

Morrill et al.
v.
Morrill. under which they claim. The conveyance of a mill is a conveyance of the water necessary to work it, and to sustain this objection, a limitation in the conveyances under which the title is derived must be shown.

Report accepted.

NOAH BURNHAM *versus* SAMUEL WHITTIER.

One of a firm may order the contents of a note made payable to the firm or order, to be paid to himself, and maintain a suit in his own name.

ASSUMPSIT upon a promissory note, dated August 4, 1828, for \$30 payable to Miles Burnham and Noah Burnham, or order, and by them endorsed to the plaintiff.

The cause was tried upon the general issue, at August term, 1830, and a verdict taken by consent for the plaintiff, subject to the opinion of the court, upon the following case.

At the time when the note was made, and also at the time when it was endorsed, Miles Burnham and Noah Burnham, the payees, were partners in trade; and the plaintiff, by an endorsement on the note in the name of the firm, ordered the contents to be paid to himself, without the knowledge or consent of the other partner; and the question was, whether upon these facts the action could be maintained.

French, for the plaintiff, relied upon 2 Starkie's Ev. 251, and the cases there cited.

Porter, for the defendant.

By the court. It is well settled, that one of a firm may order the contents of a note made payable to the firm or order, to be paid to himself, and maintain an action upon it in his own name. 1 Cain's Rep. 505, *Kirby v. Cogswell*; Chitty on Bills, 102, note; Kyd on Bills, 106; 2 Peter's S. C. R. 197; 16 Mass. Rep. 314, *Russell v. Swan*; Bailey on Bills, 77.

Judgment for the plaintiff.