

1965

# Lyle Bolger v. Beth Edwards and Clyde L. Edwards : Respondent's Brief

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**In the Supreme Court of the  
State of Utah**

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**LYLE BOLGER,**

**Plaintiff and Appellant,**

**vs.**

**BETH EDWARDS and CLYDE L.**

**EDWARDS,**

**Defendants and Respondents.**

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**RESPONDENTS' BRIEF**

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Appeal from the Judgment of the Fourth District  
for Utah County

HON. JOSEPH E. NELSON, District Judge

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## TABLE OF CONTENTS

	<b>Page</b>
STATEMENT OF FACTS.....	1
ARGUMENT .....	2
<b>POINT I</b>	
PLAINTIFF'S ACTION IS AN ACTION AT LAW AND THE SUPREME COURT IS NOT AUTHORIZED TO ALTER THE TRIAL COURT'S RULING IF THERE IS COMPETENT EVIDENCE IN THE RECORD TO SUPPORT SUCH FINDING.....	2
<b>POINT II</b>	
PROMISSORY NOTES MAY BE MADE PAYABLE IN GOODS AND SERVICES.....	3
<b>POINT III</b>	
THE TRIAL COURT'S FINDING WAS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE .....	3
<b>AUTHORITIES</b>	
<b>CASES</b>	
Campbell Bldg. Co. v. State Road Commission, 70 P. 2d 857 .....	2
Longfellow v. Huffman, 112 Pac. 8; 57 Oregon 338....	3
Salt Lake Transfer Co. v. Shurtliff, et al., 30 P. 2d 733....	2
Wilson v. Salt Lake City, 174 Pac. 847.....	2
<b>TEXTS</b>	
4 A.J. 516, "Assumpsit", Sec. 26.....	2
Appeal & Error, Key Number 1011(7).....	2
Beutel's Brannan Negotiable Instrument's Law, 7th Edition, 37-38 .....	3

**In the Supreme Court of the  
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LYLE BOLGER,  
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**CASE  
NO. 10261**

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**RESPONDENTS' BRIEF**

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**STATEMENT OF NATURE OF THE CASE**

Respondents agree generally with appellant's statement of the nature of the case. The action was on a document which appeared to be a promissory note which the Court found was issued for the purpose of evidencing the acknowledgement of the receipt of certain merchandise by defendants.

**STATEMENT OF FACTS**

Respondents agree with the statement of facts set forth in appellant's brief. Respondents would add only

the fact that defendants Beth Edwards and Clyde Edwards and their son, Kenneth Edwards, and an independent witness, Ida Elliott, all testified that the merchandise which was evidenced by Exhibit 1 was returned on a given day to the plaintiff. Beth Edwards so testified, (Tr. 31-33); Clyde Edwards did likewise (Tr. 52-54); Kenneth Edwards did, (Tr. 56, 57) and so did Ida Elliott, (Tr. 60). The Court chose to believe the above witnesses and to disbelieve the plaintiff and her husband.

## **ARGUMENT**

### **POINT I**

**PLAINTIFF'S ACTION IS AN ACTION AT LAW AND THE SUPREME COURT IS NOT AUTHORIZED TO ALTER THE TRIAL COURT'S RULING IF THERE IS COMPETENT EVIDENCE IN THE RECORD TO SUPPORT SUCH FINDING.**

An action on a note is an action at law. Salt Lake Transfer Company v. Shurtliff, et al., 30 P. 2d, 733; Campbell Bldg. Co. v. State Road Commission, 70 P. 2d, 857 at page 863. It is a form of assumpsit, 4 A. J. 516, "Assumpsit", Sec. 26.

Since the action is at law, the Supreme Court may not alter the District Court's ruling if there is substantial evidence to support the trial court's findings. Wilson v. Salt Lake City, 174 Pac. 847; Campbell Bldg. Co. v. State Road Commission, supra. This principle is widely accepted. See Appeal and Error, Key Number 1011 (7).

**POINT II****PROMISSORY NOTES MAY BE MADE PAYABLE  
IN GOODS AND SERVICES.**

A promissory note can be made payable through the delivery of goods. In early American history bills of exchange frequently provided for payment in goods. Beutel's Brannan Negotiable Instrument's Law, 7th Edition, pages 37-38. The modern day rule is the same. Longfellow v. Huffman, 112 Pac. 8, 57 Oregon 338. In this case the defendants admitted the execution of the promissory note and claimed that it was paid by the delivery of certain goods to the plaintiff. The Court so found. (R. 23).

**POINT III****THE TRIAL COURT'S FINDING WAS SUPPORTED  
BY A PREPONDERANCE OF THE EVIDENCE.**

The judgment of the trial court was supported by a preponderance of the evidence. That being so, there is certainly substantial evidence to support the Court's finding in this Court.

The real controversy in this case is whether the merchandise, the possession of which was transferred at the time the note was executed, was redelivered to the plaintiff. Four witnesses testified that the merchandise was returned, Mrs. Edwards at Tr. 31-33, Mr. Edwards at Tr. 52-54, Kenneth Edwards testified so at Tr. 56-57 and Mrs. Elliott testified at Tr. 60.

Obviously, there was a direct conflict in the evidence. The four witnesses, Mrs. Edwards, Mr. Edwards, Kenneth Edwards and Ida Elliott, testified that the merchandise

was returned. Three witnesses, Mr. Edwards, Mr. Edwards and Ida Elliott, testified that the plaintiff brought her typewriter with her to Provo and typed a list of the merchandise while she was in Provo. (Tr. 32, 53-54, and 60).

Plaintiff's testimony to the contrary is not only disputed by the four witnesses in their oral testimony, but it is also disputed by the documentary evidence. Under the plaintiff's testimony, the defendants' Exhibits 5 and 6 could not be in existence. She testified that these lists were typed with her typewriter (Tr. 10). The only time that she testified to having typed a record of the transaction was in her Salt Lake apartment on March 5, 1960. The lists that she said she typed were defendants' Exhibits 2 and 3. Plaintiff testified that defendants' Exhibits 5 and 6 were carbon copies of defendants' Exhibits 2 and 3 and yet the price extension on Exhibits 2 and 3 do not appear on defendants' Exhibits 5 and 6 so it is apparent that they were made at different times. This evidence supports the Court's acceptance of defendants' testimony and its rejection of plaintiff's evidence.

Of further significance is the fact that while there is an implied denial of the four witnesses' direct testimony as to the removal of the merchandise from the Edwards' home, there is no direct contradiction of their testimony by the plaintiff or the plaintiff's husband, plaintiff's only witness.

### **CONCLUSION**

Defendants respectfully submit that plaintiff's action is an action at law and that the trial court's finding is sup-

ported by evidence and in fact was based on the preponderance of the evidence.

Respectfully submitted,

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