

13137

No. _____

Supreme Court of Illinois

Sherman

vs.

Blackman

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

1846

Therman
vs

Blackman

3F37

Papers

Ezra L. Sherman
 Lauren P. Hilliard &
 Buckner S. Morris
 vs.
 Edwin Blackman

Supreme Court of Illinois -
 Third Division.

Appeal.

- Ezra L. Sherman, Lauren P. Hilliard &
 Buckner S. Morris ^{Appellants} assigns for error to their prejudice in
 the foregoing and annexed record as follows - to wit.
- 1st The Superior Court erred in refusing to allow the witness Henry
 Greenbaum answer the several questions asked him by the
 Appellants; and in each & every of them.
 - 2^d The said Court erred in refusing to admit Ezra L. Sherman as a
 witness to testify & prove that the defendant in error had notice of the
 usurious discounting of the notes before & at the time he bought them
 of Sherwood.
 - 3^d The said Court erred in refusing the Appellants the right to prove
 by said Sherman, that the Appellee at the time he purchased the notes
 he held another note of their which he had discounted at three per-
 cent per month, and they had talked over the usurious character
 of said notes.
 - 4th The said Court erred in refusing to exclude the notes, as
 evidence, from the jury, for the reason that the notes were
 not indorsed to him the Appellee; and that it did not appear
 in evidence he had any interest in the notes.
 - 5th The said Court erred in refusing to let the Appellants prove under
 the general issue by witnesses, that the Appellee admitted he
 had no interest in the notes.
 - 6th The said Court erred in the instructions given to the jury, and in
 every member, branch and part thereof.
 - 7th The said Court erred in refusing to give to the jury the instruc-
 tions as severally asked by the Appellants.
 - 8th The said Court erred in overruling the Appellants Motion
 for a new trial, & in giving judgment on the verdict.

Wherefore they pray that said judgment may be
 reversed with costs &c. By Morris their atty.

E. L. Sherman vs
vs. { appeal
Edwin Blackman
assignor of Iron

Filed this with the large
record when the judge is
\$2600-

Filed Apr. 27. 1860
L. L. and
C. H.

United States of America
State of Illinois, Cook County } ss.

Hear before the Honorable
the Judges of the Superior Court of Chicago, within and for the
County of Cook and State of Illinois, at a regular term of said
Superior Court of Chicago, begun and holden, at the Court
House in the City of Chicago, in said County and State on
the first Monday, being the fifth day of March, in the year
of Our Lord One Thousand Eight Hundred and sixty, and of
the Independence of the United States Of America the Eighty
fourth

Present, The Hon John W. Wilson, Chief Justice
of the Superior Court of Chicago
Saml. H. Higgins & Grant Goodrich Judges
Carlos Haven Prosecuting Attorney
John Gray Sheriff County of Cook

Be it Remembered, that heretofore to wit: on the twenty
Eighth day of October in the year Of Our Lord, One Thousand
Eight hundred & fifty nine, Edwin Blackman, by Matter
Capt and King, his attorneys filed in the Office of the Clerk
of said Court, his certain Declaration, in words
and figures following, to wit:

State of Illinois }
County of Cook } ss.

Superior Court of Chicago

2.
"Declaration"

Edwin Blackman, Plaintiff in this suit
by Mathew, Taft and King, his attorneys, complains of Ezra L. Sherman
Lamin P. Williard and Buckner S. Morris, Defendants of a plea
of trespass on the case on promises: For that whereas the said
Defendants heretofore, to wit; on the twentieth day of April in the
Year of Our Lord, One Thousand Eight Hundred and fifty Eight
at Chicago, to wit; at said County of Cook, made their certain
promissory note, in writing, bearing date the day and year
aforesaid, and then and there delivered the same to E. L. Sherman
in and by which said note said Defendants promised to pay
to the order of E. L. Sherman, six months after the date thereof
the sum of Eleven Hundred and fifty Dollars, payable at the
Marine Bank, for value received. And the said E. L. Sherman to
whom or to whose order said note was payable, afterwards, to wit;
on the day and year aforesaid at Chicago, that is to say at the County
of Cook aforesaid, Endorsed said note in writing, by which
said Endorsement the said E. L. Sherman, then and there ordered
and appointed the said sum of money in said note mentioned
to be paid to said plaintiff, and then and there delivered said
Note, so indorsed, to the said plaintiff, By means whereof,
and by force of the Statute in such cases made and provided
the said Defendants became liable to pay 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 the said plaintiff, according to the tenor and
effect of ^{the} said note, and of the Endorsement aforesaid, to wit;

at the place aforesaid. And also for that whereas the said defendants heretofore, to wit; on the twentieth day of April, Anno Domini One Thousand Eight Hundred and fifty Eight, at Chicago in said County of Cook, made their certain other promissory note, in writing, bearing date the day and year last aforesaid, and then and there delivered the same to E. L. Sherman, in and by which said note, said defendants promised to pay to the order of the said E. L. Sherman, six months after the date thereof, the sum of Twelve Hundred and Fifty Dollars, payable at the Marine Bank for value received. And the said E. L. Sherman to whom, or to whose order, said last named note was payable, afterwards, to wit; on the day and year last aforesaid at Chicago in said County of Cook, Endorsed said last named note in writing by which said Endorsement the said E. L. Sherman then and there ordered, & appointed the said sum of money in said last named note mentioned, to be paid to said Plaintiff, and then and there delivered said note so indorsed to the said Plaintiff. By means whereof and by force of the Statute in such case made and provided the said Defendants became liable to pay said Plaintiff said sum of money, mentioned in said last named note & being so liable in consideration thereof, then and there undertook & promised to pay the same to the said Plaintiff, according to the tenor & effect of said note, and of the Endorsement aforesaid, and at the place aforesaid. And Whereas also, the said defendants, afterwards, to wit; on the twenty third day of October in the year of Our Lord One Thousand Eight Hundred and Fifty Eight to wit; at said County, became and were indebted unto the Plaintiff in a large sum of money, to wit; the sum of Five Thousand

4
Dollars, for money before that time lent and advanced to said Defendants by said plaintiff at said Defendants request, and also in the like sum, for money before that time paid laid out, and expended for said Defendants by the said plaintiff, at the like special request of said Defendants: and in the like sum for money before that time had and received by said Defendants to and for the use of said plaintiff; and also in the like sum for goods, Wares and Merchandise before that time sold and delivered by said plaintiff to said Defendants, at the like special instance and request; and also in the like sum for the labor, care and diligence of said plaintiff before that time done and performed by said plaintiff for said Defendants, and at the like instance and request of said Defendants, 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 Defendants in consideration thereof, then and there undertook, and promised to pay said plaintiff said several sums of money above mentioned, when hereunto afterwards requested. — Yet the said Defendants, not regarding their said promises and Undertakings, but contriving &c: although often requested so to do, have not paid said plaintiff either of said sums of Money above mentioned, or any part thereof, but to do so have hitherto wholly neglected and refused, and still do neglect and refuse to the damage of said plaintiff of Five Thousand Dollars, and therefore he brings this suit &c —

Mather, Taft & King
Plaintiffs Attorneys

5.
Copy of Instruments Sued On.

Chicago April 20th 1858.

\$1150

Six months after date we, the subscribers of County of Cook, State of Illinois, promise to pay to E. L. Sherman or order, Eleven Hundred & fifty dollars, value received, payable at the Marine Bank.

E. L. Sherman

(Endorsement E. L. Sherman)

L. J. Williard

B. J. Morris

Chicago April 20. 1858.

\$1250.

Six months after date we the subscriber of County of Cook, State of Illinois, promise to pay to E. L. Sherman or order, Twelve Hundred & fifty dollars, value received, payable at the Marine Bank.

E. L. Sherman

Endorsements (E. L. Sherman)

L. J. Williard

B. J. Morris

And Afterwards, to wit; on the Eighteenth day of November in the year of our Lord One Thousand Eight Hundred and Fifty Nine the defendants by their Attorney B. J. Morris, filed in the office of the Clerk of said Court their certain pleas in words and figures following; to wit;

Superior Court of Chicago - Illinois

6. Exrs L. Sherman
 Laurin P. Hilliard
 Buckner S. Morris
 vs
 Edwin Blackman

Assumpsit.

Pleas. 1

And the said defendants come and for plea to the said declaration say that they did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves on the Country &c

2

And the said defendants for further plea in this behalf, to the first and second counts of the said declaration, say, that they ought not to be charged with the whole amount of the said supposed promissory notes in said counts mentioned, because they say, that before and at the time of ^{the} making of said notes they were in great need of money, and in order to raise the money by loan, they the said defendants did on that day, to wit; on the 20th day of April A.D. 1858. at Chicago in this State, Execute said notes in said counts mentioned, to obtain a loan of money thereon, which notes were then and there, indorsed by the defendant Sherman in blank, and they then and there employed the Messrs Greenbaum & Brother, Bill Brokers of Chicago, aforesaid to obtain a loan of money on said notes for the said defendants for a reasonable compensation or commission, and the said Greenbaums indorsed the said notes without recourse for the defendants, and offered said two notes to one Frank P. Sherwood of Chicago aforesaid for discount, and it was then, to wit; on 22 April 1858. at

7
Chicago, in this state, corruptly and against the form of the Statute in such case made & provided, agreed by and between said Sherwood and the defendants; by said Greenbaums in their behalf, that said Sherwood, would take and receive said two notes at a discount of three per cent interest per month for six months time said notes had to run, to be deducted from the whole amount of said two notes, and the defendants should receive by the hands of said Greenbaums from said Sherwood the residue of the amount of said two notes after the discount of three per cent per month for six months was deducted from the whole amount of the said two notes as aforesaid, and that the defendants should pay said Sherwood in six months thereafter, the whole amount of said two notes, to wit: 2,400 dollars. And the said defendants aver that in pursuance of the said corrupt agreement so made as aforesaid, the said notes were then and there delivered to said Sherwood at Chicago aforesaid, upon the terms aforesaid, he then and there lent and advanced therefor, as the whole and sole consideration of said two notes (after deducting a large sum from the amount of said notes, to wit; the sum of 432 dollars for his discount as aforesaid) the sum, to wit; ^{the sum} of Nineteen Hundred and Sixty Eight dollars, in terms of said agreement, to said Greenbaums for said defendants; and the said defendants say that said transaction and trade was a loaning and borrowing of money at a greater interest than at the

8
rate of ten per cent interest per annum, & the said defendants aver that said agreement was unlawful, corrupt, usurious, and against the form of the Statute in such case made and provided, and that the consideration of said notes, was founded in part, upon said corrupt agreement, to wit; to the extent of Four Hundred and thirty two dollars of usurious discount aforesaid. Whereby and by force of the Statute in such case made & provided, the whole amount of the interest so reserved taken & deducted from the amount of said notes as aforesaid, become forfeited & so much of said notes become illegal & void, and the plaintiff entitled to have and recover only the principal sum so loaned & advanced as aforesaid, of all which the said plaintiff at the time he took said notes, had notice, and this the defendants are ready to verify - whereupon they pray judgment &c: -

3 And the said defendants for further plea to the first Count of said Declaration, say they ought not to be charged with the whole amount of the said supposed promissory notes, in said first Count of said Declaration mentioned, because they say they had great need of money, and with a view of borrowing the same, they did on the 20th day of April 1858. at Chicago in this State Execute said note in said Count mentioned, ^{and} it was then and there endorsed by the said Defendant Sherman, in blank and put into the hands of Greenbaum & Brother, Bill

Brokers, in Chicago aforesaid, who indorsed the name of
 their firm thereon, without recourse, so as to enable
 them to raise money thereon in market, for the said
 defendants; and the defendants further say, that said
 Greenbaums then and there wrote; on the same day
 and year last aforesaid, at the place aforesaid, of-
 fered the said note to said one Frank P. Sherwood for
 discount, and it was then and th. agreed by and
 between the said Sherwood and the defendants by the
 said Greenbaums, that said Sherwood would take and
 receive said note in said first count of said declaration
 mentioned at a rate of discount of three per cent in-
 terest per month for six months, to be deducted from the
 amount of the said note, and that the defendants by
 said Greenbaums would then and there receive from
 said Sherwood the balance of the amount of said note
 after deducting said discount, and that the said de-
 fendants should pay the whole amount of said note in
 six months from its date. And the said defendants
 further say, that in pursuance of said agreement, said
 note was then and there delivered to said Sherwood
 upon the terms of said agreement, he then & there
 advanced therefor, as the sole and only consideration
 of said note, the sum to wit: the sum (after deducting
 the sum of Two Hundred and Seven Dollars from the
 amount of said note for his discount) of Nine
 Hundred and forty three dollars; and the defend-
 ants aver that said agreement and trade was a

10. loaning and borrowing of money within the true intent and meaning of the Statute in such case made and provided, and they further aver that ~~the~~ said agreement, was unlawful, corrupt, usurious, and against the Statute in such case made and provided, and that said Sherwood by said agreement took and reserved a greater interest, than at the rate of ten per cent per annum, which formed a part of the consideration of said note in said first count mentioned, to wit: the sum of Two Hundred and seven dollars of said note by way of usurious discount, whereby and by force of the Statute in such case made and provided, the whole of said discount so taken and reserved as aforesaid became forfeited and so much of said note became void in law, and the plaintiff entitled to have and recover of and from said defendants the sum so advanced and loaned as aforesaid, to wit: the sum of Nine Hundred forty three dollars of said note ^{all of} which the said plaintiff had notice at the time he took said note, and this the defendants are ready to verify, wherefore they pray Judgment &c:

- 4 And said defendants for further plea to the second count of the said declaration, say that said plaintiff ought not to recover more than ten hundred and twenty five dollars, because they say, that heretofore to wit; on the 20th day of April A.D. 1858. at Chicago in this State, they had need to borrow some money, and for that purpose they then and there executed the note in said second count mentioned to the defendant Sherman

who then and there indorsed his name on the back
 thereof in blank and delivered said Note to Messrs Greenbaums
 Note brokers, in Chicago, aforesaid, for them raise the
 money thereon for said Defendants, and the said note
 was then and there presented by said Greenbaums to said
 Frank P. Sherwood with another note, and asked him
 to purchase the said two notes, and it was then & there
 agreed by and between the said Greenbaums and Sherwood
 that he said Sherwood should purchase said notes at a
 discount of three per cent per month for six months, and
 that said Greenbaums should receive the amount of said
 two notes less the discount aforesaid, and that said de-
 fendants should pay the whole amount of said notes
 when they fell due, to wit: Twenty four hundred (2400)
 Dollars, and the said Defendants aver that in pursuance
 of said contract, said notes were then and there delivered
 to said Sherwood at Chicago, aforesaid, he advancing
 therefor as the whole & sole consideration for said note the
 sum, to wit: the sum of 1025 dollars (the residue of the amount of said note in
 the mentioned 225 dollars was received, taken, and dis-
 counted from the amount of said note for his discount in
 terms of said contract.) And the said Defendants further
 in fact say that at the time when said note was contracted
 to be sold and discounted as aforesaid, said Sherwood
 had notice that said note was made & indorsed to obtain
 a loan of money thereon for said Defendants, and that
 said pretended sale was had for the purpose to evade
 the statute against usury. And the defendants aver

thereon for the said defendants, and the said Greenbaums also indorsed their firm name on said note, without having any interest in said note, except a right to commission for obtaining the money thereon as such brokers, and the said defendants further say - that said Greenbaums as such brokers, afterwards, to wit: on the same day and year last aforesaid, at Chicago aforesaid, offered said note in said second count mentioned to one Frank P. Sherwood, for discount, and it was then and there agreed by and between said Sherwood and said defendants by said Greenbaums that he, said Sherwood, would take & receive said note at a rate of discount of three per cent interest per month for six months from the amount of such note, and said Greenbaums, as such brokers, should receive from said Sherwood (for said defendants) the sum (after deducting the sum, to wit: the sum of Two Hundred & twenty five dollars for his discount aforesaid) of ten hundred and twenty five dollars in terms of said agreement and that said defendants should pay to said Sherwood, the whole amount of said note at maturity thereof. And the said defendants aver that in pursuance of the said agreement last above mentioned, the said note the said note in said second count mentioned was then and there delivered to said Sherwood at Chicago aforesaid upon the terms aforesaid, he then advancing the said sum to wit: ten Hundred & twenty five dollars therefor as the sole and only consideration of said note, to the said Greenbaums for said defendants, and the said defendants further aver that the said transaction

and trade was a loaning & borrowing of money at a greater interest than at the rate of ten per cent per annum, and the defendants further aver that said agreement was corrupt, unlawful, usurious, and against the Statute in such case made and provided, and that the Consideration of said note was founded in part, of said unlawful and usurious consideration aforesaid, whereby & by force of the Statute, in such case made and provided, the whole amount of interest and discount so taken & reserved as aforesaid from said note in said second mentioned, to wit: Two Hundred & Twenty five dollars, became forfeited and so much of said note become void, and the plaintiff entitled only to have and recover the principal sum so loaned and advanced as aforesaid, to wit: the sum of Ten Hundred & Twenty five dollars, of all which the said plaintiff had notice at the time he took said note of said Shewood, and this the said defendants are ready to verify - Wherefore they pray Judgment &c.

6 And the said defendants for further plea in this behalf to the first Count of the said declaration, say they ought not to be charged with the whole amount of said promissory note in the said first count of said declaration mentioned. because they say, that heretofore to wit: on the 20th day of April A.D. 1858. at Chicago in this State, being in great need of money and to borrow the same, they then and there executed the said note in said first Count mentioned, and also the note in said second count mentioned, which notes were indorsed

in blank by said defendant E. L. Sherman, with the view to borrow money thereon & for that purpose employed Messrs Greenbaum & Brothers, bill brokers in Chicago aforesaid to obtain the money on said two notes for said defendants on Commission, the said Greenbaums having no interest in said notes, then and there endorsed the same, without recourse, and then and there presented the said notes to one Frank P. Sherwood, at Chicago aforesaid for discount, and it was then and there agreed, by and between said Sherwood, and the Defendants by their agents & brokers aforesaid, that said Sherwood would take, receive and discount said notes at the rate, to wit; at the rate of three per cent per month for six months time said notes had to run - and the defendants by said brokers would receive from said Sherwood therefor as the whole and sole consideration of said two notes the sum, to wit; the sum (after deducting the amount of the discount from the amount of the two notes aforesaid; to wit; 432 dollars) of Nineteen Hundred and Sixty Eight Dollars, and that the said Defendants for the forbearance of said loan of money for six months, should pay the whole amount of said notes severally at maturity, to wit: Twenty four hundred Dollars - And the Defendants aver that in pursuance of said agreement the said notes were then and there delivered to said Sherwood at Chicago aforesaid, he advancing and loaning therefor, as the whole and sole consideration of said notes (after deducting a large sum to wit: the sum of Four Hundred and thirty two

dollars from the amount of said notes for his discount) the sum to wit: the sum of Nineteen Hundred and Fifty Eight dollars for six months time: and the said defendants also aver, the said Sherwood then and there had notice that said notes were made and Endorsed to raise money thereon for said defendants, and that said transaction was a loaning & borrowing of money; and the said defendants in fact say that the said agreement last mentioned of a loan of money, was unlawful, corrupt, usurious, and against the statute in such case made and provided, and they the defendants aver, that said note in the first mentioned, or part thereof, was founded upon a usurious consideration in receiving & reserving so much of said note by way of discount, to wit: of three per cent interest per month for six months, on said notes, amounting to a large sum to wit, 432 dollars. and the defendants say, that said interest so discounted as aforesaid, is a greater interest than at the rate of ten per cent per annum upon the sum advanced & loaned, as aforesaid, whereby and by force of the statute in such case made and provided, the amount, to wit: the sum of Two Hundred & Seven dollars, so taken and reserved as discount from the said note in the first count of said declaration mentioned, was illegal and usurious and so much of said note became forfeited & void and the plaintiff entitled to have recover only the principal sum he so advanced on said note of all which the plaintiff had notice at the time he took

said note of Sherwood, and this the defendants are ready to verify, where they pray judgment &c

47. And the said defendants for further plea to the first count of the plaintiffs said Declaration say they ought to be charged with the full amount of the said supposed promissory note in said first count mentioned because they say, that they had great need of money and with a view to borrow the same, they then & there, to wit: on the 20th day of April A.D. 1858. at Chicago in this State, Executed the note in said Count mentioned with another note of 1150 dollars of the same date and payable at the same time, to wit: Six months after date thereof, which notes were then & there endorsed by the defendant Sherman (the payee of said notes) in blank and delivered them to Messrs Greenbaum & Brothers, Brokers of Chicago aforesaid, to enable them to raise the money, thereon by loan for said defendants, as agents for that purpose, said Greenbaums having no interest in said notes or transaction, except a Commission for obtaining a loan of money thereon, they indorsing said notes without recourse, and said notes, being so indorsed, were then and there offered to said Frank P. Sherwood at Chicago, aforesaid, for discount, and it was then and there agreed by and between the said Sherwood and Greenbaums, that he said Sherwood would then and there take and receive said two notes at a Discount of Two and half per Cent per month for six months from the amount of said two notes and said Greenbaums would receive the

18.

balance of said two notes therefor, and that said defendants
 should pay to said Sherwood or order in six months the
 whole amount of said two notes - to wit - 2400 dollars.
 And the said defendants in fact say that in pursuance
 of said contract so made as aforesaid, the said
 notes were then and ^{then} delivered to said Sherwood
 upon the terms of said contract, the said Sherwood ad-
 vancing to said Greenbaums therefor the sum, to wit: the
 sum of 2.034 dollars, that being the balance of said notes
 after deducting the discount from said notes, to wit:
 366 dollars, (that is to say 193 ⁵⁰/₁₀₀ dollars on the note in said first
 count mentioned, and 172 ⁵⁰/₁₀₀ on the other note aforesaid, for
 his discounts thereon) in terms of the said contract.
 And the said defendants aver said Sherwood had notice
 at the time of making said contract & discount as afore-
 said, that said notes were made & indorsed as aforesaid
 for the purpose of raising money thereon for the said de-
 fendants, and not for the use of said Greenbaums
 and that the transaction and trade aforesaid was
 unlawful, usurious, and against the statute in such
 case made and provided, & the defendants aver that the
 discount so made, received and reserved by said Sherwood
 as aforesaid was unlawful and usurious, and that said
 discount on said note said count alleged, to wit; 193 ⁵⁰/₁₀₀
 dollars, of said note in said count mentioned, formed
 so much of the consideration of said note, and that said
 discount on said note, so received and reserved, was a
 greater interest than at the rate of ten per cent per

annum, to wit: 30 per cent per Annum, of all which the said Plaintiff had notice at the time he took said note in said Court mentioned, whereby the whole amount of said discount so received & reserved as aforesaid, became forfeited by law and so much of the consideration said note has failed, and this the defendants are ready to verify - Wherefore they pray Judgment &c. by Morris their atty

8 And the said Defendants for further plea to the first count of said declaration say the said Plaintiff ought to recover the full amount of said supposed promissory notes in said first & second counts mentioned, because they say, being in great need of money and to enable them to borrow the same they, to wit: on the 20th day of April A.D. 1858. at Chicago in this State executed to the Defendant Sherman the said notes in said counts mentioned, which said several notes, said Sherman then and there severally indorsed in blank and then and there delivered them to Messrs Greenbaum & Brothers, brokers of Chicago, aforesaid for them as Agents to raise the money in market, by borrowing the money thereon for said defendants, which notes the said Greenbaums endorsed, without recourse, and then and there offered said notes to said Frank P. Sherman, at Chicago aforesaid, for discount, and it was then and there agreed by and between said Sherman and ^{the} defendants by said Greenbaum, that he said Sherman would take and receive said notes at

of said notes severally failed - of which the plaintiff had notice at the time he took said notes from said Sherwood - and this the said defendants are ready to verify: Wherefore they pray judgment &c.

by Morris their atty

And afterwards, to wit: on the twenty fourth day of December in the year last aforesaid, said day being one of the days of the December term of said Court the following among other proceedings were had and entered of record, to wit:

Edwin Blackman

vs

Ezra L. Sherman, Laurin P. Willard

and Buckner S. Morris

} Conf- Motion

Order

Dec 24th. 1859

On motion Mather, Taft and King, plaintiffs attorneys, leave is hereby given plaintiff to file double Replications to defendants pleas herein pleaded

And afterwards, to wit: on the twenty fourth day of December in the year last aforesaid, Edwin Blackman by his attorneys Mather, Taft, and King, filed in the office of the Clerk of said Court, their certain Replications, in words and figures following, to wit:

In the Superior Court of Chicago

Edwin Blackman

vs

vs

22m

Esq. L. Sherman
 Laurin P. Willard
 & Buckner S. Morris

Replications

And the said plaintiff as to the said plea of the said defendants by them firstly above pleaded & whereof the said defendants have put themselves upon the country, he the said plaintiff doth the like &c:

2 And the said plaintiff as to the said plea of the said defendants by them secondly above pleaded by leave of the Court here for this purpose first had and obtained the said plaintiff for replication thereto says precludi non &c; because he says, that the several notes in said second plea mentioned were not taken & received by the said Frank P. Sherwood, nor was either one of them taken & received by the said Frank P. Sherwood at the discount of Three per cent per month agreed upon by & between said Sherwood and the said defendants by said Greenbaum Brothers in their behalf in manner & form as is by said defendants in said second plea alleged, and of this, he said plaintiff, puts himself upon the country &c:

3 And the said plaintiff as to the said second plea & for further replication thereto, by leave of the Court for this purpose first had & obtained say, precludi non &c, because he says that he purchased & became the holder & owner of said notes in said second plea mentioned & each of them as a bona fide purchaser of negotiable commercial paper, in the ordinary

course of trade, commerce and business, for a sufficient and valuable consideration by him paid therefor, in good faith, without notice of any such facts or circumstances relating to usurious consideration of said notes, and of usury in the discounting of same in manner and form as stated in said second plea, and of this he the said plaintiff puts himself upon the Country &c.

4 And the said plaintiff as to the said plea of the said defendants by them thirdly above pleaded, by leave of the Court &c, for replication thereto says precludi non &c. because he says that the said note in said third plea mentioned was not taken and received by the said Frank P. Sherwood at a discount of three per cent per month agreed upon by and between the said Sherwood & the said defendants by the said Greenbaum & Brother in their behalf in manner & form as is in said third plea by the said defendants alleged & of this he the said plaintiff puts himself upon the Country &c.

5 And the said plaintiff as to the said third plea & for further replication thereto, by leave of the Court for this purpose first had & obtained say, precludi non &c because he says that he purchased and became the holder and owner of said note in said third plea specified as a bona fide purchaser of negotiable paper in the ordinary course of trade, commerce and business for a sufficient and valuable consideration by him

paid therefor in good faith, without notice of such facts & circumstances relating to the usurious character of said note, or in the discounting thereof in manner & form as stated in said third plea & of this he the said plaintiff puts himself upon the country &c.:

6. And the said plaintiff as to the said plea of the said defendants by them fourthly above pleaded for replication thereto, by leave of the Court, for such purpose first had & obtained; says precludi non &c. because he says, that the said note mentioned in said first plea was not usuriously discounted & cashed by said Frank P. Sherwood in manner and form as in said plea fourthly above pleaded is alleged & of this the said plaintiff puts himself upon the Country &c.:

7. And the said plaintiff as to said fourth plea & for a further replication thereto, by leave of the Court therefor first had & obtained say precludi non &c. because he says that he purchased & became the owner and holder of said note in good faith in the ordinary course of trade commerce and business, the same being negotiable commercial paper, for a full and valuable consideration by him therefor paid without such notice of facts & circumstances touching the usurious character thereof or of any prior transactions usuriously affecting the same, as in said fourth plea, in manner & form as there

pleaded, is claimed and stated, and of this the said plaintiff puts himself upon the Country &c.

8 And the said plaintiff as to the said fifth plea of the said defendants by them fifthly above pleaded for replication thereto by leave of the Court &c. says precludi non &c. because he says that the said note in said fifth plea mentioned was not usuriously purchased & discounted by said Frank P. Sherrood at a discount of three per cent per month by agreement between him and the said defendants, by said Greenbaum Brothers in manner & form as alleged in said fifth plea & of this he the said plaintiff puts himself upon the Country &c.

8 And the said plaintiff as to the said fifth plea for further replication thereto, by leave of the Court, first had obtained says precludi non &c. because he says that he purchased & became the holder & owner of said note in said fifth plea mentioned as a bona fide purchaser, in the ordinary course of business, the same being negotiable commercial paper, for a full and valuable consideration, by him therefor paid in good faith without such notice of facts & circumstances touching the usurious character of said note, or of any previous dealing touching the same & affecting it with usury in manner & form as alleged by defendants in said fifth plea & of this he the said plaintiff puts himself upon the Country &c.

And the said plaintiff as to the sixth plea of the said defendants for replication thereto by leave of the

26. Court first had obtained says precludi non, because he says that the said note in said sixth plea of the defendants above pleaded, mentioned, was not by the said Frank P. Sherwood in that plea named taken received purchased & discounted to the defendants through their agent Greenbaum & Brothers at the usurious interest or discount of three per cent per month, in manner & form as in said sixth plea of the defendants is above pleaded & of this the said plaintiff puts himself upon the country &c.

10 And for a further replication to said sixth plea by leave of the Court first had obtained, the said plaintiff says precludi non &c, because he says that he purchased & became the holder & owner of the said note in the said sixth plea mentioned in good faith, for a full & valuable consideration by him then for paid in the ordinary course of trade without notice of such facts & circumstances then or before existing or transpiring to affect the same with usury in manner & form as by said defendants in said sixth plea pleaded & of this he puts himself upon the Country &c.

11. And the said plaintiff as to the seventh plea of the defendants above pleaded, for replication thereto, by leave of the Court first had obtained says, precludi non &c, because he says that the said Frank P. Sherwood in said plea named did not usuriously, corruptly, & knowingly discount

purchased and take said notes of the said defendants through their said agents Greenbaum & Brothers at the usurious discount or interest of two and one half per cent per month agreed upon beforehand in manner & form as alleged & pleaded in said Seventh plea by said defendants, & of this, he the said plaintiff puts himself upon the Country &c.

12 And the said plaintiff as to the said seventh plea of the defendants above pleaded, for further replication thereto by leave of the court for such purpose first had and obtained says precludi non &c, because he says that he purchased & became the holder & owner of said note in said seventh plea mentioned in good faith in the ordinary course of trade, the same being negotiable Commercial paper, for a full & valuable consideration by him paid therefor, without notice of facts & circumstances going to show or to affect said note with usury in manner & form as is by said defendants alleged in said seventh plea, & of this he puts himself upon the Country &c.

13 And the said plaintiff as to the said Eighth plea above pleaded by the said defendants for replication thereto by leave of the court first had & obtained says precludi non &c. Because he says, that the said notes in said Eighth plea mentioned, were not, nor was either of them by the said Frank P. Sherwood in said plea mentioned were not, nor was either of them usuriously, corruptly and knowingly, discounted

29

purchased, & taken by him the said Sherwood of & to the said defendants, through the said agents Greenbaum & Brothers, at the said usurious rate of Two and one half per cent Discount or interest per month, in manner & form as in said Eighth plea is alleged & pleaded by the said defendants & of this he the said plaintiff puts himself upon the Country &c.

14 And for a further replication to said Eighth plea by leave of the court here for this purpose first had & obtained the said plaintiff says, *precludi non* &c. Because he says that the said notes were negotiable paper, Commercial & saleable and he the said plaintiff purchased & became the lawful & true owner & holder of the same, for a full & valuable Consideration therefor paid in Cash in good faith, without notice of any facts or Circumstances going to affect the said notes ^{with} an usurious taint in his hands by reason of any previous transactions touching the same, or the sale, discount or transfer thereof in manner & form as alleged & pleaded by the said defendants in said Eighth plea in this behalf above pleaded. And of this he the said Plaintiff puts himself upon the Country &c.

Mather, Taft & Knig
Attys for Plaintiff

And afterwards, to wit: on the twelfth day of March in the year of Our Lord, One Thousand Eight Hundred and Sixty, said day being one of the days of the March term of said Court, the following among other proceedings were had, and entered of record, to wit:

Edwin Blackman

{ Confession

Ezra L. Sherman, Lausie P. Willard

and Buckner S. Morris

{

"Order"

March 12th 1860

This day comes said Plaintiff by Mathew, Esq. King, his attorneys, and said defendants by Morris & Cummings their attorneys, also come, and issues being now joined herein, it is ordered that a Jury come whereupon comes the Jury of good and lawful men to wit: J. G. Everest, Isaac S. Speer, Daniel Dempsey, W. S. Paterson, Gustav Baumer, Geo A Harbach, W. C. Gifford, C. Boorman, W. A. M. Pherson, Cyrus Stockbridge, W. H. Pierce, and R. C. Murphy, who being duly elected, tried & sworn to try the issues, joined aforesaid, and the hour of adjournment having arrived, upon agreement of the parties, it was ordered that the Jury separate, and meet the Court tomorrow morning.

And afterwards, to wit on the thirteenth day of March in the year last aforesaid, said day being one of the days of the March term of said Court, the following, among other proceedings were had, and entered of record, to wit:

30.

Edwin Blackman

vs

Ezra L. Sherman, Laurin P. Williard

and Buckner S. Morris

Confession

Order

March 13. 1860.

And now again comes the parties to this cause by their respective attorneys as aforesaid, and the Jury empannelled herein on yesterday for the trial of this cause also come, and after hearing Evidence, arguments of Counsel and instructions of the Court, retire to consider of their verdict, and the hour of adjournment having arrived, upon Agreement of the parties it is ordered, that when the Jury shall have agreed upon a verdict, they shall reduce the same to writing, sign and seal the same, and afterwards separate and meet the Court tomorrow morning.

And afterwards, to wit: on the fourteenth day of March in the year last aforesaid, said day being one of the days of the March term of said Court, the following among other proceedings were had, and entered of record, to wit:

Edwin Blackman

vs

Ezra L. Sherman, Laurin P. Williard

and Buckner S. Morris

Confession

Order

March 14. 1860.

And now again comes the parties to this cause, by their attorneys as aforesaid, and the Jury Empannelled herein for the trial of this cause, also come, submit their verdict, and say

We the Jury find issues for said plaintiff, and assess his damages herein to the sum of Two Thousand and Six Hundred Dollars and Eighty Cents. And thereupon defendants submit their motion herein for a new trial in this cause.

And afterwards, to wit: on the fifteenth day of March in the year last aforesaid, the said day being one of the days of the March term of said court, the following among other proceedings were had, and entered of record, to wit:

Edwin Blackman

vs

Ezra L. Sherman, Laurin P. Hilliard

and Buckner S. Morris

Confession

Order

March 15th 1860.

And now again comes the parties to this cause by their respective attorneys, as aforesaid and counsel being heard on the motion heretofore submitted herein by said Defendants for a new trial in this cause, and due deliberation being thereupon had and the premises being fully understood, it appears to the Court that the motion for a new trial is not well taken, the motion for a new trial is therefore overruled and Defendants thereupon enter their Exceptions herein to the ruling of the Court, wherefore plaintiff ought to have judgment entered on the verdict of the Jury rendered herein.

Therefore it is considered that said plaintiff do have and recover of said defendants his damages of Two Thousand Six Hundred Dollars and Eighty Cents, in form aforesaid by the Jury here found and assessed, together with his costs and charges about his suit in this behalf

\$2600.80.

VS

32.

Expended, and have execution therefor.

And thereupon said defendants having entered their exceptions, pray an appeal herein to the Supreme Court, which is allowed, on filing bond in the sum of Thirty Two Hundred Dollars with security to be approved by a Judge of this Court, bond with bill of exceptions to be filed within twenty days.

And afterwards; To Wit: On the twenty ninth day of March in the year last aforesaid, the defendants, by B. S. Morris their attorney filed in the office of the Clerk of said Court their Bill of Exceptions in words and figures following, to wit:

Superior Court of Chicago

Ezra L. Sherman
Buckner S. Morris
Lawrence P. Willard
advs
Edwin Blackman

It is remembered that on the trial of this cause (March 12th 1860) the plaintiff to maintain the issues on his part read in Evidence to the Jury the two promissory notes declared on in the words & figures following to wit:

\$1150.

Chicago Apr 20. 1858.

Six months after date we the Subscriber of _____ County of Cook, State of Illinois, promise to pay to E. L. Sherman or order, Eleven Hundred

"Bill of
Exceptions"

and fifty dollars for value received, payable at the Marine Bank.

E. L. Sherman

L. P. Willard

B. S. Morris.

Power of
Attorney

Know all men by these presents, that we, the Subscribers, are justly indebted to E. L. Sherman upon a certain promissory note, bearing even date herewith for the sum of Eleven Hundred & fifty dollars, ~~with interest at the rate of~~ per cent. per annum, and due ~~Six~~ months after date

Now, therefore in consideration of the premises, we do hereby make, constitute and appoint Levi B. Taft or any Attorney of any Court of Record, to be our true and lawful attorney, irrevocably for us, and in our name, place and stead, to appear in any Court of Record in term time, or in vacation, in any of the States or Territories of the United States, at any time after the maturity of the said note, to waive the service of process, and confess a judgment in favor of the said E. L. Sherman, or his assigns, or assignees, upon the said note for the above sum, or for as much as appears to be due according to the tenor and effect of said note and interest thereon, to the day of the Entry of the said judgment, together with costs and Twenty Five dollars, Attorneys fees; and also to file a Cognovit for the amount that may be so due, with an agreement therein, that no writ of Error or appeal shall be prosecuted upon the judgment entered by virtue

34
 hereof, nor any bill in Equity filed to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up of said judgment, or issuing the execution thereon; and also to waive all benefit or advantage to which he may be entitled by virtue of any Homestead or other Exemption Law, now or hereinafter in force, in this or any State or Territory where judgment may be entered by virtue hereof. Hereby ratifying and confirming all that our said Attorney may do by virtue hereof. Witness our hands and seals this Twentieth day of April A.D. 1858.

E. L. Sherman

(Seal)

L. P. Hilliard

(Seal)

B. S. Morris

(Seal)

Chicago April 20. 1858.

\$1250.

Six Months after date we, the subscribers of _____ County of Cook, State of Illinois, promise to pay to E. L. Sherman or order, Twelve Hundred fifty Dollars, value received ~~with interest~~ at _____ per cent per annum. Payable at the Marine Bank

E. L. Sherman

L. P. Hilliard

B. S. Morris

Owner of
 Attorney

Know all men by these presents, that We the subscribers are justly indebted to E. L. Sherman, upon a certain

Promissory Note, bearing even date herewith for the sum of Twelve Hundred Fifty dollars, ~~with interest at the~~ rate of ~~seven~~ per cent, per Annum, and due Six Months after date.

Now, therefore, in consideration of the premises, We do hereby make constitute and appoint Levi B. Taft, or any attorney of any Court of Record, to be our true and lawful attorney, irrevocably, for us and in our name, place and stead to appear in any Court of Record in term time, or in vacation, in any of the States or Territories of the United States, at any time after the maturity of the said Note, to waive the service of process, and confess a judgment in favor of the said E. L. Sherman or his assigns, or assignees upon the said Note for the above sum, or for as much as appears to be due according to the tenor and effect of said Note, and interest thereon, to the day of the entry of the said judgment, together with costs and Twenty five Dollars, Attorneys fees; and also to file a Cognovit for the amount that may be so due, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in Equity filed to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up of said judgment, or issuing the Execution thereon; and also to waive all benefit or advantage to which he may be entitled by virtue of any Homestead or other Exemption Law,

now or hereinafter in force), in this or any State or Territory, where judgment may be entered by virtue hereof. Whereby ratifying and confirming all that our said Attorney may do by virtue hereof. Witness our hands and seals this twentieth day of April A.D. 1858

E. L. Sherman (Seal)

L. P. Willard (Seal)

C. S. Morris (Seal)

On the back of each of the notes is endorsed the words and figures following, to wit:

E. L. Sherman

Without recourse

Greenebaum Brothers

N.R.

which were also read in evidence).

Here the plaintiff rested his case.

The defendants then called

Henry Greenebaum, who being sworn testified. The notes being shown to witness he testified that the notes were sold at our office a few days after their date - date April 20th 1858. - I don't recollect to whom they were sold. Don't know as F. P. Sherwood got either of these notes. I don't know that I personally sold these notes. I have had conversation with Blackman, don't know as Blackman told me from whom he got these notes. The notes were left at our office by Sherman to sell, to take up other notes maturing against same makers. The endorsement of our firm is in the hand of my brother Elias Greenebaum

We had no interest in the notes, we were acting as agents for the makers, I don't know that the purchaser of these notes knew what the notes were left at our office for, or what they were given for, or what the money was wanted for. I don't know that Sherwood bot these notes. These notes were sold April 22^d 1858. They were sold as appears by a memorandum on our books for \$2034. The interest on \$2034. at 3 per cent a month for 6 months is \$361.12. consequently the discount made lacks 12 cents of 3 per cent a month for 6 months on \$2034. the amount paid for them.

Our books don't show who the purchaser was. The books were in Court. Mr. Sherwood at some time bought some notes of our firm of Greenebaum Brothers but don't know as he did these notes. Witness stated after returning from examination of their books that it appeared that these notes in question, were sold by our firm to the Bookkeeper of the Marine Bank but his name does not appear to have been entered.

I think it was Richardson, tho' I did not get his name at the time. I am not acquainted with him. I don't know who sold the notes, nor my brother. The entries on the book are in handwriting of my brother Elias. Mr. Sherwood above named was a clerk in Mr. Burch's bank & was such at that time. Their firm Witness stated, were doing business in Chicago as Bill & Note & Exchange Brokers, and European Passage Brokers. & had been so employed or engaged since 1854. & were in

38.

the habit of receiving and selling paper at greater rates of discount than legal interest as agents for owners. The plaintiff knew we sold paper in that way, for he had bot. of us before this. These notes witness swears came to Mr. Blackman's hands, before maturity, but witness did not state how he knew that fact. But I do not know that Blackman knew of our receiving & discounting these notes at such rate of discount as above.

The following question was then put to witness. "State what if anything you know as to the defendants carrying a large floating debt for the Masonic Temple Association in this City & that their paper given for that purpose for years before & at the time of issuing of said notes in question were sold in Chicago market by your firm as Agents and bill brokers, to the plaintiff and others, at usurious interest; & state the plaintiffs knowledge of these facts so far as you can recollect the same before & at the time these notes came into his hands from Sherman."

The Court overruled the question on Defts objection in the form stated, but ruled that if the witness knew anything about the notes in question he might state it. or the plaintiffs knowledge of the Character & purpose for which they were given. The Counsel for Defendants excepted, to such ruling of the Court.

The Defendant then asked the witness to state whether the plaintiff ever & if so how often, did he call at your office in Chicago to buy notes left with you to raise money thereon, and whether he obtained any

of you, and at what rates of discount. State all you know thereof.

The defendants objected. The Court overruled the question. Defendants excepted.

The defendants then asked. Do you know Life state what you know of the defendants carrying a large debt for the Masonic Temple Association of Chicago as Officers thereof for years & how long; & were the notes thereof sold by your firm for years immediately before & up to the issuing of these notes in question & were these notes a part of that indebtedness & generally so known to the public?

Objection by plff. Overruled by Court & Defendants excepted.

The defendants then offered Ezra L. Sherman one of the defendants in this suit as a witness under the statute, to prove that the plaintiff had notice of the usurious discounting of said notes, before & at the time the plaintiff bought the same of Sherwood.

The plff objected & the Court refused to let the witness testify as offered.

The defendant then offered to prove by Sherman that the plaintiff had purchased another note when issued by them Dated October 1, 1857. & endorsed by Greenebaum Brothers without recourse which he purchased of them at three per cent discounted from its face & while he held said note & before his buying

the notes in question, the plff said Sherman talked over the usurious Character of the notes executed by the defendants for carrying the floating debt of the Temple Association).

Objected to - Overruled by Court, and the defendants excepted.

The defendants then called.

Frank P. Sherwood who testified as follows, I think these notes (produced) ^{I did not purchase them. I never owned them} have been in my hands, I only received the notes from James Richardson & handed them over to Blackman. I was requested by Richardson to sell the notes for him. I don't know as any discount whatever was made on the sale of them. I acted as Agent for Richardson. It was before the notes fell due 3 or 4 weeks or 2 or 3 months possibly. I think 4 to 6 weeks. I told Blackman I had no interest in the notes & was merely Agent for said Richardson. Said Richardson lives in Montreal now, he was at the time Bookkeeper in the Marine Bank, Chicago. I don't know when Richardson got the notes. I didn't see them ever at Greenebaum's. I had no conversation with Richardson as to where he got them. I don't recollect of seeing Richardson going to or returning from Greenebaum's office.

Question by defendants

What conversation had you with Richardson about the propriety of buying the notes in question?

Plaintiffs object — The Court overrule the question
Defendants except —

Question by Defendants.

Did you hear Richardson say while he held the
notes of whom he got them? and what he paid for them.

Objected to — Overruled Question by Court
Defts except thereto —

The Defendants here stated that they were
surprised by the Evidence of Sherwood, as they had
understood he was the person who discounted the
notes while in Greenebaum's hands, and they asked
that a juror might be withdrawn. & jury discharged
from rendering a verdict & the Defendants would
pay all the Costs in the suit if they can have leave
to amend their pleas, to charge the Sale to to Rich-
ardson instead of Sherwood.

This was objected to & refused by the court
saying the question could only be raised on a motion
for a new trial.

Elias Greenebaum, sworn for Defendants, Testified,
that he sold the notes in question as agent for the
makers. Their firm Greenebaum Bros. had no interest
in the notes. The sale was made to a Bookkeeper
in the Marine Bank whose name is not known
to me — That the sale was at the rate of three per
cent Interest per month discounted from the
note on the amount paid therefor which was
\$2,034. which is equal to $2\frac{1}{2}$ per cent discounted

42.

on the face of the note. The amount received for the note was \$2034.

The defendants then moved to exclude the notes from the consideration of the Jury, for the reason that said notes are not indorsed to the plaintiff & there is not any evidence that the notes were his property, or that he has any interest in them, or right to recover in his own name. The defendants also offered to prove, under the general issue the plaintiffs admissions that the notes were not his own & that he had no interest in them.

The counsel for plaintiff in objection to the preceding propositions relied upon the objections made thereto as follows, that the offers in themselves are of improper evidence, and also introduced the records of the Court at a previous term containing the order made by Judge Wilson, opening the judgment to let in the defence, whereby it appeared that the defendants were required to restrict themselves to the defence of usury only.

Edwin Blackman

"Copy of Order"
Oct 12. 1859.

as
Ezra L. Sherman, Laurin P. Williard
and Buckner S. Morris

} Motion to set aside
Judgment & for leave to plead

This day comes the plaintiff in the above entitled case by Mather, Taft and King his attorneys, and defendants herein by B. S. Morris, and Cumming their attorneys also come, and the motion submitted by said defendant to set aside the judgments entered

"against them in above cases, and for leave to plead, on affidavit filed, being heard it is ordered that the above Cases Numbers 19532 & 19534, be consolidated into one action, that plaintiff have leave to amend declaration, and the Defendants have leave to plead usury only, that proceedings under the judgments heretofore entered be stayed, but to stand as security for whatever judgment may be rendered in future upon trial of the Case."

The court overruled two motions, to exclude the notes, & to let in proof of admissions by plff, of ownership of notes in others, to which defendants attorneys excepted.

The foregoing was all the Evidence in the cause, the Cause was then argued to the Jury, at the close of which the plaintiff asked the court to give the following instructions to the Jury, To wit:

Edwin Blackman

Morris, Sherman & Hilliard

Instructions for plff

1

That in order to let in the defence of usury against the plaintiff Blackman it is necessary the defendants should ^{have shown} ~~show~~ by Evidence satisfactory to the Jury that the notes were originally discounted at a usurious rate to F. P. Sherwood (and in so doing it should be proved that Sherwood knew the notes were not owned by Greenebaum, who were holders of them) and also that Blackman ^{or had notice} knew of the usurious discounting by Greenebaum to Sherwood

Interlineation
by the judge

Given

when he purchased the notes - and the jury must find all this from the Evidence in the case.

2. That a note given for a usurious consideration is not void by the Statute of Illinois & the usury if any cannot be set up in any suit brought on negotiable paper, by a purchaser who acquired the note before its maturity without knowledge or notice of its usurious character

3rd. That although a note may be discounted at a usurious rate, still that usury is no defence against a subsequent, bona fide purchaser unless defendant proves that such subsequent purchaser had notice or knowledge of such usury when he bought.

4. That in order to sustain the defence of usury under the pleadings on the part of the defendants the jury must be satisfied from the Evidence that the notes in question were sold and discounted by Greenebaum & Bro. to J. V. Sherwood in the manner pleaded & set forth in defendants pleas, or some one of them.

5. The mere fact that a note is sold by a bill broker & that he sometimes sells notes at a usurious discount and that such fact is generally known & known to a purchaser who sometimes buys notes, is not sufficient of itself to prove in a particular case of a note purchased, that it was purchased at a usurious discount.

Which instructions severally the Court gave to the Jury, to the giving of which the defendants Counsel Excepted severally.

The defendants then asked the Court to instruct the Jury as follows, to wit

- 1 If the Jury shall believe from the Evidence, that the notes in question were made & indorsed with a view to obtain money thereon & the Defendants left the notes with Bill Brokers to be sold to raise money without any interest in the notes & sold them "as averred in the pleas" at a rate of three per cent per month discounted from the face of the notes, such transaction was usurious, and that these notes came to the hands of the Plaintiff with knowledge of the usury, then in that case he is only entitled to recover the sum paid for the notes with six per cent interest per annum thereon.
- 2 If the Jury believe from the Evidence that the notes in question are not indorsed to the Plaintiff in this suit, then he cannot recover thereon - and their verdict should be for the defendants.
- 3 The Court is asked to instruct the Jury that usury may be given in evidence under the plea of the general issue. And that if the Jury are satisfied from the proof that the Plaintiff had notice that Greenebaum & Bros. sold these notes at a usurious discount, then under that plea in this case the Jury in their verdict should deduct

Given

Refused

Refused

46.

the numerous discount & render a verdict only for the sum of \$2034.00 paid by plff for the notes with six per cent interest thereon.

The court refused to give the same as asked but ^{the first instructions by adding} interlined these words "as averred in the pleas" and then gave the said instruction to the jury. To which several opinions of the court, in refusing to give the instruction as asked & giving the one as amended, the defendants then and there severally excepted. And the jury after retiring returned the following as their verdict: "We the Jury find issues for said plaintiff and assess his damages herein to the sum of Two Thousand and Six Hundred Dollars and Eighty Cents"

Thereupon, the defendants filed their motion for a new trial, in the words & figures following to wit:

Ezra L. Sherman	} Assumpsit
Buckner S. Morris	
Laurin P. Hilliard	
ad Edwin Blackman	

The defendants move the Court to grant them a new trial in this cause upon the following grounds to wit:

- 1st That the Verdict of the Jury is against law.
- 2nd That the verdict of the Jury is contrary to the evidence in this cause.

3.^d The Court Erred in refusing to allow the defendant Sherman to be sworn & testify as a witness in this cause, it being admitted that all the parties to the transaction of selling & discounting the notes are alive.

4.th The Court Erred in refusing to allow the defendants witnesses to answer the several questions propounded to them on the trial by the defendants attorney.

5.th The Court Erred in giving the instructions as asked by the plaintiffs attorneys

6.th The Court Erred in refusing to the several instructions as asked by the defendants.

7.th The Court Erred in refusing to allow the defendant to prove on the trial under the general issue that the plaintiff had no interest in the notes in question the time suit was brought

By Morris & Hamming Defts attys

On the hearing of this motion for a new trial the defendants read to the Court the Affidavit of B. S. Morris who wrote the pleas, filed in this cause, which Affidavit is in the words & figures following to wit:

E. Blackman

E. L. Sherman & Co

} assumpsit

B. S. Morris makes oath & says

Affidavit

B. S. Morris

Mar 15th 1860

that he drew the pleas filed in this cause, founded upon the information which he principally derived from the affidavits on filed in these causes upon the motion to set aside the judgments to obtain leave to file the said pleas, setting up the defence of usury therein alleged; and from a conversation with said plaintiff that he had obtained the notes from said Frank Sherwood, the witness in this cause & from said Henry Greenbaum a witness also, who said said he did not know the name of the party who obtained the note of them; and that this affiant was wholly unacquainted with said Sherwood and never had seen him to know him, till he came upon the stand as a witness to testify in this case, but this affiant took it for granted, that he said Sherwood was the party who discounted the two notes in question as he was so spoken of in the various conversations with various persons with who this affiant had conversations with on the subject of the discounting of said notes to enable him to draw the pleas aforesaid - and that he was taken by surprise, by the testimony of the said Sherwood that he did not discount the notes, and never had any interest in them, but they were handed to him

Mr Richardson, the party who had discounted them to sell, to raise money thereon for him to buy grain as he represented to him Sherwood. That this affiant supposed before the Jury sworn, that there was no

dispute about the fact that said Sherwood was the real party who did obtain the notes of said Greenbaums as stated in the pleas, that he had not seen, nor read the Replications till the Jury was sworn, but was told by plaintiffs that he would his replications putting the cause at issue on the pleas: and this affiant did not know of any leave given to file more than one replication to each plea. That the plaintiff stated in his affidavit above referred to that he, plaintiff, knows nothing now, nor did he ever know anything touching the manner in which one F. P. Sherwood mentioned said E. L. Shermans affidavit, had agreed with the defendants touching said notes of \$1250. & \$1150. respectively, or the manner in which any agent of the defendants had agreed with said Sherwood touching the same; and the whole allegation in said affidavit contained, charging him with notice of the usurious discounting of said notes by said Sherwood or any other person is untrue.

This affiant further states, that Sherman in his affidavit stated that the Agents of the Defendants, applied to one Frank P. Sherwood for a loan of money on these notes, and it was then unlawfully agreed, he would loan and advance on said notes, less $2\frac{1}{2}$ or 3 per cent discount, for month from said notes, which was agreed to and the agreement executed, as will appear by said affidavit.

Subscribed & Sworn to B. S. Morris

before me this 15th day of March 1860.

H. Kimball Clerk

30

Here the Plaintiff in reply thereto, read from the files Mr. Blackman's several affidavits which were before the Court, showing as claimed the Error into which Mr. Morris had fallen & also read the Records of the Court's order in this cause, opening the judgment confessed in this cause, to let in the defense of Usury only.

Affidavit
Nov 15th 1858

Edwin Blackman

vs
Ezra L. Sherman
Buckner S. Morris
Lawrence P. Williard

Cook County Court of Common Pleas.
Note dated Oct 1. 1857. payable 1st May
after date to Order of Greenbaum Brothers
with interest after due & Endorsed by payee

Principal \$775. 00
Interest 8 months less 6 days 22. 48
Costs to attys 25. 00
\$822. 48
Clerks Costs paid 6. 00

Judg^t Entered
Oct 25th 1858

State of Illinois
Cook County } ss.

Edwin Blackman the Plaintiff in the above entitled cause being duly sworn doth depose and say, that the note in the above cause declared on & upon which judgment was entered was purchased by deponent, long before it fell due from the payees Greenbaum & Brothers & the same was by said payees transferred & negotiated to deponent as a bona fide purchaser without any knowledge or notice of the existence of usury or other defense to said note, and this deponent says that he never had any knowledge, or notice of the

This has nothing to do with the case.

Existence of any such matter or thing by way of defence to said note, nor does he believe the same as in such case he would not have purchased the note.

Deponent further says, that in making such purchase, he invested the moneys of Miss Harriet J. Blodgett. Entrusted to him to see to & manage and he holds said judgment as her agent & trustee, she the said Harriet J. Blodgett having no knowledge of the facts of the case or even of her own ownership or interest in the premises, and further saith not.

Sworn to before me this
15th day of Novr 1858

Edwin Blackman

N. Kimball, Clerk

Affidavit Nov 15 th 1858	Edwin Blackman vs Ezra L. Sherman Buckner S. Morris Levin P. Willard	{ Cook County Court of Common Pleas. Note dated April 20, 1858. at 6 months to order of E. L. Sherman & endorsed by him payable at the Marine Bank Principal \$1250.
Judgt. Entered Oct 25 th 1858. {	Interest 5 days 1.08 Costs to Atty's 25. 1276.08 Alks. Costs paid 6.00	

State of Illinois
Cook County } ss.

Edwin Blackman the plaintiff
in the above entitled cause, being
duly sworn, doth depose and say, that he purchased

the two notes on which judgments were entered by confession in the above cause & in and the cause of the same title, the minutes of which are herunto annexed, on the Second day of August, last past from a person of the name of Sherwood, in Mr. Burck's Bank, Chicago, who was acting in behalf of the owner an Employee in the Marine Bank, Chicago, who it was said wanted the funds to purchase Wheat, and the said several notes were negotiated & transferred to this Deponent in the ordinary, course of trade, - Commerce and business, without any knowledge or notice on the part of Deponent of the existence of usury or other defence to said notes, and Deponent made such purchase in good faith & relying upon the entire soundness & availability of said notes, and had not knowledge or notion of any defence of any description existing against said notes, or any part thereof, as otherwise, he would not have consented to purchase the same; Deponent further says that in making such purchase he invested the funds & moneys of James M. Morrison entrusted to him to see & manage & he holds the judgments above referred to as his Agent and trustee, the whole of the business being transacted by this Deponent in his own name, without any particular knowledge of the facts of the case in said Morrison & further saith not.

Sworn to before me this 15th day
of Nov. 1858. W. Kimball
Clerk

Edwin Blackman

Edwin Blackman

Cook County Court of Common Pleas.

vs

Ezra L. Sherman

Laurin J. Hilliard

Packus S. Morris

Note dated April 26th 1858 at 6 months
to order of E. L. Sherman & endorsed by
him pay able at Marine Bank

Principal \$1150.

Judge Entered
Oct 25 '7858 }

Int. 5 days 95

Costs to Attys 25. 00

\$1175. 95

Clerks Costs paid 6. 00

The above is the suit referred to in previous affidavit as
being annexed thereto —

Affidavit
Jan'y 5. 1859.

Edwin Blackman

vs

Ezra L. Sherman

Laurin J. Hilliard

Packus S. Morris

Cook County Court of Common Pleas.

Judgment Oct 25. 1858

Note \$1250.

Same

vs

Same

Judgment same date note \$1150.

Same

vs

Same

Judgment same date note \$775.

54.

State of Illinois
 Cook County } ss. Edwin Blackman, Plaintiff in
 the above entitled cause being duly sworn says that
 the statement contained in the affidavit of Ezra
 L. Sherman and of the defendants now on file in this
 cause to the effect following that is to say, that on
 first of October 1857. & on 20 April 1858. the defendants
 applied to Plaintiff & others for loans offering defend-
 ants notes as officers of the Masonic Association,
 that said offer was refused, unless the notes were made
 by defendants, as individuals, with a power of
 attorney to each to confess judgment in default
 of payment & then that the parties or certain parties
 would discount the paper, or would loan money, or
 advance money on such paper, is wholly & entirely
 incorrect in every particular, so far as the same is
 intended or desired to be applicable to this Deponent
 & his transactions with or in reference to the several
 notes on which the above judgments are entered, On the
 contrary thereof this Deponent says, that the defendants
 in the above cause, never in any manner, individually
 or together or by any agent, or in any other manner
 applied to this deponent, for any loan of money or any
 such association paper, no such paper was ever
 offered to this Deponent, he never rejected or refused
 any such paper, and never agreed to take or buy
 any other differently drawn up, or to loan money
 upon it if so differently drawn, as above recited, —

neither is deponent now, nor was he ever possessed of any knowledge, what motives may have led the defendants to make the notes now in judgment in the particular form in which they appear or not to make them as officers of said association.

Deponent further says that he does not belong to the association referred to in defendants affidavits aforesaid, that is to say, he is not a member thereof & has not now & never had any knowledge of their business or transactions public or private & especially none touching their officers, or their debts, or the manner of contracting or paying them.

Deponent further says that the note of \$775⁰⁰ above mentioned was never given up to Deponent on any loaning of money in pursuance of any previous agreement or understanding so to do, or in any other manner as stated in the aforesaid affidavit of C. L. Sherman, but on the contrary thereof the said note was offered to Deponent by the payee thereof as bona fide paper, which the payee wished to sell, and this Deponent purchased the same in good faith, supposing the payee to be the exclusive owner & proprietor, with full & undisputed right to sell the same, and in so purchasing this Deponent had no negotiation with or reference to the makers of said note except to see that they were responsible parties, able to meet their commercial paper. This deponent further says that he

Knows nothing nor did he ever know anything touching the manner in which one F. P. Sherwood mentioned in said E. L. Sherman's affidavit had agreed with the defendants touching said notes first above mentioned for \$1250. & \$1150. respectively, or the manner in which any agents of the defendants, had agreed with said Sherwood touching the same. And the whole allegation in said affidavit contained, charging deponent with notice of the usurious discounting of said notes by said Sherwood, or any other person is utterly & wholly untrue.

Deponent further says, that as Trustee & Agent of James M. Morrison, he never made or gave his consent to the proposal of a compromise upon said notes, extending the time, as in said affidavit is mentioned on real estate security, except on the condition that said Morrison should approve of same, and on its being stated to said Morrison instead of consenting, he refused so to do & wholly & directed deponent to proceed to collect the notes; and this deponent never individually gave any other consent thereto, except on the condition aforesaid.

Deponent further says that with reference to all of said notes, he has had no motive to conceal the true ownership of the real parties in interest in each case, nor could he discover any motive to induce him to make very special explanations

to Every person he met, or dealt with touching the Same.

With regard to the other note of \$775. Deponent says he never agreed to be a party to said arrangement or compromise to wait Five Years for same, and in proceeding to judgment acted as he supposed & still believes in good faith & without violating any agreement whatever & further saith not Sworn & Subscribed

Edwin Blackman
before me Jan'y 14th 1859
C.D. Wolf J.P.

Affidavit
Jan'y 22. 1859

Edwin Blackman
vs
Buckner S. Morris
Laura P. Hilliard
Ezra L. Sherman

Cook County Court of Common Pleas

The same
vs
The same

The same
vs
The same

State of Illinois

Cook County } ss Edwin

Blackman the plaintiff in the above causes, being duly sworn says that in the Three several Cases above entitled being judgments by confession, on

58.

notes and warrants of attorney he this deponent is Agent & Trustee for Miss Blodgett and for James M. Morrison, as stated in his former affidavits on file in the causes respectively but it is not true that he is entirely without ^{any} interest in said suits, inasmuch, as by the terms of his said agency & trusteeship, he is entitled to a Commission agreed upon beforehand for his services in managing and conducting the business & for such compensation or Commission he has a lien upon and interest in the notes & judgments in each cause & the judgments are entered in his name more effectually to obtain & keep in his own hands the control over the same, which by the terms of his agency he is entitled to, and that these facts, were not stated in his former affidavit solely because he was not aware & as he is informed & believes his counsel were not aware that objection would be made on these motions founded on want of Interest in deponent in said suits, or the several debts & judgments.

Deponent has the further interest arising from his liability to the attorneys & counsel for the Plaintiff, he alone having retained and employed them & further saith not

Subscribed & sworn to Edwin Blackman
January 22nd 1859.
before me Walter Kimball
Clerk

59-

Be it Remembered that heretofore, to wit on the twelfth day of October, in the year of our Lord One Thousand Eight Hundred and fifty nine, said day being one of the days of the October Term of the Said Superior Court of Chicago, the following among other proceedings were had, and entered of record, to wit:

19532

Edwin Blackman

as

Ezra L. Sherman
Lawson P. Willard
and Buckner S. Morris

Motion to set aside Judgment
for leave to plead

19534

Edwin Blackman

as

Ezra L. Sherman
Lawson P. Willard
and Buckner S. Morris

Motion to set aside Judgment
for leave to plead.

"Order"

Oct 12/59.

This day comes the plaintiff in the above entitled cases, by Mather, Taft & King his attorneys, and defendants by B.S. Morris & Humming their attorneys also come, and the motion submitted by said defendants to set aside the judgments entered against them in above cases, and for leave to plead, on affidavit filed, being heard, it is ordered that the above cases numbered 19532 & 19534. be consolidated into one action, that plaintiff have leave to amend declaration, and the defendants have leave to plead usury only, that proceedings under the judgments heretofore entered be stayed, but to stand as security for whatever judgment may be rendered in future upon trial of the case.

The Court Overruled the motion for a new trial: to which opinion of the Court the defendants then and there excepted & prayed the Court to sign &

seal this their bill of exceptions, and make them a part of the record in this cause, which ^{is} accordingly done.

Grant Goodrich (Seal)

Appeal

Bond

^{filed}

Mar 29. 1860.

And afterwards: to wit on the twenty Eighth day of March, in the year of Our Lord, One Thousand Eight Hundred & Sixty said defendants by Morris & Cumming their attorneys filed in office of the Clerk of said Court, their appeal Bond, which is in words & figures following: to wit:

Know all men by these presents, that we Laurin P. Williard Esq. L. Sherman, Buckner S. Morris are held and firmly bound unto Edwin Blackman in the penal sum of Three Thousand Two Hundred Dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves our heirs, executors and administrators, sealed with our seal and dated this 22 day of March A.D. 1860.

The condition of the above obligation is such that whereas the above bounden Esq. L. Sherman Laurin P. Williard and Buckner S. Morris, has taken an appeal from a certain judgment rendered against them in favor of the said Edwin Blackman in the Superior Court of Chicago within and for the County of Cook and State of Illinois, at the March term thereof in the year 1860. for the sum of Two Thousand Six Hundred ⁵⁰ Dollars, damages besides his costs

in that behalf expended. to the Supreme Court, within
and for the Third Grand Division of the said State
of Illinois, to be holden at Ottawa in LaSalle County
in said State.

Now if the said Ezra L. Sherman, Lawm. P.
Hilliard and Buckner S. Morris, shall pay the
full amount of the said Judgment, costs, interest,
and damages, in case the said Judgment shall
be affirmed, and also that they will duly prosecute
their said appeal according to law. Then in such
case this Obligation shall be void, otherwise to remain
in full force and effect.

Attest

Approved March 28/60

Grant Goodrich {
Judge Superior Court
of Chicago }

E. L. Sherman

(Seal)

L. P. Hilliard

(Seal)

Buckner S. Morris

(Seal)

V. A. Boyer

(Seal)

State of Illinois
County of Cook } S. S.

I Walter Kimball Clerk of the
Superior Court of Chicago. in and for said County
do hereby certify that the foregoing is a full true
and complete transcript of all the pleadings on file
in my office. and of the proceedings entered of Record
in said Court together with Appeal Bond and
Bill of Exceptions in a certain case wherein Edwin
Blackman is plaintiff and. Ezra S. Sherman.
Laurin P. Williard & Buckner S. Morris are defendants.

In testimony whereof I hereunto subscribe
my name, and affix the seal of said
Court. at the City of Chicago. in said
County. this 11th day of April A.D.
1860. Walter Kimball Clerk



Edwin Blackman Deft in error
P. S. Morris & Thos Selff in error
April Term 1860

Supreme Court
of Illinois
3^d Grand Division

And now comes the Deft in error & says, that
there is no error in the Record & proceedings
aforesaid or in giving the judgment aforesaid
or in annulling the motion for a new trial
or in any of the alleged assignments for error
he prays the judgment so given in his favor
may be affirmed

Matth. Dyer King
Atty for Deft

To take effect on coming in of assent of
Court M. J. L. H.

Filed April 17th 1860
J. A. Leland
Clerk

1864
Jesse A. Sherman
vs
Edwin Blackman
Record