

Case No. 5,065.

{4 McLean, 365.}¹

FRASER V. WOLCOTT ET AL.

Circuit Court, D. Illinois.

June Term, 1848.

PARTNERSHIP—NOTE SIGNED WITH FIRM NAME AFTER DISSOLUTION.

At law.

Mr. Smith, for plaintiff.

Mr. Powell, for defendant

OPINION OF THE COURT. This was an action of assumpsit. The defendants pleaded non-assumpsit, and that the note was signed by Goodwin as a partner of Wolcott, in both their names, when they were not partners. By the eighth section of the Revised Statutes of 1845, it is provided, that in “actions upon contracts, expressed or implied, against two or more defendants, alleged to have been made or executed by such defendants, as partners, or joint obligors or payers, proof of the joint liability or partnership of the defendants,” etc., [shall not in the first instance be required to entitle the plaintiff to judgment], unless a plea be filed under oath, denying the execution of the instrument by the defendants. The oath is appended to this plea. It appears the defendants were formerly partners, but ‘that their partnership had been dissolved before the execution of this note. Non-suit.

¹ [Reported by Hon. John McLean, Circuit Justice.]