No. 14839

# Supreme Court of Illinois

Hemenway

vs.

Cropsey.

71641

14839

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 92

J. W. Middleton & Co., Stationers, 100 Lake St.

JAMESON & MORSE, PRINTERS, CHICAGO.

# SUPREME COURT OF ILLINOIS,

## THIRD GRAND DIVISION,

## APRIL TERM, A. D. 1865.

LUKE HEMENWAY,
*Plaintiff in Error,*
*vs.*
JOHN H. CROPSEY,
*Defendant in Error.*

## BRIEF FOR PLAINTIFF IN ERROR.

### I.

The first count of the declaration is good in substance, and is not obnoxious to any objection which can be taken advantage of on a general demurrer.

It is true that it is averred in this count that the defendant, "together with one Cyrus Aldrich," made his promissory note in writing, &c.; and it was claimed in the court below, that this showed a joint undertaking of the defendant and Aldrich, and not a several liability of the defendant.

Were this the true construction of the count, yet the objection could not be raised on demurrer. The non-joinder of a defendant in actions *ex contractu* can only be taken advantage of by plea in abatement.

1 *Chit. Pl.* 46, *and authorities cited in note* 2, *Lurton vs. Gilliam*, 1 *Scam.*, 577.

"If, however, it *expressly appear* on the face of the declaration, or some other pleading of the plaintiff, that the party omitted is *still living*, as well as that he jointly contracted; in that case the defendant may demur, move in arrest of judgment, or sustain a writ of error. (*Ibid.*) But it does not so appear in this case.

## II.

1. Usury in the inception of a promisory note, under the statutes of this State, is no defence to the same in the hands of a *bona fide* assignee, without notice, who received the note before its maturity; and a plea setting up usury as a defence in such case, must aver that the assignee had notice of the usury, or some other fact, to show that the assignee was not a *bona fide* holder of the note.

*Conklin vs. Underhill*, 3 *Scam.*, 388.
*Sherman vs. Blackman*, 24 *Ill.*, 345.
*Cooper vs. Nock*, 27 *Ill.*, 301.

In the case of *Sherman vs. Blackman*, 24 *Ill.*, 350, the following language is held by BREESE, J., who delivered the opinion of the court: "We are at a loss to perceive how the defence [of usury] set up can be sustained, there being no proof that the plaintiff had notice of the usury, and it being shown that he purchased the note before it was due."

The rule seems to be inflexible, that it is only when the statute declares a note infected with usury *void*, that this defence can be set up against the same in the hands of an innocent assignee to whom the note was indorsed before maturity.

*Adams vs. Woodbridge*, 3 *Scam.*, 257.
*Conklin vs. Underhill*, 3 *Scam.*, 389.
*Mobley vs. Ryan*, 14 *Ill.*, 51.
*Walter vs. Kirk*, *ibid*, 55, 57.
*Chitty on Bills*, 81.
3 *Kent's Com.*, 79, 80, *side paging.*
*Wyatt vs. Bulmer*, 2 *Esp. Rep.*, 538.
*Brown vs. Turner*, 7 *Term Rep.*, 630.
*Norris vs. Langley*, 19 *N. H. Rep.*, 423.
*Forbes vs. Marsh*, 3 *ibid*, 119.
*Young vs. Berkley*, 2 *ibid*, 410.

So in the case of *Fleckner vs. U. S. Bank*, 8 *Wheat*, 355, in the opinion of the court delivered by STORY, J., it is said that "the statutes of usury of some of the States, as well as of England, contain express provision that usurious contracts shall be utterly void; *and without such enactment the contract would be valid in respect to persons who were strangers to the usury.*"

It may be, that cases will be cited in which the courts have permitted the defence of usury to be set up against the assignee of a note secured by mortgage *in proceedings in equity to forclose the mortgage;* but such cases are distinguishable from the case at bar, inasmuch as this is an action at law upon the note; "A promissory note, though secured by mortgage, is still commercial paper, assignable at law; and when the remedy is sought upon that, all the rights incident to commercial paper will be enforced in the courts of law; but when resort is had to a court of equity to forclose the mortgage, that court will let in any defence which would have been good against the mortgage in the hands of the mortgagee himself, and this regardless of the fact that the assignee may have purchased the notes in good faith and before their maturity."

*Olds vs. Cummings*, 31 *Ill.*, 188.

Our usury statutes do not declare an usurious contract void, and the act of Jan 30, 1849, does not confer the right to set up this defence in any broader terms than is expressed in the *fourth section of Ch.* 54 *R. S. of* 1845; nor than is usually expressed in other usury laws under which the courts have uniformly held the contract not to be void.

2. The production of the note with its indorsements was sufficient evidence that the note was indorsed to the plaintiff before maturity. Where a note is indorsed without date, the presumption of law is that it was indorsed before it became due.

*Mobley vs. Ryan*, 14 *Ill.*, 51.
*Stewart vs. Smith*, 28 *Ill.*, 397.

Indeed, there is express evidence that the note was in Hemenway's hands on the 17th of October, 1856, a year before its maturity. The first payment indorsed is as follows: "$40 received on the within forty dollars, amount of interest due October 17, 1856. [Signed,] L. Hemenway." And it was stipulated and admitted by the parties that such payments were "made in *pursuance* of such indorsements."

3. It was incumbent upon the defendant to prove the averments in his pleas of usury, (which were traversed by the replication) that the plaintiff had notice at the time the note was assigned to him, that the consideration thereof was not money loaned. Neither party offered any evidence upon this issue. The consideration of the note was expressed by the usual formula, "for value received." Yet the court below held that the note bore evidence upon its face that it was *not* given for money loaned. The most that can be said is, that it was silent upon the subject. But we do not concede this; for the law is that "a promissory note is sufficient evidence of a loan between the original parties."

2 *Greenl. Ev., Sec.* 112, *page* 108.
*Payne vs. Whitmarsh*, 15 *Pick*, 212.

And as a rule of pleading a recovery may be had upon a promissory note under the common count for money lent.

*Lane vs. Adams*, 19 *Ill.*, 168.

Certainly, then, a promissory note in the usual form cannot, upon its face, be evidence of notice to a party purchasing it, that it was not given for money loaned. On the contrary, it is at least *prima facie* evidence of such loan.

4. It is quite true that the note possessed intrinsic evidence that it bore interest at the rate of ten per cent. per annum, and a party purchasing such a note is chargeable with a knowledge of the law which renders the same usurious as to the excess of six per cent. interest, unless the consideration thereof was money loaned. But it is sufficient to protect an innocent purchaser that the note could under any circumstances be valid in the form it was expressed. Hemenway was not bound to presume, or even suspect, that Moore and Cropsey had violated the law and contracted for usurious interest, until evidence thereof was brought to his notice. Want, or failure of consideration, is a meritorious as well as legal defence to a note, and every assignee of a note is chargeable with notice of this law; and yet no one will pretend that a party purchasing a note before maturity, is required to first investigate the circumstances under which the note was given, and satisfy himself of the fairness and validity of the consideration before he can claim the immunities of a *bona fide* assignee.

The case of *McIntyre vs. Preston*, 5 *Gilm.* 48, is in point upon this question so far as any legal principle is involved. It is there held that if an insurance company have power to take a promissory note for premiums in the usual course of their business, and for no other purpose, a note given to them would be valid in the hands of a *bona fide* assignee, although the company may not have had power to take the particular note; and that it would not be admissible for the maker to show that such note was not taken in the ordinary course of business of the company, without first showing that the assignee was not a *bona fide* purchaser.

*McIntyre vs. Preston*, 5 *Gilm.* 48, 60, 62.
*Wilmarth vs. Crawford*, 10 *Wend.*, 341.

We submit, therefore, that the ruling of the Circuit Court that the note upon its face contained evidence of notice to the plaintiff that the same was not given for money loaned, was erroneous.

JAMES K. EDSALL,
*Att'y for Plaintiff in Error.*

92

# Supreme Court of Illinois,

***APRIL TERM, 1865.***

LUKE HEMENWAY, *Plaintiff in Error,*

*vs.*

JOHN M. CROPSEY, *Defendant in Error.*

## Brief for Plaintiff in Error.

JAS. K. EDSALL,
*For Plaintiff in Error.*

JAMESON & MORSE, PRINTERS, CHICAGO.

# SUPREME COURT OF ILLINOIS,

## THIRD GRAND DIVISION,

## APRIL TERM, A. D. 1865.

LUKE HEMENWAY,
PLAINTIFF IN ERROR,
*vs.*
JOHN H. CROPSEY,
DEFENDANT IN ERROR.

## BRIEF OF DEFENDANT IN ERROR.

### I.

The first count of the declaration is not good in substance, and therefore is objectionable under a general demurrer, inasmuch as it seeks to declare against the defendant in error on a promissory note according to its legal effect, by declaring that "in and by which said note the said defendant, by the name, style and description of John H. Cropsey, promised to pay to the order of the said James Moore (under the name and style of James Moore), Four Hundred Dollars, with interest at ten per cent., interest to be paid annually, and due in two years after date (that is, due in two years after the 17th day of October, A. D. 1855)," but fails to describe a promissory note or to declare on a promissory note according to its legal effect, inasmuch as said count does not show or aver that the said defendant promised to pay the said sum of $400 therein named, at any fixed period of time, or on some event which must inevitably happen.

Said count merely avers that the defendant promised to pay the said sum of $400 with interest at ten per cent, which (said interest) was payable annually, and due in two years after date.

*Story on Promissory Notes, chap. I, sec.* 27.

## II.

The note offered in evidence is as follows, to-wit:

"$400. DIXON, ILLS., October 17th, 1855.

Two years after date, for value received, we, or either of us, promise to pay James Moore or order, Four Hundred Dollars, with interest at ten per cent., interest to be paid annually.

JOHN H. CROPSEY,
CYRUS ALDRICH."

And the defendant, under the second section of an act to amend the Interest Laws of this State, approvad Jan. 30th, 1849 (sess. laws of 1849, p. 98), set up and plead as a defense in said suit, that the consideration of said note or writing, obligatory upon which said suit was brought, was not "money loaned," and on the introduction of said note in evidence it was admitted by the plaintiff in error, as fully appears from the bill of exceptions in this case, "that the consideration of said note was not money loaned."

The said law of 1849, provides that if upon the trial of the said issue, it shall be found that the said note or writing, obligatory on which suit was brought, was not given for money loaned, then the court shall give judgment for the principal sum and six per cent. interest; and that, too, irrespective of in whose hands the note may be found, or in whose name the suit on said note may be brought.

The said statute of 1849, makes the reservation of all interest on any promissory note over and above six per cent, except where said note was given for money loaned, null and void; and the averment in the pleas of notice to the plaintiff, that the consideration was not money loaned, and the replication thereto, formed an immaterial issue in said cause, and should have been disregarded by the court.

*Cooley et als vs. Sears et al*, 25 *Ill.* 613.

There is this difference between the fourth section of the act of 1845, and the second section of the act of 1849, that the former declared a forfeiture of three-fold the whole amount of interest, reserved as a penalty, and the latter declared all excess over and above six per cent., except for money loaned, illegal, and void, and the rights or interests of third parties, as indorsees, under the two laws respectively, would be quite differently affected, inasmuch as under the former statute under a plea of usury to affect the rights of an indorsee before maturity, it

would be necessary to aver and prove notice to such indorsee at the time of assignment of the usury; but under the latter statute, where the excess of interest is made null and void, such notice would in no case be necessary.

*Adams vs. Woodbridge*, 3 *Scam.* 257.

## III.

The said note bore upon its face a rate of interest, which was at the time of the making, and of the indorsement of the same, by the laws of this State, illegal and usurious, unless given for money loaned, and was of itself sufficient notice, if any notice was necessary to any subsequent holder or indorsee, that such interest was prima facie usurious and illegal, and sufficient to put such holder or indorsee on his inquiry as to the real consideration of said note. Had said note expressed on its face that it was for money loaned, then the defendant would have been estopped from pleading and proving on said trial that the consideration of said note was not money loaned, as against a *bona fide* indorsee; but such is not the case. The note itself bears the evidence upon its face of a higher rate of interest being usured than was allowed by law, except for money loaned; and said note bears no evidence, nor is it a presumption of law that it was given for money loaned.

The note itself carried with it the evidence of its being infected with usury, unless brought within the exception provided by the statute which authorized the reservation of ten per cent.; and as a rule of law it is submitted that the court will not presume the exception; it must be averred and proved.

*Gould's Pleadings*, *chap.* 4, *sec.* 22.

## IV.

A note can be evidence under the common courts, only as between immediate parties, and is at no time more evidence of money lent than of a settlement of an account, or of money due for goods, wares and merchandise sold and delivered, or any other kind of indebtedness.

*Byles on Bills*, 509.

The defendant in error, therefore, submits that the circuit court did not err either in sustaining said demurrer to said first count, or in rendering judgment for the principal sum and six per cent. interest, and that, therefore, the said judgment should be affirmed.

GEORGE P. GOODWIN,

*Att'y for Defendant in Error.*

92 23

Lake Hennessy
vs
John H Cowperey

Brief of Deft
in Error

Filed May 3rd 1865
L. Leland
Clk.

JAMESON & MORSE, PRINTERS, CHICAGO.

# SUPREME COURT OF ILLINOIS,

## THIRD GRAND DIVISION,

## APRIL TERM, A. D. 1865.

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The rule seems to be inflexible, that it is only when the statute declares a note infected with usury *void*, that this defence can be set up against the same in the hands of an innocent assignee to whom the note was indorsed before maturity.

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It may be, that cases will be cited in which the courts have permitted the defence of usury to be set up against the assignee of a note secured by mortgage *in proceedings in equity to forclose the mortgage;* but such cases are distinguishable from the case at bar, inasmuch as this is an action at law upon the note; "A promissory note, though secured by mortgage, is still commercial paper, assignable at law; and when the remedy is sought upon that, all the rights incident to commercial paper will be enforced in the courts of law; but when resort is had to a court of equity to forclose the mortgage, that court will let in any defence which would have been good against the mortgage in the hands of the mortgagee himself, and this regardless of the fact that the assignee may have purchased the notes in good faith and before their maturity."

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Our usury statutes do not declare an usurious contract void, and the act of Jan 30, 1849, does not confer the right to set up this defence in any broader terms than is expressed in the *fourth section of Ch.* 54 *R. S. of* 1845; nor than is usually expressed in other usury laws under which the courts have uniformly held the contract not to be void.

2. The production of the note with its indorsements was sufficient evidence that the note was indorsed to the plaintiff before maturity. Where a note is indorsed without date, the presumption of law is that it was indorsed before it became due.

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Indeed, there is express evidence that the note was in Hemenway's hands on the 17th of October, 1856, a year before its maturity. The first payment indorsed is as follows: "$40 received on the within forty dollars, amount of interest due October 17, 1856. [Signed,] L. Hemenway." And it was stipulated and admitted by the parties that such payments were "made in *pursuance* of such indorsements."

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The case of *McIntyre vs. Preston*, 5 *Gilm.* 48, is in point upon this question so far as any legal principle is involved. It is there held that if an insurance company have power to take a promissory note for premiums in the usual course of their business, and for no other purpose, a note given to them would be valid in the hands of a *bona fide* assignee, although the company may not have had power to take the particular note; and that it would not be admissible for the maker to show that such note was not taken in the ordinary course of business of the company, without first showing that the assignee was not a *bona fide* purchaser.

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*Wilmarth vs. Crawford*, 10 *Wend.*, 341.

We submit, therefore, that the ruling of the Circuit Court that the note upon its face contained evidence of notice to the plaintiff that the same was not given for money loaned, was erroneous.

JAMES K. EDSALL,
*Att'y for Plaintiff in Error.*

92 23

# Supreme Court of Illinois,

***APRIL TERM, 1865.***

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LUKE HEMENWAY, *Plaintiff in Error,*

*vs.*

JOHN M. CROPSEY, *Defendant in Error.*

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## Brief for Plaintiff in Error.

Filed May 4. 1865
S. H. Lamb
Clk.

JAS. K. EDSALL,
*For Plaintiff in Error.*

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Lee County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Lee County, before the Judge thereof, between Luke Hemenway plaintiff, and John H. Cropsey defendant, it is said that manifest error hath intervened, to the injury of the said plaintiff as we are informed by his complaint the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said John H. Cropsey that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday ~~after the third Monday~~ in April A. D. 1865, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John H. Cropsey notice, together with this writ.

Witness, The Hon. Pinkney H. Walker, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of March in the year of our Lord One Thousand Eight Hundred and Sixty-five

L. Leland
Clerk of the Supreme Court.
J. D. Olin Dep't

72 23

Luke Hennessy

No.

vs.

John H. Crosby

SCIRE FACIAS.

Filed. March 3 A. D. 1865

S. Leland Clerk.

State of Illinois
Lee Co ss } I Served the within By reading the
Same to and in hearing of John H. Crosby the
within named defendant
this 17th day of March 1865

R. P. Treadwell
Sheriff
Lee Co

fees
travel 10
Serving 50
Returned 10
70 cts

Recd payment of fees of
J. K. Edsall R. P. Treadwell

Dixon, March. 14, 1865

L. Leland Esq
Clerk Sup Court
Ottawa Ill.

Dear Sir: Inclose herewith the Record in the Case of Lucius Hemenway Plff in error, v. John H. Cropsey Defdt. in error.

Please file the record and send the Sci. Fa. to Lee County and on Cropsey the Defdt in error, to me — Direct the Sci. Fa. to the Sheriff of Lee County — If I get it immediately I can get it served in time for the April Term — Inclose &c.

If this is not sufficient write me & I will send more — At all events file the record and inclose the Sci. Fa. at once, & send the same to me

Very truly yours

Lucius H. Holcomb
Attorney for Plff in Error

92 23

Hemenway

vs

Cropsey

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Precipe

Filed March 16. 1845

L. Leland
Clerk

92

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Circuit Court for the County of Lee Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Lee County, before the Judge thereof, between Luke Hemenway

plaintiff, and John H. Cropsey

defendant, it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday ~~after the third Monday~~ in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Directory to Matter

Witness, The Hon. ~~JOHN D. CATON~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this Sixteenth day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty five.

L. Leland
Clerk of the Supreme Court.
by J. D. Rice Deputy



92 23

Luke Hemenway

No. vs.

John H. Crossey

**WRIT OF ERROR.**

FILED March 16 A D. 1865

L. Leland

Clerk.

# Supreme Court of Illinois.

THIRD GRAND DIVISION.

## APRIL TERM, A. D. 1865.

LUKE HEMENWAY, Plaintiff in Error,
*vs.*
JOHN H. CROPSEY, Def'ant in Error,
} *Error to Lee County.*

### Abstract of Record.

1 PLAINTIFF IN ERROR, commenced an action of assumpsit in the Lee County Circuit, in which a summons was issued and duly served upon the defendant in error, returnable to the
2 June Term thereof, 1863.

DECLARATION was filed by the Plaintiff in error, May 28th, 1863, the first count of which, after the formal commencement, is as follows:

3 "For that the said defendant heretofore, to wit: on the seventeenth day of October in the year of our Lord one thousand eight hundred and fifty five, at Dixon, to-wit: at said County of Lee, made his certain promisory note, together with one Cyrus Aldrich, in writing, bearing date the day and year last aforesaid, and then and there delivered the same so made as aforesaid to James Moore, in and by which said note, said defendant by the name, style and description of John H. Cropsey promised to pay to the order of the said James Moore (under the name and style of James More) Four Hundred Dollars, with interest at ten per cent., interest to be paid annually, and due in two years after date, (that is, due in two years after the 17th day of October, A. D. 1855,) for value received. And that said James Moore, to whom or to whose order said note was payable, afterwards, to-wit: on the day and year aforesaid, at Dixon at Lee County aforesaid, indorsed said note in writing, by which said indorsement the said James Moore then and there ordered the said sum of money in said note mentioned, to be paid to

the said plaintiff, and then and there delivered said note so
4 endorsed to said plaintiff; by means whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to said plaintiff said sum of money mentioned in said note; and being so liable in consideration thereof, then and there undertook and promised to pay the same to said plaintiff according to the tenor and effect of said note, and of the endorsement aforesaid, to-wit: at the place aforesaid."

The declaration also contained the usual common counts,
5 and had appended thereto a copy of note and account de-
6 clared upon.

The defendant filed a plea of *non assumpsit* to the com-
7 mon counts; and a general demurrer to the first or special
9 count, which was sustained by the Court (below) June 24, 1863.

11 The defendant, by leave of the Court, filed two additional pleas to the common counts, June 26, 1863, as follows:

"And for a further plea to the said common counts of the said plaintiff's declaration, by leave of the court first had and obtained, the said defendant says *actio non* as to all the said promises and undertakings in the said counts mentioned, except as to the principal sum and six per cent. interest thereupon, now due upon a certain promissory note heretofore made and executed by the said defendant and one Cyrus Aldrich to one James Moore, which said note is in the words and figures as follows, to-wit:

\$400,00. Dixon, Ills., October 17th, 1855.

Two years after date, for value rec'd we or either of us promise to pay James Moore or order Four Hundred Dollars at ten per cent interest to be paid annually.

JOHN H. CROPSEY.
CYRUS ALDRICH.

12 And is the only and sole cause of action of the said plaintiff aginst the said defendant on which the said plaintiff seeks to recover under said counts against said defendant. Because he, the said defendant, says that the consideration of said note was not money ~~borrowed~~ loaned, of all which the said plaintiff then and there, to-wit: at the time and place of the assignment of said note as aforesaid, had due notice, and this the said defendant is ready to verify, &c.

The second additional plea is the same as the foregoing, except that it sets out the note according to its legal effect,
13 and not *in hæc verba*; and also contains an averment that the note was indorsed to plaintiff.

Replications.—June 29, 1863, the plaintiff filed the following replications to said additional pleas, to-wit:

14 1. "And now comes the said plaintiff by Jas. K. Edsall, his Attorney, and as to the 1st and 2d additional pleas of the said defendant, (filed June 26, 1863) and as to each of said pleas, says *precludi non* &c., because he says that the said note in said pleas mentioned was given for money loaned without this, that the consideration of said note was not money loaned, in manner and form as the said defendant has above thereof in his said pleas in that behalf alleged, and this the plaintiff prays may be inquired of by the country."

2. "And for a further replication to said 1st and 2d additional pleas, and as to each of them, the plaintiff, by leave of the Court first had and obtained, says *precludi non* &c., because he says, that he the said plaintiff at the said time when the said note was indorsed and assigned to him as aforesaid, did not have notice that the said note in the said pleas mentioned was not given for money loaned, in manner and form as the said defendant has above thereof in said pleas, and each of them, in that behalf alleged, and this the plaintiff prays may be inquired of by the country, &c."

To which replications the defendant added the *similiter*.

15 July 1, 1863, cause was submitted to the Court for trial, and a jury waived. The Court rendered judgment for
16 the plaintiff for $202,25, damages and costs of suit; and allowed the plaintiff thirty days from July 6, 1863, within which to file his Bill of Exceptions.

The Bill of Exceptions was filed July 21, 1863, which
17 shows that the plaintiff, to maintain the issues on his part, read in evidence upon the trial, a promissory note, together with the indorsements thereon in words and figures following:

"$400. Dixon, Ills., October 17th, 1855.

Two years after date, for value rec'd, we or either of us, promise to pay James Moore or order Four Hundred Dollars, with interest at ten per cent., interest to be paid annually.

(Signed) John H. Cropsey.
Cyrus Aldrich.

The defendant, by his counsel, claimed and insisted that the note upon its face was sufficient notice that the same was not given for money loaned.

The Court thereupon decided that the said note was sufficient notice to the plaintiff that the same was not given for money loaned; that the plaintiff could only be allowed interest upon the note at the rate of six per cent. per annum; to which decision of the Court the plaintiff, by his counsel, then and there excepted. Thereupon the Court rendered judgment for the plaintiff for the sum of $202,25, damages and costs of suit; to which the plaintiff, by his counsel then and there excepted.

The errors assigned are as follows:

21 First. The Court erred in sustaining the demurrer to the first count of the plaintiff's declaration.

Second. The Court erred in deciding that the note read in evidence was, upon its face, sufficient evidence of notice to the plaintiff, that the same was not given for money loaned.

Third. The Court erred in not allowing the plaintiff interest at the rate of ten per cent. per annum upon the said note, according to its tenor and effect.

Fourth. The Court erred in not rendering judgment for the plaintiff, below, for a greater sum than $202,25, damages.

JAMES K. EDSALL,
*Atty for Plff. in Error.*

92 23

Luke Hennessy
Plff in Error
vs
John H. Cropsey
Deft. in Error

Abstract

Filed April 26. 1865
L Leland Clk

Jas R. Edwards
for Plff in Error

(Page 1)

State of Illinois } Pleas in the Lee County
Lee County } ss Circuit Court in the Twenty
second Judicial Circuit of the State
of Illinois; in a certain matter lately pending
in said Court wherein Luke Hennessey was
Plaintiff and John H Cooley was Defendant
in an action of Trespass on the case on promises

Be it remembered that on the 28th
day of May AD 1863 the said Plaintiff by
Penny & Hoyt his Attorneys filed in the Office
of the Clerk of said Court his precipe directing
that a Summons should issue in said
cause, and thereupon a Summons was issued
in the words and figures that is to say:-

Summons

"State of Illinois } The People of the State of Illinois
"Lee County } ss to the Sheriff of said County Greeting
"We command you, that you summon John H Cooley
"if he shall 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 Dixon in said
"County on the fourth Monday of June AD 1863
"to answer unto Luke Hennessey in a plea
"of Trespass on the case on promises to the damage
"of said Plaintiff in the sum of Six Hundred
"Dollars. And have you then and there this writ with
"an endorsement thereon in what manner you shall

Issue executed the Summons

{ U. S. Court } Witness Benjamin F Shaw Clerk of our said Court and the Seal thereof at Dixon aforesaid this 28th day of May A D 1863.

{ Int Rev Stamp 50 cts }

Benjamin F Shaw Clerk
by Joseph Ball D. C. "

And the said Summons so issued as aforesaid was by the Sheriff of said Lee County returned endorsed as follows to wit:-

Sum issued in action

"State of Illinois } ss I have this 4th day of June A D 1863
" Lee County } duly served the within Summons
" by reading the same to, and in the presence and
" hearing of the within named defendant John H Bagley
" Fees-Service 50 G Flynn Sheriff -
" Mileage 5
" Return 10
" 65- "

And said Summons was further endorsed as follows to wit:- "Filed in the Circuit Court this
"23" day of June A D 1863.
" B F Shaw Clerk "

And the Declaration filed in said cause is in the words and figures as follows that is to say:-

Declaration

"State of Illinois } ss In the Circuit Court of
" Lee County } said Lee County, of the
" June Term A D 1863

3.

"In Re Hemenway, Plaintiff in this suit by Henry
" A Mix Attorney Complaining of John H Copley Defendant
" in this suit who was summoned &c of a plea
" of Trespass on the Case on Promises; for that the
" said Defendant heretofore to wit: on the Seventeenth
" day of October in the year of our Lord, one thousand
" eight hundred and fifty four at Dixon, to wit: in
" said County of Lee, made his certain promissory
" Note, together with one Cyrus Aldrich in writing
" bearing date the day and year aforesaid, and
" then and there delivered the same so made as aforesaid
" to James Moore in and by which said Note said
" Defendant by the name style and description of John
" H Copley promised to pay to the order of the said James
" Moore (under the name and style of James Moore) four
" Hundred Dollars with interest at ten per cent, interest
" to be paid annually, and due in two years after date
" (that is due in two years after the 17th day of October
" A D 1855) for value received which time of payment
" has long since elapsed. And the said James
" Moore to whom or to whose order said Note was
" payable aforesaid to wit: on the day and year
" aforesaid, at Dixon in Lee County aforesaid indorsed
" said Note in writing by which said indorsement
" the said James Moore then and there ordered the
" said Sum of Money in said note mentioned to
" be paid to said Smith and then and there
" delivered said Note so indorsed to said Smith by
" means whereof the said

" in such case made and provided the said
" Defendant then and there became liable to pay to
" said Plaintiff said sum of money mentioned in
" said Note, and being so liable in consideration
" thereof, then and there undertook and promised
" to pay the same to said Plaintiff, according to the
" tenor and effect of said Note, and the endorsement
" thereof, to wit at the place aforesaid.
" And for that whereas also the said Defendant
" afterwards to wit on the first day of January 1863
" in the year of Our Lord, one thousand eight hundred
" and sixty three, here at said County became and was
" indebted unto the said Plaintiff in a large sum of
" money to wit in the sum of Six Hundred Dollars
" for money before that time lent and advanced to said
" Defendant by said Plaintiff, at said Defendant's special
" instance and request, and also in the like sum for
" money before that time paid laid out, and expended
" for said Defendant by the said Plaintiff, at the
" like special instance and request of said Defendant;
" and in the like sum for money before that time had
" and received by said Defendant, to and for the use of
" said Plaintiff, and in the like sum for interest due
" from the said Defendant to the Plaintiff for and in
" respect of the Plaintiff having forborne and given
" day of payment of money due and owing from the
" Defendant to the Plaintiff at the Defendant's request
" for a long time elapsed, and also in like sum for
" goods, wares and merchandize, before that time

5.

sold and delivered by said Plaintiff to said Defendant at his like special instance and request; and also in the like sum for the labor, care and diligence of said Plaintiff done and performed by said Plaintiff for said Defendant and at the like instance and request of said Defendant; and also in the like sum then and there found to be due and owing to said Plaintiff on an account stated between them and being so indebted, said Defendant in consideration thereof then and there undertook and promised to pay said Plaintiff said several sums of money above mentioned when thereunto afterwards requested

Yet the said Defendant not regarding his said promises and undertaking but contriving & intending often requested so to do has not paid said Plaintiff any or either of said sums of money above mentioned or any part thereof but so to do has wholly neglected and refused, and still does neglect and refuse to the damage of said Plaintiff of Six Hundred Dollars and therefore he brings this suit &c

H A Mix
Plaintiffs Attorney

Copy of Instrument and Account sued on;

$400.00 Dexter Mo October 14th 1870

Two years after date for value rec'd I or we or either of us promise to pay James Olcott or order Four Hundred Dollars with interest at ten per cent. Interest to be paid annually

John H Crapsey
Lyman Hitchcock

8.

endorsed as follows to wit:

"Filed June 24th 1863

" B. F. Thayer Clk

" by Joseph Ball Dep "

9.

Said Defendants Demurrer

Defendant.

At a regular term of the Lee County Circuit Court, begun and holden at the court house in the city of Dixon, in said Lee county, on the Fourth Monday (the same being the 22nd day of June A. D. 1863,) then being present,

**Honorable** William W Heaton **Judge**

of the said 22nd Judicial Circuit.

David McCartney **State's Attorney**

for said 22nd Judicial Circuit.

Benjamin F Shaw **Clerk**

of said Lee County Circuit Court.

and Charles F Lynn **Sheriff**

of said Lee County.

**BE IT REMEMBERED**, that on the Twenty fourth day of June A. D. 1863, (the same being one of the regular days of said June Term,) the following proceedings were had in said cause, as appears to us of record, that is to say:

"Luther Hennessey } Assumpsit
vs
John H Brophey }

On this day comes the Plaintiff in this suit by Mix & Caldwell his attorneys also comes the Defendant by Gardner his attorney and the Defendants Demurrer to the first Count in the Declaration herein filed coming on to be heard is by the Court sustained"

And afterwards to wit on the Twenty fifth day of June A.D. 1863, (the same being as yet one of the regular days of the said June Term) the following proceedings were had in said cause as appears of Record that is to say:—

" Luke Hennessy }
" John H. Copley } Assumpsit

" On this day comes the Defendant by Goodwin his Attorney, and " moves for a more specific Bill of Particulars herein. "

And afterwards to wit on the 26th day of June A D 1863, the said Defendant filed in said cause his additional pleas, which said additional pleas are in the words and figures as follows to wit:-

"State of Illinois } ss Lee County Circuit Court
Lee County } June Term A D 1863

John H Copley
vs
Lewis Hennessy

And for a further plea to the said Plaintiffs Declaration by leave of the Court first had and obtained the said Defendant says Actio non because as to all the said promises & undertakings in the said Counts mentioned except as to the principal sum and six per cent interest thereon, now due upon or certain promissory note herein made & executed by the said defendant and one Cyrus Aldrich to one James Moore and by said Moore endorsed to and assigned to said Plaintiff which said note is in the words and figures as follows to wit:

$400.00 Dixon Ills October 14th 1855

Two years after date for value Rec'd we or either of us promise to pay James Moore or order Four Hundred Dollars at ten per

12.

cent Interest to be paid annually
John H Copley
Cyrus Aldrich ,

And is the only & sole defence of action of the said Plaintiff against the said defendant on which the said Plaintiff seeks to recover under said Counts against said Defendant. Because he the said defendant says that the consideration of said note was not money loaned, of all of which the said plaintiff then and there, to wit at the time and place of the beginning of said note as aforesaid had due notice. And this the said defendant is ready to verify &c

Geo L Goodwin
Defts Attorney

And for a further plea to the said Common Counts of said plaintiffs declaration by leave of the Court first had & obtained, the said defendant says actio non, as to all the said promises & undertakings in the said Count mentioned except as to the principal sum and six per cent interest thereon now due upon a certain promissory note heretofore made & executed by the said defendant and one Cyrus Aldrich to one James Reese and the seventeenth day of October AD 1855 at Dixon to wit at Dixon in said County of Lee in and by which said note the said defendant and the said Aldrich or either of them promised to pay, Two years after the date thereof

"the said James Moore or order Four Hundred
"Dollars with interest at ten per cent interest to
"be paid annually, and which said note was afterwards
"endorsed & assigned to said plaintiff because he says
"that said note is the only and sole cause of action
"of the said plaintiff against the said Defendants
"for which and upon which the said plaintiff
"asks or claims to recover against the said
"defendant under said counts, and that the
"consideration of said note was not money loaned
"all which the said plaintiff does now and there is ready
"at the time & place of the endorsement & assignment
"of said note as aforesaid had due notice
"and this the said defendant is ready to verify &c

"Geo S Yeomans
"Defts Atty "

And the said Amended pleas are endorsed to wit.

"Filed June 26th 1863 D F Shaw Clk
"Joseph Ball D C "

And afterwards to wit on the 29th day
June A D 1863 the said Plaintiff filed his
Replications to the said Additional pleas in
the words and figures as follows to wit:

"State of Illinois } Lee County Circuit Court
"Lee County } ss June Term A D 1863
"Luke Hennessey }
"John H Crafts } And now comes the

"said plaintiff by Jas H Edsall his attorney
"and as to the 1st & 2d additional pleas of the
"said Defendant (filed June 26 1863) & as to each
"of said pleas, says precludi non &c because he says
"that the said promissory note in the said pleas &
"mentioned were given for money loaned, without
"this that the consideration of the said note was not
"money loaned in manner & form as the said defendant
"hath above thereof in his said pleas in that behalf alleged
"& this the plaintiff prays may be inquired of by the
"Country -

"Dft doth the like
"Geo & Goodwin Dfts Atty -

"And for further replication to the said 1st & 2d additional
"pleas & as to each of them the plaintiff by leave of the
"Court first had and obtained says precludi non &c
"because he says that the the said plaintiff at the
"time when the said note was indorsed & assigned
"to him as aforesaid, did not have notice that the said
"note in said pleas mentioned, was not given for
"money loaned in manner & form as the said defendant
"has above thereof in said pleas and each of them in
"that behalf alleged & this the plaintiff prays may be
"inquired of by the Country &c

"Jas H Edsall Pffs Atty

"And Dft doth the like
"Geo & Goodwin Dfts Atty"

and the said Recognizors are bound as follows
to wit: " Felix June 29th 1863
" D. F. Shaw Clerk
" Joseph Ball. D.C. "

And afterwards to wit on the first day of July
A.D. 1863 (the same being as yet one of the
regular days of the said June Term of said Court)
the following proceedings were had in said cause as
appears of Record that is to say

" Luke Hennessy
" John E Cropsey } Assumpsit

" This day comes the
" Plaintiff by Reid & Edsall his attorneys, also comes
" the Defendant by Goodwin his attorney, and by
" agreement of Counsel in open Court the intervention
" of a Jury is waived and this cause is submitted
" to the Court for trial; and the Court after hearing
" the evidence, and the argument of Counsel finds
" the issues for the Plaintiff and assesses his Damages
" at Two Hundred & Two (202 25/100) & 25/100 Dollars.
" It is considered and adjudged by the Court that the
" Plaintiff have and recover of the Defendant
" the sum of Two Hundred and Two (202 25/100) 25/100 Dollars
" Damages so assessed as aforesaid, together with his
" costs and charges by him in and about this suit expended
" and that he have Execution therefor. "

And afterwards to wit on the sixth day of July AD 1863 the same being still one of the regular days of the said June Term of said Court the following order was made by said Court in said cause as appears to us of Record that is to say:-

Luke Hennessey } Assumpsit
vs
John H Copley }

It is now ordered that the Plaintiff have leave to file a Bill of Exceptions within thirty days from this date —"

And afterwards to wit on the 25th day of July AD 1863 the said Plaintiff filed in said cause his Bill of Exceptions in the words and figures as follows to wit:-

"State of Illinois }
Lee County } In the Lee County Circuit Court
of the June Term AD 1863

Luke Hennessey }
vs
John H Copley }

Be it remembered that on this Sixth day of July AD 1863 the same being one of the regular days of the said Term of the said Court this cause coming on to be heard by the

Cent. the intervention of said Jury having been
waived by the Counsel for the respective parties
and the Plaintiff to maintain the issues on
his part, read and gave in evidence a promissory
note together with the indorsements thereon in the
words & figures following to wit:-

"$400 00 Dixon Ills October 17th 1855

Two years after date for value rec'd we or
either of us promise to pay James Moore or order
Four Hundred Dollars with interest at ten
per cent Interest to be paid annually"

(Signed) "John H Cosgrey
Lyman Aldrich"

Indorsed as follows
"Pay to the order of L Hennessey
James Moore"

"$400 Rec'd on the within forty Dollars
amount of Interest due October 17th 1856"
(Signed) "L Hennessey"

"$440. Rec'd Dixon October 29th 1857 on the
within one hundred & forty dollars"
(Signed) "L Hennessey"

"Rec'd on the within Nov 9th 1859
One Hundred Dollars"
(Signed) "L Hennessey"

18.

"$20 - Recd on the within Twenty Dollars
Sept 17th 1858"
(Signed) "L. Y6"

Whereupon it was mutually admitted by the Counsel for the respective parties, Plaintiff and defendant for the purposes of the trial as follows to wit:-
1st - That the name of "John H Bopsey" signed as one of the makers of the said note, and also the name "James Moore" indorsed upon the back of said note are in the handwriting & are the genuine signatures of the said Defendant, and the said payees named in said note respectively -
2. That the consideration of said note was not for money loaned -
3 - The said payments so indorsed on said note were also admitted to have been made in pursuance of such endorsements -
The foregoing being all of the evidence produced to the Court & all of the admissions made by the respective parties upon the trial of said cause and upon which the said cause was submitted to the Court for decision -
The Plaintiff by his Counsel therefor claimed & insisted, that under the pleadings in the case inasmuch as there was no proof or admission to shew that the plaintiff had notice that the said note was not given for "money loaned" at the time, or before the same was so endorsed to said plaintiff; that notwithstanding the said note was

not in fact given for money loaned; yet the plaintiff being an innocent purchaser, without notice was entitled to be allowed the rate of interest expressed in said note, to wit ten per cent per annum.

The Defendant by his Counsel demurred and insisted that the note upon its face was sufficient notice to the plaintiff that it was not given for money loaned.

And the said Court then & there decided and gave its opinion that the said note was sufficient notice to the plaintiff that the same was not given for money loaned, that the Plaintiff could only be allowed interest upon the said note at the rate of six per cent per annum. And to which decision and opinion of the Court the plaintiff by his Counsel then and there excepted.

Whereupon the Court rendered judgement for the plaintiff for the sum of Two Hundred and Two $\frac{25}{100}$ Dollars ($202\frac{25}{100}$) & costs of suit, to which the plaintiff by his Counsel then and there excepted.

And because the exceptions aforesaid do not otherwise appear of record, thereon on the prayer of the said plaintiff by his said Counsel the said Circuit Judge of said Court hath to this Bill of Exceptions set his hand & seal the day & year first above written.

W W Boarman
Judge

And the said Bill of Exceptions is endorsed as follows to wit: " Filed July 28 1863
" B F Shaw Clerk "

State of Illinois }
Lee County } ss

I Benjamin F Shaw Clerk of the Circuit Court within and for said County in the State aforesaid, do hereby certify that the foregoing is a full, true, and complete, exemplification of all the proceedings of the Record in said cause, and the papers on file therein as appears by the Books and Files yet remaining in my Office

In Attestation of which I hereunto set my hand and the Seal of said Court at Dixon August Eighth A D 1863

Benjamin F. Shaw Clerk
by Joseph Ball D C

Pffs Cost $13.00
Defds Cost .60 } $14.60/100

Third Grand Division

Supreme Court of Illinois
in Error to Third Grand Division
April Term A.D. 1865

Luke Hennessey
Plaintiff in error
vs
John A Cropsey
Defft. in error

And now comes the said Luke Hennessey, the plaintiff in error, by Jas K Edsall his attorney & says that there is manifest error in the record and proceedings aforesaid in this to wit:

First: That the Court below erred in sustaining the demurrer to the first Count of the plaintiffs declaration:

Second: The Court erred in deciding that the note read in evidence upon its face was sufficient evidence of notice to the plaintiff that the same was not given for Money loaned

Third: The Court erred in not allowing the plaintiff interest at the rate of ten per cent per annum upon the said note according to its tenor & effect.

Fourth: The Cert erred in not rendering judgment for the plaintiff, below for a greater sum than $212.25/100 damages — And the plaintiff in error says that the judgment aforesaid for the errors aforesaid & other errors in the record & proceedings aforesaid being, may be reversed, set aside & held for nought — & that the said Court may be remanded to the Cert below for further proceedings according to law.

Jas. H. Eckels
Attorn Pl'ff in error

State of Illinois } ss
Third Grand Division }

Supreme Court
April Term A.D. 1865

John H. Caspary
Def't in Error
vs
Lake H. Conaway
Plain't in Error

And now comes the said John H. Caspary defendant in Error by George P. Bowdein his Attorney & says that there is no error in the record & proceedings aforesaid in manner & form as the plaintiff in error has above thereof in his assignment of errors alleged & therefore he prays that the said judgment may be affirmed & that his costs may be adjudged to him &

George P. Bowdein
Atty for Def't in error

92 — 23

Libbie Hemenway
Pltff in Error
v
John H Cropsey
Deft-in Error

Record

Filed March 16. 1865
L. Leland
Clerk

Fees due
Transcript
$6.00