

14290

No. _____

Supreme Court of Illinois

Norton

vs.

Merchants Saving & Loan
Ass'n.

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

14290

No. 268.

Norton

vs

Merlan

1862

1862

Prepared

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Seventh day of April in the year of our Lord One Thousand Eight Hundred and Sixty Two and of the Independence of the United States of America the Eighty Sixth

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago. }
} Judges.

Van H. Higgins
and Grant Goodrich

Calos Warren Prosecuting Attorney.

Anthony Mesing Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that hereunto is set on the twenty fourth day July, in the Year of our Lord One thousand Eight hundred and Sixty one being issued out of the office of the Clerk of the Superior Court of Chicago, the proper writ of Summons which said writ with the Sheriff return thereon endorsed is in words and figures following to wit

State of Illinois
County of Cook ss.

The People of the State of Illinois
To the Sheriff of said County - Creating
Our Command You that You summon
Nathaniel Weston if he shall be found in your

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County, personally to be and appear before the
Superior Court of Chicago, of said Cook County, on
the first day of the next term thereof, to be holden at
the Court house in Chicago in said Cook County
on the first Monday of August next to answer unto
The Merchants Savings Loan and Trust Company
in a plea of Travers in the case upon premises, to
the damage of the said Plaintiff as is said in the name
of Eight Thousand Dollars,

And should you show this writ with an endorsement
thereon in what manner you shall have executed the
same

Witness Walter Kimball, Clerk of said
Court and the Seal thereof, at Chicago aforesaid
said the 24th day of July A D 1861
Walter Kimball Clerk

Served by reading the within writ to the within named
defendant this 24th day of July 1861

Anthony C. Hering Sheriff
by John A. Nelson Deputy

And afterwards to wit on some day and Year
aforesaid The Merchants Savings Loan & Trust
Company by Farrell and Smith its attorneys filed
in the office of the Clerk aforesaid its Certain
declarative in words and figures following to wit:

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Superior Court of Chicago
of the August Term A.D. 1861.

State of Illinois
County of Cook ss.

The Merchants Savings Loan & Trust Company plaintiffs in this suit by Travell & Smith their attorneys complain of Nathaniel Norton Defendant therein who has been summoned & is of a plea of trespass on the case upon promises.

For that whereas heretofore to wit on the first day of April in the year of our Lord one thousand eight hundred and sixty one at Rock Island to wit at the said County of Cook N. B. Buford & Co made their certain promissory note in writing bearing date on a certain day and year therein mentioned to wit the day and year aforesaid in and by which said promissory note the said N. B. Buford & Co promised to pay to the order of the said Defendant at the Banking House of Gilman Son & Co No 47 Exchange Place New York three months after the ~~the~~ date of the said promissory note the sum of five thousand dollars value received and delivered the said promissory note to the said defendant, and the said defendant then & there by indorsement in writing upon the said promissory note under his hand indorsed and assigned the same and then and there by an instrument in writing endorsed upon the said promissory note for a valuable consideration expressed in said instrument guaranteed the payment of the said promissory note at ma

tured thereof to said plaintiffs and then and there delivered the said promissory note so indorsed assigned and guaranteed to the said plaintiffs.

And the said plaintiffs aver that at the time of making assignment & guaranty of the said promissory note the place of payment thereof to wit the Banking House of Gilman Sons & Co was and has still continued to be located in the State of New York and that by the laws of the State of New York enforce at the making and guaranteeing & maturity of the said promissory note interest at the rate of seven per cent per annum was payable and recoverable upon the sum specified therein from the maturity thereof.

And the plaintiffs say that the said St. B. Buford & Co and the said Defendant have not nor have either of them paid the said sum of money in said promissory note specified or the interest due and recoverable thereon as aforesaid or any part thereof.

And whereas also the said defendant afterwards, to wit, on the twenty third day of July, in the year of our Lord one thousand eight hundred and sixty one at the place aforesaid, was indebted to the said plaintiffs in the sum of Eight thousand dollars, lawful money of the United States of America for so much money before that time lent and advanced by the said plaintiff to the said defendant and at the special instance and request of the said defendant. And for other money by the said plaintiffs before that time paid, laid out, and expended, for the said defendant and the like request of the said defendant and for other money by the said

3- defendant before that time had and received to and for the use
 of the said plaintiffs and being so indebted, the said defendant
 in consideration thereof, afterwards, to wit, on the same day
 and year last aforesaid, and at the place aforesaid, under-
 took, and then and there faithfully promised the said
 plaintiff well and truly to pay unto the said plaintiffs the
 said sum of money in this account mentioned, when the said
 defendant should be therunto afterwards requested, and
 whereas also the said defendant afterwards, to wit on the
 day and year last aforesaid, and at the place aforesaid,
 accounted together with the said plaintiffs of and concern-
 ing divers other sums of money before that time due and
 owing from the said defendant to the said plaintiffs and
 then and there being in arrear and unpaid, and upon such
 accounting the said defendant then and there was found
 to be in arrear, and indebted to the said plaintiffs in the
 further sum of Eight thousand dollars of like lawful
 money as aforesaid. And being so found in arrear and
 indebted to the said plaintiff the said defendant in consid-
 eration thereof, afterwards, to wit, on the same day and year
 last aforesaid, and at the place aforesaid, undertook, and
 then and there faithfully promised the said plaintiffs
 well and truly to pay unto the said plaintiffs the said sum of
 money last mentioned when the said defendant should be there-
 unto afterwards requested. Nevertheless, the said defendant
 (although often requested, &c.) to wit, on the day when the
 said note became due and payable, according to the tenor
 and effect thereof, and oftentimes since, to wit, at the place

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aforsaid,) has not yet paid the ^{said} several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff but to pay the same, or any part thereof to the said plaintiffs the said defendant has hitherto altogether refused, and still do refuse, to the damage of the said plaintiffs of Eight thousand dollars, and therefore the said plaintiffs bring suit, &c.

Samuel & Smith
Plffs Attys

Copy of Instrument sued upon as follows:

11 \$5000 - Rock Island April 1st 1861.
 12 Three months after date we promise to pay
 13 to the order of Nathaniel Norton Esq Five thousand
 14 Dollars value received, at the Banking house of Gilman
 15 Son & Co No 47 Exchange Place New York
 16 (signed) "N. O. Buford & Co"
 (Indorsed) Nath^l Norton, also indorsed
 upon the back of this note is the following guar-
 anty.
 "For value Received I guarantee payment
 of the within at maturity"
 (Signed) "Nath^l Norton"

And afterwards &c wit, on the Seventh day of August in the Year
 aforesaid Nathaniel Norton by R T Merrick his Attorney filed in the of-
 fice of the Clerk aforesaid his Certain Pleas in words and figures following
 to wit: -

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 Nathaniel Norton
 at
 Merchants Savings Loan & Trust-Company } Superior Court
 Aug. 5 1861.

And the said defendant - by R. T. Merrick, his Attorney, comes and defends the wrong & injury whereto and says he did not undertake or promise in manner & form as the said plaintiffs have above thereof complained against and of this he puts himself upon the country &c.

2 And for a further plea in this behalf as to the first count in said plaintiffs declaration the said defendant says action on &c because he says that the consideration for said note and guaranty in said first count mentioned has wholly failed in that the said promisory note and guaranty in writing were executed in pursuance of an agreement whereby the said plaintiffs undertook and promised to forward immediately and without delay Five Thousand (\$5,000) Dollars in the notes of the Bank of the Federal Union of which Bank the said N. B. Buford & Co. were the owners and proprietors to the Auditor of the State of Illinois at Springfield. To make up a

8 deficit in the securities of said Bank de-
posited with the said Auditor And the
defendant further says that it was further
provided by said agreement in consider-
ation of which said note & guaranty
were executed as aforesaid that the notes
of the Bank of the Federal Union, which
were at the date of said note & guaranty
depreciated in value and which said plain-
tiffs had "thrown out" and refused to receive
as currency would be again and from the
date of said agreement received by said
plaintiff as good currency and the credit
of said Bank would be made good by said
plaintiff And said defendant avers that
in consideration that said ^{plaintiffs} would keep
and perform the part of the agreement
aforesaid to be by them kept and performed
and for that consideration only the said
W. B. Buford agreed to and did execute said prom-
issory in said declaration mentioned and
the said defendant agreed to and did guaran-
ty the payment of the said note at the
maturity thereof as in said first count of
said declaration mentioned Yet the said
defendant avers that the said plaintiffs
did not keep and perform their part of
said agreement and did not forward

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immediately and without delay Five Thousand and (5000) Dollars in the notes of the Bank of the Federal Union to the Auditor of the State of Illinois at Springfield to make said deficit in said securities and did not & would not again receive the notes of the said Bank. and did not & would not make good the credit said Bank. but so to so have wholly failed and this the said defendant is ready to verify wherefore he prays judgment &c.

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And for a further plea in this behalf to the said first count of the said Plaintiffs declaration by leave of the court the said defendant says actio non dicitur because he says that the said plaintiffs represented that they had in their possession Five Thousand (5000) Dollars in the notes of the Bank of the Federal Union of which Bank the said N. B. Buford & Co the maker of the note in said first count mentioned were the owners and proprietors & that if the said N. B. Buford & Co would give the said N. B. Buford & Co their note for \$5,000 with security they the said Plaintiffs would forward the said Five Thousand (5000) Dollars of the notes of the Bank of the Federal Union immediately &

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without delay to the Auditor of the state of Illinois at Springfield to be by him destroyed and thereupon in consideration thereof the said (R.P. Buford) executed the said promissory note in said first-count mentioned and the said defendant assigned and executed upon the back thereof his instrument in writing in said first-count mentioned guaranteeing the payment of said promissory note at maturity yet the said defendant avers that the said plaintiff did not forward the said Five Thousand and Dollars in the notes of the Bank of the Federal Union immediately and without delay to the Auditor of the state of Illinois at Springfield to be by him destroyed and this the said defendant is ready to verify wherefore he prays judgment &c

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And for a further plea in this behalf to the said first-count of said declaration by like leave &c said defendant says actio non &c because he says that the promissory note and guaranty in writing in said first-count mentioned were obtained by the said plaintiffs (and others in collusion with them) by fraud, Covert and misrepresentation that is to say by

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without delay to the Auditor of the state of Illinois at Springfield to be by him destroyed and thereupon in consideration thereof the said (R.P. Buford) executed the said promissory note in said first-count mentioned and the said defendant assigned and executed upon the back thereof his instrument in writing in said first-count mentioned guaranteeing the payment of said promissory note at maturity yet the said defendant avers that the said plaintiff did not forward the said Five Thousand and Dollars in the notes of the Bank of the Federal Union immediately and without delay to the Auditor of the state of Illinois at Springfield to be by him destroyed and this the said defendant is ready to verify wherefore he prays judgment &c

4

And for a further plea in this behalf to the said first-count of said declaration by like leave &c said defendant says actio non &c because he says that the promissory note and guaranty in writing in said first-count mentioned were obtained by the said plaintiffs (and others in collusion with them) by fraud, Covert and misrepresentation that is to say by

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the said plaintiffs (and others in collusion with them) knowingly, falsely and fraudulently representing to N.B. Buford & Co the makers of said note and to said defendant - that they the said plaintiffs had in their possession Five Thousand Dollars of the notes of the Bank of the Federal Union of which Bank the said N.B. Buford & Co were the owners and proprietors that they would on good security sell said notes of the Bank of the Federal Union to N.B. Buford & Co and would forward said notes to the Auditor of the State of Illinois at Springfield to be by him destroyed and that they would make good the credit of said Bank of the Federal Union whose notes were at that time somewhat depreciated and thereupon the said N.B. Buford & Co confiding in the representations of the said plaintiffs executed the promissory note in said first count mentioned in consideration that said plaintiffs had in their possession \$5,000 in the notes of the Bank of the Federal Union and would forward the said \$5,000 in the notes of the

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the said plaintiffs (and others in collusion with them) knowingly, falsely and fraudulently representing to N.B. Buford & Co the makers of said note and to said defendant - that they the said plaintiffs had in their possession Five Thousand Dollars of the notes of the Bank of the Federal Union of which Bank the said N.B. Buford & Co were the owners and proprietors that they would on good security sell said notes of the Bank of the Federal Union to N.B. Buford & Co and would forward said notes to the Auditor of the State of Illinois at Springfield to be by him destroyed and that they would make good the credit of said Bank of the Federal Union whose notes were at that time somewhat depreciated and thereupon the said N.B. Buford & Co confiding in the representations of the said plaintiffs executed the promissory note in said first count mentioned in consideration that said plaintiffs had in their possession \$5,000 in the notes of the Bank of the Federal Union and would forward the said \$5,000 in the notes of the

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Bank of the Federal Union which they represented as aforesaid to be in their possession immediately and without delay to the Auditor of the state of Illinois at Springfield to be by him destroyed and would make good the Credit of the said Bank of the Federal Union and the said defendant likewise confiding in the representations of said plaintiffs and for the like consideration signed the said note and executed the guaranty in said first count mentioned. Yet said defendant charges that the said representations of the said plaintiffs were knowingly fraudulent & untrue that said plaintiffs did not have in their possession at the time of said agreement nor at the date of making said note & guaranty Five Thousand (5000) Dollars of the notes of the Bank of the Federal Union and did not forward the same immediately & without delay to the Auditor of the state of Illinois to be by him destroyed and did not make good the credit of said Bank wherefore he the said defendant says that the promisory note and the said guaranty in writing in said first count mentioned were and are void

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Bank of the Federal Union which they represented as aforesaid to be in their possession immediately and without delay to the Auditor of the state of Illinois at Springfield to be by him destroyed and would make good the Credit of the said Bank of the Federal Union and the said defendant likewise confiding in the representations of said plaintiffs and for the like consideration signed the said note and executed the guaranty in said first count mentioned. Yet said defendant charges that the said representations of the said plaintiffs were knowingly fraudulent & untrue that said plaintiffs did not have in their possession at the time of said agreement nor at the date of making said note & guaranty Five Thousand (5000) Dollars of the notes of the Bank of the Federal Union and did not forward the same immediately & without delay to the Auditor of the state of Illinois to be by him destroyed and did not make good the credit of said Bank wherefore he the said defendant says that the promisory note and the said guaranty in writing in said first count mentioned were and are void

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in law. And this the said defendant is ready to verify wherefore he prays judgment - &c

5 And for a further plea in this behalf as to said first-Count in said declaration by like leave &c. said defendant says actis non &c because he says that the said promissory note and the said instrument in writing guaranteeing the payment of said note at maturity in said first count mentioned were obtained from the said defendant by the said plaintiffs (and others in collusion with them) by fraud, Covert and misrepresentation of said plaintiff (and others in collusion with them) to wit at the County of Cook aforesaid wherefore he the said defendant saith that the said promissory note and the said instrument in writing guaranteeing the payment of said note at maturity in said first count of said declaration mentioned were and are void in law. And this said defendant is ready to verify wherefore he prays judgment &c

R. A. Merrick.

Def't Attorney.

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in law. And this the said defendant is ready to verify wherefore he prays judgment - &c

5 And for a further plea in this behalf as to said first-Count in said declaration by like leave &c. said defendant says actis non &c because he says that the said promissory note and the said instrument in writing guaranteeing the payment of said note at maturity in said first count mentioned were obtained from the said defendant by the said plaintiffs (and others in collusion with them) by fraud, Covert and misrepresentation of said plaintiff (and others in collusion with them) to wit at the County of Cook afore said wherefore he the said defendant saith that the said promissory note and the said instrument in writing guaranteeing the payment of said note at maturity in said first count of said declaration mentioned were and are void in law. And this said defendant is ready to verify wherefore he prays judgment &c

R. A. Merrick.

Def't Attorney.

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And on the Seventh day of August in the year
aforesaid Nathaniel Norton by his attorney
filed in the office of the Clerk aforesaid his
Certain affidavit of merits in words and figures
following to wit;

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And on the Seventh day of August in the year
aforesaid Nathaniel Norton by his attorney
filed in the office of the Clerk aforesaid his
Certain affidavit of merits in words and figures
following to wit;

Merchants Savings Loan
& Trust Company

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vs
Nathaniel Norton

Superior Court of Chicago
Of August Term A.D. 1861

State of Illinois
Cook County } s

Nathaniel Norton being first
duly sworn deposes and says that he is the defend-
ant in the above entitled Cause, and that he has
a good defense on the merits thereof

Sworn & Subscribed to
before me this day of
August A.D. 1861

Nathl Norton

Walter Kimball Clerk

And afterwards to wit on the fifth day of
December in the year aforesaid The Merchants
Savings Loan and Trust Company by Hamell
and Smith its attorney filed in the office of
the Clerk aforesaid its Certain Replication
in words and figures following to wit:

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Superior Court of Chicago

The Merchants Savings
Loan & Trust Company)
vs
Nathaniel Norton.)

And the said plaintiffs as to the said plea of the said Defendant by him secondly above pleaded say proclution because they say that the said Defendant at the said time when he in the said first Court mentioned, of his own wrong, and without the cause by him in said second plea mentioned, broke his promise and undertaking in manner and form as the said plaintiffs have above thereof in said first Court complained to wit at the County of Cook aforesaid, and this the said plaintiffs pray may be enquired of by the Country &c.

And the said plaintiffs as to the said plea of the said Defendant by him thirdly above pleaded say proclution because they say that the said Defendant at the said time when he in said first Court mentioned of his own wrong and without the cause by him in said third plea mentioned broke his promise and undertaking in manner and form as the said plaintiffs have above thereof in said first Court complained to wit at the County of Cook aforesaid and this the said plaintiffs pray may be enquired of by the Country &c.

And for further Replication to said third plea, leave of the court being first had & obtained, said plaintiffs say procladison because they say, that they did forward the said five thousand Dollars in the notes of the Bank of the Federal union immediately and with out delay to the Auditor of the State of Illinois at Springfield to be by him destroyed, and this the said plaintiffs may be enquired of by the Country &c

And the said plaintiffs as to the ^{said} plea of the said Defendant by him fourthly above pleaded say procladison because they say that the said Defendant at the said time when &c in said first Count mentioned, of his own wrong and without the causes in said fourth plea mentioned broke his promise & undertaking in manner and form as the said plaintiffs have above thereof in said first Count Complained to wit, at the County of Cook aforesaid, and this the said plaintiffs may be enquired of by the Country &c

And the said plaintiffs as to the said plea of the said Defendant by him fifthly above pleaded say procladison because they say that the said Defendant at the said time when &c, in said first Count mentioned, of his own wrong and without the causes in said fifth plea mentioned broke his promise & undertaking in manner and form as the said plaintiff have above thereof in said first Count Complained to wit at the County of Cook aforesaid and this the said plaintiff may be enquired of by the Country &c
 Frowell & Smith
 plffs attys

Amendment by leave by inserting after Springfield the following "to be by him destroyed"

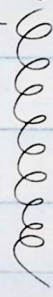
Amended and filed Jan 11th 1862 W. B. Carter CLK.

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And afterwards to wit on the the tenth day of January in the year of our Lord One Thousand eight hundred and fifty two Nathaniel Boston by R. T. Moore his attorney filed in the office of the Clerk aforesaid his Answer demurred to the Replication of the Plaintiff in words and figures following to wit

Superior Court of Chancery

Nathaniel Boston
at
The Merchants Loan
& Trust Company



And the said defendant, saith that the replications of the said Plaintiff to the said second fourth and fifth pleas, and the first replication of the said Plaintiff to the said third plea of the said defendant, and the matters and things therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said Plaintiff to have or maintain their aforesaid action thereof against the said defendant, and that the said defendant is not bound by law to answer the same. And that the said defendant is ready to verify, wherefore by reason of the insufficiency of the said replications in the behalf the said defendant prays judgment if the said Plaintiff ought to have or maintain their aforesaid action thereof against him or

And the said defendant saith that the second replication of the said plaintiffs to the said third plea of the said defendant, and the matters and things therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against said defendant, and that he the said defendant is not bound by law to answer the same, and this the said defendant is ready to verify: wherefore he prays judgment, by reason of the insufficiency of said replication in this behalf, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him &c

And the said defendant, according to the form of the Statute in such case made and provided, states and shows to the Court here the following causes of demurrer in law to said second replication to said third plea, that is to say, that said plaintiffs have not taken or tendered a material issue out of or upon said plea of said defendant by him thirdly above pleaded in bar, but have stated and put in issue in their said Replication that the said plaintiffs "did forward the said Five thousand Dollars of the notes of the Bank of the Federal Union immediately and without delay to the Auditor of the State of Illinois at Springfield" whereas the issue tendered by said plea was whether said plaintiffs did forward said "Five thousand Dollars of the notes of the Bank of the Federal Union in and without delay to the Auditor of the State of Illinois at Springfield to be by him destroyed" and for that

21 said replication is in other respects uncertain informal and insufficient &c.

R. T. Merrick
Deft's Atty.

Superior Court of Chicago

The Merchants Savings
Loan & Trust Co
vs
Nathaniel Horton

And the said plaintiffs say that the Replications to the 2nd 4th & 5th pleas and the first Replications to the 3rd plea and the 2nd Replication to said 3rd plea are sufficient in law - & this they are ready to verify &c wherefore they pray Judgment & their damages

Farnell & Smith
Plffs Atty.

And afterwards to wit on the fifteenth day of April in the Year last aforesaid. Said day being one of the days of the April term of said Court

22 the following among the proceedings, was had
in said Court and intend of record to wit

Merchants Savings Loan
and Trust Company

Nathaniel Norton

Assumpt

This day Comes said plaintiff
by its attorneys Hamill and Smith, and said
defendant by R T Merrick his attorney also
Comes, and said defendant submits his motions for
leave to file additional pleas herein, which motions
of said defendant for leave to file additional pleas
is hereby overruled, to which ruling of the Court
said defendant by his Counsel then and there
excepts and therefore enters his exception
herein to the ruling of the Court in overruling his
said motions for leave to file additional pleas
in this Cause

And on the eighth day of June instant last aforesaid
And afternoon at to wit. The defendant by
R T Merrick his attorney filed in the office
of the Clerk aforesaid, ~~on the same day~~ ~~and~~
~~on last aforesaid~~ his Certificate Bill of Exceptions
in words and figures following to wit.

The Merchants Loan & Trust Co

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vs
Nathaniel Norton

27.

Bill of Exception
The defendant by his Counsel pleads the following
affidavit & Pleas without leave of Court

The Merchants Loan & Trust Co

vs
Nathaniel Norton

R T Merrick atty for deft
being duly sworn deposes and says that N
B Buford the drawer of the note paid on & the
party familiar with the whole transaction and
the only party interested therein soon after the
employment of this deponent as Counsel for defendant
in this case, entered the Army of the United
States & has been in said Army in Active Service at
Cairo & upon the Creative Line of the Army for
several months. That at the time the Pleas in this
Case were filed it was the impression of this
deponent that the Plea of usury & failure of
Consideration ^{that he finds these Pleas not due} were put in in such shape as to
be available and that he believes the facts set
forth in the additional Pleas herein sh offered
to the Court to be true and that it is essential
to a just & fair trial of said Cause that said

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additional pleas should be filed

That the evidence upon which he relies to establish the truth of the allegations of said plea is within the possession of the Plaintiff & he expects to establish the same by J H Durham & D R Holt officers of said Corporation. The Plaintiff, by the books of said Corporation & that he knows of no other competent evidence with regard to said facts than those as stated above and does not expect to offer any

This affiant therefore prays leave of the Court to file said additional pleas

Subscribed & sworn to R T Mcnemee
before me this 8th April
A D 1862

The B Carter
Clerk

The Merchants Loan & Trust Co.

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Nathanial Norton

Superior Court of Chicago

Additional Pleas

1st

And the said Defendant by R. T. Merrick
 his atty comes and defends the wrong and injury
 whereto he says that the said plaintiff ought not to stand
 & maintain his aforesaid action thereof against him
 because he says: that said note is made payable
 in the City & State of New York & that by the laws of
 the State of New York in force at the time of the
 execution of said note, any note or contract upon
 which a greater rate of interest than seven per cent
 per annum is received or paid is thereby void &
 void. And said Defendant avers that said plaintiff
 did charge and receive a greater rate of interest
 upon said note, than seven per cent per annum.
 & that in negotiating the same they charged and
 received thereon, to wit, at the rate of twelve per cent
 per annum. Contrary to the laws of New York as
 aforesaid whereby the said note was & is void.
 & the said Defendant is ready to verify. Wherefore
 he prays judgment if the said plaintiff ought to have or
 maintain his action against him. R. T. Merrick
 atty for def

2nd And for a further plea in this behalf said defendant
2 & says that said plaintiff ought not to have or maintain
his said action against him because he says that
said note in the said declaration mentioned was made
& executed & delivered in pursuance of a corrupt &
unlawful contract between the said W. B. Buford
& the said plaintiff whereby it was agreed that
said plaintiff should charge & receive for his accounting
the said a greater rate of interest than ten per
cent per annum - and said defendant avers that
said note in said declaration mentioned is made
payable in the City & State of New York & that by
the laws of the State of New York in force at the
time of the execution & delivery of said note a greater
rate of interest than ten per cent per annum upon any
note or contract was not allowed to be charged or
received, & that when a greater amount of interest
than seven per cent per annum was charged & received
such note or contract is declared void & of no effect -
And said defendant further says that said plaintiff
did charge & receive a greater rate of interest than
ten per cent per annum upon said note to wit: in-
terest at the rate of twelve per cent per annum.
Contrary to the laws of New York as aforesaid &
contrary to the laws of this State, whereby said note
was & is utterly void: and this he is ready to verify.
Wherefore he the said defendant prays judgment
if the said plaintiff ought to have or maintain.

In aforesaid action against him.

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R. J. Merrick Atty for Deft.

And the said Defendant for further filed in this behalf says that the said Plaintiff ought not to have maintained his aforesaid action against him because he says that said W. B. Buford & Co. nor his Defendant nor any one for or account of the said W. B. Buford & Co. & this Defendant ever received any valuable consideration for said note in said declaration mentioned, but that said note & the guarantee thereof of this Defendant are without any consideration whatever - & this he is ready to verify wherefore he prays judgment if the said Plaintiff ought to have or maintain his aforesaid action against him.

R. J. Merrick
Atty for Deft.

And thereupon filed the following motion.

The defendant by his Counsel moves the Court for leave to file additional pleas setting forth that said note said on was discounted at a usurious rate of interest under the laws of New York & of this State & that there was a total failure of Consideration

R T Merrick
Atty for Deft

Which said motion being overruled by the Court the said defendt and thos & thos except & pray the Court to sign & seal this his bill of Exceptions.

J. M. Higgins
Judge

And afterwards Petitt on the Eighteenth day of April in the Year last aforesaid said day being one of the days of the April Term of said Court - the following among other proceedings was had in said Court and entered of record Petitt:

29 Merchants Savings Loan
and Trust Company

vs
Nathaniel Norton

Assumpsit

This Cause being this day
Called for trial Comes said Plaintiff by Hamill
and Smith et Attorneys, and said defendant
by Richard T. Merrick his attorney. Also Comes
and issues being joined herein it is ordered
that a jury Come whereupon Comes the jury
of good and lawful men to wit, E. French
William Benson. George Litt. A. K. Peterson.
W. E. Thorpe J. Allen. A. Gorman. W. Bushnell
J. McSherry Peter Long J. O. Hall J. B. Griffin
who being duly elected tried and sworn to
try the issues joined as aforesaid, after hearing
evidence arguments of Counsel and instructions
of the Court retired to Consider of their verdict
and afterward returned into Court submit their
verdict and say, we the jury find issues for said
Plaintiff and assess it damages herein against
said defendant to the sum of Five Thousand
Two hundred and Sixty eight dollars and
twelve Cents

And therefore said defendant submits his
motion herein for a new trial in said Cause

And afterwards to wit, on the Twenty first day of April

30

in the Year last aforesaid. Said day being one of the days
of the April Term of Said Court. The following among
other proceedings was had and entered of record in
Said Court to wit

Mercantile Savings Loan & Trust Company
vs
Nathaniel Norton
Newport

Friday again comes the said
Plaintiff by Hamm & Smith its attorney and said defendant
by R. B. Merrick his attorney also comes and this Court
coming on now to be heard upon the motion of said defend-
ant heretofore submitted herein at the present term of this
Court for a new trial in said cause, and counsel being
heard thereon, and the Court being fully advised in the premises
is of the opinion that the reasons filed by said defendant in support
of his said motion are not sufficient. it is therefore considered
by the Court that the said defendants motion for a new trial be
and hereby is overruled. to which ruling of the Court said de-
fendant then and there assents and thereupon enters his
assent herein to the ruling of the Court in overruling his
said motion for a new trial, Wherefore said Plaintiff ought
now to have judgment entered for his damages upon verdict of the
jury rendered herein as aforesaid, Therefore it is considered that
said Plaintiff do have and recover of and from said defendant its damages of Five
thousand two hundred and Sixty eight dollars and Two Cents in full aforesaid
by the jury here found and assented and also its Costs and Charges in this
behalf expended and here executed &c

30

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of the April Term of Said Court. The following among
other proceedings was had and entered of record in
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said Plaintiff do have and recover of and from said defendant its damages of Five
thousand two hundred and Sixty eight dollars and Two Cents in full aforesaid
said by the jury here found and assented and also its Costs and Charges in this
behalf expended and have execution of

31 And afterwards to wit on the twenty
second day of April in the year
aforesaid there was filed in the
Office of the Clerk aforesaid a certain
other Bill of Exceptions in the
words and figures following to wit:

The Merchants Loan
Trust Company

Nathaniel Norton
2^d Bill of Exceptions

Afterwards said Cause came on to
be heard upon said demurrer &
Replications, which was overruled by
the Court - to which ruling of the
Court the defendant then and there
Exceptis and prays the Court to sign
& seal this his bill of Exceptions.

3rd Bill of Exceptions
The Plaintiff offers in evidence the
following note.
Rock Island April 1 1861
\$500.00. Three months after date we

31 And afterwards to wit on the twenty
second day of April in the year
aforesaid there was filed in the
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Trust Company

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Court the defendant then and there
Exceptis and prays the Court to sign
& seal this his bill of Exceptions.

3rd Bill of Exceptions
The Plaintiff offers in evidence the
following note.
Rock Island April 1 1861
\$500.00 Three Months after date we

32 promise to pay to the order of
Nathaniel Norton Esq Five Thousand
Dollars value received at the
Banking House of Gilman Son & Co
N^o 47 Exchange Place New York
(Signed) N B Buford & Co
(Endorsed) Nath^l Norton

Also endorsed upon the back of
this Note is the following guaranty
For value Received I guarantee
payment of the within at Maturity
(Signed) "Nath^l Norton"

The plaintiff then offered the laws
of New York with regard to interest
and defendant waived the reading
of said Laws & admitted that by
said Laws seven per Cent was
authorized to be taken.

The plaintiff thereupon closed
his case.

The defendant then offered as a
witness D R Holt who being duly
sworn testified as follows.

I am Cashier of the Merchants
Loan & Trust Co the plaintiff -
The defendant signed the guaranty

33

about the date of the paper, that is within two or three days of said date. The discount was entered on the 5th & I presume it was discounted at that time.

When a note is discounted we place the proceeds to the Credit of the party who procured the discount. I am positive that the note was guaranteed before it was discounted. It was probably guaranteed on the same day it was discounted. The Note was sent to me in a letter from W B Buford, mailed at Rock Island & was afterwards endorsed by Norton in Chicago. The witness then produced a book which he testified was the discount book of the Plaintiff & read from it the following entry therein. "April 5th 1861"

Payer	Endorsed	Date	Time
W B Buford	W Norton	April 1 st	3 Mo

due	Discounted for	amount	Discount
July 4	W B Buford & Co	5000 ⁰⁰	\$129 ¹⁶ / ₁₀₀

Total Net
4870 ⁸⁰/₁₀₀

34 The witness then proceeded to state as follows. Nothing whatever was passed to Nortons Credit. The Credit was made in the Account of N B Buford & Co April 5th 1861 for \$4870⁸⁴. This Credit was the discount proceeds of the note sued on - Buford & Co have nothing to their Credit on the books of the Bank at this time as far as I know of.

Upon Cross Examination the witness stated as follows.

Mr Buford came to our office and asked a discount for \$5000. and offered different kinds of Collaterals all which we refused. Buford left the City and went home to Rock Island without any promise or understanding as to any discount whatever. Very soon after I received a letter from him enclosing the note sued on, in which he said Mr Norton would call at the office & guaranty it & that he wished me to discount it for him. Mr Norton did call at the office, said he had received

33- a letter from Col Buford asking
him to call & sign some notes,
that Col Buford had placed securities
in his hands to indemnify him
for doing so. He told Mr Norton
we should be very happy to discount
Col Buford's notes with his guaranty.
I presented the note to him & he
indorsed it & guaranteed it & I
discounted it & placed the proceeds
to Credit of Buford & Co - I presume
two per Cent was discounted, that
is our usual rule - I had nothing
to do with the calculation. I gave
it to a clerk & suppose two per
Cent was received.

I had refused to discount for
Buford on his own name &
would not have taken the note
except for the endorsement and
guaranty of defendant.

Upon his Examination in Chief
the witness stated as follows.
The business was all done at
one interview. Cant say positively
whether Mr Norton came to the
Bank on the same day I received
the letter and note - I did not

36 do any thing with it until Mr
Horton came into the office &
guaranty the paper.

The defendant then closed
his case & this was all the evidence
offered by either side —

The defendant's Counsel then
stated to the Court the point
upon which he relied & the
Counsel for the plaintiff thereupon
called on the witness D. R. Kolb
to Explain the Circumstances of the
Discount spoken of in his evidence.
Said Witness then stated to the
Court as follows. "I did not
authorize the particular Calculation
of interest. The Clerk ought not
to have reserved the interest from
the 1st of April but should have
taken it from the 5th of April &
I presume it was a mistake. I
can readily understand how such
a mistake might have occurred".
After said Explanation plaintiff's
Counsel proposed to remit the
Excess of interest over 10 per Cent,
and stated he should only claim
at the rate of ten per Cent from

37 date of discount, The amount
proposed to be remitted being
\$6.93

38 Before making this statement
the counsel for the defendant,
objected to any such Explanation
and had already stated the
points of defence.

The defendant by his Counsel
prayed the Court to instruct the
jury as follows

If the jury believe from the evidence
that the note sued on in this
case bore date the first of
April 1861 & was not discounted
by the plaintiff until the 5th of
April 1861 & that said plaintiff on
said fifth of April passed to the
Order of N B Buford the sum
of \$487.⁰⁴ & no more as the
proceeds of said note then said
note is void & plaintiff can
not recover.

Referred

38
Of the jury believe from the evidence
that the note sued on in this
Case bore date the first of
April 1861 and was discounted
by the plaintiff on the 5th of
April 1861 and that the said
plaintiff at the time of discount-
ing the same charged a
discount an amount equal
to ten per cent per annum as
from the first of April for the
time said note had so run.
The said note is void and
plaintiff is not entitled to recover.

Refused

Of the jury believe from the
evidence that the note sued on
in this case was Executed by
W B Buford & Co on the first
day of April 1861 & not
endorsed or guaranteed by
Norton the Defendant until
the 5th of April the plaintiff
is not entitled to recover.

Refused

39
Refusal

Of the Jury find from the Evidence that the plaintiff in discounting the note sued on in this case reserved a greater amount for such discount than at its rate of ten per Cent per annum. The plaintiff is not entitled to recover.

Which were refused by the Court and to which refusal of the Court the defendant then and there excepts, and prays the Court to sign and seal this his bill of Exceptions.

Wm H. Higgins Esq
Judge.

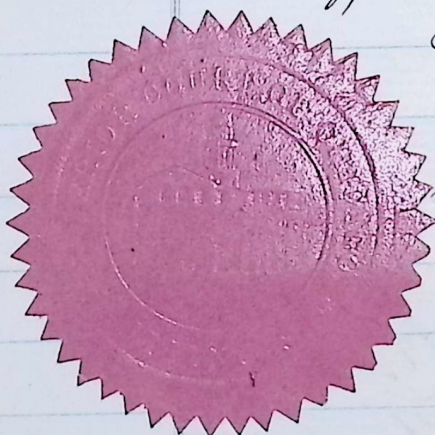
~~R. T. Munich Atty for Pff in error assigns the following errors in the foregoing -~~

- ~~1. The Court erred in overruling the demurrer of defendant -~~
- ~~2. The Court erred in refusing motion of defendant to file additional Pleas.~~
- ~~3. The Court erred in refusing instructions asked by defendant -~~
- ~~4. The Court erred in overruling defendant's~~

40 State of Illinois
County of Cook } S.S.

I, Thomas P. Carter Clerk of
the Superior Court of Chicago, within and for the
County & State aforesaid, do hereby certify that the
above and foregoing is a full true and complete
manuscript of all the pleadings on file, and of all
orders and judgment entered of Record in said
Court together with the Bill of Exceptions in the case
wherein the Merchants Savings Loan and Trust Company
plaintiff and Nathaniel Norton defendant.

In testimony whereof I hereunto subscribe
my name, and affix the Seal of said
Court, at the City of Chicago in said County
this 23rd day of April A.D. 1882
Thomas P. Carter Clerk



R. J. Munich atty for Off in sum assigns
the following errors.

1. The Court erred in overruling the demurrers of defendants.
2. The Court erred in refusing the motion of Dept. to file additional Pleas.
3. The Court erred in refusing the instructions asked for by Dept.
4. The Court erred in overruling the Dept motion for New Trial.
5. The Court erred in giving judgment for Plaintiff.

R. J. Munich
attorney for Off in sum

and the defendants say that in the record and proceedings aforesaid & in the giving the judgment aforesaid there is no error.

Forcald Smith
attys for Defendants

106 268

Supreme Court

Nathaniel Norton
Hoffin error

^{as}
The Merchants Savings

• Seam & Frost Co
Sept in error

Filed Apr 24-1862

L. Leland

Clark

77.50 Paid. J. B. Carter
clerk