

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

BENJAMIN B. REYNOLDS et al. }
vs. }
CHARLES PAVER.

The judgment in this case was authorized by the power of Attorney.

It is said that although the power of attorney would authorize a confession for B. B. Reynolds, David Reynolds and W. C. Richardson, or for any one of them singly, but not for two of them jointly.

To this there are two answers. The power of attorney was executed by B. B. Reynolds and D. Reynolds, and authorizes an attorney to appear for them and William C. Richardson, jointly and severally. If the attorney might appear for them *severally*, he might appear for as many of them or as few of them as he chose; and so is the very language of the power of attorney, for it says "That upon the appearance of the attorney, judgment may be forthwith entered of record against *us*, or *any* or *either* of *us*. In this phrase there are three terms, "*us*," "*any* of *us*," or "*either* of *us*," evidently meaning by "*us*" all *three* of them, by "*any* of *us*" any *two* of them, and by "*either* of *us*" either *one* of them.

2d. The other ground on which it is sought to set aside this judgment, is alleged usury.

The manner in which courts have exercised their equitable jurisdiction over judgments entered by confession, has been either, 1st, by setting aside the judgment, or, 2d, by allowing the judgment to stand as security, and admitting the party to plead and to try the merits of his defence. The application in this case was to set aside the judgment entirely; it was not merely to be allowed to plead, letting the judgment stand as security.

6 Johns., 296. 3 Barn., 501. 2 Gilm., 629.
15 Ill., 353. 9 Wend., 437.

In every case where courts have exercised their equitable jurisdiction to allow a party to come in and litigate a question of usury, they have retained the judgment and not set it aside, but have merely granted the party leave to plead. The application in this case to set aside the judgment entirely, we think was properly overruled.

9 Johns., 80.	8 Barn. & Cress, 21.
20 Ib., 296.	2 Cowen, 465.
6 Halstead, 110.	12 Wend., 222.
5 Johns. C. R., 320.	2 Halstead, 199, note.
Barnes, 277, note.	2 John. Ca., 258.

Nor should the court have entertained the application at all, unless Reynolds had come into court and tendered the amount of money which he acknowledges was justly due to Paver. The application is to the equitable jurisdiction of the court, and he who seeks the aid of equity must do equity. It would be grossly inequitable to allow the defendants to refuse to pay the principal of the note under the pretence that they ought to be allowed to litigate the question of interest.

Barnes, 243. 2 Arch. Prac., 11. Tidd's Prac., 512.

B. C. COOK,
For Def't in Error.

145
Hoyt's 142
11
Power

Deft's Brief

Filed May 26, 1859

L. Leland
Clerk