

No. 12713

# Supreme Court of Illinois

Clapp

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vs.

Scoville, et al

~~376~~ 85

James Clapp  
vs

George Scoville et al

85

1859

12713

Q

Bill for signature



# In Chancery - Injunction

Clapp, assignee } Brief-  
Swiss, Dillard & Co }

The Statute (last Ed.) p. 600. Laws 1857 Sec. 3) declares "that if any person or corporation shall contract to receive a greater rate of interest than 10 per cent upon any contract, such person or corporation shall forfeit the whole of said interest so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation".

It will be seen that the person or corporation who shall contract to receive a greater rate than 10 per cent shall forfeit the whole of the interest contracted to be received.

The forfeiture attaches the moment the contract is made to receive more than 10 per cent. The Statute then becomes part of the contract, the same as if it had been inserted in the contract. The true meaning of the words "shall forfeit the whole of the interest," thus plainly appears to be that the contract to receive more than 10 per cent shall be null & void in law, and that the contract in legal effect, is merely a contract to pay the actual sum loaned without interest. The forfeiture does not attach upon receiving more than 10 per cent, but upon contracting to receive, he forfeits the whole



of the interest — Nor a person can  
not forfeit or lose what he has not rec<sup>d</sup>,  
but he can forfeit or lose a legal right  
to <sup>receive or</sup> recover. The Contract to receive

more than 10 per cent avoids the whole  
of the contract to receive or pay interest—  
and the contract is equally void in the  
hands of a bona fide purchaser.

He takes the contract as it was in law  
when it was made.

And no person can give it vitality  
or effect beyond its original character

As well might it be claimed, that a note  
made without interest will be continued  
as drawing int: in the hands of a  
bona fide purchaser

It has frequently been decided in N. Y.  
that the bona fide purchaser of a note tainted  
with usury shares the fate of the original  
lender

9 Paige 197.

3 John 206

Laws 1837. (2 Rev Statute p. 56) Note,

A Note declared void by Statute in the  
hands of an insolvent assignee, is void —

3 Scammon 388.

Cumpling v. Mendoncia

The complainant has pursued the proper  
course to obtain relief against the illegal  
contract

3 Gillman 570.



The trustee should be enjoined from authorizing the sale of the property to satisfy any sum over the amount actually received by J. S. Wright to wit: \$23,925. as any other administration and sale would be contrary to the statute & void.

~~77~~ 83  
In Chancery  
Clapp

u  
Scrull et al

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Injunction  
Brief on motion

Filed May 31, 1858  
Leland  
CLR

D. H. Lawrence  
Smyth



State of Illinois, } ss.  
COOK COUNTY, }

I, Wm M. Stearns a Notary Public in and for said County, in the State aforesaid, do hereby certify, That John S. Wright and Catharine B. his wife who are personally known to me as the persons whose names are subscribed to the within Trust Deed, as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing, as their free and voluntary act, for the uses and purposes therein set forth, the contents and meaning having been fully explained by me.

And the said Catharine B. Wright wife of the said John S. Wright having been by me examined, separate and apart, and out of the hearing of her husband and the contents and meaning of the said Trust Deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower and all right, title and interest to the lands and tenements therein mentioned, without the compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and Notarial seal, this Eleventh day of April in the year of our Lord one thousand eight hundred and fifty seven



Wm M. Stearns  
Not Public  
[Signature]

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CHICAGO, ILL.	
R. K. SWIFT, BROTHER & JOHNSTON,	
<u>Wm M. Stearns</u> Notary Public	
Filed for record in the Recorder's office of Cook County, Illinois, April 13 <sup>th</sup> A. D. 1857, and recorded in Book No. 120 page 507	
No. 84192	
R. K. SWIFT, BROTHER & JOHNSTON.	
FOR USE.	
GEORGE SCOVILLE.	
<u>John S. Wright</u>	
DEED OF TRUST.	
No.	

Filed May 31, 1857  
at Chicago Ill

375-



This Indenture, Made this Eleventh day of April in the year One Thousand Eight Hundred and Fifty seven  
Between J. S. Wright and C. B. Wright his wife

of the City of Chicago, in the County of Cook and State of Illinois, party of the first part, and **GEORGE SCOVILLE** of the City of Chicago aforesaid, party of the second part, **WITNESSETH,**

That Whereas J. S. Wright

has executed Fifteen certain Promissory Notes bearing even date herewith, payable to the order of himself, at the office of Swift, Ransom & Co. 31 Pine St. New York, Nine months after the date thereof, for the sum of Two thousand (\$2000) Dollars, each with interest thereon after due at Ten per cent. per annum — said notes being numbered from Number one to number fifteen inclusive and amounting in all to the sum of thirty thousand (\$30,000) Dollars

And Whereas, The said J. S. Wright and C. B. Wright his wife

are desirous of securing not only the prompt payment of said Promissory Notes but also of effectually securing and indemnifying ~~the~~ **R. K. SWIFT, BROTHER & JOHNSTON**, for or on account of any assignment, endorsement or guaranty of said Promissory Notes

Now, Therefore, The said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of One Dollar to them in hand paid by said party of the second part, the receipt whereof is hereby confessed, have and hereby do grant, bargain, sell and convey unto the said party of the second part, his Heirs, Assigns, or Successor, in trust, FOREVER, all the premises situate in the City of Chicago, County of Cook, and State of Illinois, known and described as follows, to wit:

Lot Number one (1.) in Block Number one (1.) in Fractional Section fifteen (15.) addition to Chicago.

To Have and to Hold the Same, together with all and singular the privileges and appurtenances thereunto belonging: In Trust, Nevertheless, That in case of default in the payment of the said Notes or either of them, or any part thereof, according to the tenor and effect of said Notes then, on the application of the legal holder of said Notes or any or either of them, it shall and may be lawful for said party of the second part, his heirs, assigns or successor in trust, to sell and dispose of the said premises, and all the right, title, benefit and equity of redemption of said party of the first part their heirs or assigns therein, at public auction at the north door of the Court House in the City of Chicago, in the State of Illinois, for the highest and best price the same will bring in cash ten days' public notice having been previously given of the time of such sale, by advertisement in one of the newspapers at that time published in said City of Chicago; and to make, execute and deliver to the purchaser or purchasers at such sale, good and sufficient deed or deeds of conveyance for the premises sold; and out of the proceeds or avails of such sale and the purchase money paid thereon, after first paying all costs of advertising and sale, commissions and all other expenses of this Trust, including all moneys advanced for taxes or other liens and assessments, with the interest thereon, to pay the principal and interest due on said Notes according to the tenor and effect thereof, rendering the overplus (if any) unto the said party of the first part their legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money, which sale or sales so made, shall be a perpetual bar, both in law and in equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them.

And the said J. S. Wright

for himself his Heirs, Executors and Administrators, covenant and agree to and with said party of the second part, his legal representatives or successor in Trust, that at the time of the ensembling and delivery of these presents he is well seized of said premises, in fee simple, and has the good right, full power, and lawful authority to grant, bargain and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances whatever (~~except as hereinbefore provided~~)

And it is Stipulated and Agreed, That in case of default in any of said payments of principal or interest as aforesaid, or of a breach of any of the covenants or agreements herein, then and in that case the whole of said principal sum hereby secured, and the interest to the time of sale, according to the tenor and effect of said indenture, shall and may at once become due and payable, and the said premises be sold in like manner with the same effect as if the said indebtedness had matured; and it is further agreed and especially understood that in case of the death, resignation, removal from the said City of Chicago, or other inability to act of said party of the second part, then **GRANT GOODRICH**, of the said City of Chicago, shall be and hereby is appointed and made successor in Trust herein, with like power and authority as the said party of the second part, and the said premises shall become vested in such new Trustee accordingly.

In Witness Whereof, The said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in presence of }

J. S. Wright

C. B. Wright

