

No. 12790

Supreme Court of Illinois

Moir et al

vs.

Harrington et al

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1859

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No.

12790

Revised

Major S. J. S.

Harrington et al
 Defts in Error
 "

Moir et al
 Defts in Error

Suggestions in behalf
 of Defts in Error

O. C. Skinner
 atty

Filed April 20, 1859
 G. Deland
 Clerk

State of Illinois }
Anderson County }

Shews before the Honorable John
S. Thompson Judge of the Tenth Judicial Circuit
of the State of Illinois, at a Special Term of the
Circuit Court of said County and State -
begun and held at the Court House in Quincy
on the third Monday of the Month of December
in the Year of our Lord one thousand Eight
hundred and fifty seven, it being the
twenty first day of said Month, in said
Year

Present Hon John S. Thompson Judge
James H. Steward State Atty
Wilson M. Graham Sheriff
Hugh L. Hanson Clerk

James Moir and
Robert Moir partners in trade
under the name firm and style of Haultoffs
Moir & Brothers

vs
William B. Hopkins
Benjamin Harrington
Stephen S. Phelps

Plaintiffs
Defendants

5270-1
Be it remembered that hereofore, to-wit: on
the 25th day of November A.D. 1857, the plaintiffs

by their attorney filed their Declaration in
said cause which reads in the words and
figures following to wit:

"State of Illinois } The Special Term of the Circuit
Haukeison County } Court of said County to be holden
on the third Monday of December
A.D. 1857

James Moir and Robert Moir partners in trade
under the name firm and style of Moir and
Brothers plaintiffs in this suit complains
of William B. Hopkins, Benjamin Harrington
+ Stephen S. Phelps defendants in this suit
who have been summoned to answer unto
said plaintiffs in a plea of Trespass on the
case on promises, For that whereas the said
William B. Hopkins, Benjamin Harrington
and Stephen S. Phelps by the said names of
Wm B. Hopkins, Benj. Harrington and S. S. Phelps
on the 17th day of November 1856 at Equana
to wit; at the County aforesaid made their
certain promissory Note in writing and
delivered the same to the said James Moir
and Robert Moir and thereby promised by
the names of Wm B. Hopkins Benj. Harrington
and S. S. Phelps ~~to the 17th day of Nov 1856~~
to pay to the said James Moir and Robert
Moir by the said name of their firm of

by their attorney filed their Declaration in
said cause which reads in the words and
figures following to wit:

"State of Illinois } The Special Term of the Circuit
Kendall County } Court of said County to be holden
on the third Monday of December
A.D. 1857

James Moir and Robert Moir partners in trade
under the name firm and style of Moir and
Brothers plaintiffs in this suit complains
of William B. Hopkins, Benjamin Harrington
+ Stephen S. Phelps defendants in this suit
who have been summoned to answer unto
said plaintiffs in a plea of Trespass on the
case on promises, For that whereas the said
William B. Hopkins, Benjamin Harrington
and Stephen S. Phelps by the said names of
Wm B. Hopkins, Benj. Harrington and S. S. Phelps
on the 17th day of November 1856 at Equana
to wit; at the County aforesaid made their
certain promissory Note in writing and
delivered the same to the said James Moir
and Robert Moir and thereby promised by
the names of Wm B. Hopkins Benj. Harrington
and S. S. Phelps ~~to the 17th day of Nov 1856~~
to pay to the said James Moir and Robert
Moir by the said name of their firm of

by their attorney filed their Declaration in
said cause which reads in the words and
figures following to wit:

State of Illinois } The Special Term of the Circuit
Kenderson County } Court of said County to be holden
on the third Monday of December
AD 1857

James Moir and Robert Moir partners in trade
under the name firm and style of Moir and
Brothers plaintiffs in this suit complains
of William B Hopkins, Benjamin Harrington
Stephen S Phelps defendants in this suit
who have been summoned to answer unto
said plaintiffs in a plea of Trespass on the
case on promises, For that whereas the said
William B Hopkins, Benjamin Harrington
and Stephen S Phelps by the said names of
Wm B Hopkins, Benj Harrington and S. S Phelps
on the 17th day of November 1856 at Aquanah
tourt; at the County aforesaid made their
certain promissory Note in writing and
delivered the same to the said James Moir
and Robert Moir and thereby promised by
the names of Wm B Hopkins Benj Harrington
and S. S Phelps ~~to the 17th day of Nov 1856~~
to pay to the said James Moir and Robert
Moir by the said name of their firm of

Moir & Brothers One thousand dollars in
Six Months after the date thereof which
period had elapsed before the commencement
of this suit, and the said William B Hopkins
Benjamin Harrington and Stephen S Phelps
by the said names of W B Hopkins Benj
Harrington and S. S. Phelps then and there
in consideration of the promises promised
to pay the amount of the said Note to the said
James Moir and Robert Moir by the said name
of the firm of Moir and Brothers according
to the tenor and effect thereof, And for that
Whereas the said defendant on the 1st day
of June AD 1857 at the County aforesaid was
indebted to the said plaintiffs in the sum
of Fifteen hundred dollars for money then
and there paid by the said plaintiffs for
the use of the said defendants at their request
and in the sum of fifty two hundred dollars
for money then and there received by the
said defendants for the use of the said plaintiffs
And in the sum of fifteen hundred dollars
for money found to be due from the said
defendants to the said plaintiffs on an account
then and there stated between them, And
Whereas the said defendants on the day
last aforesaid in consideration of the promises
then and there promised to pay the three
last mentioned several sums of money to the

said plaintiffs on request, Yet they have
disregarded their promises and have not met
with either of them nor any part thereof to
the damage of the said plaintiffs of fifteen
hundred dollars and thereupon they bring
suit &c By Bill Harris their attorney

\$1000⁰⁰ Oquawka Nov 17th 1856.
Six months after date we or either of us promise
to pay Main & Brothers or order One thousand
dollars for value received, Wm J Hopkins
Benj Hamington
S. E. Phelps

The foregoing is a copy of the promissory
Note upon which the suit aforesaid was
brought Bill Harris atty for Plffs therein

And afterwards, to wit; On the twenty first
day of December AD 1857, at a Special
term of the Court then holden, the court
caused a general order to be entered upon
the Records thereof, which reads in the
words and figures following, to wit;

"It is Ordered by the court that in all actions
on promissory notes, when pleas are filed
an affidavit must accompany the same
of the defendant or some one for him
that he has a good and sufficient defense

to the cause of action or a part thereof, And
in default of such affidavit, the pleas filed
will be stricken from the files and judgment
by default for the want of a plea entered.
And that such plea and affidavit must
be filed on or before the second day of the term.

And afterwards, during the same term of the
Court, to-wit: on the 22^d day of December, A.D.
1857, the defendants by their attorney filed
their pleas with an accompanying affidavit
which reads in the words and figures follow-
ing to-wit:

"State of Illinois. In Henderson Circuit Court
Henderson County. In December Term A.D. 1857

Stephen L. Phelps
Wm. J. Hopkins &
Benjamin Harrington
vs
James Moir & Robert Moir

And the said
defendants came and defend the wrong
and injury when to say that they did
not undertake and promise as in said
Declaration alleged And of this they
put themselves upon the Country

Shant & Harding Attys for
defendants

And said plaintiffs doth the like

C. M. Mann's atty for said plaintiffs

- 2 And for a further plea in this behalf the said defendants say, Acted Upon & because they say that the said Note was given for the sole and only consideration of the sum of One thousand dollars loaned to the defendants Hopkins & Hamington on the 17th day of November A.D. 1856, and that the defendant Stephen S. Phelps only signed said Note as security & received no part of the consideration therefor; that at the time of making said loan and Note, the said plaintiffs contracted to and with the said Hopkins & Hamington corruptly and against the Statute to receive for the loan of said money & the forbearance thereof for the term of six months from that date, interest on said sum to the amount of One hundred dollars, which was deducted from the One thousand dollars so loaned which exceeds the rate of ten per cent per annum interest on said sum so loaned; That at the expiration of said said six months the said plaintiffs and said defendants Hopkins and Hamington corruptly & against the Statute &c contracted that

the plaintiffs should receive and did
receive the sum of one hundred dollars
for the renewal and forbearance of said
loan for a further term of six months,
which exceeds the legal amount of interest
on the said sum at the rate of ten per cent
and the defendants are that the said
several sums of interest so usuriously &
corruptly contracted for were paid by the
said defendants to said plaintiffs, And
defendants are that the one thousand
dollars described in said Note, and which
the same is conditioned to pay is the same
principal sum so loaned to said Hopkins
& Harrington, And the said several contracts
were made in Henderson County Illinois
And so the defendants say the said plaintiffs
have corruptly and against the Statute con-
tracted to receive a greater ~~and more~~ rate
of interest than ten per centum per annum
upon the principal sum of one thousand
dollars described in said Note, wherefore
he says the plaintiffs have forfeited the
whole of said interest so contracted to
be received and this they are ready to
verify &c

Stewart & Harding attys for
Depts

The State of Illinois } Henderson County, Circuit
Henderson County } Court Special Dec Term 1857

James & Robert Meir }

v.

Wm B Hopkins }

Benj. Hamington & }

Stephen S. Phelps }

Wm B Hopkins one of
the defendants being duly sworn says that
he believes the defendants have a
veracious defense to the above action
Subscribed & sworn to } Wm B Hopkins
this 22^d day of Decr }
A.D. 1857, H. L. Thompson Clk }

And afterwards, to-wit: on the 30th day of
December A.D. 1857, the plaintiffs filed their
demurrer to the defendants 2^d plea, which
reads in the words and figures following
to-wit:

"State of Illinois } Special December Term
Henderson County } A.D. 1857, of the Circuit Court
of said County,
James Meir & Robert Meir partners }
in trade under the names }
firm and style of }

Moir & Brothers

or

William B. Hopkins

Benjamin Hamington and

Stephen S. Phelps

Trustees of the

on promises

And said plaintiffs as
to said plea of said defendants by their
secondly above pleaded say that the same
and the matters therein pleaded contained
in manner and form as the same are
above pleaded and set forth are not in law
sufficient to bar or to preclude them said
plaintiffs from having or maintaining their
aforesaid action thereof against them
said defendants, and that said plaintiffs
are not by law bound to answer the same
And thus the said plaintiffs are ready
to verify whereupon by reason of the in-
sufficiency of said plea in this behalf
said plaintiffs pray Judgment &c
And said plaintiffs according to the
Statute in such cases made and provided
state and show to the Court here the
following causes of Demurrer that said
plea is double in stating two alleged
grounds of defense

By C. M. Davis their atty

And afterwards, to wit: on the 30th day
of December AD 1857, the Court caused the
following order to be entered of Record
in said cause in the words and figures
following to wit:

"James Moir &
Robert Moir

vs

William B Hopkins Etal

} Assumpsit

This day came the
plaintiffs by their attorney and filed their
Demurrer to the defendants 2^d plea, And
after hearing the argument of course thereon
and being sufficiently of and concerning
the premises it is ordered by the Court that
the Demurrer be sustained"

And afterwards on the same day, to wit:
the 30th day of December AD 1857, the Court
made an order in the words and figures
following, to wit,

James Moir & Robert Moir
partners in trade under the
name firm & style of
Moir & Brothers

vs

William B Hopkins

} Assumpsit

Benjamin Harrington }
Stephen S. Phelps }

This day came the parties and their attorneys and issue being joined dispense with a jury and for trial put themselves upon the court after hearing the evidence the court finds the issues for the plaintiffs, ~~thereupon~~ ~~the defendants~~ ~~and~~ ~~then~~ ~~the court~~ and assesses their damage at the sum of One thousand and thirty seven dollars and fifty cents, thereupon came the defendants by their attorney and move the court for a new trial herein, after being addressed of and concerning the premises it is ordered by the court that the motion be overruled thereupon it is considered by the court that the plaintiffs have and recover of the said defendants the sum of One thousand and thirty seven dollars and fifty cents the amount of their damages as found by the court together with their costs by them in this suit expended, thereupon come the defendants by their counsel and pray the court for an appeal to the Supreme Court, thereupon it is ordered by the court that an appeal be allowed upon the said defendants entering into bond with security in the penal sum

of Two thousand Dollars to be approved
by the clerk of this court said Bond to be
filed within thirty days, and bill of
exceptions to be filed within thirty days

And afterwards, to wit: on the 25th day of
January AD 1858 the defendants filed their
Bond which reads in the words and figures
following, to wit:

"Know all men by these presents, that we
William B. Hopkins and Benjamin Hamington
and Stephen S. Phelps, ^{as principals and petitioners} as security are held
and firmly bound unto James Moir and
Robert Moir in the special sum of Two thousand
dollars for the payment of which well and
truly to be made we bind ourselves our
heirs Executors and administrators jointly
and severally firmly by these presents, Given
under our hands & seals this 25th day of
January AD 1858. The condition of the
above obligation is such that Whereas on
the 31st day of December AD 1857 James
Moir & Robert Moir recovered a judgment
against William B. Hopkins, Benjamin
Hamington and Stephen S. Phelps in the
Circuit Court of Henderson County Miss.
in a suit brought by the said James Moir

and Robert Moir against the said William
B Hopkins, Benjamin Hamington and
Stephen S. Phelps for the sum of five thousand
and thirty seven ⁵⁰ dollars and costs
of suit from which Judgment the said
William B Hopkins, Benjamin Hamington
and Stephen S. Phelps appealed to the
Supreme Court of the State of Illinois
Now if the said William B Hopkins
Benjamin Hamington and Stephen S. Phelps
shall pay the Judgment costs, interest,
and damages in case the said Judgment
shall be affirmed and shall duly pro-
-ceeds said appeal with effect, then this
obligation to be void, otherwise to remain
in full force and effect

Taken and entered into } Wm B Hopkins (Seal)
before me at my office } Benj Hamington (Seal)
and the security approved } Stephen S. Phelps (Seal)
by me this 25th day of } A. S. Phelps (Seal)
January A D 1858
Hugh L Thompson (Seal)

State of Illinois
Henderson County

I, Hugh L. Thompson
Clerk of the Circuit Court within and
for the County and State aforesaid do
hereby certify that the foregoing is a
true full and correct copy of the Record
in in said cause, as appears to me from
the Records on file in my office

In Testimony Whereof I have
hereunto set my hand and do
affixed the Seal of said Court
at Quincy Ill this 9th day of
February A.D. 1858.

Hugh L. Thompson Clerk

James Mott et al

Benjamin Huntington et al

~~The defendants~~ appellants
by their attorneys, come and aver
that in the decision here made
there is manifest & manifest error
and assign the following causes
of error -

1. The court erred in -

Sustaining the demurrer to
Defendants' second plea.

2 The court directed its
reversing judgment for the
Plaintiffs

Wherefore the Defendants
pray that said judgment be
reversed

Pringle V Harding
for Defendants

And now comes the defense
cloves in error and for
joinder in error say that
there is no error in the
record & proceedings, affirmed
Wherefore they pray that said
the same be in all things

affirmed &c

W. H. Keiser
Att'y for deft in error

Joinder in Error

Filed May 14, 1888

W. H. Keiser
Att'y

~~184~~ 66
James Allen & Co
~~302~~ in ~~184~~

Benjamin Harrington
of Cal

Record

Filed April 21st 1858
S. Leland
clerk

Filed April 28th 1858
S. Leland
clerk

no 66)

The Plea is legally and technically a good plea in Bar to the recovery of any interest on the Note — and the Verdict to the same was improperly Sustained

Purple for Oppellout

Moir & Otten
vs. Co.

Wm. B. Hopkins
vs. Otten

Argument

A. M. Pople

Filed April 22, 1859

L. Leland
Clerk

JAMES MOIR, *Et. al.* }
vs. } SUPREME COURT OF ILLINOIS,
BENJAMIN HARRINGTON, *Et. al.* } THIRD GRAND DIVISION,
APRIL TERM, A. D. 1858.

APPEAL FROM HENDERSON.

This was an action of assumpsit brought on a promissory note made by defendants.

Declaration filed 25th November, 1857, containing special and common counts.

Defendant filed two pleas. The first was the general issue. The second plea set up, "that the said note was given for the sole and only consideration of the sum of \$1000, loaned to two of defendants, Hopkins & Harrington, on November 17, 1856, and that the other defendant, Phelps, signed the same as security without other consideration, that at the time of making the note and loan, the plaintiff corruptly contracted with Hopkins & Harrington to receive interest for the loan and forbearance of said money, for six months from date of said note to the amount of one hundred dollars, which was deducted from the \$1000 so loaned, which exceeds ten per cent. per annum interest on the sum loaned; that at the expiration of said six months the plaintiffs and said defendants corruptly contracted that the plaintiffs should receive \$100 interest for the loan and forbearance of said sum so loaned, for a further period of six months, which exceeds the legal rate of interest at ten per cent. for said time; that the plaintiffs received the said sums of usurious interest and the same were paid them by defendants; that the \$1000 described in said note which said note was conditioned to pay, is the same principal sum so loaned, wherefore the defendants aver that the plaintiffs have forfeited the whole of said interest so contracted to be received and received.

Plaintiffs demurred to the second plea, and for special cause of demurrer set out that the plea is double.

Demurrer was sustained, trial had, and judgment was rendered for the plaintiffs for the amount of the note and interest.

Defendants prayed an appeal, which was allowed.

PURPLE & HARDING,
Attorneys for Appellants

JAMES MOIR, *et. al.*, }
vs. }
BENJAMIN HARRINGTON, *et. al.* }

The appellants by their attorneys come and aver that in said record of said case there is manifest and manifold error, and assign the following causes:

1. The court erred in sustaining the demurrer to defendants' second plea.
2. The court erred in rendering judgment for the plaintiffs.

Wherefore the appellants pray that said judgment be reversed.

PURPLE & HARDING, *for Appellants.*

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James M. Wal

vs

Stephen

Benjamin Harrington

Filed April 26, 1838

L. S. Church

Clk

Superior Court

April Term 1859

No. 66.

Harrington & others
Plffs in Error

Moir & others
Defts in Error

Suggestions for Defts in error -

The error complained of in this case
is in sustaining Defts Demurrer to
Plffs second Plea.

The Demurrer was both general & Special -

Said Plea is a plea of money in
loan of money - and is bad for the
following reasons.

1st Said Plea sets out two distinct
contracts of loaning - and the Demurrer
therein for duplicity was properly sustained.

2^d Said Plea does not show the
amount of illegal interest received.

3^d Said Plea commences & concludes

as a plan to the whole action,
while it in fact, avenges but a
part, - and there is no Plan to
the residue, -

We submit, that the foregoing propo-
sitions are too familiar to require
reference to authorities -

The judgment now should be
affirmed -

O. C. Skinner
for Deft in Error.

APPEAL FROM HENDERSON.

This was an action of assumpsit brought on a promissory note made by defendants.

Declaration filed 25th November, 1857, containing special and common counts.

Defendant filed two pleas. The first was the general issue. The second plea set up, "that the said note was given for the sole and only consideration of the sum of \$1000, loaned to two of defendants, Hopkins & Harrington, on November 17, 1856, and that the other defendant, Phelps, signed the same as security without other consideration, that at the time of making the note and loan, the plaintiff corruptly contracted with Hopkins & Harrington to receive interest for the loan and forbearance of said money, for six months from date of said note to the amount of one hundred dollars, which was deducted from the \$1000 so loaned, which exceeds ten per cent. per annum interest on the sum loaned; that at the expiration of said six months the plaintiffs and said defendants corruptly contracted that the plaintiffs should receive 100 interest for the loan and forbearance of said sum so loaned, for a further period of six months, which exceeds the legal rate of interest at ten per cent. for said time; that the plaintiffs received the said sums of usurious interest and the same were paid them by defendants; that the \$1000 described in said note which said note was conditioned to pay, is the same principal sum so loaned, wherefore the defendants aver that the plaintiffs have forfeited the whole of said interest so contracted to be received and received.

Plaintiffs demurred to the second plea, and for special cause of demurrer set out that the plea is double.

Demurrer was sustained, trial had, and judgment was rendered for the plaintiffs for the amount of the note and interest.

Defendants prayed an appeal, which was allowed.

PURPLE & HARDING,
Attorneys for Appellants

JAMES MOIR, <i>et. al.</i> , <i>vs.</i> BENJAMIN HARRINGTON, <i>et. al.</i>	}
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The appellants by their attorneys come and aver that in said record of said case there is manifest and manifold error, and assign the following causes:

1. The court erred in sustaining the demurrer to defendants' second plea.
2. The court erred in rendering judgment for the plaintiffs.

Wherefore the appellants pray that said judgment be reversed.

PURPLE & HARDING, *for Appellants.*

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Harrington

Filed Apr 26. 1838

A. S. Leonard
Clerk

Prepared