No. 13318

Supreme Court of Illinois

Pe~~x~~lty, for use

vs.

Corbett

71641 7

1

Be it remembered that on the 27th day of July A.D. 1858 came into the office of the Clerk of the Circuit Court within and for the County of Bureau and State of Illinois John T. Petty for the use of James P. Martin by Taylor and Phelps his attorneys and filed his Praecipe for summons herein which is in the words and figures following to wit

State of Illinois } ss In Circuit Court
Bureau County } September Term A.D. 1858

John T. Petty for the use of James Martin
vs
James Corbett and Charles L. Kelsey
} Trespass on the case upon promises Damages $400,00

The Clerk of said Court will please issue summons in the above entitled cause against the above defendants. lay the action Trespass on the case upon promises and the Plaintiffs damages at Four hundred dollars
Princeton July 27th 1858

Taylor & Phelps for Plff

And on the same day process of summons issued out of the Office of the Clerk of said Circuit Court which summons is in the words and figures following to wit

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State of Illinois } The people of the State of Illinois
Bureau County } ss To the Sheriff of said County Greeting

We command you that you summon. James Corbett and Charles E. Kelsey if they shall be found in your County personally to be and appear before the said Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in the Town of Princeton in said County on the first monday in the month of September next to answer unto John T. Petty for the use of James Martin of a plea of trespass on the case upon promises to the damage of the said plaintiff as he says in the sum of Four hundred dollars and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same

Witness Edward M. Fisher Clerk of our said Circuit Court and the seal thereof at Princeton in said County this 27th day of July in the Year of our Lord one thousand eight hundred and fifty eight

(Seal)

Edward M. Fisher Clerk
per Wm Hall Jenkins Dep Clk

Upon which summons the Sheriff of said County made the following endorsement to wit

' I served the within writ by reading to James Corbett & Charles E. Kelsey this 17th day of August

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A.D. 1858

Y. K. Waldron Sheriff
By James Wharton Dep.

And on the 28th day of August came the said plaintiff by his attorneys aforesaid and filed his declaration and copy of note by him then and there declared upon which are in the words and figures following to wit

State of Illinois } In Circuit Court of said County
Bureau County } ss. September Term A.D. 1858

John P. Petty plaintiff who sues for the use of James Martin by Taylor & Phelps his attorneys complains of James Corbett and Charles L. Kelsey defendants in a plea of Trespass on the case upon promises for that whereas the said defendants on the twenty ninth day of April in the year of our Lord One thousand Eight hundred and fifty six at Princeton in the County of Bureau and State of Illinois made their promissory note in writing bearing date on that day and delivered the same to the plaintiff and thereby they the said James Corbett & Charles L. Kelsey (the said Charles L. Kelsey by and under the name of C. L. Kelsey) six months after the date thereof jointly and severally promised to pay the plaintiff or order the sum of Five hundred dollars for value received

with interest from date at ten per cent per annum which period hath now elapsed and the said defendants (the said Charles L. Kelsey by and under the name of C. L. Kelsey) then and there in consideration of the premises promised to pay the amount of the said note and interest to the said plaintiff according to the tenor & effect of the said promissory note, Yet the said defendants have disregarded their promises and have not nor hath either of them paid the said sum of money & interest or any part thereof to the damage of the plaintiff of Four hundred dollars and thereupon he brings his suit &c.

Taylor & Phelps for pltff

Copy of the note sued on in the foregoing declaration

Six months after date I promise to pay to John T. Petty or order five hundred dollars with interest at ten per cent from date for value received

Princeton April 29th 1856

James Corlett
C. L. Kelsey (surty)

Copies of the endorsements on the back of said note

1 Recd Int in full up to Oct. 29th 1856. John T. Petty
2 May 1st 1857 Received int in full up to April 29th 1857. John T. Petty
3 Pd int up to July 29th 57 John T. Petty
4 Recd Sept. 29th 1857 on the within three hundred dollars. John T. Petty
5 Recd Int in full up to Sept. 29th 1857 John T. Petty

Pleas before the Honorable Martin Ballou Judge of the twenty third Judicial Circuit of the State of Illinois at a term of said Circuit Court begun and held at the Court House in Princeton within and for the County of Bureau in said State on monday the sixth day of September in the Year of our Lord one thousand eight hundred and fifty eight

Present Hon. Martin Ballou Judge
Edward M. Fisher Clerk
Y. K. Waldron Sheriff
George W. Stipp states attorney

John T. Pitty for the use of James Martin vs James Corbett and Charles L. Kelsey	assumpsit	To wit on the 7th day of Sept. being the 2nd day of said Term

Now comes the defendants by Peters & Farwell their attorneys and file their demurrer as follows to wit

John T. Pitty vs asst. James Corbett & Charles L. Kelsey	Circuit Court of Bureau Co. Ills Sept. T. 1858

And the said deft. Kelsey comes and defends when &c and says the said declaration and the matters therein contained are insufficient in law and the said deft. is not

bound to answer the same and this he the said deft. is ready to verify wherefore he prays judgment &c.

Peters Farwell
attys for deft.

which is sustained by the court
Whereupon on motion of Taylor attorney for plaintiff, leave is given said Plaintiff to file his amended declaration herein, and the said plaintiff by his attorney aforesaid files his amended declaration herein which is in the words and figures following to wit

State of Illinois } In Circuit Court of said County
Bureau County } ss September Term A.D. 1858

John S. Petty who sues for the use of James Martin by Taylor & Phelps his attorneys complains of James Corbett & Charles L. Kelsey defendants in a plea of Trespass on the case upon promises, for that whereas the said defendants on the twenty ninth day of April in the Year of our Lord One thousand eight hundred & Fifty six at Princeton in the County of Bureau and State of Illinois made their promissory note in writing bearing date on that day and delivered the same to the plaintiff and thereby they the said James Corbett and Charles L. Kelsey (the said Charles L. Kelsey by and under the name of C. L. Kelsey) six months after the date thereof, jointly and severally promised to pay to the plaintiff

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or order the sum of Five hundred dollars for value received. with interest from date at ten per cent per annum which period hath now elapsed and the said defendants (the said Charles L. Nelsey by and under the name of C. L. Nelsey) then and there in consideration of the premises promised to pay the amount of the said note and interest to the said plaintiff according to the tenor and effect of the said promissory note. Yet the said defendants have disregarded their promises, and have not, nor hath either of them paid the said sum of money & interest or any part thereof to the damage of the Plaintiff of Four hundred dollars and thereupon he brings his suit &c.

Taylor & Phelps for pltff.

Copy of note sued on in the foregoing narration

Six months after date I promise to pay to John J. Petty or order five hundred dollars with interest at ten per cent from date for value received

Princeton April 29th 1856

James Corbett

C. L. Nelsey (surety)

Copies of the endorsements on the back of said note

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2 May 1st 1857 Received Int. in full up to April 29th 1857 John J. Petty

3 Pd int up to July 29th 57 John J. Petty

4 Rec'd Sept. 29th 1857 on the within three hundred dollars. John J. Petty

5 Rec'd Int in full up to Sept. 29th 1857 John J. Petty

Pleas before the Honorable Martin Ballou Judge of the twenty third Judicial Circuit of the State of Illinois at the January Term of said Court begun and held at the Court House in Princeton in the County of Bureau and State of Illinois on Monday the third day of January in the Year of our Lord one thousand eight hundred and fifty ~~eight~~ nine

Present Hon. Martin Ballou Judge
E. M. Fisher Clerk
D. E. Norton Sheriff
Geo. W. Stipp States atty

John T. Petty for the use of James Martin vs James Corbett and Charles C. Kelsey	assumpsit	To wit on the first day of said Term

Now comes the defendants by Peters their attorney and file their plea herein in the words and figures following to wit;

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John T. Pilly for the use of Martin vs asst James Corbett & Charles L. Nelsey

Circuit Court
Bureau Co. Ills
Jany. T 1859

And the said defendants come and defend the wrong & injury when &c. and says they did not undertake and promise in manner and form as the said plaintiff hath above complained against him and of this the said defendants put themselves upon the Country and the plaintiff doth the like

Taylor & Phelps for Plf

2d And for a further plea in this behalf as to one hundred and twenty dollars part of the money claimed in said declaration the said defendants says actio non because they say that when said note was given to wit on the date thereof that twenty five dollars usury was included ~~included~~ in said note that is ten per cent interest for six months in addition to the ten per cent interest which the note is made to draw upon its face and that in addition said plaintiff has charged these defendants twenty per cent in said note up to the present time that as the defts made payment

the said plaintiff illegally applied such payment in satisfaction of said twenty per cent interest and only the balance of the amounts paid was applied towards the principal of said note if any & this the said defts is ready to verify wherefore they pray Judgment &c.

Peters & Farwell
Defts attys

Affidavit of Charles L. Kelsey
Copy

John F. Petty
vs
James Corbett & C. L. Kelsey } Circuit Court Bureau Co. Ills Jany. 3. 1859

State of Illinois
Bureau County } SS.

C. L. Kelsey being duly affirmed says that he expects & fully believes that the said defts can prove the allegations of their 2nd plea herein filed

Subscribed and affirmed to before me by the said Charles L. Kelsey this 3rd day of January 1859
Joseph P. Williams J.P. Seal } Charles L. Kelsey

John T. Petty for the use of James Martin vs James Corbett and Charles L. Kelsey	assumpsit	To wit on the 8th day of Jany. being the 6th day of said Term

Now comes the plaintiff by his said attorney and files his demurrer to said defendants second plea in the words and figures following to wit

State of Illinois } ss In Circuit Court
Bureau County } January Term 1859

John T. Petty for use of James Martin
vs
James Corbett & Charles L. Kelsey

And the plaintiff by Taylor & Phelps his attorneys comes and says that by reason of any thing alledged in the 2nd Plea of the defendants by them secondly above pleaded, the plaintiff ought not to be barred from having his aforesaid action against said defendants for the whole amount claimed by the plaintiff in his declaration aforesaid because he says that the said second plea & the matters therein alledged are insufficient in law to bar the plaintiff from maintaining his aforesaid action for the whole amount of money claimed in his said declaration

and that he is not bound by law to reply to said second plea whereupon he prays judgment &c
The said Plaintiff makes his demurrer general & Special and for Special demurrer assigns the following causes
1st That said plea is Double
2nd That said plea professes to be a plea of usury sets up partly a usurious defense and partly a defence of payments made by defendants upon the principal of said note
3rd That the matters pleaded in said 2d plea are distinct & different & cant be pleaded in the same plea

Taylor & Phelps attys for Pltf

And the defendants come by Peters & Farwell their attorneys and confess said demurrer & leave is given said defendants to amend their second plea.
And the said defendants by their attorneys aforesaid comes and files their amended second & third additional pleas in the words and figures following to wit

John T. Petty
vs
Jas. Corbett &
Charles L. Kelsey
ass't.

Circuit Court
Bureau County Ills
To the Sumy. T. 1859

1 And the said defendants say as to twenty five dollars part of the money claimed in said declaration, the said defendants say actio non because

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he says that the said twenty five dollars is usurious. that the said twenty five dollars is included in the principal of said note, and was agreed to be given by defendants for the use of four hundred and seventy five dollars loaned by the plaintiff to the defendant Corbett at the date of said note and for which said note was given and is in addition to the ten per cent interest which the said note draws upon its face and this the said defendants is ready to verify. wherefore he prays Judgment &c.

3 And for a further plea in this behalf as to two hundred dollars part of the money claimed in said declaration the said defendants say actio non, because they say that before the commencement of this suit at said County, they paid the said plaintiff two hundred dollars upon the said note and this the said defendants are ready to verify, wherefore they pray Judgment &c.

Peters & Farwell
Defts. attys

To wit on the 12th day of said Term.

John J. Petty for the use of James Martin
vs
James Corbett and Charles L. Kelsey
} assumpsit

Now come the defendants by Peters & Farwell their attorneys and by leave of

the Court place on file their fourth and fifth additional pleas herein which are in the words and figures following to wit

John T. Petty for the use of James Martin vs asst James Corbett and Charles L. Kelsey	Circuit Court Bureau County Ills To the Jany Term A. D 1859

4 And for a further plea in this behalf, as to one hundred dollars part of the moneys sued for in said declaration the said defts say actio non because they say that one of said defendants to wit James Corbett has paid since the making of the note sued upon to the ~~said plaintiff~~ one hundred dollars for the forbearance of the monies in said declaration mentioned in addition to the ten per cent interest which said note is drawing upon its face which said one hundred dollars so paid was usurious, and which amount the said defendants are entitled to have applied upon said note as a payment and extinguishment of the same to that extent and this the said defendants are ready to verify. wherefore the said defendants pray judgment as to said one hundred dollars &c

Peters & Farwell
Attys for defts

5 And for a further plea as to said one hundred dollars defts say actio non because they say that they have as stated in their 3rd additional plea paid plaintiff one hundred dollars in usurious interest and that they are entitled to have the same set off upon the demand of the said Plaintiff sued upon and this they are ready to verify wherefore they pray judgment &c.

Peters & Farwell
Defts attys

John T. Petty for the use of James Martin vs James Corbett & Charles L. Kelsey	assumpsit	To wit on the 17th day of January being the 13th day of said Term

Now comes the plaintiff by Taylor his attorney and files his replications to said defendants amended second and third pleas and demurrer to said fourth and fifth Pleas in the words and figures following to wit

Replication to 2nd amended plea

State of Illinois } ss In Circuit Court
Bureau County } January Term 1859

John T. Petty for use of James Martin
vs
James Corbett & Charles L. Kelsey

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action against the said defendants for the amount claimed in his declaration because he says it is not true as in the said plea alledged that the said defendants paid to the plaintiff Two hundred dollars upon the said note and of this he puts himself upon the Country

Taylor & Phelps for Plff.

and the defendants doth the like

T. & T. for defts

Demurrer to 4 & 5th pleas of defts

State of Illinois } ss In Circuit Court
Bureau County } January Term 1859

John T. Petty
vs
James Corbett & Charles L. Kelsey

And the Plaintiff by Taylor & Phelps his attorneys comes and says that by reason of any thing in the third & fourth pleas of the defendants by them thirdly above pleaded the plaintiff ought not to be barred from having his aforesaid action for the whole amount of money claimed in the plaintiffs declaration because he says that said 4th & 5th pleas are insufficient in law to bar the said plaintiff and that he is not bound by law to answer the same wherefore he prays judgment &c.

Taylor & Phelps for Pl

And the said defendants say that the said 4 & 5th pleas are sufficient in law and this the said defts are ready to verify wherefore they pray Judgment &c

Peters & Farwell Attys for Defts

John T. Petty for the use of James Martin vs James Corbett and Charles L. Kelsey	assumpsit	To wit on the 18th day of said Term

Now comes the parties by their attorneys aforesaid and the Court considers that plaintiffs demurrer to defendants fourth and fifth pleas be overruled

Pleas before the Hon. M. E. Hollister Judge of the ninth judicial Circuit of the State of Illinois at the March Term of the said Circuit Court in and for the County of Bureau begun and held at the Court House in Princeton in said County on the second monday in the month of March in the Year of our Lord one thousand eight hundred and fifty nine

Present Hon. M. E. Hollister Judge
E. M. Fisher Clerk
D. E. Norton Sheriff
Mr Bushnell states attorney

John T. Petty for the use of James Martin vs James Corbett & C. L. Kelsey	assumpsit	To wit on the 1st day of March being the 5th day of said term

Now comes the plaintiff

by Taylor his attorney and files his replication to the defendants fourth plea herein pleaded in the words and figures following to wit

State of Illinois } ss. In Circuit Court
Bureau County } March Term 1859

John T. Petty for use
of James Martin
vs
James Corbett and
Charles G. Stelsey

And the plaintiff by Taylor & Phelps his attorneys comes and says that by reason of anything in the 4th Plea of the defendants alledged he ought not to be barred from having or maintaining his aforesaid action against the said defendants for the amount claimed in his declaration because he says that it is not true as in the said fourth plea alledged that the said James Corbett paid to the plaintiff one hundred dollars to be applied upon the promissory note in the plaintiffs declaration mentioned or any other sum and this he prays may be enquired of by the Country

Taylor & Phelps attys for Plff

John T. Petty for the use of James Martin
vs
James Corbett and Chas. L. Kelsey
assumpsit
To wit on the 17th day of March being the sixth day of said Term

This day this cause being called the plaintiff comes by Taylor his attorney and the defendants come by Peters & Farwell their attorneys and by agreement of said parties a Jury is waived and this cause is submitted to the Court for trial, and the Court finds for the plaintiff and assesses his damages at the sum of one hundred and forty four dollars and three cents. It is therefore considered by the Court that the plaintiff have and recover of the said defendants the said sum of one hundred and forty four dollars and three cents his said damages together with all his cost and charges in and about his suit in this behalf expended and that he have an execution therefor

John T. Petty for the use of James Martin
vs
James Corbett & Charles L. Kelsey
assumpsit
To wit on the 17th day of said Term

Now come the said defendants by Peters and Farwell their attorneys and

prays an appeal herein to the Supreme Court and presents his appeal bond herein with James S. Everett as his security which is approved by the Court and ordered to be filed and said appeal is thereupon allowed

Copy of Appeal Bond

Know all men by these presents that we James Corbett and Charles L. Kelsey and James S Everett of the County of Bureau and State of Illinois are held and firmly bound unto John T. Petty for the use of James Martin, also of the same County and State in the penal sum of three hundred dollars current money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents. Witness our hands and seals this First day of April A.D 1859 The condition of the above obligation is such that whereas the said John T. Petty for the use of James Martin did on the nineteenth day of March A.D 1859 in the Circuit Court in and for the County and State aforesaid recover a judgment against the above bounden James Corbett and Charles L. Kelsey for the sum of one hundred and forty four dollars and three cents debt and costs from which said judgment of the said Circuit Court the said James Corbett and Charles L. Kelsey have prayed for and obtained an

appeal to the Supreme Court of said State
Now if the said James Corbett and Charles L. Kelsey shall duly prosecute their said appeal with effect and shall moreover pay the amount of the judgment costs interest and damages rendered and to be rendered against them in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue

approved — James Corbett (Seal)
M. E. Hollister — Charles L. Kelsey (Seal)
Judge — James S. Everett (Seal)

State of Illinois }
Bureau County } ss.

I Edward M. Fisher Clerk of the Circuit Court within and for the County of Bureau in the State of Illinois do hereby certify that the above and forgoing is a true and perfect copy of all the proceedings in the above entitled cause as the same appears on file and of record in my Office

In testimony whereof I have hereunto set my hand and affixed the the seal of said Court at Princeton this 9th day of April A.D. 1858

Edward M Fisher Clerk
by Wm Hall Jenkins Dep Clk

Fees for Transcript, Cost &c $6.25. paid by Plff.

John T. Petty for use of
No 325 James Martin
vs
Chas L.
for Corbett & Kelsey
vs
John T. Petty, use of
Certified transcript of
Record

Filed Apl. 20. 1860
L. Leland
Clk.

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