

NEW YORK SUPREME COURT

Flagg v. Swift

32 N.Y. Sup. Ct. 623 (1881) · Decided December 15, 1881

SUMMARY

The New York Supreme Court considered whether individual members of an organized, unincorporated association could be sued initially for rent owed by the association. It held that, under the governing statute and Code of Civil Procedure § 1919, the action had to be brought against the association's president or treasurer rather than individual members, and it reversed the judgment and granted a new trial.

CASE DETAILS

COURT	New York Supreme Court
WRITING FOR THE COURT	Dykman, J.; Barnard, P. J.; Gilbert, J.
JURISDICTION	New York
DECIDED	December 15, 1881
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal by the defendants from a judgment entered on a jury verdict in the City Court of Yonkers in favor of the plaintiff for rent allegedly owed by an unincorporated association.
PRECEDENTIAL VALUE	Published state appellate decision
PARTIES	Defendants Swift and the other individual members sued v. Flagg

TOPICS

- civil procedure
- commercial litigation

PRACTICE AREAS

- Civil procedure
- Commercial litigation
- Unincorporated associations

QUESTIONS PRESENTED

- Whether individual members of an unincorporated association consisting of seven or more persons may be sued in the first instance for a liability incurred by the association when the association has a president or treasurer.

2. Whether the judgment against the individual members should stand under Code of Civil Procedure section 1919.

HOLDINGS

1. When an unincorporated association consists of seven or more persons, has a president or treasurer, and is organized with bylaws, an action for an association liability cannot be maintained in the first instance against individual members; the action must instead be brought against the association's president or treasurer as prescribed by Code of Civil Procedure section 1919.

KEY QUOTATIONS

“Our conclusion, therefore, is that this action cannot be maintained, and that the judgment must be reversed.” (625)

FACTUAL BACKGROUND

The Yonkers Dramatic Club was a voluntary, unincorporated association with more than seven members and a treasurer. Flagg rented a building to the club and sued three individual members to recover rent in arrears. The trial court entered judgment for Flagg.

PROCEDURAL HISTORY

Flagg sued three individual members of the Yonkers Dramatic Club to recover rent owed for a building rented to the voluntary association. The City Court of Yonkers entered judgment for Flagg after a jury verdict. The New York Supreme Court reversed and ordered a new trial, with costs to abide the event.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

New trial granted, with costs to abide the event.

CASES CITED

- Williams v. Bank of Michigan, 7 Wend. 542
- Witherhead v. Allen, 4 Abb. Ct. App. Dec. 628
- Park v. Spaulding, 10 Hun 128
- Ebbighousen v. Worth Club, 4 Abb. N. Cas. 300