Case No. 6,958.

HUTCHINSON ET AL. V. PEYTON ET AL.

{2 Cranch, C. C. 365.}[1]

Circuit Court, District of Columbia. Nov. Term, 1822.

EVIDENCE—PAROL—PARTNERSHIP—PROOF OF INSURANCE.

1. If an agreement in writing be made by one of the partners of a mercantile firm it is competent for the plaintiffs, in an action in the name of the members of the firm, to prove by parol, that it was made by that partner as the agent, and for the use and benefit of the firm.

2. The fact that insurance was made, cannot be proved without producing the policy, or showing it to be lost.

An agreement in writing, respecting the advance of bills on London to the amount of £4,000 sterling, and the consignment of a cargo of flour to John Traverse, one of the plaintiffs, in Lisbon, was made between the defendants and the said Traverse. In an action by the firm {Hutchinson, Traverse & Co.}, their counsel offered parol evidence to prove that the agreement, although in the name of Traverse alone, was made by him as the agent and for the use and benefit of the firm.

Mr. Swann and Mr. Hewitt, for defendants, objected that it was not competent evidence, because it contradicts the written papers in which the name of the firm is not mentioned.

But THE COURT (THRUSTON, Circuit Judge, absent) overruled the objection and admitted the evidence.

The plaintiffs, to support a charge for the premium of insurance, gave in evidence the defendants orders to Traverse to cause insurance to be made, and the deposition of a witness stating positively that insurance was made by Baring & Co. in London; and the acknowledgment of Peyton, one of the defendants, that the premium was reasonable.

But THE COURT (THRUSTON, Circuit Judge, absent, and CRANCH, Chief Judge, doubting) said that it was necessary to produce the policy, or to show it to be lost.

The plaintiffs became nonsuit with leave to move to reinstate the cause, on the ground of misdirection to the jury by the court. But it was not moved again.

[1] {Reported by Hon. William Cranch, Chief Judge.}