

Case No. 3,326.

{Pet. C. C. 139.}¹

CRAIG v. BROWN.

Circuit Court, D. Pennsylvania.

April Term, 1815.

ACTION ON BILL OF EXCHANGE—PLEADING AND PROOF.

1. In an action where the declaration stated that E. Brown was attached to answer, and proceeded to allege in his declaration, the drawing of a bill of exchange by Elisha Brown; evidence of a bill of exchange signed by Elijah Brown, cannot be given in evidence.
2. The plaintiff was allowed to take off a nonsuit and to amend the declaration, on payment of costs.

The declaration recited that E. Brown was attached to answer the plaintiff; and then proceeded to declare against him, as Elisha Brown, on a protested bill of exchange, drawn by him in favour of the plaintiff. At the trial, the plaintiff offered in evidence to support his declaration, a bill of exchange signed E. Brown, and proved the hand writing to be that of Elijah Brown, as the witness had generally heard him called, and did not recollect ever to have heard him called Elisha Brown. The defendant's counsel objected to this evidence, on account of the variance between the proof and the declaration.

Mr. Shoemaker, for plaintiff.

Mr. Chauncey and J. R. Ingersoll, for defendant.

THE COURT sustained the objection; observing that it would be improper to permit a paper to go to the jury, having the signature of the defendant in the suit, unless it is proved to be his signature, by sufficient evidence. This suit is against Elisha Brown, and the bill of exchange offered in evidence is signed by Elijah Brown.

The plaintiff suffered a nonsuit. He afterwards moved to set aside the nonsuit, and to have leave to amend his declaration, which was allowed by THE COURT, upon his paying the costs.

{NOTE. On the trial, plaintiff suffered a nonsuit. Case No. 3,327. Plaintiff thereafter commenced a new action. Judgment was rendered for defendant on demurrer to the replication,

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with leave to plaintiff to amend (Case No. 3,329); and, on the trial of the new action, plaintiff was again nonsuited (Case No. 3,330).

{See, also, the discharge of a rule to show cause why defendant should not be discharged on common bail. Case No. 3,328.}

¹ [Reported by Richard Peters, Jr., Esq.]