

No. 13492

Supreme Court of Illinois

D
~~X~~ooley.

vs.

Stipp.

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 70.

861

Shipp

70

Supreme Court & General division

146

Geo. W. Steph.

127

William Dealey

Letter to McClellan

No. 789 William Bailey

but

George M. Steph

Yours to McLean

It is agreed by the parties
that the above cases shall be consolidated,
and heard by one judge of the Record
Court at 1885 in the same record.

It is further agreed, that intract
any former garden or terrace, it is
to be carried forward to the next portals
have assigned a number of years on the
land, & the one is
to be carried, as having joined in
error, upon the assessment of
years of the other, and one abstract
is to be used and carried as the
abstract of each party.

March 28th 1861,

A. C. Williams

Cumrell for Duly

(A Brown-fur Stepp

41 & 70

No 146

& 155

Sept 11 1846
Savvy as then

Agreement

7th Sept 1846
L. V. L.
C.

Williams & Moore

State of Illinois

Supreme Court for the 3rd
Grand division at Ottawa.
April Term 1860

William Dooley

vs
George W. Stiff

Error to the Circuit Court for
McLean County

The Plaintiff upon this Record
assigns the following error.

1st The Court erred to the prejudice of Plaintiff
in error, in deciding that Plaintiff here-
Complainant below, was not entitled
to relief as to any portion of the judg-
ments confessed.

2nd The Court erred to the prejudice of
Plaintiff, in not rendering a decree
in favor of Plaintiff for the amount
of usury over and above ten per
cent. in the face of the two judgments
confessed.

3rd The decree is erroneous to the prejudice
of the Plaintiff in not decreeing in
favor of Plaintiff the whole amount
of usury paid by him upon the two
judgments confessed at Law. And
by not decreeing in favor of Plaintiff
for the whole amount paid by him
over and above the original indebted-
ness and ten percent interest thereon
from its date to the date of judgment.
And further that the decree should be reversed and
the Cause remanded for a new trial.

R. C. Williams
Counsel for Plaintiff

In nullo Est Erratum

C. H. Moore per Olipso

285-
William Dooley

vs

George W. Shipps

Assignment of

Errors

~~~~~

Filed April. 19. 1860

L. Veland

Clk.

R. E. Williams



Heas continued and held at the Court House in Bloomington in and for the County of McLean and State of Illinois before the Hon David Davis Judge of the Circuit Court of said County in a certain cause therein pending wherein William Dooley was complainant and George W. Stepp and James Nicolls were defendants

State of Illinois

McLean County Be it remembered that heretofore to wit on the 20<sup>th</sup> day of August A.D. 1857 came William Dooley by Lord Williams & Walker his attorneys and filed in the office of the Clerk of the Circuit Court of said County his bill of complaint against George W. Stepp & James Nicolls in words and figures as follows to wit:-

State of Illinois

September Term 1857

McLean Circuit Court

To the Honorable David Davis Judge and Chancellor of the 8<sup>th</sup> Judicial Circuit.

Your orator William Dooley humbly complaining would most respectfully show unto your honor that heretofore to wit on the first day of July 1855 orator was indebted to one James Culbertson in the sum of thirty five  $68/100$  dollars and delivered to



promissory note due  
 one day after date for said sum and it was  
 specified by way of obtaining usurious interest  
 that said sum of money in said note specified  
 should bear fifteen per cent per annum interest  
 after due. Orator would further show that while  
 said Culbertson was the holder of said note orator  
 made several ~~attempts~~ payments on the same  
 that were indorsed on said note orator would show  
 that after said note had been sometime due and  
 said payments had been made on the same said  
 Culbertson sold and assigned said note to one George  
 W. Stepp and that afterwards to wit on the 1<sup>st</sup> day of  
 December 1856 said Stepp proposed to orator to  
 ascertain the amount due upon said note cal-  
 culating the interest on the same at fifteen per cent  
 from the date of the said note and up to the 25<sup>th</sup> day  
 of March 1856. Said Stepp told orator if orator  
 would give said Stepp a new note for all the balance  
 due on said old note calculating interest on the  
 entire sum for which said old note was given at  
 15 per cent per annum up to March 25<sup>th</sup> 1856  
 said new note to fall due on said 25<sup>th</sup> day of March  
 1856 that said Stepp would give up said old note and  
 take said new note and wait with orator until said



3  
25<sup>th</sup> day of March 1856 otherwise said Stipp would at once sue orator on said old note orator being largely indebted and much embarrassed at said time assented to said arrangement and the amount of said new note upon a calculation made as above stated to wit counting interest on said old note from its date at 15 per cent and extending the time to the 25<sup>th</sup> of March 1856 was found to be Eleven hundred and seventeen dollars that would be due on said 25<sup>th</sup> day of March 1856 calculating the interest on said old note at 15 per cent per annum from the date of said old note until the said 25<sup>th</sup> day of March and thereupon orator in full satisfaction of said old note for the forbearance to be obtained on said 1<sup>st</sup> day of December 1856 made and delivered to said George W. Stipp his orator's promissory note for the sum of Eleven hundred and seventeen dollars due on the said 25<sup>th</sup> day of March 1856 and it was provided by way of obtaining usurious interest on said last mentioned note that the same was to bear interest after maturity at two per cent per ~~annum~~ month. Orator would further show that on the making of said arrangement and giving said last mentioned note said old note was to have been given up to orator but orator avers that by accident ~~in full satisfaction~~ settlement was made



4  
and forgot said old note and thereby left the same  
in the possession of said Stipp. Orator would further  
show that on the 11<sup>th</sup> day of October 1855 orator was  
indebted to said Stipp a sum of money which with  
interest on the same at the rate of 15 per cent per  
annum until the 1<sup>st</sup> day of March 1856 would  
amount to the sum of Five hundred and Ninety  
three  $\frac{88}{100}$  dollars and said Stipp proposed on said  
11<sup>th</sup> day of October 1855 that if orator would give  
said Stipp his orators promissory note for said sum  
of Five hundred and ninety three  $\frac{88}{100}$  dollars which  
was the debt due with 15 per cent on the same  
until the 1<sup>st</sup> of March 1856 said Stipp would wait  
with orator until said 1<sup>st</sup> day of March 1856 and  
orator in view of his orators great embarrassment  
at the time consented to said arrangement and  
on said 11<sup>th</sup> day of October 1855 orator made and  
delivered to said Stipp his orators promissory note for  
Five hundred and ninety three  $\frac{88}{100}$  dollars due  
on the 1<sup>st</sup> of March 1856 and it was provided  
in said last note by way of obtaining usurious  
interest that said last mentioned note should bear  
twenty per cent interest after due. Orator would  
further show that on the 3<sup>d</sup> day of December 1855  
orator was further indebted to said Stipp on account



Twenty five dollars and on said 3<sup>d</sup> day of December  
 1855 orator gave to said Stipp his orators due bill for  
 said Twenty five dollars. Orator would further show  
 that at the Spring Term 1856 of your honors Court  
 on the Common Law side thereof in said McLean  
 County said Stipp commenced against orator two  
 actions of Assumpsit on said old note first mentioned  
 and on said new note given in satisfaction thereof  
 as aforesaid and on said \$593.<sup>88</sup>/<sub>100</sub> note and on  
 said \$25<sup>00</sup>/<sub>100</sub> due bill and was fraudulently proceed-  
 ing to prosecute said suits upon all of said notes  
 and said due bill and orator became very uneasy  
 for fear that said Stipp would obtain Judgements  
 on all of said new notes and said due bill and orator  
 was at said time to wit in April 1856 very much  
 indebted and embarrassed and said Stipp was  
 threatening to break up orator and orator thought  
 if he orator could get a years time on the indebt-  
 edness due from orator to Stipp and have the  
 amount thereof properly adjusted orator could  
 sell enough property to pay his orators debts and  
 relieve himself from his embarrassments and  
 said Stipp having the fraudulent advantage  
 aforesaid by holding said old note that had  
 been fully satisfied proposed to orator that if  
 orator would give him Judgement for the



6  
of all said notes (except the old note first men-  
tioned) and said due bill together with interest on  
the same at the rate of fifteen per cent on the same  
from the dates of the notes and the due bill said  
Stipp would take said Judgements with a stay of  
them for one year and deliver up to orator said  
old note and that at the end of the said year he  
said Stipp would take the place of the said judgements  
without calculating any interest on the face of said  
Judgements and orator under the pressure of his orators  
embarrassments and the fraudulent advantage  
said Stipp had over him orator by his said Stipp's  
having possession of said old note entered into  
said arrangement and did on the 8<sup>th</sup> day of April  
1856 on the Circuit Court of said McLean County  
confess two judgements in favor of said Stipp  
one for the sum of Twelve hundred and seventy eight  
dollars  $89\frac{1}{100}$  dollars and the other for the sum of  
Seven hundred and nineteen  $58\frac{1}{100}$  dollars bring  
for the full amount due from orator to said Stipp  
on the said note for \$ 1117.<sup>00</sup>/<sub>100</sub> and said note for  
\$ 593  $88\frac{1}{100}$  and said ~~593~~ due bill including  
interest on all of said notes and said due bill from  
their several dates at the rate of 15 per cent per annum  
to the end of the time that said executions was to be



7  
stayed - to wit the 8<sup>th</sup> day of April 1857 and said  
Judgements were entered up with a stay of execution  
accordingly orator would further show that on the 18<sup>th</sup>  
day of October 1856 said Stipp assigned said two  
Judgements to one James Nicolls but orator avers  
that said Nicolls took the assignment of said  
Judgements with full knowledge of all the foregoing  
facts orator would further show that after said stay  
of executions had expired said Nicolls demand-  
ed from orator the amount of said two judgements  
together with six per cent interest thereon from the  
date of the rendition of said judgements. Orator would  
show that at the time the said stay of executions had  
expired he orator was still greatly indebted and  
unbarassed and that a large amount of orators  
Real Estate had been sold under executions and  
that the time within which orator could redeem said  
lands so sold as aforesaid had nearly expired and  
orator would further show that said two judgements  
in favor of said Stipp were also a lien upon said  
Real Estate and that orator could not find any per-  
son to purchase his said Real Estate that had been so  
sold under execution in order that orator might  
raise funds to redeem from said execution sales  
until orator could procure satisfaction of said  
Stipp and thereby



8  
remove the lien of said judgements from said Real Estate orator offered to pay to said Nicolls who controlled said two judgements in favor of said Stipp the full amount of the face of said two judgements but said Nicolls refused to receive that and refused to satisfy said Judgements until orator should pay the face of said Judgements with six per cent interest thereon from the date of the rendition of said Judgement and it was impossible for orator to free his Real Estate and obtain money to redeem the same from said execution sales without procuring satisfaction of said two Judgements so controlled by said Nicolls and said Nicolls was fraudulently trying to prevent all persons from buying the Real Estate of orator and threatening that if any person did buy the same and redeem from the executions sales he said Nicolls would immediately sue out executions on said two Judgements so controlled by said Nicolls and levy the same on said land and said Nicolls was threatening he said Nicolls would break up orator and was slandering the title of orator to all his orators Real Estate and said Nicolls was doing all he said Nicolls could to break up orator and orator had to save himself from ruin and insolvency to satisfy the



9

said unconscientious claims of the said Nicolls and orator did on the 21<sup>st</sup> of May 1857 pay to said Nicolls on said Judgements the sum of \$418. <sup>78</sup>/<sub>100</sub> and on the 7<sup>th</sup> day of August orator paid to said Nicolls the entire balance of said two Judgements rendered in favor of said Stipp together with six per cent interest on the face of the said Judgements from the date of their rendition

Orator avers that a large amount of the money so paid by orator to said Nicolls was for usurious interest over and above the rate of six per cent ~~per annum~~ to wit the sum of One Thousand dollars and that the said sum of One Thousand dollars was extorted from orator by the fraud and oppression of the said Stipp and the said Nicolls wherefore orator prays that said Stipp and said Nicolls be made defendants hereto and either to appear and answer this bill and that upon a final hearing hereof for a decree in favor of orator against said Stipp and said Nicolls for the said sum of One Thousand dollars so wrongfully and against Law and against conscience extorted from orator and for his costs and for general relief

Lord Williams & Walker  
Solicitors



you execute the same

Witness William M Cullough Clerk of  
said Circuit Court and the seal thereof hereto affixed  
at Bloomington this 20<sup>th</sup> day of August in the year  
of our Lord One thousand eight hundred and fifty  
seven

W<sup>m</sup> M Cullough Clerk

By H. Burr Deputy

Which said summons was by the Sheriff of said  
County returned into said Clerk's office endorsed  
as follows to wit=

Executed the within writ by delivering a true copy  
of the same to the within named Stepp & Nicolls

Aug 21<sup>st</sup> 1857

Shffs fee Dr R

1.10

copies

1.00

Mitago

.10

\$2.20

J. H. Moore Shff

By Geo Parker Deputy=

And thereupon at the September term of said Court to wit  
on the 14<sup>th</sup> day of September 1857 certain proceedings  
were had in this cause as appears of record in words  
and figures as follows to wit=



W<sup>m</sup> Dooley

vs

George W. Stebbins

James Nicolls

Bill for Relief

This day comes said complainant by his solicitor and on motion said defendants are by the Court ruled to answer said complainants bill or demur thereto within sixty days or the allegations thereof will be taken for confessed against them—

And thereupon on the 24<sup>th</sup> day of October A. D. 1857 came said defendants by their attorneys and filed in this cause their demurrer to said complainants bill which demurrer is in words and figures as follows to wit—

W<sup>m</sup> Dooley

vs

George W. Stebbins

James Nicolls

And now comes the said defendants and demur to to said complainants bill of complaint and say that the matters and things in said complainants bill as therein set forth and alleged against them are insufficient to enable the said complainant to obtain relief in this Court as prayed for in his said bill and said defendants therefore pray that said bill may



9

said unconscientious claims of the said Nicolls and orator did on the 21<sup>st</sup> of May 1857 pay to said Nicolls on said Judgements the sum of \$418.<sup>75</sup>/<sub>100</sub> and on the 7<sup>th</sup> day of August orator paid to said Nicolls the entire balance of said two Judgements rendered in favor of said Stipp together with six per cent interest on the face of the said Judgements from the date of their rendition

Orator avers that a large amount of the money so paid by orator to said Nicolls was for usurious interest over and above the rate of six per cent per annum to wit the sum of One Thousand dollars and that the said sum of One Thousand dollars was extorted from orator by the fraud and oppression of the said Stipp and the said Nicolls wherefore orator prays that said Stipp and said Nicolls be made defendants hereto and either to appear and answer this bill and that upon a final hearing hereof for a decree in favor of orator against said Stipp and said Nicolls for the said sum of One Thousand dollars so wrongfully and against Law and against conscience extorted from orator and for his costs and for general relief &c

Lord Williams & Walker  
Comptrols Soers



William Dooley

vs

George W. Stipp &  
James Nicolls

Bill in equity for Relief

The clerk will please issue  
process on this bill returnable to the September Term  
1857 and oblige

Lord Williams & Walker  
Compts. Solrs.-

And thereupon issued out of said clerks office a writ  
of summons in words and figures as follows to wit

State of Illinois The people of the State of Illinois  
McLean County To the Sheriff of said County greeting  
We command you to summon George W. Stipp  
and James Nicolls if to be found in your County  
personally to be and appear before the Circuit  
Court of said County on the first day of the next  
term thereof to be holden at the Court House in  
Bloomington on the first Monday in the month of  
September next to answer to a certain bill of  
complaint filed in our said Circuit Court on  
the Chancery side thereof against them by William  
Dooley for relief. And have you then and there  
this writ and make return thereon in what manner



be dismissed =

And afterwards to wit on the 16<sup>th</sup> day of November A.D. 1857 came James Nicolls and filed herein his answer to said complainants bill in words and figures as follows to wit =

The separate answer of James Nicolls impleaded with George W. Stepp to the Bill of complaint of William Dooley

This respondent in answer to the said complainants bill or to so much thereof as he is advised it is material & proper for him to make answer unto he answers & says.

It is true that respondent purchased of said defendant G. W. Stepp two Judgements in the Circuit Court of said County of M Lean against said complainant William Dooley & the same Judgements have been paid off & discharged by said complainant. This respondent however says that at the time of his purchase of said two Judgements of said Stepp he had no knowledge of the matters stated in said bill as to usury or fraud but truly believed that said Judgements were both legally & equitably just & unpaid & indeed he had no reason to think otherwise as no defence what

staining of said



judgements, by said Dooley

Respondent purchased said Judgements in good faith & for a good full & valuable consideration & without any notice whatever that any equitable defence whatever existed to the full payment of the same

Respondent any & all combination or conspiracy with said defendant Stepp or otherwise. As to other matters stated in said bill he denies them and requires proof - Respondent further answering says that whatever equity may exist as between the complainant Dooley and the defendant George W. Stepp or others this respondent by reason of the premises aforesaid ought not to be prejudiced & thereby and he has paid henceforth with his reasonable costs & charges in this behalf expended

James Nicolls

Holmes Solicitor

Subscribed & sworn to

before me Decr 10, 1858

Wm W Cullough clk

per H. B. Burdette

And thereupon at the December Term of said Court to wit on the 26<sup>th</sup> day of January 1858 certain proceedings were had by said Court in this cause as appears of record in words



and figures following to wit:

William Dooley

<sup>vs</sup> Bill for relief  
George W. Stepp

James Nicolls } This day come said defendants  
by their attorneys and here enter their demurrer to said  
complainants bill and say the same is not  
sufficient to be answered unto =

And afterwards at said December Term of said  
court to wit on the 27<sup>th</sup> day of January 1858 further  
proceedings were had in this cause as appears of record  
to wit.

William Dooley

<sup>vs</sup> Bill for relief  
George W. Stepp - James Nicolls

This day again come  
said parties by their attorneys and this cause coming  
on to be heard on the demurrer to complainants bill  
heretofore entered by said defendants and the court  
being fully advised in the premises doth overrule said  
demurrer and now on motion leave is granted said  
complainant to amend his bill filed herein  
and said defendants are by the court ruled to  
answer said bill of complaint by the first day of



next term - And this cause is continued =

And afterwards at the April Term of said Court to wit on the 5<sup>th</sup> day of April 1858 further order was made by said Court in this cause as appears of Record in words and figures following To wit =

William Dooley  
vs  
Stipp v Niccolo

Bill for Relief

This day on motion of said defendants leave is granted them to file their answer to said complainant's bill of complaint.

And thereupon on said 5<sup>th</sup> day of April 1858 came George W. Stipp and filed herein his answers to said complainant's bill which answer was in words and figures as follows to wit =

The separate answer of George W. Stipp to the bill filed against him in the Circuit Court of McLean County by William Dooley -

and answering  
his respondent saving unto himself all and all manner of exception that may be taken to the many and manifest errors



1<sup>st</sup>

inaccuracies and misstatements in said bill contained for answer to so much of said bill as he is informed it is material for him to answer answering says - That true it is that the said complainant was on the 1<sup>st</sup> day of July 1855 indebted to one James Culbertson but of the amount of that indebtedness or its nature your respondent knows nothing except as herein after stated. That the first that this respondent heard of said Culbertsons note against said Dooley was from the said Culbertson who called upon this respondent and proposed to sell said note to this respondent and respondent then refused to purchase said note that afterwards the complainant came to this respondent and said that he complainant was indebted to said Culbertson in about the amt in said bill specified that he complainant was paying him Culbertson 15 per cent interest & that Culbertson was wanting the money and was annoying him Dooley about it and that he Dooley had not the money & then said complainant asked this respondent to purchase the said note from Culbertson and as an inducement for this respondent stated & promised that if respondent would buy said note from said Culbertson and give him Dooley time for the payment of the same that he Dooley would pay respondent the same



interest that he was paying Culbertson respondent.  
 Further answering says that he in consideration  
 of the promises and undertakings of the said  
 Dooley did buy said note from the said Culbertson  
 about October 1855 that after the said note was  
 so bought by respondent at the request of said  
 complainant the said complainant & respon-  
 dent were together and the said complainant  
 agreed that if this respondent would give him  
 complainant until about the 25<sup>th</sup> day of March  
 1856 to pay the same he complainant would  
 give respondent a new note with a mortgage  
 on his estate to secure the same with two per-  
 cent interest per month after due to compensate  
 this respondent for the delay & as a consideration  
 that complainant should not be sued by  
 respondent during that time respondent here  
 avers that he accepted the promise of the said  
 complainant so made as aforesaid, drew out  
 a new note for about the amount of \$1117.00  
 as in said bill for the amount which complain-  
 ant signed. That it is true that the old note  
 was not given up at the time said new note  
 was made because the said Dooley was to  
 come in with his wife and execute to you



respondent a mortgage to secure the said last  
 note and when this was done the said old note  
 was to be given up to the said complainant that  
 said new note was not a satisfaction of the old  
 note or to be so understood between ~~them~~ complain-  
 ants respondent until the same was secured by  
 said mortgage. Dooley refused to make the mortgage  
 that the said note for about \$593.88 was given in  
 lieu of some ten or twelve notes on complainant of  
 small denominations but by respondent at com-  
 plainants request, but respondent expressly ~~claims~~  
 denies that any 15 per cent interest was taken or  
 computed upon said small notes or put into said  
 large note that it is true that the comp Dooley did  
 confess two Judgements in favor of this respondent  
 for about the amounts in said complainants  
 bill named which included a medical bill of this  
 respondents against complainant of some years stan-  
 ding and that it is true that a greater amount than ten  
 per - was added to said notes in said Judgements  
 but your respondent here avers that the additional  
 amount so agreed to be given by complainant to  
 this respondent was given in consideration that this  
 respondent would take his Judgement with a stay  
 of execution for 12 months which respondent did  
 do. ~~the~~ then answering says



that the said Dooley never paid this respondent any money either as principal or interest and that the complainants promise to pay a large amt than ten per cent upon the amt due upon said notes was in consideration that this respondent did & would wait upon the said Dooley for the money due on said several notes from time to time & after they severally became due and would not or did not enforce the collection of the same by Judgt and execution in a Court of law

Respondent further answering says that another consideration for the amt. of money due & specified in the Judgt. in said complainants bill named was that as number of the notes & account then and before that time held & owned by the said respondent & against the said complainant upon small notes within the Jurisdiction of a Justice of the peace & upon which respondent could have obtained a Judgement before a Justice of the peace had execution thereon & enforced the collection of the same by selling the personal property of the said complainant and complainant agreed if respondent would surrender up to complainant said notes last aforesaid and consolidate them with others in a



large note giving the complainant a longer time in which to pay the said notes then due and depriving this respondent of his speedy remedy for the collection of said small notes by several actions before a Justice of the Peace, and said respondent here avers that he in consideration that the complainant would pay him the amt specified in said note for \$593.88 with the twenty per cent interest after ~~the~~ said notes became and was due did surrender to complainant the said small notes and did deprive this respondent of his speedy cheap remedy for the collection of his small notes against the said complainants

Respondent further answering files copies of the notes but not account, upon which the two Judgements were confessed by said complainant which are made part of this answer

That by repeated decisions of the Supreme Court of the State of Illinois notes given in the form that these are given are not usurious but can be collected by law - and respondent is informed & believes that the same supreme Court at their last ~~term~~ Session at Springfield approved their former decisions making them even stronger than those now published -



And this respondent further answering says that  
 the said complainant persuaded the said respondent  
 to buy these notes upon complainant & give him longer  
 time for the payment and thus save complainant  
 being sued at that time and in consideration  
 that respondent would & did advance the money for  
 said notes on complainant & would & did give him  
 complainant a longer time for the payment of the  
 same & each of them & would & did stay his execution  
 upon the judgements complainant did agree to  
 pay respondent a larger sum of money than  
 said notes & <sup>interest</sup> ten percent thereon and ought so to do  
 respondent has never received any  
 money or valuable thing from complainant in pay-  
 ment of either interest or principal due to him from  
 said complainant, that it is true that respondent did  
 assign the said two Judgements so confessed by said  
 complainant to this respondent to this and respon-  
 dent Nicolls and as this respondent is informed &  
 believes the said Dooley has paid said Judgments  
 in this way. The said Dooley sold the said respon-  
 dent Nicolls a large amount of land or Real  
 Estate getting a certain sum of money down &  
 the balance in payments of One Two Three years  
 and that the said Dooley did take said Judgments



ments not on the cash payment but on one of the time payments of the said Nicolls but of this respondent cannot answer definitely. Respondent knows nothing about ~~the~~ standing of title by the said Nicolls. This respondent further answering will insist on the hearing of this cause that the said bill is insufficient for a decree against him if no answer was filed in this cause that the said complainant does not file copies of the notes & Judgts mentioned in said bill. That the bill itself shows that true consideration was given by this respondent to complainant for the amount of money agreed to be paid respondent by said Dooley to use of money and a forbearance to sue ~~on~~ of complainant as they become due. That the complainant confessed Judgements for the amounts due waiving the defence of usury set up in said Bill - That there is no equity in the bill. respondent further answering ~~denies~~<sup>tries</sup> all fraud or conspiracy to wrong & defraud the said complainant. And now having fully answered he prays to be dismissed with his reasonable costs

G.W. Stepp

Moore Sol.

State of Illinois

McLean County

G. W. Stepp being duly sworn  
signed is true in substance



24  
& in fact & further he says not  
Subscribed & sworn to

Geo. W. Stipp

before me this 5<sup>th</sup> April 1858

W<sup>m</sup> M Cullough Clk

By L Burr Depty

Copy of notes on which Dooley confessed Judgement  
Bloomington 4 Octo 1855

On or before the the first day of March next I promise  
to pay George W. Stipp or order five hundred ~~dollars~~  
and ninety three dollars and eighty eight cents  
value received with two per cent interest per  
annum after due

William Dooley

Bloomington 3 Dec 1855

Due Geo W. Stipp or order Twenty five dollars  
value received in full of medical account  
William Dooley

#11175 Bloomington 1 Dec 1855

On or before the 25<sup>th</sup> day of March next I promise  
to pay Geo W. Stipp or order Eleven hundred & seven-  
teen dollars value received with two per cent a  
month interest after due

William Dooley



And thereupon on the said 5<sup>th</sup> day of April 1858 came the said complainant by his attorneys & filed herein his application ~~there~~ to the several answers of said defendants in words and figures as follows to wit

State of Illinois

McLean Circuit Court March Term A.D. 1858

William Dooley

vs

George W. Stepp and

James Nicolls



In Equity

For Relief

And the said complainant by application to the several answers of the said defendants being read all the matters and things in the said bill contained are true and that the said answers so far as they or either of them deny the allegations of the bill are wholly untrue and this, complainant is ready to prove in any manner the Court may direct wherefore complainant prays for relief as in the original bill

R. E. Williams

Sol pro Compt-

And thereupon this cause was continued by said Court from term to term until the December Term 1858. And at said December Term to wit on the 10<sup>th</sup> day of December A.D. 1858 this cause

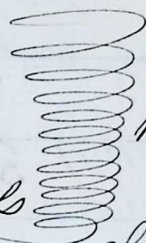


came on for hearing and certain proceedings were had herein as follows appears of record to wit=

Wm Dooley

vs

George W. Stepp & James Nicolls



Bill for Relief

This day comes said complainant by Williams & Packard his attorneys and also come said defendants by their attorneys and this cause coming on to be heard on the bill answer of said defendants and replication thereto and heard as follows: Papers and judgments and receipts in two Common Law suits of George W. Stepp vs William Dooley which were as follows to wit=

State of Illinois In the McLean Circuit Court  
McLean County April Term 1856

George W. Stepp plaintiff in this suit complains of William Dooley defendant in a plea of assumpsit - For that whereas heretofore to wit on the first day of July in the year Eighteen hundred and fifty six at Bloomington at the County of McLean and State of Illinois the said defendant made executed and delivered to one



27

James Culbertson his (the said defendants) promissory note in writing and thereby then and there promised one day after the date thereof to pay to the said James Culbertson or order twelve hundred and thirty five  $\$1100$  dollars with interest at the rate of fifteen per cent per annum after due for value received and afterwards to wit on the day and year aforesaid at the County aforesaid the said James Culbertson assigned by writing on the back thereof the said promissory note to the said plaintiff by means whereof he the said ~~plaintiff~~ defendant then and there became liable to pay to the said plaintiff the said sum of money in said promissory note specified according to the tenor and effect of said promissory note and being so liable he the said defendant afterwards to wit on the day and year aforesaid at the County aforesaid promised the said plaintiff to pay to him the said sum of money in said promissory note specified according to the tenor and effect of said note and the said plaintiff avers that said promissory note according to the tenor and effect thereof has long since become due and payable yet the the said defendant has not paid the same nor any part thereof. And for that whereas also heretofore to wit



on the fourth day of October in the year Eighteen  
 hundred and fifty five at Bloomington at the  
 County of McLean and State of Illinois afore-  
 said the said defendants made up cents &  
 delivered to the said plaintiff his the said  
 defendants certain promissory note in writing  
 and thereby then and there on or before the first day  
 of March (then) next (meaning the 1<sup>st</sup> day of March  
 then next ensuing) promised to pay to the said  
 plaintiff or order Five hundred and ninety three  
 dollars and Eighty Eight cents value received  
 and twenty percent per annum after  
 due by means whereof the said defendant  
 then and there became liable to pay to the said  
 plaintiff the said sum of money in said promissory  
 note specified according to the tenor & effect of said  
 promissory note and being so liable he the said  
 defendant afterwards to wit on the day and year  
 aforesaid at the County aforesaid promised to said  
 plaintiff to pay to him the said sum of money  
 in said promissory note specified according to the  
 tenor and effect of said promissory note. Yet  
 the said defendant has not paid the same nor  
 any part thereof although the said note has  
 long since been due and payable



And for that whereas also heretofore to wit on the  
 third day of December in the year Eighteen hun-  
 dred and fifty five at the County of McLean  
 and State of Illinois aforesaid the said defen-  
 dant made executed and delivered to the said  
 plaintiff his certain due bill in writing and  
 thereof then and there acknowledged that there  
 was then due to the said plaintiff or order twenty  
 five dollars value received in full of medical ac-  
 count, and thereof then and there became liable to  
 pay to the said plaintiff the said sum of money in  
 said due bill mentioned according to the tenor  
 and effect thereof and being so liable he the said  
 defendant then and there afterwards to wit on the  
 day & year aforesaid at the County aforesaid the  
 said defendant promised the said plaintiff  
 to pay him the said sum of money in said  
 due bill mentioned according to the tenor and  
 effect thereof. Yet the said defendant has not  
 paid the same or any part thereof. And for  
 that whereas also heretofore to wit on the fifteenth  
 day of March in the year Eighteen hundred  
 and fifty six at the County of McLean and  
 State of Illinois aforesaid the said defendant  
 was indebted to the said plaintiff in the sum  
 of three thousand dollars for money before



that time had and received by the said defendant for the use of the said plaintiff and in a like sum for money paid laid out and expended by the said plaintiff for the use of the said defendant at his request and in a like sum for money before that time lent by the said plaintiff to the said defendant at his request and in a like sum then & there found to be due from the said defendant to the said plaintiff on an account then & there stated between them and being so indebted he the said defendant then and there afterwards to wit on the day & year last aforesaid at the County aforesaid promised the said plaintiff to pay to him the said several sums of money last mentioned on request. Yet the said defendant has not paid the same nor any part thereof although often requested so to do. To the damage of the said plaintiff of Three Thousand dollars & here he must

Hanna Scott for Plff -

( - Notes used on - )

Blountingon Ill July 1. 1855

Oweday after date I promise to pay to James Culbertson or order Twelve hundred and thirty five  $\frac{68}{100}$  Dollars with interest at the rate of 15 per cent per annum after due for value received.

\$ 1235.68

( Name torn off - )



Endorsed

Pay the within note George W. Stepp  
James Culbertson

Sept 8, 1855

Cash received on this note two hundred and  
seventy five dollars

\$275

James Culbertson

Bloomington 14 Octo 1855

On or before the first day of March next I promise  
to pay George W. Stepp or order Five hundred and  
ninety three dollars and eighty eight cents value  
recd with twenty per cent interest per annum after  
due  
William Dooley

Bloomington 3 Dec 1855

Due Geo W. Stepp or order Twenty five dollars  
value received in full of medical account  
William Dooley

State of Illinois } The people of the State of Illinois  
McLean County } To the Sheriff of said County  
Greeting = . We command you to summon  
William Dooley if found in your County person-  
ally to appear before the Circuit Court of said



County on the first day of the next term thereof to be  
 holden at the Court House in Bloomington on the  
 first ~~day~~ Monday in the month of April next  
 to answer unto George W. Stipp in a plea of  
 Assumpsit to his damage Three Thousand  
 dollars as he says, and have you then and  
 there this writ and make return thereon in what  
 manner you execute the same

(L.S.) Witness Wm M Cullough Clerk of the  
 said Circuit Court and the seal  
 thereof hereto affixed at Bloomington

this 22<sup>nd</sup> day of March A.D. 1856

Wm M Cullough Clerk  
 by H. Burr Deputy

Executed by reading to Wm Dooley this 22<sup>nd</sup> day of  
 March A.D. 1856. Service + Return 60

10 M travel 50

1.10

J. J. Price Sheriff  
 by Geo. N. Larimore Deputy

Tuesday April 8<sup>th</sup> 1860



33

1212

George W. Stipp  
vs  
William Dooley

In Assumpsit

This day came said plaintiff  
by his attorney and thereupon came said defen-  
dant in proper person and confessed that said  
plaintiff had sustained damage by reason of the  
nonperformance of certain promises in his decla-  
ration mentioned to the amount of seven hundred  
and nineteen dollars and fifty eight cents (\$719.58)  
It is therefore considered by the Court that said  
plaintiff recover of said defendant the sum of  
seven hundred and nineteen dollars and fifty eight  
cents (\$719.58) as confessed as afore-  
said = And likewise his costs in this behalf expended  
And by agreement now here made in open Court  
it is ordered that execution herein be stayed until  
the first day of April A.D. 1857 =

George W. Stipp  
vs  
William Dooley

Confession of Judgement April  
8th 1856 - \$719.58

For value received I hereby  
assign this Judgement to James Nicolls this  
Oct 18. 1856  
Geo. W. Stipp =



Received Four hundred + eighteen  $78/100$  dollars on  
this Judgement - May 21<sup>st</sup> 1857

James Nicolls  
Received this Judgement in full Aug 7<sup>th</sup> 1857  
James Nicolls

State of Illinois In The MLean Circuit Court  
MLean County April Term A.D. 1856-

George W. Stepp plaintiff in this suit  
complains of William Dooley defendant in a plea of  
assumpsit. That whereas before to wit on the first  
day of December in the year of our Lord Eighteen hun-  
dred and fifty five at Springfield in the County of  
MLean and State of Illinois aforesaid the said defen-  
dant made executed and delivered to the said plaintiff  
his the said defendants certain promissory note in  
writing and thereby then and there promised on or  
before the twenty fifth day of March next (thereafter)  
to pay to the said plaintiff or order Eleven hundred  
and seventeen dollars value received with two per  
centum monthly interest due by means whereof  
he the said defendant then and there became liable  
to pay to the said plaintiff the said sum of money  
in said promissory note specified according to the tenor



and effect of said promissory note and being so liable he the said defendant in consideration thereof afterwards to wit on the day and year aforesaid at the County aforesaid promised the said plaintiff to pay him the said sum of money in said promissory note specified according to the tenor & effect of said promissory note and the said plaintiff avers that said sum of money in said promissory note specified has long since become due & payable according to the tenor & effect of said promissory note yet the said defendant has not paid the same nor any part thereof. And for that whereas also heretofore to wit on the twenty sixth day of March in the year eighteen hundred and fifty six he said defendant was indebted to the said plaintiff in the sum Fifteen hundred dollars for money before that time had & received by the said defendant for the use of the said plaintiff and being so indebted he the said defendant afterwards to wit on the day and year last aforesaid in the County aforesaid in consideration thereof promised the said plaintiff to pay to him said sum of money on request. Yet the said defendant has not paid the same nor any part thereof although often requested so to do.



To the damage of said plaintiff of Fifteen hundred  
dollars & herein he sues &c

Hanna & Scott

for Plff-

(Note Sued on)

#1117 Bloomington 1 Dec 1858

On or before the 25<sup>th</sup> day of March next I  
promise to pay Geo W. Stepp or order Eleven hun-  
dred and Seventeen dollars value received with  
two per cent a month interest after due

William Dooley

State of Illinois the people of the State of Illinois  
McLean County = The Sheriff of said County  
Greeting = We command you to  
summon William Dooley if found in your  
County personally to appear before the Circuit  
Court of said County on the first day of the  
next term thereof to be holden at the Court  
House in Bloomington on the first Monday in  
the month of April next to answer unto  
George W. Stepp a plea of assumpsit to  
his damage Fifteen hundred dollars as he says  
and have you then and there this writ and  
make return thereon in what manner you



37  
+  
execute the same =

L.S.

Witness Wm M Cullough Clerk  
of the said Circuit Court and the seal thereof hereto  
affixed at Bloomington this 27<sup>th</sup> day of March  
A.D. 1856

By St. Burr Deputy.

Executed the within summons by reading to  
the within named Wm Dooley March 27. 1856

Service & Return                      60  
travel 10 miles                      50    \$ 1.10

John J. Price Shff=

Tuesday April 8<sup>th</sup> 1858

George W. Stepp

1223

per se

William Dooley

This day came said plaintiff  
by his attorney and thereupon came said defendant  
in proper person and confesses that said plaintiff  
hath sustained damage by reason of the non performance  
of certain promises in his declaration mentioned to  
the amount of One thousand Two hundred &  
seventy eight dollars and eighty nine cents  
(\$ 1278.89) It is therefore considered by the Court  
that said plaintiff recover of said defendant  
the sum of Twelve hundred & Seventy eight & <sup>89</sup>/<sub>100</sub>  
~~eighty nine~~ cents dollars his damages aforesaid



And likewise his costs in this behalf expended  
and by agreement execution herein is stayed  
until the first day of April A.D. 1857

George W. Stipp } Confession of Judgement  
vs } April 8<sup>th</sup> 1856 = \$1278.89  
William Dooley }

For value received I hereby assign  
this Judgement to James Nicolls Oct 18. 1856

Geo W. Stipp

This Judgement is satisfied in full Aug 7. 1857  
James Nicolls

And the Court having heard the evidence herein  
and the arguments of Counsel and not being fully  
advised in the premises what decree ought to be  
rendered herein doth take the same under  
consideration.

And thereupon this cause was con-  
tinued by said Court until the September Term  
1859 and at said September term on the 15<sup>th</sup>  
day of September A.D. 1859 final decree was ren-  
dered by said Court and the same appears of  
Record in words and figures as follows to wit=



William Dooley

vs

George W. Stipp

Bill for Relief

James C. Nicolls in this case having been at a prior term argued and submitted upon the pleadings and papers filed and offered in evidence and the Court having taken the same under advisement until now, And now the Court being fully advised it is considered by the Court that as there is no proof that the defendant Nicolls obtained said Judgement with knowledge of the usury in the same that the complainant as to said defendant Nicolls is not entitled to any relief and that the said Nicolls be hence dismissed with his costs. It is further considered and decreed by the Court that as the Court is satisfied from the pleadings that interest from the date of the notes up to the stay of execution on the Judgement confessed was computed on the total indebtedness at the rate of fifteen per cent per annum and the Court is satisfied from the pleadings (it being directly charged in the Bill and not at all denied in the answer) that it was the agreement between the complainant and the defendant Stipp at the time said Judgements were confessed that said Judgements were to be satisfied by the payment of the said Judgements at the end



of the stay of the execution or twelve months from the entry of said Judgements by confession. It is therefore considered by the Court that inas much as complainant confessed a Judgement for the 15 per cent interest and did defend <sup>and</sup> said actions at law on the ground of usury that the complainant is not entitled to relief as to the amount of the face of said Judgements by confession. But it is considered and decreed by the Court that inas much as it was the agreement of the parties upon which said Judgements were confessed, and it appearing by the proof and pleadings it being admitted that defendant paid as charged on the bill the face of the Judgements confessed together with six per cent interest on the face of said Judgement up to the end of the stay of execution that the complainant is entitled to have paid back to him the said six per cent interest on the face of said Judgements confessed to the end of the stay of execution together with interest on the amount so over paid at six per cent from the end of the stay of execution up to the date of this decree amounting to the sum of One hundred and thirty seven dollars and twenty seven cents.

It is therefore considered and decreed by the Court that complainant have and recover of and from



411  
The defendant George W. Stipp the said sum of  
One hundred and thirty seven dollars and twenty  
seven cents together with interest on the same at the  
rate of six per cent per annum from the date of  
this decree until the same is paid and all the  
costs of this cause (except such costs as were made  
by making defendant Nicolls a party) for which  
let an execution issue. And the costs made by  
making said Nicolls a party are to be paid by  
complainant -

State of Illinois

McLean County

I, Wm. McCullough, Clerk of the Circuit  
Court, do hereby certify that the  
foregoing is a true and complete transcript of the Records  
& files of my office pertaining to the foregoing cause.

Given under my hand & seal of office at  
Bloomington this 5<sup>th</sup> day of March  
A. D. 1860



Wm. McCullough, Clerk.

By L. Burr, Deputy.



*William Dooley*

*vs*

*Geo. W. Stipp & Jas. Nicolls*

*Record from McLean Co.*

*\$5.00 Pd by Dooleys attys.*



70 ~~285~~ 18.

William Dooley

George W. Stipp  
Wal.

Reind & sons

Fish Apr. 19, 1860  
L. Island  
Calh.



STATE OF ILLINOIS,  
*Supreme Court, Third Grand Division.*

OTTAWA, APRIL TERM, 1861.

WM. DOOLEY *vs.* GEO. W. STIPP, }  
                                  - AND -        } ERROR TO McLEAN.  
GEO. W. STIPP *vs.* WM. DOOLEY. }

These two cases, by agreement are consolidated, and each party has leave to assign cross errors, and both causes are to be heard together.

ARGUMENT FOR DOOLEY.

Stipp brought two actions of assumpsit against Dooley, on three notes, and a due bill. One of the notes, for a large amount, Dooley did not owe. It had been given instead of another of the notes; and by some means, both notes (the old note, and the new one given in renewal) had been left with Stipp, and he sued Dooley on both of these, together with one other note for a smaller amount, and a due bill for \$25, held by Stipp against Dooley. Dooley had no evidence that he did not owe both of the large notes, and had been paying Stipp fifteen per cent. interest on what he (Dooley) owed Stipp before the suit. Stipp, by having possession of both notes, (one of which Dooley did not owe, and Dooley being without evidence to show the facts,) had obtained an unconscientious advantage of Dooley. Dooley was in the power of Stipp. And finally, by agreement between Stipp and Dooley, Dooley confessed judgment in both cases at law in favor of Stipp, leaving out the note which was not owing; but taking all the real claims Stipp had against him and calculating interest on them at the rate of fifteen per cent. per annum from their maturity, until the expiration of twelve months from the rendition of the judgments, which was all put in the face of the judgments, and execution by agreement was stayed twelve months. Shortly afterwards, Stipp assigns the judgments to Niccolls; and after the stay of execution had expired, Dooley pays to Niccolls the face of the judgments, with six per cent. interest on them from their rendition until their payment.

Niccolls' receipts are of payment in full, which was the face of the judgments, and six per cent. interest on them from the date of their rendition. After paying off the judgments to Niccolls, the assignee (Dooley) files his bill against Stipp and Niccolls, to recover back the usury paid by him on the indebtedness; but afterwards



in chancery, as money inequitably extorted from the borrower. (*Palmer vs. Lord*, 6th John. Chy., 99; 1st Story's Equity, sec. 302, page 301; 10 Bacon's Abridgment, page 293, 4, 5; Edwards on bills and notes, page 351; see also dissenting opinion of Mr. Justice Walker, in *Hadden vs. Innes*, 24th Ill., 385 and 386, and authorities there cited upon this point.)

But our statute of 1845 is conclusive as to the point, and it was not repealed by the act of 1849. (See *Kinsey vs. Nisley*, 23d Ill., 505.) Is the confession of a judgment any more solemn act than payment without suit? I think not; it is nothing more than the acknowledgment of the debt of record. And can there be any more solemn or binding act acknowledging a debt, than to pay it? It seems to me that of the two acts, that of payment should be the most binding, especially where it is done voluntarily; and such payment is not a bar to the recovery of the excess over the legal rate, at common law, as we have seen by the above authorities. And by our statute, the party could recover three times the whole interest; but this bill only seeks to recover the usury over and above the highest rate of legal interest; and is sustained by the general principles of equity, outside of the statute. Under the Kentucky statute of 1819, simply making a usurious contract void, as to the usury, and leaving it good as to the principal and legal interest, the courts decide that a party need not make a defence at law, but may omit to do so, and then go into chancery and recover back the usury after payment. (4th Monroe, 488; 5th do., 394 and 470; 4th J. J. Marshal, 48.) It has been expressly decided in Kentucky that a confession of a judgment for the usury is no bar to recovering it back in equity—(*Burnham & Co. vs. Gentry's*, 7th Monroe, 385)—and this under a statute saying nothing about recovering it back, but simply saying the security shall be void only to the extent of the usury, and good for the principal and legal interest. But shall Stipp be permitted to take advantage of his own wrong, by suing Dooley upon a note that was in fact paid? Dooley having no evidence of that fact, except what lay in the breast of an unconscientious adversary, was afraid to resort to a bill of discovery; and to prevent Stipp from getting a judgment on both notes, was compelled to enter into the agreement to confess a judgment for the amount due, and fifteen per cent. interest, and then paid six per cent. on this amount—making between twenty-one and twenty-two per cent. in fact, upon the real indebtedness. Shall Stipp now be permitted to set up his own turpitude to protect himself, and say to the court, as in effect he does: because I was dishonest enough to hold a note that was in fact paid, and sue upon it, and thus compel my debtor to confess a judgment in my favor for a large amount of usury, under the lash, that I unrighteously and dishonestly hold over him, he is estopped by his confes-



sion of a judgment? There is no better settled principle of law, than that a fraud will vitiate the most solemn act, be it a judgment of a court or anything else; and Stipp, in his answer, admits his fraud, but still claims the benefit of it.

The court erred, to the prejudice of Dooley, in not decreeing that he recover from Stipp the full amount of the usury. Dooley might have claimed, by his bill, three times the entire interest, but because he is not disposed to act the Shylock, and claim the full penalty of the bond, is certainly no reason that he shall not recover what he claims; and he resorts to equity to recover the usury, not asking to recover the full amount of the penalty exacted by the statute.

The assignment of errors made by Dooley upon the record, only raises the point that the court erred to his prejudice in not decreeing to him the full amount of the usury paid by him.

As to the first point made by the counsel for Stipp; I would say, the point simply is, that by the confession of the judgments, Dooley is estopped from again litigating the matter. Admitting this to be true, where no advantage is taken by one party to compel another to confess a judgment, (which, however, I do not admit to be the law, for the reasons above given.) yet the confession of these judgments was compelled by the fraud of Stipp, he having brought suit upon a large note, of over a thousand dollars, which he admits in his answer Dooley did not owe him; and having this unconscientious advantage of Dooley, compels him into a confession of judgments for a large amount of usury, and now comes into court and claims the advantage of his own turpitude. We quote the maxim: "No one can take advantage of his own wrong." Dooley, being in the hands of an unscrupulous creditor, cannot be said to have voluntarily confessed the judgments; and even if he had, this was certainly no more solemn and binding act than voluntary payment; and after such payment, there is no controversy but that the usury might be recovered back, under our statute at the time in force. And in Kentucky, we have seen, it has been decided that a confession of judgment is no bar to the recovery of usury.

Now, let this court establish the rule that a confession of a judgment is final, and it at once offers a reward to the usurer to make courts of justice the most potent engines of oppression: for a man who will agree to pay usury, will always in the first instance, if necessary to get the money, go into a court and confess a judgment—thus prostituting courts of justice to the purposes of the usurer, and against the borrower, who, as all the decisions say, is not to be deemed a voluntary agent.

Whatever may be the views of the court under the present statute, yet under the statute in force, and by which this cause is to be decided, the confession, under the circumstances, was no bar.



As to the point that he might have made his defence at law, I do not contest that, provided no undue advantage was taken of him. But in this case Dooley was prevented from making his defence at law, and was compelled to confess the judgments, by the undue advantage that Stipp had taken of him in the suits at law. And, although he might, had it not been for this fact, have made his defence at law, yet even then, by the statute, he was not compelled to do so.

As to the second point, I would say, it is true, if the judgments were correct, they drew six per cent. interest; and although Stipp denies, in his answer, that fifteen per cent. was calculated on the note for \$593.38, yet he does not deny that it was computed on all the balance; and a computation shows that it was calculated upon all, and put into the face of the judgments. The counsel for Stipp is mistaken in saying that the decree was rendered without proof. He made his argument from his own record, which was incomplete, and does not contain the record of the two cases at law. These two cases give the data for showing the usury, and do show it fully. These are embodied in my record, which it is agreed is correct, and is to be used by the court in deciding the case.

That the court did not err to the prejudice of Stipp in decreeing to Dooley the amount decreed, is manifest from the proof; for the proof shows a much larger amount of usury than that decreed. Although the court may have given a wrong reason for its decision, yet, if the decision is not erroneous in fact to the prejudice of Stipp, the court will not reverse the case at Stipp's suit. The decree is not erroneous to the prejudice of Stipp, but is to the prejudice of Dooley, as it should have decreed all the usury, which it does not do.

As to the third point, or 4th assignment of error of Stipp; the court did not render a final decree without proofs; but the proofs fully sustain the decree, and would have sustained one for a much larger amount.

Upon the whole case, then, I contend that the decree should be reversed, upon the errors assigned by Dooley, and the cause remanded, with instructions to the court below to render a decree in favor of Dooley for the whole amount of the usury, as well in the face of the judgments, as for the six per cent. paid on the face of the judgments.

*R. E. Williams*  
*for Dooley*



STATE OF ILLINOIS,  
Supreme Court, Third Grand Division.

OTTAWA, APRIL TERM, 1861.

WM. DOOLEY *vs.* GEO. W. STIPP, }  
                                  - AND - } ERROR TO McLEAN.  
GEO. W. STIPP *vs.* WM. DOOLEY. }

These two cases, by agreement are consolidated, and each party has leave to assign cross errors, and both causes are to be heard together.

ARGUMENT FOR DOOLEY.

Stipp brought two actions of assumpsit against Dooley, on three notes, and a due bill. One of the notes, for a large amount, Dooley did not owe. It had been given instead of another of the notes; and by some means, both notes (the old note, and the new one given in renewal) had been left with Stipp, and he sued Dooley on both of these, together with one other note for a smaller amount, and a due bill for \$25, held by Stipp against Dooley. Dooley had no evidence that he did not owe both of the large notes, and had been paying Stipp fifteen per cent. interest on what he (Dooley) owed Stipp before the suit. Stipp, by having possession of both notes, (one of which Dooley did not owe, and Dooley being without evidence to show the facts,) had obtained an unconscientious advantage of Dooley. Dooley was in the power of Stipp. And finally, by agreement between Stipp and Dooley, Dooley confessed judgment in both cases at law in favor of Stipp, leaving out the note which was not owing; but taking all the real claims Stipp had against him and calculating interest on them at the rate of fifteen per cent. per annum from their maturity, until the expiration of twelve months from the rendition of the judgments, which was all put in the face of the judgments, and execution by agreement was stayed twelve months. Shortly afterwards, Stipp assigns the judgments to Niccolls; and after the stay of execution had expired, Dooley pays to Niccolls the face of the judgments, with six per cent. interest on them from their rendition until their payment.

Niccolls' receipts are of payment in full, which was the face of the judgments, and six per cent. interest on them from the date of their rendition. After paying off the judgments to Niccolls, the assignee (Dooley) files his bill against Stipp and Niccolls, to recover back the usury paid by him on the indebtedness; but afterwards



dismissed his bill as to Niccolls. And on the final hearing, the court decreed that Dooley should recover of Stipp six per cent. on the face of the judgments, from their rendition until their payment; being the excess over and above the fifteen per cent. in the face of the judgments. Both parties take a writ of error—Dooley contending that the court should have given him the entire usury, over and above ten per cent.; and Stipp claiming, that by the confession of judgment, Dooley was barred from obtaining any relief.

Stipp, in his answer, tries to dodge and prevaricate, and evade answering. Courts do not look favorably on such answers to a bill charging usury. "An evasive answer on the subject of usury shall be taken as an admission of the usury." (4th Bibb, 119; 7th Monroe, 388; *Pierce vs. Hedrick*, 3d Little, 113; 4th Monroe, 488; 3d J. J. Marshall, 11.) But he admits the main charge in the bill: that is, that of the two large notes upon which he brought suit against Dooley, Dooley owed only one. That one was given for the other. This is really the main charge in the bill. He admits his own turpitude, in suing upon paper that was in fact paid; and by so doing he obtained an unconscientious advantage over Dooley.

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But our statute of 1845 is conclusive as to the point, and it was not repealed by the act of 1849. (See *Kinsey vs. Nisley*, 23d Ill., 505.) Is the confession of a judgment any more solemn act than payment without suit? I think not; it is nothing more than the acknowledgment of the debt of record. And can there be any more solemn or binding act acknowledging a debt, than to pay it? It seems to me that of the two acts, that of payment should be the most binding, especially where it is done voluntarily; and such payment is not a bar to the recovery of the excess over the legal rate, at common law, as we have seen by the above authorities. And by our statute, the party could recover three times the whole interest; but this bill only seeks to recover the usury over and above the highest rate of legal interest; and is sustained by the general principles of equity, outside of the statute. Under the Kentucky statute of 1819, simply making a usurious contract void, as to the usury, and leaving it good as to the principal and legal interest, the courts decide that a party need not make a defence at law, but may omit to do so, and then go into chancery and recover back the usury after payment. (4th Monroe, 488; 5th do., 394 and 470; 4th J. J. Marshal, 48.) It has been expressly decided in Kentucky that a confession of a judgment for the usury is no bar to recovering it back in equity—(*Burnham & Co. vs. Gentry's*, 7th Monroe, 385)—and this under a statute saying nothing about recovering it back, but simply saying the security shall be void only to the extent of the usury, and good for the principal and legal interest. But shall Stipp be permitted to take advantage of his own wrong, by suing Dooley upon a note that was in fact paid? Dooley having no evidence of that fact, except what lay in the breast of an unconscientious adversary, was afraid to resort to a bill of discovery; and to prevent Stipp from getting a judgment on both notes, was compelled to enter into the agreement to confess a judgment for the amount due, and fifteen per cent. interest, and then paid six per cent. on this amount—making between twenty-one and twenty-two per cent. in fact, upon the real indebtedness. Shall Stipp now be permitted to set up his own turpitude to protect himself, and say to the court, as in effect he does: because I was dishonest enough to hold a note that was in fact paid, and sue upon it, and thus compel my debtor to confess a judgment in my favor for a large amount of usury, under the lash, that I unrighteously and dishonestly hold over him, he is estopped by his confes-



sion of a judgment? There is no better settled principle of law, than that a fraud will vitiate the most solemn act, be it a judgment of a court or anything else; and Stipp, in his answer, admits his fraud, but still claims the benefit of it.

The court erred, to the prejudice of Dooley, in not decreeing that he recover from Stipp the full amount of the usury. Dooley might have claimed, by his bill, three times the entire interest, but because he is not disposed to act the Shylock, and claim the full penalty of the bond, is certainly no reason that he shall not recover what he claims; and he resorts to equity to recover the usury, not asking to recover the full amount of the penalty exacted by the statute.

The assignment of errors made by Dooley upon the record, only raises the point that the court erred to his prejudice in not decreeing to him the full amount of the usury paid by him.

As to the first point made by the counsel for Stipp; I would say, the point simply is, that by the confession of the judgments, Dooley is estopped from again litigating the matter. Admitting this to be true, where no advantage is taken by one party to compel another to confess a judgment, (which, however, I do not admit to be the law, for the reasons above given,) yet the confession of these judgments was compelled by the fraud of Stipp, he having brought suit upon a large note, of over a thousand dollars, which he admits in his answer Dooley did not owe him; and having this unconscientious advantage of Dooley, compels him into a confession of judgments for a large amount of usury, and now comes into court and claims the advantage of his own turpitude. We quote the maxim: "No one can take advantage of his own wrong." Dooley, being in the hands of an unscrupulous creditor, cannot be said to have voluntarily confessed the judgments; and even if he had, this was certainly no more solemn and binding act than voluntary payment; and after such payment, there is no controversy but that the usury might be recovered back, under our statute at the time in force. And in Kentucky, we have seen, it has been decided that a confession of judgment is no bar to the recovery of usury.

Now, let this court establish the rule that a confession of a judgment is final, and it at once offers a reward to the usurer to make courts of justice the most potent engines of oppression: for a man who will agree to pay usury, will always in the first instance, if necessary to get the money, go into a court and confess a judgment—thus prostituting courts of justice to the purposes of the usurer, and against the borrower, who, as all the decisions say, is not to be deemed a voluntary agent.

Whatever may be the views of the court under the present statute, yet under the statute in force, and by which this cause is to be decided, the confession, under the circumstances, was no bar.



As to the point that he might have made his defence at law, I do not contest that, provided no undue advantage was taken of him. But in this case Dooley was prevented from making his defence at law, and was compelled to confess the judgments, by the undue advantage that Stipp had taken of him in the suits at law. And, although he might, had it not been for this fact, have made his defence at law, yet even then, by the statute, he was not compelled to do so.

As to the second point, I would say, it is true, if the judgments were correct, they drew six per cent. interest; and although Stipp denies, in his answer, that fifteen per cent. was calculated on the note for \$593.38, yet he does not deny that it was computed on all the balance; and a computation shows that it was calculated upon all, and put into the face of the judgments. The counsel for Stipp is mistaken in saying that the decree was rendered without proof. He made his argument from his own record, which was incomplete, and does not contain the record of the two cases at law. These two cases give the data for showing the usury, and do show it fully. These are embodied in my record, which it is agreed is correct, and is to be used by the court in deciding the case.

That the court did not err to the prejudice of Stipp in decreeing to Dooley the amount decreed, is manifest from the proof; for the proof shows a much larger amount of usury than that decreed. Although the court may have given a wrong reason for its decision, yet, if the decision is not erroneous in fact to the prejudice of Stipp, the court will not reverse the case at Stipp's suit. The decree is not erroneous to the prejudice of Stipp, but is to the prejudice of Dooley, as it should have decreed all the usury, which it does not do.

As to the third point, or 4th assignment of error of Stipp; the court did not render a final decree without proofs; but the proofs fully sustain the decree, and would have sustained one for a much larger amount.

Upon the whole case, then, I contend that the decree should be reversed, upon the errors assigned by Dooley, and the cause remanded, with instructions to the court below to render a decree in favor of Dooley for the whole amount of the usury, as well in the face of the judgments, as for the six per cent. paid on the face of the judgments.

*R. E. Williams*  
*for Dooley*



70 & 41

Hick vs Dooley  
x Dooley vs Hick

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Brief & argument  
for Dooley

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Filed Apr. 15<sup>th</sup> 1861

L. Leland

Clerk

R. E. Williams



OTTAWA, APRIL TERM, 1861.

These two cases, by agreement are consolidated, and each party has leave to assign cross errors, and both causes are to be heard together.

## ARGUMENT FOR DOOLEY.

Stipp brought two actions against Dooley, on three notes, and a due bill. One of the notes, for a large amount, Dooley did not owe. It had been given instead of another of the notes; and by some means, both notes (the old note, and the new one given in renewal) had been left with Stipp, and he sued Dooley on both of these, together with one other note for a smaller amount, and a due bill for \$25, held by Stipp against Dooley. Dooley had no evidence that he did not owe both of the large notes, and had been paying Stipp fifteen per cent. interest on what he (Dooley) owed Stipp before the suit. Stipp, by having possession of both notes, (one of which Dooley did not owe, and Dooley being without evidence to show the facts,) had obtained an unconscientious advantage of Dooley. Dooley was in the power of Stipp. And finally, by agreement between Stipp and Dooley, Dooley confessed judgment in both cases at law in favor of Stipp, leaving out the note which was not owing; but taking all the real claims Stipp had against him and calculating interest on them at the rate of fifteen per cent. per annum from their maturity, until the expiration of twelve months from the rendition of the judgments, which was all put in the face of the judgments, and execution by agreement was stayed twelve months. Shortly afterwards, Stipp assigns the judgments to Niccolls; and after the stay of execution had expired, Dooley pays to Niccolls the face of the judgments, with six per cent. interest on them from their rendition until their payment.

Niccolls' receipts are of payment in full, which was the face of the judgments, and six per cent. interest on them from the date of their rendition. After paying off the judgments to Niccolls, the assignee (Dooley) files his bill against Stipp and Niccolls, to recover back the usury paid by him on the indebtedness; but afterwards



dismissed his bill as to Niccolls. And on the final hearing, the court decreed that Dooley should recover of Stipp six per cent. on the face of the judgments, from their rendition until their payment; being the excess over and above the fifteen per cent. in the face of the judgments. Both parties take a writ of error—Dooley contending that the court should have given him the entire usury, over and above ten per cent.; and Stipp claiming, that by the confession of judgment, Dooley was barred from obtaining any relief.

Stipp, in his answer, tries to dodge and prevaricate, and evade answering. Courts do not look favorably on such answers to a bill charging usury. "An evasive answer on the subject of usury shall be taken as an admission of the usury." (4th Bibb, 119; 7th Monroe, 388; Pierce *vs.* Hedrick, 3d Little, 113; 4th Monroe, 488; 3d J. J. Marshall, 11.) But he admits the main charge in the bill: that is, that of the two large notes upon which he brought suit against Dooley, Dooley owed only one. That one was given for the other. This is really the main charge in the bill. He admits his own turpitude, in suing upon paper that was in fact paid; and by so doing he obtained an unconscientious advantage over Dooley.

The usury is proved by computation: Take the aggregate of indebtedness from Dooley to him—the principal is \$1,579.56—the judgments confessed amount to \$1,998.47; taking the principal of the notes, deduct credits indorsed, and calculating from their maturity until the end of the stay of execution, it will be seen that fifteen per cent. on the amount actually due was calculated, and put into the face of the judgments, up till the end of the stay of execution.

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*R. E. Williams*  
*for Dooley*



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Stipp vs Dealey  
& Dealey vs Stipp

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Brief & argument  
for Dealey

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Filed April 15<sup>th</sup> 1861

L. Ireland

Clerk

R. E. Williams