

No. 14210

Supreme Court of Illinois

Nichols

vs.

Stewart et al

71641  7

THEOPHILUS M. NICHOLS, *Plaintiff in error,*
vs.
 CHAS. STEWART, JNO. H. CALBREATH, *Defts. in error.* } Error to St. Clair.

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(4)

Plea.

"

Demurrer, and sustained.

(5-6)

Plea amended so as to craveoyer, and be a plea of usury in usual form, for the loaning of money, answering only first count of declaration.

(4)

Demurrer to amended plea.

"

Demurrer overruled.

"

Pltff. stands by demurrer.

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Count renders judgment, that pltff. recover of and from defts. \$500 with six per cent, per annum interest on the same from the date of said writing obligatory, being in all \$500 debt and damages and costs of suit.

ERRORS ASSIGNED.—1. The overruling of demurrer to amended plea. 2. In giving judgment as rendered. UNDERWOODS, *Pltffs. Atlys.*

BRIEF.—The demurrer to the amended plea should have been sustained, because, 1—The usury law of 1857 is prospective and repeals so much of former penalties as affected this note which was made before its passage, p. 45-6.

2.—The Legislature have power to repeal laws against usury; and contracts made while they existed may afterwards be enforced Sedgw. Con. L., 410, 411, 412, 694. Grunder vs. Nelson. 9 Gill. R., 299. Curtis vs Leavitt, 17 Barb. R., 311.

3.—The law of 1840, p. 98, allows the taking of ten per cent. interest by agreement for money lent, and where more than six per cent. is contracted for other debts, the excess only is forfeited. Hence the court below should have allowed the plaintiff in error at least ten per cent. interest.

The demurrer should have been also sustained because the plea purported to answer, but did not, the whole declaration, Snyder vs. Gaither, 3 Scam. R., 91.

5.—The plea was bad for not alleging that it was *corruptly* agreed, &c., 3 Chitty's P., 966, 3 Mod. R., 35, 2 Shaw R., 329, 7 John. R. 284.

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