-116

Alexander Condictchank
vs;

James Connors

Argument for Plaintiffs

Filed April 21, 1860.
L. Leland
Clerk

J. H. Bull
Pffs Atty

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Recorder's Court of The City of
Lea Salle. January Term thereof A.D. 1864.

State of Illinois }
Lea Salle County } ss.
City of Lea Salle }

Pleas, Proceedings, Judgments and Decrees held and taken
in and before the Recorder's Court of
the City of Lea Salle in Lea Salle County
in the State of Illinois, at a regular
Term thereof, commenced and held at
the Recorder's Court Room in said City
and County, on the second day of
January in the year of our Lord one
thousand eight hundred and sixty,
and of the Independence of the United
States of America, the Eighty fourth.

Present, his Honor William Thomas, Judge

Charles S. Miller, Clerk.

Francis Warner Sheriff

Washington Bushnell State Attorney

Be it Remembered that heretofore
to wit, on the third day of October in the
year of our Lord one thousand eight
hundred and fifty nine, there was
filed in the office of the Clerk of the

Recorders Court of the City of Leaballe
a summons, in the words and figures
following to wit:

"State of Illinois, Leaballe County, ss.
The People of the State of Illinois, to any
constable of said county - Greeting -
You are hereby commanded to summon
Alexander Crutchshank, to appear before
me at my office in Leaballe, on the 24th day
of September AD 1859, at 2 o'clock P M, to
answer the complaint of James Connors,
for a failure to pay him a certain sum
not exceeding one hundred dollars, and
heredof make due return as the law directs,
Given under my hand and seal this 19th
day of September AD 1859 - Nicholas Gunn
- can. Seal Justice of the Peace."

And which said summons has the
following endorsement written upon the
back thereof, to wit: "James Connors vs.
Alex. Crutchshank, Demand \$33.75;
Costs .75. Served by reading to the within
named defendant this 20th day of September
1859. Service & 30. mileage --- Tho. O'Brien
- con. Leaballe. Filed October 8th 1859.
W. S. Miller Clerk."

And also a certificate of depos-
-it in the records and figures following

to wit: "Banking Office of Alexander
 Crumshank, ^{1733 1/2} Peru Ill. Sept 5th 1859.
 As Lemmings Esq. has deposited in
 this office the sum of Fifty three 10/100 dollars
 currency to the credit of himself, and
 subject to his order, on return of this
 certificate. Payable in like funds. With
 Int at 6 per per annum if 10 days notice
 is given. C. F. Gunther, Teller."

Certificate of deposit.

Which said certificate has the follow-
 ing written upon the back thereof to wit:

"Judgment rendered hereon before
 me this 24th day of September 1859.

Nicholas Duncan, J. P." Filed October
 3rd 1859, L. B. Miller, Clerk.

And also the following Execution
 which is in words and figures following
 to wit: "State of Illinois Leaball County.

The People of the State of Illinois, To any
 Constable in said County Greeting -

We command you, That if the
 Goods and Chattels of Alexander Crum-
 shank in your County, you make
 the sum of Fifty Three dollars and
 seventy five cents debt, and one dollar
 and fifteen cents costs, which James
 Lemmings lately recovered before me, in
 a certain plea against the said

Alexander Leitchbank, and hereof make
due return to me within seventy days
from this date, Given under my hand
and seal, this 24th day of September 1859.
Nicholas Duncan {Seal} Justice of the Peace.
Upon the back of which Execution
is the following writ:

Execution Instantly, James Leomyne
vs. Alexander Leitchbank, Debt \$53.75.
Costs \$15. for oath 3 1/4. Sale of property
to stay 20 days from date of return writ.

Received this writ September 24th 1859.
3 o'clock P.M. Thos O'Brien Constable.
Filed this 3rd day of October 1859.

G. B. Miller Clerk

And also a transcript from the
said Justice of the Peace, which is the
words and figures following to wit:

"James Leomyne	{	1859, 19 th day of September
vs.		Summons issued set
Alexander Leitchbank	{	sumnable 24 th instant
Justice fees 75.		2 o'clock P.M. Delivered
Execution & oath 3 1/4	{	to Thomas O'Brien Constable
Levy appeal 25.		Demand & Complaint \$53.75
Recalling execution 75.	{	1859, 24 th day of September
Transcript 25.		Said Summons returned
Constable fees	{	enclosed "Served by
on Summons 30,		reading to within

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named defendant this 20th day of September 1859 (by Thomas O'Brien constable, 1859, 24th day of September the plaintiff appeared at the appointed time. (no appearance for ~~the~~ defendant) and having heard the proofs and allegation, it was adjudged and determined that said plaintiff have and recover of said defendant the sum of fifty three dollars and seventy five cents debt and costs of suit. 1859, 24th day of September on oath of plaintiff. Execution issued, delivered to Thomas O'Brien constable. 1859, 31st day of September Plaintiff prayed an appeal to Recorders Court of City of Leaballe, and filed an appeal bond, executed by himself + Churchill Capping, which bond I did approve. This cause is therefore appealed. Execution recalled, and papers delivered to clerks of said court, among which was a certificate of deposit by defendant to plaintiff for \$53.75.

State of Illinois Leaballe County, ss.

I the undersigned a Justice of the peace in & for said county, do hereby certify the foregoing with the annexed papers, to be a full transcript, from

my docket, of the proceedings & judgment before me in the above entitled cause. Dated this 30th day of September 1859. Nicholas Duncan J.P."

On the back of which said Transcript is the following to wit:

"Filed October 3rd 1859, L.S. Miller, Clerk."

And also an appeal Bond in the words and figures following to wit: Know all men by these presents, That we Alexander Leveick, Shank, and Lehuschle Leffing, are held and firmly bound unto James Leppmings in the penal sum of one hundred and ten (\$100) Dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind our selves, our heirs, and administrators, jointly severally, and firmly by these presents. Witness our hands and seals this 26th day of September AD 1859.

The condition of the above obligation is such, whereas the said James Leppmings did on the 24th day of September AD 1859, before Nicholas Duncan Esq. a Justice of the Peace for the County of Lou Salle, recover a judgment

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against the above bounden Alexander
 Leuickshank for the sum of fifty three
 dollars and seventy five cents, and
 costs of suit, from which said judgment
 the ^{said} Alexander Leuickshank has taken
 an appeal to the Recorders Court of
 the City of La Salle in the County aforesaid
 and State of Illinois. Now if the said
 Alexander Leuickshank shall proce-
 te his appeal with effect, and shall pay
 whatever judgment may be rendered by
 the Court upon dismissal or trial of
 said appeals, then the above obligation
 to be paid, otherwise to remain in
 full force and effect.

Taken and approved by me ^{Alex Leuickshank}
 this 29th day of September 1889. ^{Leuickshank}

J. Duncan Justice of the Peace.

On the back of which said appeal bond
 is the following to wit: "Filed October
 3rd 1889. L. S. Miller to Clerk"

And Be it further Remem-
 bered that heretofore to wit on the
 seventeenth day of October in the
 year of our Lord one thousand eight
 hundred and fifty nine, there issued
 out of the office of the Clerk of the Recor-
 ders Court of the City of La Salle, a

writ of summons, in the before mentioned
 cause in the words and figures follow-
 -ing to wit: The People of the State of
 Illinois, To, The Sheriff of La Salle
 County - Greeting - Whereas in a
 certain cause lately pending in our
~~said~~ court, held, before Nicholas Dun-
 -can Esquire, one of the Justices of the Peace
 in and for our County of La Salle,
 wherein James Lemmings is plaintiff
 and Alexander Levenickshant is de-
 -fendant, judgment has been render-
 -ed by said justice, against the said
 Alexander Levenickshant, from which
 the said Alexander Levenickshant has
 appealed to our Recorder's Court.

We therefore Command you, That
 you summon the said James Lem-
 -mings, if he be found in your County
 that he personally be and appear in
 our said Recorder's Court for the City
 of La Salle, before our Judge thereof, on
 the first day of the next term of said
 court, to be held at the Recorder's Court
 Room in said City, on the first Mon-
 -day in January next, at ten o'clock
 in the forenoon, and abide by, and
 perform, the judgment of our court in

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the premises. In Witness Whereof, we
have caused the Seal of our said Court
to be hereto affixed, and attested, by Charles
S. Miller, our clerk hereto, at Louisville
(seal) this 17th day of October A.D. 1859.
Charles S. Miller, Clerk

On the back of which said Summons
is the following, to wit: Jas. Cummings vs.
Alex. Crumshank; Crumshank, appellant.
Summons to Jan T. 1860

Served the within Summons by read-
ing same to James Cummings Oct 31st 1859.

H. Warner Shff. By F. W. Matlocks Dep.
Fees - Ser & ret 00, 2 miles 10.

Filed Nov 2nd 1859 J. S. Miller Clerk.

And Be it further Remember-
ed that heretofore to wit on the Ninth
day of January A.D. 1860, one of the days
of the said January Term of said
Court, certain proceedings were had
and entered of Record in said
Court in the case James Cummings
vs. plaintiff and Alexander Crumshank
is defendant in the records
and figures following to wit
James Cummings vs. Alexander Crumshank;
Monday January 9th 1860.
appeal J. P.

This day came the plaintiff by David L. Keough his Attorney, and the Defendant by Strain & Bull his Attorneys, and by agreement between the parties herein this cause is submitted to the Court upon the issues joined between the parties.

And the Court being fully advised in the premises, does find that the said Alexander Lernickshank did assume and promise in manner and form as the said James Leornyno has complained against him, and assess the damages of the said James Leornyno by reason thereof to fifty four Dollars and fifty four cents.

The defendant by his Attorneys moved the Court, to set aside said finding and for a new trial, which motion being heard, on consideration thereof it is ordered that said motion be and the same is overruled.

For overruling said motion the defendants except and pray an appeal to the Supreme Court, and offers Schuchill Coffey as security on upon appeal Bond, who is accepted.

by the Court, and a Bond in one hundred and fifty Dollars duly executed, ordered to be filed within ten days from the rising of this Court, and it is further ordered that a Bill of exceptions be tendered herein within ten days from the rising of this Court. Therefore it is considered by the Court that the said plaintiff have and recover of the said defendant the said sum of fifty four dollars and fifty four cents, his damages aforesaid, and also his costs and charges by him herein expended, and that he have execution therefor -

And Be it further Remembered that heretofore to wit on the sixteenth day of January in the year of our Lord one thousand eight hundred and Sixty, the said Defendant Alexander Leitchman by Strain and Bull his attorneys filed in the office of the Clerk of the Recorder Court of the City of Dallas his appeal Bond, ^{in this cause} in the words and figures following to wit -
 Know all men by these

presents that we Alexander Leitchshank
and Leitchhill Coffing, are held and
firmly bound unto James Leitchshank
in the penal sum of one hundred and
fifty Dollars (\$150-) for the payment
of which well and truly to be made
we do ^{hereby} bind ourselves our heirs
executors and administrators, jointly
and severally firmly by these presents

Sealed with our seals and dated
this fourteenth day of January A.D. 1860.
The condition of the above obliga-
tion is such that whereas at the Jan-
uary Term for the year A.D. Eighteen
hundred and sixty (\$1860) of the
Recorders Court of the City of Leitchhill
in the County of Leitchhill and
State of Illinois, The above named
James Leitchshank recovered a judg-
ment in said Court, against the
above bounden Alexander Leitchshank
for the sum of Fifty four
dollars and fifty four cents,
from which judgment the above
bounden Alexander Leitchshank
has prayed an appeal to the Supreme
Court of the State of Illinois, which
appeal has been by said Recorders

cannot allowed. Now therefore if the above Bounden Alexander Lernickshank shall pay the judgment, costs, interest and Damages in case said judgment shall be affirmed, and shall prosecute his said appeal to effect and without delay, then this obligation to be void, else to be and remain in full force and effect.

Alex. Lernickshank

Seal
Seal

Churchill Coffing

on the back of which appeal Bond is the following: "Recorders Court Los Angeles. James Leomyus vs. Alex. Lernickshank, appeal bond to Supreme Court, Filed this 16th day of January, A.D. 1860. H. B. Miller / Clerk"

And be it further remembered that heretofore to wit on the twenty first day of January in the year of our Lord one Thousand Eight hundred and Sixty, there was filed in the Office of the Clerk of the Recorders Court of the City of Los Angeles, in this cause a Bill of Exceptions in the words and figures following to wit—

State of California }
Los Angeles County }
City of Los Angeles }

Recorders Court for said
City, January Term
 thereof A.D. 1860

James Leomyus
vs

Alexander Lernickshank

} Appeal

Be it Remembered that on the Ninth day of January A.D. 1860, the same being one of the days of the said term of said court, this cause came on for trial, and by agreement of parties a jury was waived and the cause was submitted to the court for trial, whereupon the plaintiff to maintain the issues on his part offered to read in evidence a certificate of deposit in the words and figures following to wit:

Certificate of Deposits

Banking Office of Alexander Crockett & Co.
\$53 43 1/2 Per Bk Sept 5th 1859 Cash
Summers Esq has deposited in this office
the sum of Fifty three 43/100 Dollars
Currency to the credit of himself and
subject to his order on return of this
certificate payable in like funds with
interest at 6 per cent per annum if 10 days
notice is given, A. Bonthar, Teller

and that to the reading of said certificate of deposit in evidence, said defendant by Strain & Bull his attorneys then & there objected, which objection was by the court then and there overruled, and said plaintiff was permitted to read said certificate

of deposit ~~deposit~~ in evidence,
 and the said defendant then & there
 by his attorneys excepted to the decision
 of the court in overruling said objec-
 -tion, and in permitting said certificate
 of Deposit to be read in evidence.

Be it further remembered that no
 other or further evidence was offered
 or produced by either party. Whereupon
 the court did then & there find the
 issues joined in favor of the plain-
 -tiff and assessed his damages
 at Sixty four Dollars and fifty four
 cents. And be it further remember-
 -ed that said defendant by Straive
 Bull his attorneys did then &
 there enter a motion for a new
 trial, which motion was by the court
 then & there overruled, and judgment
 rendered in favor of the plaintiff
 for the sum of Sixty four Dollars
 and fifty four cents, and the said
 defendant then & there by his attorney
 excepted to the decision of the court
 in overruling said motion, for
 a new trial, and in rendering said
 judgment, and prays that this his
 bill of exceptions may be signed

sealed and made a part of the records in this cause.

Wm Summers Seal
 Judge of the Recorder's Court of the City
 of Lowell

On the back of which said
 Bill of Exceptions is the following
 verbatim. Filed this 21st day of January
 AD 1860. Charles S. Miller. Clerk

State of Illinois }
La Salle County } ss.
City of La Salle }

I Charles S. Miller

Deputy of the Recorder & Clerk of the City
of La Salle in La Salle County. Do
certify the above and foregoing
to be a true, full and complete
copy of all the papers on file in my
office, and all the orders entered of
Record in said court in said
cause, wherein James L. Campy is
plaintiff, and Alexander Grubb
Shank is defendant.



Witness my hand and the
seal of said court at my
office in said city of La Salle
in La Salle County this
fifteenth day of March
A.D. 1860.

Charles S. Miller

Deputy

Fees for above Record 74.00

¹⁰⁴
Alexander Linnickshank
Appellant

vs:
James Connors
Appellee

~~~~~

Record



Filed March 17<sup>th</sup> 1880

L. Leland  
Clerk

B. H. Bull  
for app<sup>t</sup>



State of Illinois } ss Third Grand  
Supreme Court } Division, April  
Term thereof A.D. 1860

Alexander Cruickshank  
Appellant

vs

James Cummings  
Appellee

} Appeal

And now

comes the said Alexander Cruickshank by E. F. Bull his attorney and says there is manifest error in the foregoing record of said cause in this to wit:

1st. The court erred in permitting said certificate of deposit, made payable to one James Cummings to be read in evidence on the trial of a cause wherein said Defendant James Cummings was plaintiff without proof of an assignment of the same to the defendant or proof that the defendant and said Cummings were the same persons -



2<sup>nd</sup> The court erred in permitting said certificate of deposit to be read in evidence without proof that that the person signing the same was the clerk of the plaintiff Crickshank or that the ~~was~~ person signing the same was authorized by the plaintiff Crickshank to ~~ex-~~sign certificates of deposit for him -

3<sup>rd</sup> The court erred in permitting said certificate of deposit to be read in evidence before a demand for the money mentioned was first proven -

4<sup>th</sup> The court erred in finding the issues joined in favor of the plaintiff Defendant Compro and in assessing his damages at sixty four dollars and fifty four cents.

5<sup>th</sup> The court erred in overruling the plaintiffs motion



for a new trial

6<sup>th</sup> The court erred in rendering judgment in favor of the defendant for the sum of sixty four & 54/100 Dollars. The judgment is excessive

E. F. Bull

State of Illinois }  
Supreme Court } ss Offs atty  
Third Land Division  
April Term 1866

Alexander Smith & Co }  
vs } Appeal  
James Cornyus

And the said  
appelles, by D. L. S. Long's atty,  
Cornel Velefont & Co, say that in  
the second proceeding in the above  
entitled cause, there is no error

D. L. S. Long  
Atty for Appelles



104-146  
Alexander Leitch  
vs

James Connors  
~~Record and~~  
Assignment of errors

Filed April 12, 1860  
L. Leland  
Clerk

E. H. Bull  
Ref. atty



STATE OF ILLINOIS, SUPREME COURT,

### THIRD GRAND DIVISION.

APRIL TERM, 1860.

ALEXANDER CRUIKSHANK, Appellant,  
vs.  
JAMES COMYNS, Appellee.

} *Appeal from Recorder's  
Court of City of La  
Salle.*

### ABSTRACT OF THE RECORD.

*Page of Rec.* THIS was an action upon a Certificate of Deposit by appellee *vs.* appellant, brought before a Justice of the Peace, Sept. 19th, 1859, and taken to the Recorder's Court of the City of La Salle, by appeal.

2 Magistrate's summons and return of constable filed Oct. 3d,  
1859.

1859.

3. Certificate of deposit for \$53 75-100 currency <sup>claimed to be</sup> given by appellant to one James Cummins, dated, Peru, Sept. 5th, 1859; payable with 6 per cent. interest, if ten days notice given. Filed Oct. 3d, 1859.

3      Endorsement of magistrate on certificate that he rendered judgment thereon, Sept. 24th, 1859.

Execution issued by magistrate, Sept. 24th, 1859; execution  
3, 4 filed Oct. 3d, 1859; endorsements of magistrate and constable  
on back of execution.

4, 5, 6 Transcript of magistrate filed Oct. 3d, 1859, with Clerk of Recorder's Court, which shows the issuing of summons by magistrate, Sept. 19th, 1859 ; service and return of summons by constable Sept. 20th, 1859 ; judgment before magistrate rendered Sept. 24th, 1859, in favor of appellee, against appellant, for \$53. 75-100 ; issuing of execution by magistrate same day, on oath of appellee ; delivery of execution to constable, appeal allowed to appellant by magistrate, to Recorder's Court of the City of La Salle ; appeal bond with Churchill Coffing as security, approved Sept. 29th, 1859 ; execution recalled, and that the transcript of judgment papers and certificate of deposit were delivered to Clerk of Recorder's Court City of La Salle.

6 Transcript of judgment before magistrate, filed Oct. 3d, 1859.

6, 7 Appeal bond from judgment before magistrate, filed Oct. 3d,  
1859.

7 Summons issued Oct. 17th, 1859, to appellee, by the Clerk of  
8, 9 LaSalle Recorder's Court of the City of La Salle; service, return  
and filing same.

10     Tried at January term, 1860, of the Recorder's Court of the  
        City of La Salle. Agreement of parties to submit to Court for



*Page of Rec.* trial without intervention of jury ; finding of Court in favor of appellee for the sum of \$64.50-100.

Motion for new trial by appellant ; overruled by Court. Appeal prayed by appellant to Supreme Court, allowed on filing  
 11 bond in \$150 by appellant, with Churchill Coffing as security—ten days allowed from rising of Court to file appeal bond, and tender Bill of Exceptions ; final judgment rendered by the Court for \$64.54-100.

11 Appeal bond filed Jan. 16th, 1860, with Churchill Coffing as security.

12, 13 Appeal bond for appeal from judgment of Recorders Court to Supreme Court, and filing of same.

14, 15, 16 Bill of Exceptions signed by Judge of Recorder's Court of the city of La Salle, showing that appellee offered in evidence the following certificate of deposit, dated Sept. 5th, 1859, for \$53.-75-100 <sup>damned to be</sup> given by appellant to one James Cummins, which certificate was in the words and figures following, to wit :

"Banking Office of Alexander Cruikshak,  
 \$53.75-100. Peru, Ills., Sept. 5th, 1859.

Jas. Cummins, Esq., has deposited in this office the sum of Fifty-three 75-100 dollars, currency, to the credit of himself and subject to his order on return of this certificate, payable in like funds with interest at 6 per cent. per annum, if ten days notice is given.  
 F. GUNTHER, Teller."

To the introduction of which appellant objected, which objection was overruled by the Court, and appellant excepted, and the certificate was read in evidence. Shows that the certificate  
 15 was all evidence offered by either party ; that the Court found the issue in favor of appellee, and assessed his damages at \$64.54. That appellant made a motion for a new trial, which was by the Court overruled, and that appellant excepted to the decision of the Court, in overruling motion for new trial and in entering judgment for appellee for \$64.54.

17 Certificate of Clerk that same is a complete copy of record.

#### *Errors Assigned.*

1st. Court erred in permitting certificate of deposit to James Cummins to be read in favor of James Comyns.

2d. The Court erred in permitting said certificate to be read in evidence without proof that the person executing the same was authorized by plaintiff to do so.

3d. Court erred in permitting certificate of deposit to be read in evidence without proof of demand for money.

4th. Court erred in finding issues in favor of defendant.

5th. Court erred in overruling motion for new trial.

6th. Court rendered judgment for too much upon the proof adduced.

E. F. BULL, Plaintiff's Attorney.



104

A. Cruickshank  
23.

Gas. Company

Abst. Record

Filed Apr. 18, 1860  
L. Leland  
Clerk

E. L. Burr  
P. M. aty



STATE OF ILLINOIS---SUPREME COURT.

Third Grand Division thereof---April Term, 1860.

ALEXANDER CRUICKSHANK,  
vs.  
JAMES COMYNS. } *Appeal from Recorder's Court  
of the City of LaSalle.*

POINTS AND AUTHORITIES.

1st. Cummins and Comyns are not "*idem sonans*" and a certificate of deposit made payable to Cummins, cannot be introduced as evidence in favor of Comyns, without proof showing the persons to be the same.

13 Ills. 651. 17 10 East R. 83. 20 Ills. 46. 2 Spear 46.  
4 Bac. Abr. Letter A. Tittle Misnomer p. 752. 2 Spear 45.

2nd. A certificate of deposit made by F. Gunther, Teller, was no evidence of an indebtedness on the part of the plaintiff, without some proof showing or tending to show that he, Gunther, had authority to bind the plaintiff. The execution of the certificate of deposit was not proven.

3d. The defendant was not entitled in any event to bring suit on the certificate of deposit until he had first made a demand for the money. There is no proof showing or tending to show such a demand.

Addison on Contracts. Pages 417; 57; 547.

Pothier on Contracts by Evans, Vol. 2. p. 126.

Marzetti vs. Williams, Eng. C. L. R., 415.

4th. The verdict or Judgment of the Court was for too much. All the proof offered by the defendant on the trial below, was the certificate of deposit, for \$53.75. dated Sept. 5th, 1859, and on the 9th day of January, A. D. 1859, the Court rendered a judgment against plaintiff for \$64.54.

5th. The plaintiff was entitled to a new trial.

E. F. BULL,  
*Plaintiff's Attorney;*







# STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

ALEXANDER CRUIKSHANK, Appellant, } *Appeal from Recorder's*  
vs. } *Court of City of La*  
JAMES COMYNS, Appellee. } *Salle.*

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3 Certificate of deposit for \$53 75-100 currency *claimed to be* given by appellant to one James Cummins, dated, Peru, Sept. 5th, 1859; payable with 6 per cent. interest, if ten days notice given. Filed Oct. 3d, 1859.

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6th. Court rendered judgment for too much upon the proof adduced.

E. F. BULL, Plaintiff's Attorney.



10 7-11.6

A. Crumshank

1860

Gas. Company

Abst. Record

Filed Apr. 18. 1860

G. Leland

Clerk

E. J. Brill

P. J. O. O.