No. 12289

Supreme Court of Illinois

McAllister.

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vs.

Smith, et al.

71641  7

Page 1.

The People of the State of Illinois — By the Grace of God free and independent, To all to whom these presents may come — Greeting: Know Ye that we having caused to be inspected the Records and proceedings now remaining in the office of our clerk of our Circuit Court in and for our County of Will, do find these certain records in words and figures following: Viz:

Will County Circuit Court

September Term A.D. 1855

United States of America
State of Illinois } ss
Will County }

Be it remembered that before the Honorable Sylvester H. Randall Judge of the Eleventh Judicial Circuit of the State of Illinois at the September Term of the Will County Circuit Court began and held at the Court House in the City of Joliet in said County on the first Monday of September (the same being the third day of said month of September) in the year of our Lord One Thousand Eight Hundred and Fifty five and of the year of the Independence of said United States the Eightieth

Present Hon Sylvester H. Randall Judge as aforesaid
Sherman H. Reuer States Attorney for the 11th Judicial Circuit
Perry P. Scarritt Sheriff of said Will County
Royal E. Palmer Clerk of Will County Circuit Court

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And on the same day last aforesaid the said Court being duly organized and sitting in open Court for the transaction of business. the following proceedings were had and entered of Record to wit

In the Matter of Filing Pleadings

It is ordered by the Court that all Pleas in all cases now pending upon the docket and not already filed be filed by next Wednesday morning at nine o'clock and sooner in every cause that is reached for trial before that time. And that all issues be made up in each cause by the time that the cause is reached in its order for trial

And Before (to wit) on the second day of July in the year of our Lord one thousand eight hundred and fifty-five, A certain Precipe for summons was filed in the office of said clerk of said Court in words and figures following: (To-Wit)

State of Illinois Will County. ss

Will County Circuit Court
September Term A.D. 1855

William Smith &
R. Eaton Goodell
vs
Edward McAllister

Trespass on the case upon promises,
Damages $10,000

The clerk will please issue summons in this

cause against the above named defendant, directed to the sheriff of said Will county, to execute and returnable according to law

And oblige Gouro

S. Goodspeed

Atty for Plffs.

3

Whereupon the said clerk issued a writ of summons in words and figures following, (To Wit)

State of Illinois }
Will County } ss.

The people of the State of Illinois, to the Sheriff of said County. Greeting:

We command that you summon Edward McAllister if he be found in your County, personally to be and appear before our Circuit Court of our said Will County, on the first day of the next term thereof, to be holden at the Court House in Joliet, in said Will County, on the First Monday of September, 1855 to answer William Smith & R. Eaton Goodell of a plea in Trespass on the case upon promises, to the damage of them, the said plaintiffs ten thousand dollars as is said: And you have then, there this writ.

Witness Royal E. Barber, Clerk of our said Court and the seal thereof hereto affixed at the office in Joliet in said Will County this 2nd day of July A.D. 1855

R. E. Barber, Clerk,

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4 Which said writ of summons was to be returned by the said Sheriff duly served upon the said defendant Edward McAllister

And afterwards (to wit) on the twenty fourth day of August in the year of our Lord one thousand eight hundred and fifty five a certain declaration was filed in the office of our said clerk in words and figures following! (To wit)

State of Illinois } ss.
Will County } In Will County Circuit Court September term, 1855.

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1

To-wit:

William Smith and Reuben Cordell plaintiffs in this suit by P. Goodspeed their attorney, complains of Edward McAllister defendant being duly summoned &c of a plea of trespass on the case upon promises.

For that whereas certain persons by and under the names, style and firm of McAllister & Co, heretofore to-wit on the second day of September A. D. 1854 at Plainfield that is to say in the County of Will and State of Illinois made their certain bills of exchange in writing bearing date a certain day and year therein mentioned to-wit the day and year aforesaid and thereby then and there required the said defendant ten days after the date thereof to pay to the order of them the said McAllister & Co at the Merchants and Drovers Bk Joliet, that is to say at the Merchants and Drovers bank of Illinois, situated in the City of Joliet in said State the sum of two thousand dollars value received, which said bill of exchange the said defendant afterwards to-wit on the day and year aforesaid at the county of Will aforesaid upon sight thereof accepted And the said drawers of said bill of exchange to whom or to whose order the payment of the said sum of money in the said bill of exchange specified was to be made after the making of said bill of exchange and before the payment thereof to-wit on the day and year aforesaid to-wit in the county of will aforesaid endorsed the same to the said plaintiffs.

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6 of all which the said defendant then and there had notice. And in consideration thereof the said defendant then and there had notice, promised the said plaintiffs to pay them the amount of the said bill of exchange according to the tenor and effect thereof and of his said acceptance.

2 And whereas also those certain persons by and under the names styles and firm of McAllister Co afterwards to-wit-on the fifth day of September A. D, 1854 at Plainfield that-is to say in the said County of Will and State of Illinois made their certain other bill of exchange in writing, bearing date a certain day and year therein mentioned to-wit the day and year last aforesaid and directed the same to the said defendant at Plainfield aforesaid and thereby required the said defendant in sixty days after the date thereof to pay to the order of them, the said drawers of said last mentioned Bill of exchange the sum of one thousand dollars at Wadsworth & Sheldons N York that is to say at the office of Wadsworth and Sheldon in the City of New York in the State of New York, — And the said defendant then and there accepted the said last mentioned bill of exchange, and the said drawers of the said last mentioned bill of exchange to whom or to whose order the said payment of the sum of money in the said last mentioned bill of exchange specified was to be made after the making of the said last-mentioned bill of exchange and before the payment thereof to-wit on the day and year last aforesaid to-wit in the county of Will aforesaid endorsed the same to the said plaintiffs of all which the said defendant then and there had notice, And in consideration

thereof then and there promised to pay them the
7 said plaintiffs the amount of the said last mentioned
bill of exchange according to the tenor and effect thereof
and of his said last mentioned acceptance,
3 And whereas also those certain persons by and under the
names styles and firm of Mc Allister & Co. afterwards to=wit on
the seventh day of September A. D. 1854 at Plainfield that is
to say in the said county of Will and State of Illinois made
their certain other bill of exchange in writing bearing date
a certain day and year therein mentioned to=wit the day
and year last aforesaid and directed the same to the said
defendant at Plainfield aforesaid and thereby required the
said defendant in sixty days after the date thereof to pay to
the order of them the said drawers of the said last mentioned
bill of exchange the sum of one thousand dollars, and the
said defendant then and there accepted the said last
mentioned bill of exchange "Pay to at the office of Wadsworth
and Sheldon New York" that is to say payable at the
office of Wadsworth & Sheldon in the City of New York in the
State of New York, And the said ~~defendant~~ drawers of the
said last mentioned bill of exchange to whom or to whose
order the said payment of the sum of money in the said
last mentioned bill of exchange specified was to be made
after the making of the said last mentioned bill of exchange
and before the payment thereof to=wit on the day and year
last aforesaid to=wit in the county of Will aforesaid endorsed the same to the said plaintiffs
of all which the said defendant then and there had notice,
and in consideration thereof then and there promised to pay

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8 them the said plaintiffs the amount of the said last mentioned bill of exchange according to the tenor and effects thereof and of his said last mentioned acceptance.

4 do 11 And whereas also those certain persons by and under the names style and firm of McAllister & Co. afterwards to-wit on the eleventh day of September A.D. 1854 at Plainfield that is say in the said County of Will and State of Illinois made their certain other bill of exchange in writing bearing date a certain day and year therein mentioned to-wit the day and year last aforesaid and directed the same to the said defendant at Plainfield aforesaid and thereby required the said defendant in sixty days after the date thereof to pay to the order of them the said drawers of the said last mentioned bill of exchange the sum of two thousand dollars And the said defendants then and there accepted the said last mentioned bill of exchange payable at Wadsworths and Sheldons New York and the said drawers of the said last mentioned bill of exchange to whom or to whose order the said payment of the sum of money in the said last mentioned bill of exchange specified was to be made after the making of the said last mentioned bill of exchange to-wit on the day and year last aforesaid to wit in the county of Will aforesaid endorsed the same to the said plaintiffs of all which the said defendants then and there had notice. And in consideration thereof then and there promised the said plaintiffs to pay them the amount of said last mentioned bill of exchange according to the tenor and effect thereof and of his said last mentioned

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acceptance,
And whereas also those certain persons by and under the name style and firm of McAllister and Co, aforesaid to-wit on the Eighteenth day of September A.D. 1854 at Plainfield that is to say in the said county of Will and State of Illinois made their certain other bill of exchange in writing bearing date a certain day and year therein mentioned to-wit the day and year last aforesaid and directed the same to the said defendant at Plainfield aforesaid and thereby required the said defendant in sixty days after the date thereof to pay to the order of them the said drawers of the said last mentioned bill of exchange the sum of one thousand dollars.- and the said defendant then and there accepted the said last mentioned bill of exchange payable at the office of Wadsworth & Sheldon New York and the said drawers of the said last mentioned bill of exchange to whom or to whose order the said payment of the sum of money in the said last mentioned bill of exchange specified was to be made, after the making of the said last mentioned bill of exchange and before the payment thereof to-wit on the day and year and at the place last aforesaid endorsed the same to the said plaintiffs of all which the said defendant then and there had notice - and in consideration thereof then and there promised the said to plaintiffs to pay them the amount of the said last mentioned bill of exchange according to the tenor and effect thereof and of his said last mentioned acceptance,
And whereas also the said defendant on the first day of June A.D. 1855 at Joliet that is to say in the said County of

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Will and State aforesaid was indebted to the said plaintiffs in the sum of ten thousand dollars for the price and value of goods then and there sold and delivered by the said plaintiffs to the said defendant at his request: And in the further sum of ten thousand dollars for the price and value of work then and there done and materials for the same provided by the plaintiffs for the said defendant at his request, And in the further sum of ten thousand dollars for money then and there lent by the said plaintiffs to the said defendant at his request:

And in the further sum of ten thousand dollars for money then and there paid by the said plaintiffs for the use of the said defendant at his request:

And in the further sum of ten thousand dollars for money then and there received by the said defendant for the use of the said plaintiffs: And in the further sum of ten thousand dollars for money found to be due from the said defendant to the said plaintiffs on an account then and there stated between them:

And Whereas the said defendant afterwards to-wit: on the day and year last aforesaid to-wit: in the county of Will aforesaid in consideration the premises respectively then and there promised to pay the said several monies respectively to the said plaintiffs on request: Yet the said defendant disregarding his said several promises and undertakings hath not paid the said several sums of money or either of them or any part thereof to the said

plaintiffs although often requested so to do but the said defendant
to pay the same hath hereto wholly neglected and refused so to
and still doth neglect and refuse so to
do, to the damage of the said plaintiffs of ten thousand dollars
10 and therefore they bring their suit &c,

A Goodspeed atty for plffs

Copies of Bills of exchange and the acceptances
declared on.

$2000 Plainfield Sept. 2nd 1854

Ten days after date Pay to the order of ourselves at the
Merchants & Drovers Bk the sum of two thousand dollars
value recieved and charge the same to account of
To Edwd McAllister,
Plainfield

McAllister & Co.

$1000 Plainfield Sept. 5th 1854

Sixty days after date Pay to
the order of ourselves at Wadsworth & Sheldons N York
One thousand Dollars
value recieved and charge the same to account of
To Edwd McAllister Yours &c
Plainfield Ills

McAllister & Co

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11

$1000 Plainfield Sept 18th 1854

Sixty days after date value received Pay to the order of ourselves One thousand dollars.

To Edwd McAllister,
Plainfield Ills.

McAllister & Co

$1000 Plainfield Sept 7th 1854

Sixty days after date value received Pay to the order of ourselves One thousand dollars.

To Edward McAllister,
Plainfield Ills.

McAllister & Co.

$2000 Plainfield Sept 11th 1854

Sixty days after date value received Pay to the order of ourselves Two thousand dollars.

To Edward McAllister,
Plainfield Ills.

Mc Allister & Co.

And afterwards (to-wit) on the fourth day of September in the year of our Lord one thousand eight hundred and fifty-five. Defendants filed their pleas in the aforesaid entitled cause in words and figures following, (To-wit)

Circuit Court Will County }
Edward McAllister, }
12 ads, } Sept Term A. D. 1855,
William Smith and R }
Eaton Goodell, }

1 85 11 And the said defendant by Anderson and McAllister his attorneys comes and defends the wrong and injury wherein and says that he did not promise or undertake in manner and form as the said plaintiffs have above thereof complained against him and of this the said defendant puts himself upon the country

2nd Plea And for a further plea as to the said premises undertakings and bills of exchange in the second third fourth and fifth counts in said declaration mentioned the said defendant says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him because he says that before the making of the said premises undertakings and bills of exchange in the said several counts mentioned to-wit on the twentieth day of August in the year of our Lord one thousand eight hundred & fifty four to-wit at Joliet in said county of Will the Merchants and Drovers Bank of Illinois was a body corporate created under the statute of the State of Illinois passed to-wit on the fifteenth day of February eighteen hundred and fifty one Entitled "An act to Establish a general system of Banking" and the said William Smith was then and there and still is the president and the said R Eaton Goodell the Cashier thereof. And the said the Merchants and Drovers Bank then

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13 and then so being such body corporate and the said William Smith the president and the said R Eaton Goodell the cashier thereof as aforesaid on to wit the day and year and at to wit the place aforesaid, it was contrary to the provisions of the Statute of the State of New York hereinafter set forth corruptly agreed by and between the said bank by the said plaintiffs the agents and officers thereof as aforesaid of the one part and the said McAllister & Co and the said defendant of the other part that the said bank should lend and advance to the said McAllister & Co and to this defendant for the purposes of buying by the parties last-named a quantity of grass seed during the then coming fall such sums of money as they the said parties last named should desire not exceeding to-wit the sum of seven thousand dollars in manner following that is to say, in such sums as should from time to time be required by the said McAllister & Co and the said defendant for the purpose aforesaid, and that the said bank should forbear and give day of payment of the said sums to be so lent and advanced as aforesaid and each and every thereof for the period to-wit of sixty days upon each from the time of advancing the same and the said sums to be so sent and advanced by the said bank as aforesaid were each and every thereof to be paid by the said McAllister & Co and the said defendants in the city and State of New York reference being had to the laws of the said State by the said several parties in the making of the said corrupt agreement. And that for the forbearing and giving day of payment of the said sums of money so to be

advanced as aforesaid by the said bank to the said
12) McAllister & Co, and the said defendant should give &
pay to the said Bank a certain sum of money and rate
of interest to-wit- at the rate of twelve dollars for a hundred
dollars for one year upon all the moneys to be so advanced
by the said bank as aforesaid besides the difference in
exchange between the said city of Joliet and the city
of New York and it was then and there further
agreed that to secure the repayment of the said sums
of money so to be lent and advanced as aforesaid the
said McAllister & Co should make draw and endorse
and the said defendant accept a bill of exchange
payable in the city of New York aforesaid for such
an amount as would cover such sum as should be at any
time lent and advanced as aforesaid together with twelve
per centum per annum upon the same as the rate of interest
aforesaid thereon added to such sum and that the
same so made drawn endorsed and accepted as aforesaid
should be delivered to said bank by the said McAllister
and Co or the said defendant at the time of receiving
such sum of money as aforesaid from the said Bank
And the said defendant further in fact says that in
pursuance and part performance of the said corrupt
and unlawful agreement the said Mc Allister & Co afterwards to wit on the fifth day of September one thousand
eight hundred and fifty four to-wit at Joliet
aforesaid made drew and endorsed and the said
defendant then and there accepted the said bill of

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15 Exchange in the second count in said declaration
mentioned and the said last mentioned parties then
and there delivered the same so made drawn endor-
sed and accepted to the said bank, And the said bank
by the said agents then and there recieved the same
and in further pursuance of said corrupt and unlawful
agreement lent and advanced then and there to
the said parties the sum of nine hundred and seventy
nine dollars, And that in further pursuance of said
corrupt and unlawful agreement the said Mc Allister
and Co, afterwards to-wit, on the seventh day of Sep-
tember aforesaid to wit at the place aforesaid made
drew and endorsed and the said defendant then &
there accepted the said bill of exchange in the third
count in said declaration mentioned and there & then
the same so being made, drawn endorsed and accepted did
deliver to the said bank and the said bank then
there by the aforesaid agents then and there recieved
the same and in further pursuance of said corrupt
and unlawful agreement did lend and advance to the
said Mc Allister & Co and the said defendant the
further sum to-wit of nine hundred and seventy nine
dollars, And the said defendant further in fact says
that in further pursuance and part performance of said
corrupt and unlawful agreement the said Mc Allister
& Co, afterwards to-wit on the eleventh day of September
aforesaid at the place aforesaid did make draw and endorse
and the said defendant accept the said bill of

exchange in the said fourth count in said declaration
mentioned and the same so made drawn endorsed and
16 accepted did then and there deliver and the said bank
by the aforesaid agents thereof did recieve the same
and in further pursuance of said corrupt and unlawful
agreement and on the terms aforesaid did lend and
advance to the said McAllister & Co and the said
defendant then and there the further sum of nineteen
hundred and fifty eight dollars. And further in pur-
suance of said corrupt and unlawful agreement the
said Mc Allister & Co afterward to-wit on the eighteenth
day of September last aforesaid to-wit at Joliet aforesaid
did make draw and endorse and the said defendant
then and there accept the said bill of exchange men-
tioned in the fifth count in said declaration and the
said Mc Allister & Co then and there delivered and the
said bank recieved the same so made drawn endorsed
and accepted as aforesaid and then and there on the
terms aforesaid lent and advanced to the said Mc
Allister & Co and the said defendant the further sum
to-wit of nine hundred and seventy nine dollars to-wit
in like bills as aforesaid. And the said defendant further in fact
says that the whole amount of moneys so recieved as
aforesaid under the said agreement and for securing the
repayment of which the said several bills of exchange in
said counts mentioned were so made drawn endorsed and
accepted by the said parties thereto and recieved by the
said bank aforesaid did not exceed the sum to-wit of

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17 four thousand and eight hundred and sixty five dollars and that the amount which in and by the said agree= ment and the said bills of exchange the said bankers reserved and agreed to take and receive for the loan and for= bearance of said moneys so lent and advanced as aforesaid to the said parties to said bills of exchange exceeds the rate of seven dollars for the forbearing of one hundred dollars for one year. And the said defendant further in fact says that previous to the making of the aforesaid agreement (and which at the time of the making of the same was well known to the said plaintiffs) there was and still is a Statute in force in the said State of New York entitled "Of the interest of money" in and by which it is among other things enacted and provided as follows to wit. S.1. "The rate of interest upon the loan or forbearance of any money, goods or things in action, shall continue to be seven dollars upon one hundred dollars for one year and after that rate for a greater or a less sum or for a longer or a shorter time" And it is further in and by said Statute among other things provided as follows to wit. S.5. All bonds bills notes assurances conveyances, all other contracts or securities whatsoever And all deposites of goods or other things whatsoever whereupon or whereby there shall be reserved or taken, or agreed to be reserved or taken any greater sum or greater value for the loan or forbearance of any money goods or other things in action, than is above prescribed shall be void. but this section shall not extend to any bills of exchange or promissory notes payable

to order or bearer in the hands of an endorsee or holder
18 who shall have received the same in good faith and for
valuable consideration and who had not at the time of
discounting such bill or note or paying such consideration
for the same actual notice that such bill or note had
been originally given for a usurious consideration or upon a
usurious contract, And the said defendant further says
that the said last mentioned statute was afterwards
amended by another statute of said State, entitled an
act to prevent usury passed May 15 1837, in and by
which it is among other things enacted as follows, S.1. the
fifth section title three of chapter four part two of the
Revised Statutes is hereby amended so as to read as follows
viz- S.5. All bonds bills notes assurances conveyances all
other contracts or securities whatsoever (except bottomry and
respondentia bonds and contracts) and all deposites of
goods or other things whatsoever whereupon or whereby there
shall be reserved or taken or secured or agreed to be
reserved or taken any greater sum or greater value for the
loan or forbearance of any money goods or other things in action
than is above described shall be void; but this act shall not
effect such paper as has been made and transferred previ-
ous to the time it shall take effect, Transcripts of which
statutes duly certified under the hand of the secretary of state
of the State of New York and the seal of said State the
said defendant now brings here into court,
And the said defendant further in fact says that the
said bills of exchange in said counts mentioned each and

every thereof still belong to the said bank and this action is thereupon brought for the use and benefit of the said bank and each and every thereof were and are by virtue of the premises and and of said said statute wholly void and this the said defendant is ready to verify wherefore he prays judgment if the said plaintiffs ought to have or maintain the ~~same~~ aforesaid action thereof against him.

3rd Plea And for a further plea as to the said second third fourth and fifth counts in said declaration, and the bills of exchange therein mentioned, the said defendant says that the said plaintiffs ought not to have or maintain their action thereof against him because he says that before the making of the said several bills of exchange in said counts mentioned to wit on the twentieth day of August in the year of our Lord one thousand eight hundred and fifty four to wit at Joliet in said county of Will it was against the form of the Statute of the State of New York in the defendants foregoing special plea mentioned and set forth corruptly and usuriously agreed by and between the said plaintiffs of the one part and the said McAllister and Company of the other part that the said plaintiffs should lend and advance to the said McAllister & Co, and the said defendant for the purpose of buying grass seed the then coming fall such sums of money as should be required by the parties last aforesaid for the purpose aforesaid in manner as follows that is to say in such sums as should from time to time be required by said McAllister & Co, and said defendant for the purpose aforesaid and that the said plaintiffs should forbear and

give day of payment of the said sums to be so lent & advanced as aforesaid and each and every thereof for the
20 period to wit of sixty days from the time of advancing each and every sum as aforesaid by the said plaintiffs and each and every sum so lent and advanced was to be paid by the said McAllister & Co. and the said defendant in the city and State of New York with reference to the laws of which said State the said agreement was then and there in all respects made by the aforesaid parties thereto, And that for the forbearing and giving day of payment of the said sums of money so to be lent and advanced as aforesaid by the said plaintiffs to the said McAllister & Co. and the said defendant, they the said McAllister & Co and said defendant should give and pay to the said plaintiffs a certain sum of money and rate of interest to wit at the rate of twelve dollars for a hundred dollars for one year upon all moneys to be so advanced by the said plaintiffs besides the difference in exchange between Joliet aforesaid and the city of New York aforesaid, And it was then and there further agreed that to secure the repayment of the said sums to be so advanced as aforesaid by the said plaintiffs to the parties aforesaid the said McAllister and Co. should make draw and endorse and the said defendant accept a bill of exchange payable in the city of New York aforesaid for such and amount as would cover such sum as should be at any time lent and advanced as aforesaid together with twelve per centum interest on such sum as the rate of interest thereon as aforesaid added to such sum so lent and advanced and that the same so

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made drawn endorsed and accepted as aforesaid should be delivered to the said plaintiffs by the said parties at the time of recieving such money as aforesaid. And the said defendant further in fact says that in pursuance and part performance of the said compt and unlawful agreement the said McAllister & Co. afterwards to-wit on the fifth day of September 1854 to-wit at Ohio aforesaid made drew and endorsed and the said defendant accepted then and there the said bill of exchange in the second count in said declaration mentioned and the said last mentioned parties the said bill so made drawn endorsed and accepted there delivered to the said plaintiffs who then and there recieved the same and in further pursuance of said compt and unlawful agreement then and there did lend and advance to the said McAllister & Co and the said defendant the sum of nine hundred and seventy nine dollars. And that in further pursuance of said compt and unlawful agreement the said McAllister and Co afterwards to-wit on the seventh day of Sept aforesaid to-wit at the place aforesaid made drew endorsed and the defendant accepted the said bill of exchange in the third count in said declaration mentioned and the same so made drawn endorsed and accepted then and there delivered to the said plaintiffs and the said plaintiffs then and there recieved the same and in further pursuance of said compt and unlawful agreement then and there lent and advanced to the said McAllister & Co and said defendant the further sum of nine hundred and seventy nine dollars, and that in further pursuance of said compt and unlawful agreement

22 and in part performance thereof the said Mc Allister & Co afterwards to-wit: on the Eleventh day of September aforesaid at the place aforesaid made drew endorsed and the said defendant then and there accepted the said bill of exchange in the fourth count of said declaration mentioned and the same so made drawn endorsed and accepted then and there delivered to the said plaintiffs and said plaintiffs in further pursuance of said corrupt and unlawful agreement then and there lent and advanced to the said McAllister & Co. and said defendant the further sum of nineteen hundred and fifty eight dollars. And further in pursuance of said corrupt and unlawful agreement the said McAllister and Co. afterwards to-wit on the eighteenth day of September aforesaid to-wit at the place aforesaid did make draw and ~~xxxxxxx~~ endorse and said defendant ~~xxx~~ then & there accept said bill of exchange in the fifth count in said declaration mentioned, and then and there delivered the same to the plaintiffs and the said plaintiffs in further pursuance of said corrupt and unlawful agreement then and there lent and advanced to the said McAllister and Co. and said defendant the further sum of nine hundred and seventy nine dollars And the said defendant further in fact says that the whole amount of moneys so received as aforesaid by the said McAllister & Co and said defendant under said agreement and for securing the repayment of which the said several bills of exchange in said counts mentioned were so made drawn endorsed accepted and delivered

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as aforesaid did not exceed the sum of to-wit: of
23 four thousand eight hundred and ninety five dollars and
that the amount which in and by said bills of exchange
the said plaintiffs agreed to take and receive for the loan
and forbearance of said moneys so lent and advanced as
aforesaid exceeds the rate of seven dollars and exceeds the
rate of ten dollars per centum per annum for one hundred
dollars for a year and the defendant further says that
the said several bills of exchange in said counts mentioned
and each every thereof by virtue of the said statutes of the
State of New York in the foregoing plea set forth were and
are wholly void, and this the said defendant is ready to
verify wherefore he prays judgment if the said plaintiffs
their action aforesaid thereof ought to have or maintain
against him.

4th Plea. And for a further plea as to the said bill of exchange in
the first count of said declaration mentioned the said
defendant says the said plaintiffs ought not to have
their aforesaid action thereof
or maintain against him because he says that before the
time of the making of said bills to-wit: on the 2d day of Sept-
ember 1854 to-wit at Joliet aforesaid the said the Merchants
and Drovers Bank of Illinois were a body corporate created
under the statute of the State Entitled, "An act to establish a
general system of Banking passed to-wit: on the fifteenth
day of February 1851, having their place of business at
Joliet aforesaid, and the said William Smith was then and
there and still is the president and the said R Eaton
Goodell the cashier thereof, and the said bank being such

body corporate and the plaintiffs such president and cashier as aforesaid on to-wit: the day and year and at
24 the place aforesaid it was corruptly and against the powers of said act agreed by the said bank by the said officers and agents thereof of the one part and the said McAllister & Co of the other part that the said bank should lend & advance to the said McAllister & Co. a sum of money to wit the sum of nineteen hundred and fifty one dollars thirty three cents, and the said bank should forbear and give day of payment for the said sum to be so lent and advanced for the period of ten days from the said 2d day of September and that for the forbearing and giving day of payment as aforesaid the said McAllister & Co should give and pay to the said bank the sum of to-wit: eight dollars sixty seven cents being at the rate of twelve percentum for a year upon the said sum so to be lent and advanced as aforesaid, and it was then and there further agreed that to secure the repayment of the said sum so to be lent and advanced as aforesaid the said McAllister & Co should make draw endorse and the said defendant accept the bill of Exchange that the same so made drawn endorsed and accepted should be delivered by the said McAllister & Co to the said bank and the said defendant further in fact says that afterwards to-wit: on the day and year and at the place aforesaid in pursuance and performance of said corrupt and unlawful agreement the said McAllister and Co did make draw and endorse and the said defendant then accept the said

25 bill of exchange and the same being so drawn made endorsed and accepted the said McAllister & Co there and there delivered to the said bank, and the said bank then and there recieving the same further in pursuance of said corrupt and unlawful agreement did lend and advance to the said McAllister & Co the said sum of nineteen hundred and ~~twenty~~ ninety one dollars and thirty three cents and no more, And the said defendant therefore says that the said bank recieved the said bill as security under a corrupt agreement as aforesaid to take more than at the rate of seven per centum per annum as interest in violation of the said statute under which said bank was created and the said bill was and is wholly void and this the said defendant is ready to verify, Wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against the said defendant.

Anderson and McAllister
Deft. attys.

And afterwards towit on the seventh day of Sept in the year of our Lord one thousand eight hundred and fifty five it also being one of the regular days of said September Term of said Court for the said year 1855 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following. (towit)

William Smith & R. Eaton Goodell
vs
Edward McAllister

Trespass on the Case upon Promises

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And now this Cause being Called for Trial And neither of the said Parties being ready for Trial. It is ordered by the Court that this suit be set at the foot of the Docket. Thereupon the said Defendant by Anderson and McAllister his Attorneys enter his motion for leave to file his Amended Plea herein. And the Court being fully Advised in the premises it is ordered that said motion for leave to file said Amended Plea be and it is overruled.

And afterwards (to wit) on the thirteenth day of September in the year of our Lord one thousand eight hundred and fifty-five. The said Plaintiffs filed their Replication to the said Defendant second plea in their aforesaid cause in words and figures following: (To wit)

[10289-14]

State of Illinois Will County ss

Will Circuit Court
September term 1855

27 William Smith and
R Easton Goodell
vs
Edward McAllister

1 And the said plaintiffs as to the plea of the said defendant by him first above pleaded and whereof he puts himself upon the country do the like.

S. Goodspeed atty for plffs.

2 And to the said plea of the said defendant by him secondly above pleaded, plaintiffs say that they by reason of any thing in said plea alleged ought not to be barred from having and maintaining their action in that behalf, because they say that no such usurious agreement as is in said plea alleged was made in manner and form as the same is alleged in said plea and this they pray may be enquired of by the country.

S. Goodspeed atty for plffs.

3 And for a further replication to said second plea of said defendant, said plaintiffs protesting that no such contract or agreement was made between said bank of the one part — and the said McAllister and company and said defendant of the other part — as is alleged in said plea — and that said bills of exchange in 2nd 3rd 4th and 5 counts in said declaration mentioned were not respectively made accepted and delivered in pursuance of such alleged contract as set forth in said plea nevertheless say — that such contract was not

5/2289-10

28 made nor were said bills of exchange made accepted or
endorsed with reference to the laws of the State of
New York nor was reference had to the laws of the
State of New York by the said several parties in the
making of said contracts or writings or in the accepting
endorsing or delivering of said several bills of exchange
in said plea mentioned and this they pray may be
enquired of by the country

J Goodspeed atty for plffs

4 And for a further replication to said second plea of
defendant said plaintiffs say precluded now, because
protesting that such agreement was not made as in
said plea is alleged they say that said several bills
of exchange in the said 2nd 3rd 4th and 6th counts
of said declaration respectively mentioned, were not
drawn, accepted endorsed delivered or given for such
usurious consideration, nor in pursuance of such
usurious agreement as in said plea alleged And this
the said plaintiffs pray may be enquired of by the country

J Goodspeed atty for plffs

5 And for a further replication to said second plea of defendant
plaintiffs protesting that no such agreement as is alleged
in said plea (and in pursuance of which it is alleged
in said plea that said several bills of exchange (in said
plea referred to) were made accepted and given) was ever
made as is alleged in said plea and that said bills
of exchange were not drawn accepted endorsed delivered
or given for such usurious consideration, nor in pursuance

of such agreement as is in said plea alleged. Nevertheless
29 say - that said bills of exchange were severally drawn signed
accepted endorsed delivered and given - in the State of
Illinois - viz - in the county of Will aforesaid and that
all and each of the parties to said several bills of exchange
and each of the parties to this suit were then and there
residents and citizens of the State of Illinois and transacting
business in the said State of Illinois - and that in drawing
accepting endorsing and delivering said several bills of
exchange reference was had by all the parties thereto
to the laws of the state of Illinois and not to the laws of
the State of New York all of which said plaintiffs are
ready to verify wherefore &c.

F Goodspeed atty for plfs

6 And as to said plea of defendant by him thirdly above pleaded
Plaintiffs for replication say that no such usurious agreement
as is in said plea alleged to have been made, was made
in manner and form as the same is in said plea
alleged. And this they pray may enquired of the county.

F Goodspeed atty for plfs.

7 And for a further replication to said third plea of said
defendant said plaintiffs protesting that no such contract
or agreement was made as is in said plea alleged to have
been made and that said bills of exchange in said plea
mentioned were not made accepted and delivered in pursuance
of such alleged contract as in said plea is alleged, nevertheless
say - that such contract was not made nor were said
bills of exchange made accepted or endorsed or received with
reference to the laws of the State of New York nor was reference

[12289-16]

30 had to the laws of the State of New York by the said several parties in the making of the said contracts or writings or in the accepting endorsing delivering or recieving of said several bills of exchange in said plea mentioned and this they pray may be enquired of by the country.

J. Goodspeed atty for plffs

8 And for a further replication to said third plea of defendant said plaintiffs protesting that such usurious agreement was not made as is in said plea alleged they say that said several bills of exchange in said third plea mentioned were not drawn accepted endorsed delivered given or received for such usurious ~~agreement~~ consideration nor in pursuance of such usurious agreement as is in said plea in that behalf alleged. And this they pray may be enquired of by the country.

J. Goodspeed atty for plffs.

9 And for a further replication to said third plea of defendant plaintiffs protesting that no such usurious agreement as is in said plea alleged was ever made and that said bills of exchange in said plea mentioned were not drawn accepted endorsed delivered given or received in pursuance of any such agreement as is in said plea alleged. Nevertheless say, that said bills of exchange were severally drawn signed accepted endorsed delivered given and recieved within the State of Illinois to wit in the County of Will aforesaid, And that all and each of the parties to said several bills of exchange and each of the parties to this suit were then and there and now are residents and citizens of the said State of Illinois, transacting business in said State of Illinois

and that in drawing signing ~~&~~ accepting endorsing
31 delivering and receiving said several bills of exchange reference was had by each and all of said parties to the laws of the State of Illinois and not to the laws of the State of New York all of which said plaintiffs are ready to verify. Wherefore &c.

P Goodspeed atty for plffs

11 And for replication to fourth plea above pleaded by defendant, plaintiffs say that such illegal agreement as is alleged in said plea was not made by and between the Merchants and Drovers Bank of Illinois of the one part and Mc Allister and Co of the other part as defendant hath in said plea alleged – And this they pray may be enquired of by the country

P Goodspeed atty for plffs.

11 And for further replication to said fourth plea, protesting that said bank did not lend nor agree to lend to McAllister and Co, money as alleged in said plea and that such illegal agreement was not made, plaintiffs nevertheless say, said bill of exchange in said first count mentioned was not drawn accepted endorsed delivered or received in pursuance of any such illegal ~~consideration~~ contract, wrongly said illegal consideration alleged in said plea, and this they pray may be enquired of by the country.

P Goodspeed atty for plffs

[12289-17]

And afterwards (to wit) on the fifteenth day of

82 September in the year of our Lord one thousand eight hundred and fifty-five, the said Defendant filed his Rejoinder, to the said Replications of the said plaintiff, in the said cause in words and figures following, (to-wit)

Will County Circuit Court

Edward McAllister
ads
William Smith &
R Eaton Goodell

Sept. Term.
A. D. 1855.

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And the said defendant as to the fifth replication of the said plaintiffs and being to the defendants second plea by him pleaded saith that the said plaintiffs ought not by reason of any thing by him in that replication alleged to have or maintain his aforesaid action thereof against him the said defendant because he says that reference was not had by the said parties or any thereof to the laws of the state of Illinois in either the drawing, the endorsing, the delivering or receiving said several bills of exchange or either of them in said plea mentioned in manner and form as by the said plaintiffs in said replecation is alleged but the same were drawn made endorsed accepted delivered and received by and between said parties before mentioned with reference to the laws of the said state of New York and of this the said defendant puts himself upon the country.

Anderson & McAllister.
Defts. atty.

And for a further rejoinder the said defendant as to the ninth replication of the said plaintiffs and being to the defendants third plea by him pleaded saith that the said plaintiffs ought not by reason of any thing by him in that replication alleged to have or maintain his aforesaid action thereof against him the said defendant

[12289-18]

34

because he says that reference was not had by the parties in said replication mentioned or any of them neither the drawing the endorsing the delivering or receiving the said several bills of Exchange or any of them in manner and form as by the plaintiffs in said replication alleged but the same and each and every thereof were made drawn endorsed accepted delivered and received by and between the said parties with reference to the laws of the State of New York and of this the said defendant puts himself upon the country.

Anderson & McAllister Defts atty.

And as to the plaintiffs second third fourth sixth seventh eighth tenth and eleventh replications and which the said plaintiffs have prayed may be enquired of by the country the said defendant doth the like.

Anderson & McAllister Defts atty

And afterwards (to wit) on the fifteenth day of September in the year of our Lord one thousand eight hundred and fifty-five the said Defendants attorney filed his affidavit in the said cause in words and figures following (to wit)

Will Co. Circuit Court

Edward Mc Allister
ads.
William Smith and
R Eaton Goodell

35- Will County ss. W R Mc Allister being duly sworn says that he is one of Defts Attys in this cause that the defendant after the Court declared on Thursday evening that he would try no more cases with a jury, left on Friday morning on a visit to the east and is now out of this State. That the defendant is fully possessed of all the facts in this case and knows all the matters pertaining thereto, by examining of entries made by plffs words and statements of defendant and his witnesses that said defendant has a good & substantial defence upon the merits, to this action as deponent verily believe. That defendant and deponent have been anxious during all the term to dispose of this case this term. That replications by plffs were filed tendering issues to the county only a few minutes before the court declared that no more civil cases would be tried and the fate of the case as to going over the term thereby determined. Deponent further says that the pleas by him filed for deft were prepared in much haste, the first day of the term and filed the second, and when deponent was indisposed to so great an extent as to quite unfit him for any business and he fears that he has misapprehended in some degree the facts, in the defence which are very intricate and involve very important questions of law. Deponent further says that there is or has been no disposition on

[12287-9]

his part or that of the defendant to delay or put over this cause, and he makes this application in good faith, that he has urged Mr Goodspeed nearly every day this term to bring the case forward by filing replication or take some other step, but could get nothing done till late Thursday afternoon. That several replications are filed to the pleas which were interposed without leave of the court,
Sworn this 15th day of Sept 1855 before me
R. B. Barber Clk

Wm R McAllister

And afterwards (Court) on the fifteenth day of September in the year of our Lord one thousand eight hundred and fifty-five it also being one of the regular days of said September Term of said court for the said year 1855 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following. (Court)

William Smith & Re. Eaton Woodell
vs
Edward McAllister
} Trespass on the Case upon Promises

And now come the said Plaintiffs by S. Goodspeed their Attorney and enter their motion that this cause be now called up for hearing. And the said defendant by Anderson and McAllister his Attorneys enter his cross motion that this cause be now called up for hearing. Whereupon it is ordered by the Court that this cause be and it now is called up for hearing. Thereupon the said defendant enters his motion for leave

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to withdraw the Third Plea herein. And substitute amended Pleas in place of the Second and fourth Pleas herein. Whereupon it is ordered by the Court that such leave be and it is granted. And the said Defendant enters his motion to strike out the Fifth and ninth replications of the said Plaintiffs. And the said Plaintiffs enter their cross motion that said motion of the said defendant to strike out said Fifth and ninth Replications herein be overruled. And after hearing the Arguments of Council upon said motion. And the Court being fully advised in the premises it is ordered that said motion to strike out the said Fifth and ninth Replications herein be and it is overruled. Thereupon the said defendant enters his Exceptions to the opinion of the Court in overruling his said motion for to strike out said fifth and ninth Replications herein

And afterwards Exhibit on the Fourth day of January in the year of our Lord one Thousand eight hundred and fifty six it also being one of the Regular days of said December Term of said Court for the said year A.D. 1855 aforesaid and the said Court being then duly organized and sitting in open Court for the Transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following Exhibit

William Smith & Reuben Caldwell

vs

Edward McAllister

} Trespass on the Case upon Promises

And now come the said Plaintiffs by Woodspeed their Attorney and enter their motion that this Cause be now

[illegible]

Called up for hearing. And the said defendant by Anderson and McAllister his Attorneys enters his Cross motion that this Cause be now called up for hearing. Whereupon it is ordered by the Court that this Cause be and it now is called up for hearing. Thereupon the said Plaintiffs enter their motion that this cause be set for trial on next monday at two oclock in the afternoon. And the said defendant enters his Cross motion that the Trial of this Cause be set for Monday next at two oclock in the afternoon. And the Court being fully advised in the premises and receiving the unanimous Consent of the Bar it is ordered that the Trial of this Cause be and it is set for monday next at two oclock in the afternoon.

And afterwards to wit on the seventh day of January eighteen Hundred and fifty six it also being one of the regular days of said December Term of said Court for the said year A.D. 1855 aforesaid. And the said Court being then duly organized and sitting in open Court for the Transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following to wit

William Smith & R. Eaton Woodell
vs
Edward McAllister
} Trespass on the Case upon Promises

And now came the said Plaintiffs by T. Woodyard and Norton and McRoberts their Attorneys and enter their motion that this Cause be now called up for hearing. And the said defendant by Anderson and McAllister his Attorneys enters his Cross motions

that this Cause be now called up for hearing. Whereupon it is ordered by the Court that this Cause be and it now is
39 Called up for hearing. Thereupon the said Plaintiffs enter their motion that this Cause do now proceed to Trial as per order heretofore entered herein. And the said Defendant enters his Cross motion that this Cause do now proceed to Trial herein. And the Court being fully advised in the premises it is ordered that this Cause do now proceed to Trial herein as per said Consent and Agreement heretofore entered herein. And the said Plaintiffs enter their motion that a Jury do now come herein. And the said Defendant enters his Cross motion that a Jury do now come herein Whereupon it is ordered by the Court that a Jury do now come herein. Thereupon come the Jurors of a Jury of Good and Lawful men Sworn

Robert Strong	Clark Baker	Horace Carpenter
Orrison Miles	C. H. Smith	W. H. Rumsey
Isaac Scarritt	Amasa Thomas	Henry McWilliams
	W. W. Witter	Samuel Adams

and Robert Clow who being duly Empannelled and Sworn to well and truly try the issues joined between the said Parties herein and a True Verdict give According to Evidence. Thereupon the said Plaintiffs Enter their motion that said Jury do have leave to seperate and meet the Court Tomorrow Morning And the said Defendant enters his Cross motion that said Jury do have such leave to seperate. Whereupon it is ordered by the Court that said Jury do have such leave to seperate and meet the Court Tomorrow morning at nine oClock

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And afterwards (to wit) on the eight day of January in the year of our Lord one thousand eight hundred and fifty-six it also being one of the regular days of said January Term of said Court for the said year 1856 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following: (To-wit)

"William Smith & R Eaton Goodell vs Edward McAllister } Trespass on the Case on promises

And now again come the said parties to this suit by their respective attorneys as heretofore and the said jury heretofore empannelled in this cause also again come and it is ordered by the Court that the trial of this cause now proceed. And after hearing the evidence adduced herein said plaintiffs enter their motion that said jury be permitted to seperate to meet the court on to-morrow morning. And said defendant enter his cross motion that said jury be permitted to seperate as aforesaid. Whereupon it is ordered by the Court that the said jury be permitted to seperate to meet the Court on to-morrows morning at eight O'clock."

And afterwards (to wit) on the ninth day of January in the year of our Lord one thousand eight hundred and fifty-six it also being one of the regular days of said January Term of said Court for the said year 1856 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following: (To-wit)

"William Smith & R Eaton Goodell vs Edward McAllister } Trespass on the Case on promises

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And now again come the said parties to this suit by their respective attorneys as heretofore, and the said jury heretofore empannelled in this cause also again come and it is ordered by the Court that the trial of this cause do now proceed. And now it is ordered by the Court that the issues joined between the said parties on the second and third pleas and replications in this cause be stricken out as immaterial. Whereupon the said defendant by his said attorneys excepts to the opinions and ruling of the Court in striking out the said issues ~~formed~~ upon the said second and third pleas and Replications in this cause and enters his motion that his Bill of exceptions thereto be signed and sealed by the Court. Thereupon it is ordered that said defendants said Bill of exceptions be allowed signed and sealed by the Court which is accordingly done. And after hearing the arguments of Counsel herein, the said plaintiffs enter their motion for leave to said jury to seperate to meet the Court on to-morrow morning. And said defendant enter his cross-motion for leave to said jury to seperate as aforesaid. Whereupon it is ordered by the Court that said jury have leave to seperate and meet the court to-morrow morning at 8 oclock

And thereupon (to-wit) on the same day ~~aforesaid~~ last aforesaid the said Defendant filed his said bill of exceptions in the said cause in words and figures following: (to wit)

[12289-22]

42

Circuit Court Will County

Edward McAllister

ads

William Smith & R. Eaton Goodell

Be it remembered that upon a trial of this cause in said Court, on the ninth day of January A.D. 1856, after the evidence had been closed the Court without any motion from either party ordered and directed that the said second and third pleas and replications be stricken out as presenting immaterial issues in the cause, and they were accordingly stricken out. To which decision of the said Court the said defendant by his counsel then and there excepted.

Signed and sealed this 9th day of January A.D. 1856 upon the prayer of said defendant

L. W. Randall (Seal)

And afterwards (to-wit) on the tenth day of January in the year of our Lord one thousand eight hundred and fifty-six it also being one of the regular days of said January Term of said Court for the said year 1856, aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of record by the said Court in words and figures following: (To-Wit)

"William Smith & R. Eaton Goodell
vs
Edward McAllister } Trespass on the case upon promises

And now again come the said

parties to this suit by their respective attorneys as heretofore, and the said jury heretofore empannelled in this cause also again come and after receiving the instructions of the Court retire in charge of an officer of the court to consider of their verdict. And the said jury returning into Court for verdict say: We of the jury find the issues tried in this cause for the said plaintiffs and asses said plaintiffs damages herein to the sum of seven thousand five hundred and four dollars. Whereupon said defendant enters his motion for a new trial in this cause and said plaintiffs enter their motion to overrule said motion for a new trial herein. And after hearing the arguments of counsel thereon and being fully advised in the premise it is ordered by the Court that said motion for a new trial in this cause be and it is overruled. Thereupon the said plaintiffs enter motion for judgment upon the said verdict and also enter their motion for execution thereon. Whereupon it is ordered by the Court that said plaintiffs do have judgment against the said defendant for their damages aforesaid to the sum of Seven thousand five hundred and four dollars.

It is thereupon considered by the Court that the said plaintiffs do recover of the said defendant their damages aforesaid as aforesaid assessed to seven thousand five hundred and four dollars together with their costs and charges by them about their suit in this behalf expended and that they have execution therefor.

And thereupon the said defendant by his said attorney enters his motion for appeal from the said

judgment of this Court in this cause to the Supreme Court of this State. Whereupon it is ordered by the Court that said appeal be and it is granted upon condition that the said defendant do file appeal bond with the Clerk of this Court within thirty days in the sum of fifteen thousand and five hundred dollars with Jonathan Hagar, Cyrus Ashley, Lyman Foster, Reuben Flagg, Alonzo Leach and Alva Culver as securities

And afterwards, (to wit) on the fifteenth day of January in the year of our Lord one thousand eight hundred and fifty-six, the said defendant filed his Bill of exceptions in the aforesaid entitled cause in words and figures following (To wit)

William Smith &
vs. Eaton Goodell
vs.
Edward McAllister

State of Illinois, Will County
& Circuit Court thereof
December Term thereof A.D. 1855

Be it remembered that on the trial of the above entitled cause the plaintiffs to sustain the issues on their part read in evidence five several bills of exchange with the endorsements thereon and the acceptance of defendant written across the face thereof which are as follows:

46 $1000 nov. 6/9

Plainfield Sept 7th 1854

Sixty days after date value recd

Pay to the order of ourselves One thousand dollars,

To Edw. McAllister McAllister & Co.

Plainfield Ill

Accepted One thousand dollars Payable at office of Messrs. Wadsworth & Sheldon New York E. McAllister

Which last above Bill of Exchange was endorsed on the back thereof as follows (To Wit)

1580 Due Nov. 9th Pay to Smith & Goodell

McAllister & Co

Pay Wadsworth & Sheldon or order

~~XXX & XXXX~~

$2000 nov. 10/13

Plainfield Sept 11 1854

Sixty days after date value received

Pay to the order of ourselves Two Thousand Dollars

To Edw. McAllister McAllister & Co.

Plainfield Ill.

Accepted payable at Wadsworth & Sheldon New York E. McAllister

Which last above Bill of Exchange was endorsed on the back thereof as follows: (to Wit)

1601 Due Nov. 13/54 N.Y. Pay to Smith & Goodell

McAllister & Co

Pay Wadsworth & Sheldon or order

~~Smith & Goodell~~

47

$1000 Plainfield Sept 18th 1864

Sixty days after date value received, Pay to the order of myselves One Hundred Dollars

To Edwd McAllister Plainfield NJ

McAllister & Co.

Which last above Bill of Exchange was endorsed on the back thereof as follows; (To-wit)

1638 Due Nov. 21 N.Y. Pay to Smith & Foosdell

McAllister & Co

Pay Wadsworth & Sheldon or order

~~Smith & Reed~~

The plaintiff then offered in evidence ~~four~~ notarial protests one of which was attached to each of the bills described except the Bill payable at the Merchants & Drovers Bank which protests are as follows!

12284-25

$1000

Plainfield Sept 5th 1854

Sixty days after date Pay to the order of ourselves
the sum of Value received and charge the
same to account of
To Edwd Chester Ambler
Att'y at Plainfield Ills.

Wadsworth & Sheldons N York
One thousand Dollars
Wadsworth & Sheldon
Mc Allister & Co.

48

United States of America } ss.
State of New York }

On the Seventh day of November in the year of our Lord one thousand eight hundred and fifty-four at the request of Wadsworth & Sheldon I John Chester Ambler a Notary Public duly commissioned and sworn dwelling in the City of New York did present the original bill of exchange hereunto annexed to one of the firm of Wadsworth & Sheldon at whose office in this city the same is made payable and demanded payment thereof which was refused. Whereupon I the said Notary at the request aforesaid did Protest and by these presents do publicly and solemnly Protest as well against the drawer and endorsers of the said bill as against all others whom it doth or may concern for exchange re-exchange and all costs, damages and interest already incurred and to be hereafter incurred for want of payment of the said bill. In Testimony Whereof I have hereunto set my hand and affixed my seal at the City of New York aforesaid. John C Ambler
Notary Public 29 Wall Street

J C Ambler
Notary Public
N. Y.

12289-26

11

$ 1200

Plainfield Sept. 7th 1854

Sixty days after date of this our sole bill of exchange first and second of the same tenor and date not paid, Pay to the order of ourselves One thousand Dollars,

T. Edwd. Wadsworth
Plainfield Ills.

Wm. Allister & Co.

49

United States of America
State of New York } ss. On the ninth day of November in the year of our Lord one thousand eight hundred and fifty four at the request of Wadsworth & Sheldon, I, John Chester Ambler a Notary Public duly commissioned and sworn dwelling in the City of New York did present the original bill of exchange hereunto annexed to one of the firm of Wadsworth & Sheldon at whose office in this city the same is made payable and demanded payment thereof which was refused, Whereupon I the said Notary at the request aforesaid did protest, and by these presents do publicly and solemnly protest as well against the drawer and Endorsers of the said bill as against all others whom it doth or may concern, for exchange, re-exchange, and all costs damages and interest already incurred, and to be hereinafter incurred for want of payment of the said bill, In Testimony Whereof I have hereunto set my hand and affixed my seal at the City of New York aforesaid,

John C Ambler
Notary Public, 29 Wall Street

J C Ambler
Notary Public
N. Y.

[12284-27]

12

$2000

Plainfield Sept. 11. 1854

Sixty days after date value received, Pay to the order of ourselves Two thousand dollars.

To Edw.d & Wm McAllister
Plainfield Ills.

McAllister & Co.

Accepted payable at Wadsworth & Sheldon
E. & Wm McAllister

On the back of said bill of exchange it is endorsed as follows, Viz:
Pay to Smith and Godell, McAllister & Co.
Pay Wadsworth & Sheldon or order.

50

United States of America }
State of New York } ss. On the thirteenth day of November in the year of our Lord one thousand eight hundred and fifty four at the request of Wadsworth and Sheldon, I, John Chester Ambler a Notary Public duly commissioned and sworn dwelling in the City of New York did present the original bill of exchange hereunto annexed to one of the firm of Wadsworth & Sheldon at whose office in this city the same is made payable and demanded payment thereof which was refused, Whereupon I the said Notary at the request aforesaid did Protest, and by these presents do publicly and solemnly Protest as well against the drawer and endorsers of the said bill as against all others whom it doth or may concern for exchange, re-exchange and all costs damages and interest, already incurred and to be hereafter incurred for want of payment of the said bill

In Testimony Whereof I have hereunto set my hand and affixed my seal in the City of New York aforesaid,

J. C. Ambler
Notary Public
N.Y.

John C Ambler
Notary Public 29 Wall Street

[12289-AB]

13

$1000

Plainfield Sept 14th 1854

Sixty days after date value received, Pay to the order of ourselves One thousand dollars.

To Edwd McAllister Esq
Plainfield N.Y.

McAllister & Co

#

37

United States of America
State of New York } ss.

On the twentieth day of November in the year of our Lord one thousand eight hundred and fifty four at the request of Wadsworth and Sheldon, I John Chester Ambler a Notary Public duly commissioned and sworn, dwelling in the City of New York did present the original bill of exchange hereunto annexed to one of the firm of Wadsworth and Sheldon at whose office in this city the same is made payable and demanded payment thereof which was refused. Whereupon I the said Notary, at the request aforesaid did Protest and by these presents do publicly and solemnly Protest, as well against the drawer and endorsers of the said bill as against all others whom it doth or may concern for exchange re-exchange and all costs damages and interest already incurred and to be hereafter incurred for want of payment of the said bill. In Testimony Whereof I have hereunto set my hand and affixed my seal at the City of New York aforesaid.

J C Ambler
Notary Public
N.Y.

John C Ambler.
Notary Public 29 Wall Street

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To which certificates of protest the counsel for the defendant objected. The court overruled the objection and said certificates of protest were read in evidence. To which decision of the court in overruling said objection & permitting said certificates of protest to be read in evidence the defendants then and there excepted. The plaintiffs rested their case.

The defendants then called Archibald McAllister, and said McAllister upon request of the plaintiffs was first sworn on his oath, and testified as follows: I am a member of the firm of McAllister & Co. (The Bills of Exchange herein before mentioned, were then shown to him) I am one of the drawers and endorsers of these Bills. The name of McAllister & Co. was signed by me. The plaintiffs then objected to the witness testifying in this suit. The said witness was then interrogated by the counsel for the defendant & testified as follows: I have a release which was executed and delivered to me by the defendants. The defendants counsel then read said release, which was produced by the witness and which is in words and figures following: (To-wit)

Will County Circuit Court

Edward McAllister
ads
William Smith &
R. Eaton Goodell

Release

For value received I do hereby release Archibald McAllister a witness to be offered by me on the trial of this cause of and from any claim or demand which I may or may hereafter have

against him by reason of the determination of this suit or any matter either directly or indirectly brought or to be brought in question in the same suit either for or against me. And I do further release him from all claims and demands connected with or depending upon the subject matter of this suit or any part thereof which I now or may hereafter have against him - Witness my hand and seal this 17th day of December, A.D. 1855

E. McAllister (L.S.)

Sealed and delivered in the presence of

The defendants counsel then made as statement as follows! The Defendant offers this witness to prove that the Bills of Exchange given in evidence were made with reference to the laws of New York and that they were drawn in pursuance of a contract made with the Merchants & Drovers Bank for the loan of money by the said Bank to the defendant McAllister & Co. at twelve per cent per annum payable in the city of New York and as security for such loan and to prove the facts set out in defendants pleas. The Court excluded said witness sustaining the objection made by the plaintiff to which decision of the Court the defendant then and there excepted.

The defendant then called James P. McDougal as a witness, who testified as follows:

I am assistant cashier of the Merchants and Drovers Bank, (shown the bills of Exchange read in evidence) I have seen these bills before, I know the plaintiffs. William Smith is President and R. Eaton Goodell is cashier of the march-

[12289-30]

54 ants and Drovers Bank, I think these Bills were

not drawn in the bank. I saw them bills on the days on which they bear date severally, bills to be discounted were generally brought in by A. McAllister but I dont remember who brought these bills. I conclude that Archibald McAllister brought them. I have heard some talk about grass seed these bills were discounted at the office where the bank is kept Smith and Goodells business office is also the office where the bank is kept. The counsel for the defendant asked the witness the following question, State what occurred and what was said at the time these bills were discounted to which question the plaintiffs objected. The court directed that the defendant might prove what took place in the presence of the plaintiffs or either of them or with their knowledge or sanction, the counsel for the defendant insisted upon the question as asked and the same was overruled by the to which ruling of the court the defendant then and there excepted.

Cross examined. These bills came to me from the drawer of the teller of the business office of Smith and Goodell, the drawer of the teller has other bills in it than those discounted, in it are kept bills sent for collection. Thompson is deposite book keeper of Smith and Goodell, Thorpe is teller for them. I dont know what the bank has any deposites. Smith and Goodell take deposites and have a book keeper. Smith and Goodell keep a seperate set of books from the bank books. As far as I can recollect I have no personal knowledge that these bills were discounted only inference I small books shown These are pass books such as are used by Smith and Goodell

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these books are in the handwriting of Thompson, McAllister and Co, were not in the habit of bringing their books at the time the business was transacted but their books were commonly copied off from the office books,

Re-examined by defendant. Thorpe is teller for Smith and Goodell, there is no teller for the bank, William Smith is president and R E Goodell cashier of the bank, I am assistant cashier of the Merchants and Drovers bank, the bank loans money loan all they have, The defendant then called A B Thompson who testified as follows I reside in Joliet have resided here one year am in the employ of Smith & Goodell they do business in Governor Matteson's building in 2d Story in the same rooms as the Merchants and Drovers Bank (the small books before mentioned were shown) these books are in my handwriting, I was deposite book keeper for Smith and Goodell the entries in these small books were copied from the deposite ledger I could not say by whose direction the copies were made if parties came in and asked to have their books written up I did it,

Cross examined, I was not in Smith and Goodells office in September 1854, I came in January 1855, We have two ledgers these books are copies from the deposite ledger, The other ledger is the ledger of the daily transactions of the office collections &c In writing up these small books I aimed to make correct copies the heading of these pass books was not copied from the ledger, be examined) I dont know whether the bank keeps books or not, The defendant then called Edward Thorp who testified as follows, I reside here am teller for Smith & Goodell

there is no teller for the Merchants and Drovers bank that I know of. I have been teller for Smith and Goodell for two years. These pass books are not in my hand writing. I have seen the books at Smith and Goodells office I dont know how often I have seen them lying there I had nothing to do with them I am acquainted with Archibald McAllister I have seen the bills of exchange (bills read in Evidence being shown) the bank is in the same room occupied by Smith and Goodell. The bank does no business. I dont know that the bank has any money there, I would be likely to know if it had I had a drawer called the tellers drawer. The bank has not discounted paper since I have been there. Smith & Goodell recieve deposits the bank does not. the bank has a set of books (book shown). This is the deposite ledger of Smith and Goodell The bank has a ledger but not a deposite ledger (two other books produced) these are Smith and Goodells books the bank has no such books. I pay the money on bills discounted. these bills have passed through my hands as teller in that office. These bills were ordered to be discounted by one of the plaintiffs I think Archibald McAllister presented them for discount the bills were discounted at the rate of 12 per cent per annum I never discount bills without the orders of one of the plaintiffs or the initials of one of the plaintiffs being on the paper. I dont remember the particular orders I had in relation to this matter. I have heard the matter of the purchase of grass seed I had a conversation one day at the office with Archibald McAllister in relation to grass seed I dont think any one was present but ourselves the conversation was I think some

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time before the bills were discounted, he spake of the money that might be made in buying grass seed and sending it east. There was one check drawn payable to grass seed and that is so entered in McAllister & Co account the discount of these bills was entered in these books and the amount was checked and from time to time by McAllister & Co. The account of McAllister & Co. from the deposite ledger was then read in evidence a perfect copy of which with the heading on the top of the page is hereto attached marked (A) & made a part hereof, the plaintiffs counsel then admitted that the proceeds of the bills of exchange read in evidence were the items credited in said accounts as of the same dates of the bills of exchange, the said deposite ledger was marked in large letters on the back "Deposite Ledger Smith and Goodell"

Witness Thorpe cross examined books shown him, these are the day books of Smith and Goodell in which the original entries were made which were pasted into the ledger. The office is in four rooms connected together the 1st room is the reception room there is an opening between that and the room I occupy, where customers can present their checks. Smith and Goodell occupy the south west corner room, McDougal occupies the south east ~~& south~~ corner room I am alone in north east corner room Thompson keeps Smith and Goodells books McDougall keeps the bank books each one does his own business when arrangements are made for a discount they are made in Smith and Goodells room with them I have nothing to do with it. The following entries in Smith and Goodells blotters were offered in evidence

Sept 2	McAllister & Co	Dis# 1571	1991,33
7	McAllister & Co	Dis# 1586	979
11	McAllister & Co	Dis# 1601	1958
12	McAllister & Co	Dis# 1605	979
18	McAllister & Co	Dis# 1638	979

5-9 The defendant by his counsel objected and excepted thereto the court overruled the objection and the entries were read in evidence to which ruling of the court the defendant then and there excepted the bills of exchange shown were discounted at the rate of one percent a month on the face of the bills were discounted for 63 days the rate of exchange on New York when these bills were discounted was from 1 1/4 to 1 1/2 percent a month I deducted nothing for exchange I deducted $21 upon each $1000 12 per ct was the usual rate of discount in this vicinity upon time bills McAllister & Co had other transactions with Smith and Goodell about the same time defendant also had an account with Smith and Goodell, points out the account on the ledger which is truly copied in the paper marked (B) which is hereto annexed and made part hereof. Goodell had a general supervision of the affairs of the office. I commenced with Smith and Goodell in Feb 1854.

The defendant then called Hamilton A Risley as a witness who testified as follows. I reside in Joliet know the parties I was a member of the grand jury in December 1854, Col. Smith one of the plaintiffs was sworn as a witness before said Grand Jury I dont know that I can give the substance of what he said I would not state that he said that the bank had

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loaned money to McAllister and Co. he testified that McAllister & Co borrowing money, my best recollection is that he spake of McAllister & Co borrowing money to buy grass seed, I think he said that the grass seed was to be forwarded to New York sold and the proceeds placed to their (our) credit There was a complaint that the money was not paid according to agreement dont know that Mr Smith made a charge, the complaint before the grand jury was founded upon some ware house reciepts, Jesse McAllister and Archibald McAllister were indicted upon 7 indictments,

Cross examined, I dont know that any complaint was made against the defendant I cant tell whether Smith said that he had loaned money or whether he said that Smith and Goodell had bought drafts of McAllister & Co, said they had agreed to forward grass seed to meet the drafts dont remember whether the ware house reciepts are to Smith and Goodell or bearer, My best recollections is that the parties to the advancing the money and the parties to the warehouse reciepts were the same, The defendant then called as a witness O McGarney who testified as follows I was a member of the Grand Jury in December 1854, Col. Smith made a complaint according to my best recollection, he complained of McAllister & Co. stating that they had obtained money on the ware house reciepts as collateral security my best recollection is that he said money was loaned of the bank by them I think the most of it or all of it was to buy grass seed part of the money I think was to be paid in New York they was to send grass seed to meet the

payments there. Cross-examined. Smith said that McAllister & Co. had obtained money and the receipts were left as collateral security my recollection is not distinct but my impression is he said the bank loaned the money

61 (the ware house receipts hereinafter mentioned were here shown to the witness) These are the ware house receipts that were before the grand jury, there was no judgments against defendant, Identifies indictments against Jesse and Archibald McAllister, the words Smith used in his testimony were that McAllister had obtained money and had given the ware house receipts as collateral security dont remember whether the ware house receipts run to Bank or to Smith and Goodell, George Yates was then called by defendant as a witness who testified as follows, I was a member of the grand jury, William Smith the plaintiff was a witness before us he said McAllister & Co. had got money out of the bank and had given ware house receipts as collateral security said they got the money to buy grass seed, the receipts were for wheat and I think corn can not tell the amount of the money, he said he was a friend of their father east and had reserved some money to accomodate friends, Some of the money was payable in New York,

Cross examined, I think he said they had had money out of the bank the word bank was used frequently by the grand jurors in talking the matter over, I dont know but he said Smith and Goodell let him have money out of the bank, think there were other witnesses sworn in the case cant tell who, I cant tell who the ware house receipts

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saw to dont remember any difference between the parties to the reciepts and to the advancing of the money the money was advanced on the reciepts, he complained that they had deceived him that they had no grain or had sold it think he said they had sold without the written consent of the bank or without the written consent of Smith and Goodell, Mr Smith did state that they had had money before that time, On examined by defendants counsel, My impression is that he said they had sold the grain without the written consent of the bank, The defendant then called R W Stoddard as a witness who testified as follows I was a member of the Grand Jury heard Mr Smith swore my recollection is very poor, I think the money was loaned to McAllister & Co, but whether by the bank or Smith & Goodell I cant tell a portion of it was loaned to buy grass seed part of it was payable in New York, Cross examined, cant say whether he said the money was loaned or whether he said he got the money there dont recollect that there was any difference between the parties to whom the reciepts were and the parties who advanced the money, Smith said that at the time the reciepts were taken McAllister & Co said that they had contracted for a large amount of grass seed which they agreed to forward to provide funds to meet the payments of drafts which had been given for the money and that they had not done so, the counsel for the defendant then offered the defendant as a witness in this cause to which the plaintiffs objected the court ruled that the defendant was not a competent witness in the cause

and refused to permit him to testify as a witness in the
cause to which ruling the defendant by his counsel then
63 and there excepted, the defendant used in evidence an
exemplification of the laws of New York which is as follows
(here insert it) the defendant read the passbooks above
spoken of in evidence which are as follows (here insert them)
(copies are to be filed with ck by defts) the defendant here
rested, the plaintiff read in evidence the ware house
receipts spoken of as follows which are as follows (here insert
the ware house receipts, the plaintiffs offered in evidence the
indictments against Archibald McAllister and Jesse McAllister above spoken of, the defendant objected thereto
the court overruled the objection and thereupon the plaintiff
read to the jury an indictment which is as follows (here insert
the indictment read) before the question as the admissibility
of said Indictment was decided, the defendants counsel read in
evidence an order of this court quashing said indictment, to the
decision of the court in permitting said indictment to be read
in evidence the defendant then and there excepted.

The
evidence being closed the plaintiffs requested the court to
instruct the jury as follows (here insert the instructions given
at the plffs request) which instructions were severally given
by the court and to the giving of said instructions the
defendants then and there excepted, the defendant
then asked the court to instruct the jury as follows
asked
(here insert the instructions by defendant except the one
which was qualified) which instructions the court

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refused to give, to which ruling and decision of the court in refusing said instructions the defendant then and there excepted, the defendant asked the court to instruct the Jury as follows (here insert the instructions qualified by the court which instruction the court refused to give as asked but offered to give qualified so as to read as follows (here insert the instruction as qualified) the defendant declined to have the instruction given as qualified and excepted then and there to the decision of the court in refusing to give the same without such qualification.

The Jury found a verdict for the plaintiff for the sum of $1504.

The defendant moved for a new trial which was overruled by the court to which decision of the court in overruling said motion the defendant then and there excepted And because now of the aforesaid matters appears of record herein the defendant on the 15th day of January A.D. 1856 at the term above mentioned prays this his bill of exceptions be signed sealed and made part of the record which is done.

C. W. Randall [seal]

Title IIII.

Of the interest of money.

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Sec. 1. Rate of interest to continue at seven per cent.
2. Prohibition against taking greater interest.
3. Persons paying greater interest may recover it back in one year.
4. When Superintendents and overseers of poor may recover excess.
5. Contracts &c. for greater rate, void except negotiable instruments in certain cases.
6. Offenders compelled to answer bills of discovery.
7. Discovery and return of excess, to exonerate from further penalty.
8. Party filing bill not to pay interest on sum loaned nor to pay principal.
9. How months and days to be considered in casting interest.
10. Interest to be calculated by the year, when no time for that purpose is stated.

S. 1. The rate of ~~is~~ interest upon the loan or forbearance of any money goods or things in action shall continue to be seven dollars upon one hundred dollars for one year and after that rate for a greater or less sum or for longer or a shorter time.

S. 2. No person or corporation shall directly or indirectly take or receive in money goods or things in action or in any other way any greater sum or greater value for the loan or forbearance of any money, goods or things in action than is above prescribed.

S. 3. Every person who for any such loan or forbearance shall pay or deliver any greater sum or value than is above allowed to be received and his personal representatives may recover in an action against the person who shall have taken or received the same and his personal representatives the amount of the money so paid or value delivered above the rate aforesaid, if such action be brought within one year after such payment or delivery.

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§ 4. If such suit be not brought within the said one year and prosecuted with effect then the said sum may be sued for and recovered with costs, at any time within three years after the said one year by any overseer of the poor of the town where such payment may have been made or by any county superintendant of the poor of the county, in which the payment may have been made,

§ 5. All bonds bills notes assurances conveyances, all other contracts or securities whatsoever and all deposites of goods or other things whatsoever, whereupon or whereby there shall be reserved or taken or secured or agreed to be reserved or taken any greater sum or greater value, for the loan or forbearance of any money goods or other things in action, than is above prescribed, shall be void; but this section shall not extend to any bills of exchange or promissory notes payable to order or bearer in the hands of an endorsee or holder, who shall have received the same in good faith, and for valuable consideration, and who had not at the time of discounting such bill or note or paying such consideration for the same, actual notice, that such bill or note had been originally given for a usurious consideration, or upon a usurious contract,

§ 6. Every person offending against the provisions of this title shall be compelled to answer on oath any bill that may be exhibited against him in the court of chancery for the discovery of any sum of money goods or things in action so taken, accepted or received, in violation of the foregoing provisions or either of them,

S. 7. Every person who shall discover and repay or return the money, goods or other things so taken accepted or received, or the value thereof, shall be acquitted and discharged from any ~~further~~ other or further forfeiture penalty or punishment, which he may have incurred by taking or receiving the money goods or other thing so discovered and repaid or returned as aforesaid.

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~~S. 8.~~

S. 8. Whenever any borrower of any money, goods or things in action, shall file a bill ~~in~~ Chancery for a discovery of the money goods or things in action, taken or received, in violation of either of the foregoing provisions, it shall not be necessary for him to pay or to offer to pay any interest whatever on the sum or thing loaned nor shall any court of equity require or compel the payment or deposite, of the principal sum or any part thereof as a condition of granting relief to the borrower, in any case of a usurious loan forbidden by this Chapter.

S. 9. For the purpose of calculating interest, a month shall be considered the twelfth part of a year, and as consisting of thirty days, and interest for any number of days less than a month shall be estimated by the proportion, which such number of days shall bear to thirty.

S. 10. Whenever in any statute act deed written and verbal contract, or in any public or private instrument whatever any certain rate of interest, is or shall be mentioned, and no period of time is stated for which such rate is to be calculated interest shall be calculated at the rate mentioned by the year in the same manner as if the words per annum or by the year had been added to such rate,

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Chap 430.

An Act to prevent Usury.

Passed May 15, 1837.

The people of the State of New York represented in Senate and Assembly do enact as follows:

§ 1. The fifth section of title three chapter four part two of the Revised Statutes is hereby amended so as to read as follows:

§ 5. All bonds bills notes assurances conveyances, all other contracts or securities whatsoever (except bottomry and respondentia bonds and contracts) and all deposites of goods and other things whatsoever, whereupon or whereby there shall be reserved or taken ~~any greater sum~~ or secured or agreed to be reseved or taken, any greater sum or greater value for the loan or forbearance of any money goods or other things in action than is above described shall be void; but this act shall not effect such paper as has been made and transacted previous to the time it shall take effect.

§ 2. Whenever in an action at law the defendant shall plead or give notice of the defence of usury and shall verify the truth of his plea or notice by affidavit, he may, for the purpose of proving the usury, call and examine the plaintiff as a witness in the same manner as other witnesses may be called and examined.

§ 3. Every person offending against the provisions of the said title or of this act may be compelled to

answer on oath any bill that shall be exhibited against him in the court of chancery for relief or discovery or both,

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S. 4, Wherever any borrower of money goods or things in action shall file a bill in chancery for relief or discovery or both, against any violation of the provisions of the said title or of this act it shall not be necessary for him to pay or offer to pay any interest or principal on the sum or thing loaned; nor shall any court of chancery require or compel the payment or deposite of the principal sum or interest, or any portion thereof as a condition of granting relief or compelling a discovering to the borrower in any case, usurious loans forbidden by said title or by this act,

S. 5, Wherever it shall satisfactorily appear by the admissions of the defendant, or by proof that any bond, bill, note, assurance, pledge, conveyance, contract, security, or any evidence of debt, has been taken or recieved in addition of the provisions of said title or of this act, the court of chancery shall declare the same to be void, and enjoin any prosecution thereon, and order the same to be surrendered and cancelled

S. 6, Any person who shall, directly or indirectly, recieve any greater interest discount or consideration than is prescribed in the said title or of this act, shall be

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deemed guilty of a misdemeanor, and on conviction thereof the person so offending shall ~~not~~ be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding six months, or both.

S. 7. It shall be the duty of all courts of justice to charge the grand jury especially to inquire into any violations of the provisions of the said title or of this act.

S. 8. Every plaintiff examined as a witness pursuant to the provisions of this act, or any defendant under the provisions of this act, who shall swear falsely, shall, upon conviction thereof, suffer the pains and penalties of wilful and corrupt perjury; but the testimony given by any plaintiff in the answer of any defendant made pursuant to the said title or of this act, shall not be used against such person before any grand jury, or on the trial of any indictment against such person.

S. 9. So much of the ~~title~~ third chapter fourth and part second of the Revised Statutes, as is inconsistent with the provisions of this act, is hereby repealed.

S 10. This act shall take effect on the first day of July next.

Chap. 172.

An act to prohibit corporations from interposing the defence of usury in any action.

Passed April 6, 1850.

The people of the State of New York represented in Senate and Assembly do enact as follows:

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S. 1. No corporation shall hereafter interpose the defence of usury in any action

S. 2. The term corporation, as used in this act, shall be construed to include all associations and joint stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships.

S. 3. This act ~~to~~ shall take effect immediately.

State of New York }
Secretary's Office } I have compared the preceding with Title 11 of Chapter IV of Part II of the Revised Statutes of this State entitled "Of the interest of money" with Chapter 430 of the Laws of 1837 entitled "An act to prevent usury" passed May 15, 1837, and with Chapter 172 of the Laws of 1850, entitled "An act to prohibit corporations from interposing the defence of usury in any action" passed April 6, 1850, on file in this office, and do certify that the same are correct ~~copies~~ transcripts therefrom and of the whole of said Title of the Revised Statutes and of said Acts.

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Seal
Secretary of State
State of New York

Given under my hand and seal of office, at the city of Albany, the second day of March in the year one thousand eight hundred and fifty five.

E W Leavenworth.
Secretary of State.

The defendant read the pass books above spoken of in evidence, which are as follows:

(A)

M'Allister & Co.

Dr 1854						Cr 1854				
Aug.	1	To Ck J. R. Wilson	100			Aug	1	By Balance	360	83
	3	" Ex Chicago	500				3	" Cy 30 920 ck 20	70	
	5	" A. McA.	25				7	" "	491	25
	7	" T. & Shepard	500					" Dis# 1477	494	50
	8	" Ex Chicago	500				12	" Dep W. R. & McA	800	
	10	" C. Mrs Allister	25				15	"	491	25
		" "	25				23	" 300 ck 501 23	801	23
		" "	59					" Dis# 1580	247	25
	11	" "	30					" " 1537	193	88
	11	" E. Freer	80	10				" " 1588	193	88
	12	" J. W. Case	120			Sept.	2	" " 1571	1 991	38
	14	" A. Houghteling	11				4	" " 1578	88	70
	17	" D. C. Norton	270				5	" " 1583	979	
	18	" J. R. Wilson	250				7	" " 1586	979	

		" Ex Chicago	500			11	" " 1601	1 958	
	19	" Geo. Brazer	232	22		12	" Cy 600 Cl 400	1 000	
72	23	" W. K. McAllister	303				" Dis #1605	979	
		" Selves	500			18	" " 1638	979	
	29	" Houghteling	230		Oct.	2	" G	185	
	30	" O. Hardy	60			4	" Dis #1687	99	30
Sept	2	" Ex Chicago	232				" " 1688	124	54
	4	" Longworthy	38	25			" " 1689	79	71
		" W. Bergman	41	75		10	" per A. S. Evans	19	75
		" R. B. Ashley	500			19	" " R. Nichols	85	
	5	" A Houghteling	1 000			21	" cks	190	50
		" F. Parmelee	135	38		28	" "	600	
	6	" Grass Seed	500				" 201 ck 68 99	270	77
	7	" " "	1 000		Nov.	2	"	195	
	8	" W. Wright	260				"	104	
	11		1 000			4	"	200	
	12	"	50			6	"	200	
		"	500			11	"	1 032	
		"	1 010			25	" to pay note	50	
		"	500						
	13	"	162	38					
	14	"	588						
	18	"	1 000						
Oct	4	"	122	40					
		" Your note Daggett	92						
	7	" Ch.	100						
	9	" "	100						
		Forward	$13328	48			Forward	$16176	17

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Dr

Mc Allister & Co

Cr

1854					1854			
	To Forward	$ 15	328	48	By Forward	$ 16	176	17
Oct	12 " ck		101	50	" Balance		99	81
	14 " "		300					
73	16 " "		100					
	17 " ck		60					
	"		300					
	28 "		501					
	"		291					
	30 "		85					
Nov	1 "		200					
	11 "	1	010					
Dec	12 " Note		50					
		$ 16	275	98			$ 16	275	98
Dec	12 To Balance		99	81				

(63) 1st

Edward Mc Allister

Dr. Cr.

1854				1854			
				Feby 27			
Feby	27 To ck #1 Self		185	Feby 27	By Dis # 788		293 70
March	6 " "		150				
	13 " " Self		8 70				
			293 70				293 70

The defendant here rested.

The plaintiffs read in evidence the warehouse receipts spoken of as follows which are as follows

74

Rec'd in store in our Mill at Plainfield, Fifteen hundred bushels of winter Wheat. Which we hold subject to the order of Wm Smith & R. C. Goodell.

Plainfield Nov. 9, 1853

McAllister & Co,

Rec'd in Store in our Mill in Plainfield two thousand bushels of good Winter Wheat, Which we hold subject to the order of Smith & Goodell, as collateral to our offs accepted by Edward McAllister

Plainfield Feb. 28, 1854 McAllister & Co.

2000 Bu. Wheat

Rec'd in Store in our mill in Plainfield Five hundred bushels of Winter Wheat, Which we hold subject to the order of Smith & Goodell,

Plainfield Octo 14, 1854 McAllister & Co.

Rec'd in Store in our crib in rear of Henry Fish's Ware-house in Joliet, Twelve hundred Bushels of Corn in the car. Which we hold subject to the order of Messrs, Smith & Goodell being collateral to our offs accepted

SJ 2289-417

by Edwd McAllister payable at Merchants & Drovers Bank, Joliet

Joliet, Feb 18th 1854 McAllister & Co,

The plaintiffs offered in evidence the Indictments against Archibald McAllister & Jesse McAllister above spoken of. The defendant objected thereto, the Court overruled the objection, and thereupon the plaintiffs read to the Jury an indictment which is as follows:

State of Illinois }
Will County } ss. Of the December term of the Will County circuit court in the year of our Lord one thousand eight hundred and fifty four.

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The Grand Jurors chosen selected and sworn in and for the county of Will in the name and by the authority of the people of the State of Illinois upon their oaths present that Archibald Mc Allister & Jesse Mc Allister late of said county of Will, under the name style and firm of Mc Allister & Co on the seventeenth ~~day~~ of October in the year of our Lord one thousand eight hundred and fifty four at and within the county of Will in the state of Illinois aforesaid unlawfully knowingly and fraudulently and feloniously did sell ship transfer and remove beyond their immediate control four thousand bushels of winter wheat of the value of five thousand dollars, And twelve hundred bushels of corn of the value of seven hundred dollars, for which winter wheat and corn they the said Archibald Mc Allister and Jesse Mc Allister had under the name ~~Style~~ and firm of Mc Allister and Co before that time given to Williams Smith and R Eaton Goodell doing business under the name style and firm of Smith and Goodell, their receipts — Which said Receipts are in the words and figures following, to wit:

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77 Rec^{d} in Store in our Mill at Plainfield Fifteen hundred bushels of Winter Wheat. which we hold subject to the order of Wm Smith & R E Goodell.
Plainfield Nov. 9, 1853.

Mc Allister & Co.

Rec^{d} in Store in our Mill ~~in~~ Plainfield two thousand bushels of good Winter Wheat which we hold subject to the order of Smith and Goodell, as collateral to our dfts accepted by Edward Mc Allister.
Plainfield Feb. 23, 1854, Mc Allister & Co,
2000 bushels wheat.

Rec^{d} in Store at our Mill in Plainfield five hundred bushels of winter wheat which we hold subject to the order of Smith & Goodell,
Plainfield Octo. 14, 1854 Mc Allister & Co,

Rec^{d} in Store in our crib in rear of Henry Fish's Ware House in Joliet, Twelve hundred bushels of Corn in the ear, Which we hold in subject to the order of Messrs. Smith and Goodell being collateral to our dfts accepted by Edw^{d} Mc Allister, pay^{a} at Merchants and Drovers Bank Joliet,
Joliet Feb 10th 1854.

Mc Allister & Co.

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Which said receipts – were given by said Archibald Mc Allister and Jesse Mc Allister under the name style and firm, aforesaid to said William Smith and R Eaton Goodell as aforesaid as security – for the loan of divers large sums of money amounting in the aggregate to the sum of twelve thousand dollars by said William Smith and R Eaton Goodell to said Archibald Mc Allister and Jesse Mc Allister, without the written assent of the said William Smith and R Eaton Goodell or either of them who were then and there and still are the persons lawfully holding said receipts – all which said Archibald Mc Allister and Jesse Mc Allister then and there well knew with an intent to cheat and defraud the said William Smith and R Eaton Goodell, to the great damage of the said William Smith and R Eaton Goodell contrary to the form of the statute in such case made and provided and against the peace and dignity of the same people of the state of Illinois,

Sherman W Bowen
States Attorney of the
Eleventh Judicial Circuit

SJ 2289-43

Before the question on the admissibility of said Indictment was decided the defendants counsel read in evidence an order of this Court quashing said Indictments, To the decision of the Court in permitting said Indictment to be read in evidence the defendant then & there excepted,

The evidence being closed the plaintiffs requested the Court to instruct the jury as follows:

Smith and Goodell
vs
80 Edward Mc Allister } The court is asked to instruct the jury on the part of the plaintiffs.

1st Under the general issue in this case the only question presented to the Jury for their consideration is whether the bills of exchange set out in plaintiffs declaration were accepted by the defendant as stated in the declaration and whether they have been paid or satisfied under this issue, there is no question before this Jury as to whether the usury laws of New York make these bills of exchange void

Given

2nd If the bills of exchange mentioned in the declaration in this case were accepted by the defendant and have not been paid or satisfied, they will find the issue upon the first plea, which is the general issue for the plaintiffs

Given

3d That the fourth plea has reference only to the bill of Exchange set out in the first count in the plaintiffs declaration, which is the one drawn for ten days, and under that issue it is necessary for the defendant to

Given

1st prove, that this was a contract for the loaning of money for if the bill of exchange mentioned in this plea was purchased in the ordinary course of business, no matter at what price and is not proven to have been taken

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under a contract to loan money the defence must fail under this plea.

2ng That the contract was actually made between the Merchants and Drovers Bank and Mc Allister & Co for the contract was made between Smith & Goodell and Mc Allister & Co the defence must fail on this plea

3 That unless it is proven that the rate of interest alleged to have been agreed upon is truly stated in said plea the defence must fail on that plea. A loan at 12 per cent per annum on the face of the bill does not support the allegation of a loan at 12 per cent per annum on the amount of the money loaned if that amount was less than the face of the bill.

3 That in this suit the question of the propriety of Smith and Goodell ~~carrying~~ carrying on the business of brokers in the same offices in which the books of the Merchants & Drovers Bank are kept is not a question for the consideration of the Jury.

That the burden of proof to sustain the allegation of the 4th plea in each of the above particulars rests upon the defendant in this case.

Queen's

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Given

That the incorporation of the Merchants & Drovers Bank is only admitted by the issue on the 4th plea, which relates only to one bill of exchange, which is mentioned in said plea, and as to the other bills of exchange there is no admission in the pleadings that the Merchants & Drovers Bank was ever organized under the general banking law of this State. And the jury must believe that it has been proven that the Merchants and Drovers Bank was organized under that particular law, or so far as any question arises under the general issue that law or the rate of interest provided for it is not to be considered.

Which instructions were severally given by the Court and to the giving of said instructions the defendant then and there excepted. The defendant then asked the Court to instruct the Jury as follows:

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The court is requested on behalf of the Defl to instruct the Jury as follows:

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1st That if the Jury believe from all the circumstances connected therewith that the parties to the contract, in pursuance of which the bills of exchange mentioned in the second third fourth and fifth counts of Plffs declaration were given, had, in making said contract, and giving and receiving said bills in pursuance thereof, the laws of the state of New York in view and reference thereto as to the execution of said contract and payment of the money loaned for which said bills were made then the validity of said bills must be determined by the laws of the New York and not by the laws of Illinois and if the laws of New York render them void, it is the duty of the Jury to find accordingly.

Refused

2nd That if the Jury shall find from the evidence and allegations in this case that the said bills above mentioned were payable at a place within the State of New York that fact is of itself prima facie evidence that they were made with reference to the laws of New York.

Refused

3d That if the Jury believe from the evidence that the said bills of exchange were given in pursuance of an agreement made between the Merchants and Drovers Bank, or the Plffs with the parties to said bills or either of them, for the loan of money at the rate of twelve per centum per annum as interest on such loan, that such rate is illegal by the laws of Illinois whether made by said bank or by the plffs personally; and if said money so made loaned and the said bills were by said agreement

Refused

[12289-46]

made payable in the city and State of New York and if it was provided by said agreement that the seed purchased with the money so loaned was to be taken to New York and one of the parties to said bills was to go there and sell the same and with the proceeds pay said bills in the City of New York, these circumstances, raise the presumption, that the parties in making said agreement and said bills had reference to the laws of New York and not to the laws of Illinois, so strong as to require evidence from the plffs to overcome it.

Refused,

4th " that if the Jury believe from the evidence that the said several bills were made with reference to the laws of New York, and though they find also that the parties thereto and to said agreement under which they were given respectively resided and did business at the time of making them in the State of Illinois and the said bill were accepted in the State of Illinois, Yet the said bills are to be regarded as if they were actually made and to be performed in the State of New York and their validity as respects the question of usury must be determined by the laws of New York and not by those of Illinois.

Refused,

5th " That if the Jury believe from the evidence that the said bills were made for the purpose of being discounted by the said bank or the plffs at the rate of twelve per centum per annum, and that they were in fact discounted at that rate, and it was known to the plffs at the time of discounting them that they were made for the purpose aforesaid and that said rate exceeds the rate of interest allowed by the laws of the State of New York; the said rate being illegal by the laws

of Illinois and if the Jury also find that said bills were made with a view to the laws of New York, they will be authorized to find said bills to be usurious the same as if they had been severally given in pursuance of a previous usurious agreement; and their validity as respects usury must be governed by the laws of New York and not by those of Illinois.

85

Refused

6th " That if the Jury believe from the evidence that said bills of exchange mentioned in plffs declaration and given in evidence were recieved by the Merchts and Drovers bank as personal security for the loan of money by the said bank to the parties to said bills or either of said parties, at a rate of interest agreed upon between the parties to such loan, exceeding the rate of seven per centum per annum, contrary to the thirty eighth section and the other provisions of the statute of Illinois under which said bank exists the said bills are void and they should find for the defendant. And this defence may be proved under the general issue.

Refused

7th " ~~third~~ That although the dft. has pleaded usury for the by special pleas to the said bills mentioned in 2nd, 3d, 4th & 5th Counts of plffs declaration and offered proof under said pleas Yet if there is any variance between the pleas and proof which should exclude the evidence given under them, it is still competent for the dft to prove under his general issue that said bills were void for usury from the beginning.

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Refused

8th If the Jury believe from the evidence that the bills in suit in this action were originally given to the Merchants & Drovers Bank and that the said bank still owning them, prosecutes this suit in the name of the President and Cashier on behalf of said Bank, that there is no authority given by the statute for the said bank to bring actions in its own behalf in any other than its corporate name and they should find for the defendant

Refused

9th If the Jury believe from the evidence that said bills of exchange mentioned in the 2d 3d 4th & 6th counts of the declaration were specifically made payable in the city and State of New York and that it was understood and agreed by the parties to this suit, that they should be paid there with interest at the rate of twelve per cent per annum, that then the lex loci contractus or place of this contract is the city and State and State of New York; and being void by the laws of that State for usury, as appears from an exemplification thereof, made evidence in this cause said contract and bills of exchange are void everywhere, and cannot become legal and valid by transportation from New York to the state of Illinois. For being once corrupt, they cannot become pure by change of time or place. Hence their verdict in relation to said bills should be for the defendant

10th. That it is competent for the defendant in this cause to to prove by any legal and admissible evidence that the notes or bills declared on were void from the beginning and never had any legal existence, And he may do this under his plea of the general issue, So that if the Jury believe from the evidence given in the cause that the bills mentioned in the 2nd 3d 4th & 6th counts of the declaration were given for money loaned either by the plffs or the Merchants & Drovers Bank which contract of loan was to be performed in the State of New York and made with reference to its laws, then the validity of such contract is to be tested by the laws of New York and if void by the laws of that State the Jury can so find them void under the general issue pleaded in this case,

Refused

The Court is requested to charge the Jury on behalf of the defendant as follows:

That if they believe from the evidence that the Bills in question were received or taken by the Merchants and Drovers Bank as personal security for the loan of money by the said Bank to the parties to said bills or either aforesaid parties, at a rate of interest agreed upon exceeding the rate of seven per centum per annum and that they are still owned by said Bank, they are void

Refused

Which instructions the Court refused to give, to which ruling & decision of the court in refusing said instructions the defendant then and there excepted the defendant asked the Court to instruct the Jury as follows:

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The Court is requested to charge the Jury on behalf of the defendant as follows:

That it is admitted by the pleadings in this cause that the Merchants and Drovers Bank is a body corporate under the act of this State, entitled, An act to establish a general system of Banking, And was such body corporate before the making of the Bills in question, And that William Smith was & still is the President, and R. Eaton Goodell the cashier thereof. And such admission is to be taken as true for all the purposes of this suit.

Refused

Which instruction the Court refused to give as asked, and offered to give qualified so as to read as follows:

The Court is requested to charge the Jury on behalf of the defendant as follows:

That it is admitted by the pleadings in this cause that the Merchants and Drovers Bank is a body corporate under the act of this State, Entitled, An act to establish a general system of Banking. And was such body corporate before the making of the Bills in question, And that William Smith was & still is the President, and R. Eaton Goodell the cashier thereof, And such admission is to be taken as true for all the purposes of this suit. So far as the fourth plea is concerned, and as further

Deft objecting to qualification
Ex Cashier—
Sworn

Know all men by these presents that we Edward Mc Allister, Jonathan Hager, Cyrus Ashley, Lyman Foster, Reuben Flagg, Alonzo Leach, Alva Culver, are held and firmly bound unto William Smith and R. Eaton Goodell in the penal sum of fifteen thousand and five hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs, and administrators jointly and severally, firmly by these presents. Witness our hands and seals this eleventh day of January A.D. 1856.

The condition of the above obligation is such that whereas the said William Smith and R. Eaton Goodell did on the tenth day of January A.D. 1856 by and before the Circuit Court in and for the County of Will, and State of Illinois recovered a Judgment against the above bounden Edward McAllister for the sum of seven thousand five hundred and four dollars damages besides costs, from which judgment the said Edward Mc Allister has taken an appeal to the Supreme Court of the said State Now if the said Edward McAllister shall duly and diligently prosecute said appeal and shall pay the judgments, costs, interest and damages in case the said judgments shall be affirmed then this obligation to be void, otherwise to remain in full force and virtue and effect

Edward Mc Allister (Seal)

[L2287-119]

S. Hagar, Seal
Cyrus Ashley, Seal
Lyman Foster, Seal
Reuben Flagg Seal
Alonzo Leach Seal
Silva Culver Seal

And afterwards to wit on the 12th day of January A
1856 the said defendant filed his Appeal Bond in the said
Cause which is as follows to wit

The defendant declined to have the instruction given as qualified and excepted then & there to the decision of the Court in refusing to give the same without such qualification.

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The Jury found a verdict for the plaintiffs for the sum of $7,504.

The defendant moved for a new trial, which was overruled by the Court, to which decision of the Court in overruling said motion, the defendant then and there excepted. And because none of the aforesaid matters appear of record herein, the defendant, on the 15th day of January 1856, at the term above mentioned prays this, his Bill of exceptions be signed, sealed & made part of the record which is done.

A. W. Remdall. (Seal)

State of Illinois
Will County ss

I Royal E. Barber Clerk of the Will County Circuit Court in said State do hereby certify the foregoing to be a true Correct and perfect record of the aforesaid entitled cause, of the Record of the proceedings of the said Court therein and of the Bill of Exceptions filed therein and also of the appeal Bond filed therein January 12. A.D. 1856

In attestation whereof I have hereto subscribed my name and affixed the Seal of said Court at office in Joliet in said County this 17th day of April A.D. 1856

R. E. Barber
Clerk

(12289-50)

Sup Court
Edward McAllester
vs Appt
William Smith &
R Eaton Goodell
Appellees

Filed June 6. 1856
L Leland
Clerk

25.53

Supreme Court

Edward McAllister
ads Appellant
William Smith and
R Eaton Goodell

Of June Term A D 1856

And now comes the said Edward McAllister by Anderson & McAllister his attorneys, before the Judges of the Supreme Court of the State of Illinois and says that in the record and proceedings aforesaid, also in giving the Judgment aforesaid there is manifest Error in this that the circuit court aforesaid should have granted the motion to Strike out the fifth and ninth replications filed by the plaintiffs. Also there is Error in this that the said Archibald McAllister was a competent witness for the defendant and should not have been excluded. Also there is Error in this that the said Notarial Certificates were not competent or admissable testimony and should have been excluded, And also there is Error in this that the defendant should have been admitted to testify on the issue of usury in the case, And also there is Error in this, that the said court of its own motion struck out the defendants second and third pleas and the replications thereto as tendering immaterial issues And also there is Error in giving the said instructions on the part of the plaintiffs and refusing the instructions requested on the part of the defendant, and in overruling the motion for a new trial.

And also there is Error in this that the Judgment aforesaid by the record aforesaid, appears to have been given for the said plaintiffs against the said defendant, whereas by the law of the land the said Judgment ought to have been given

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for the said defendant against the said plaintiffs and the said Edward McAllister prays that the judgment aforesaid, for the Errors aforesaid, and for other Errors in the said record and proceedings being, may be reversed annulled, and altogether holden for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment &c

Anderson & McAllister
attys for Appellants

And said Appellees - come by Dicky & Cook - and that in said proceedings & judgment there is no such error as is alleged above by said Appellant - and prays that said judgment may be in all things affirmed

Dicky & Cook

McAllister vs Smith & Goreleee

SUPREME COURT.

EDWARD MCALLISTER, Apellant.
ads.
WILLIAM SMITH, and
R. EATON GOODELL, Apellees.

Apellant's Points.

I.

This action is assumpsit against the Deft. as the acceptor of five bills of Exchange, four of which are made specifically payable, in the city and State of New York.

To the four counts upon the bills payable in New York, the Deft. pleaded two special pleas (known as the 2nd and 3d pleas,) and the general issue to the whole declaration. These special pleas are substantially alike, except as to the parties to the contract, but both show the Plaintiffs, the actors in making it, and allege a corrupt and usurious agreement for the loan of money to the Deft. and others, at twelve per centum per annum, interest; that these bill were agreed to be, and in fact were given and received to secure the repayment of said loan. That the money was to be repaid and the contract executed in the city and State of New York, and that the parties thereto made the same with reference, in all respects, to the laws of the State of New York. That the usury laws of New York, which are set out, render them void, concluding with a verification. The Plffs., by replication take issue upon the allegation that the parties had reference to the laws of New York in the execution of said contract concluding to the country, and by their fifth and ninth replications allege that the parties had a view to the laws of Illinois as to the bills of exchange mentioned and not to those of New York and concluded with a verification, which two replications the Deft. moved to strike out, but the Court overruled the motion; the Deft. excepted and rejoined to them, traversing the allegation.

These second and third pleas, and all the issues tendered upon them, the Circuit Judge, on his own motion, struck out, as immaterial. Which ruling together with the refusal of the Court to give the second, third, fourth, fifth, ninth, and tenth instructions asked by the Deft. is, in effect, that the parties at the time of making the bills and contract, being in this State, it is wholly immaterial whether as to the execution of the said contract, they had in view the laws of the State of New York or not; and that it was not competent or even possible for them, to so contract, as that the validity of their contract must be tested by the laws of any other State or Country.

In that opinion, we insist, that the learned Circuit Judge, is proved, by the most unquestionable authorities, to have misapprehended the law.

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The leading case on this subject is that of Robinson *vs.* Bland, 2 Burrows 1077. Lord Mansfield there says, "The law of the *place* can never be the rule where the transaction is entered into with an *express* view to the law of *another* country, as the rule by which it is to be governed," citing Huberus & Voet.

The rule is stated, as we apprehend, with greater accuracy by Kent, Justice, in Van Schaick *vs.* Edwards, 2 Johns. Cases 367. "It is not enough that the parties have a view or reference to the law of another State, in the formation of their contract; for if that were sufficient the statute of usury, would, in every case, at the option of the parties become a dead letter. The rule is, that the parties must have a view to the laws of another State in the execution of the contract, and then, undoubtedly, the contract is to be governed by such foreign law."

In Thompson *vs.* Ketchum, 4 Johns. R. 288 the same rule is recognized, "And all the circumstances of the case," the Court say, "corroborate the Plffs. confession and afford conclusive evidence, that the money, for which the note was given, was lent with a view to its being repaid on the arrival of the parties in New York. If this, then, is to be taken as the contract between the parties, the case stands precisely upon the same footing as if the Note had been made in this State. For it is a well settled rule, *that where a contract is made in reference to another country in which it is to be executed*, it must be governed by the laws of the place where it is to have its effect."

And again in the case of Fanning *vs* Consequa 17 Johns. R 518 the Court of Errors of New York give the rule thus: "According to Huberus (De conflictu legum Vol. 2 Book 1 Tit. 3) the general rule is, that contracts are to be interpreted according to the laws of the Country where they are made. But if by the *terms or nature of the contract* it appears that it was to be *executed in a foreign country, or that the parties had respect to the laws of another country, then the place of making the contract becomes immaterial; and the obligation must be tested by the laws of the country where the duty was to be performed.*"

Again in Kent's Com. 2, Vol. 460, (old paging) the rule is thus: "But if a contract be made under one government and it is to be performed under another and the parties had in view the laws of such other country in reference to the execution of the contract, the general rule is, that the contract in respect to its construction and force is to be governed by the law of the country or State in which it is to be executed."

Story Conf L Sec 299

To the same effect is Story Conflict Laws. § 280, 304, 242; Andrews *vs.* Pond, 13 Peters 77; Sherman *vs.* Gasset, 4 Gilman, 521. See also 460, 2 Kent's Com. Note (a), cases cited. Commonwealth of Kentucky *vs.* Bassford, 6 Hill, (N. Y.) 526; 8 Johns. R 191; Jack *vs.* Nichols, 1 Selden, R. 185; Andrew *vs* Herriot, 4 Cow. 511, Note a; Baldwin C. C. R. 537, id. 130; 6 Peters, 172; 1 Howard, U. S. R. 182; 1 Gallis C. C. R. 381.

In Sherrill *vs.* Hopkins, 1 Cow. 108,—a case upon the force of a bankrupt's discharge made in the State of New York, when neither the debtor nor his creditor lived in that State. The Court in reviewing the authorities on that subject says:—"In all these cases, considerable importance seems to be attached to the circum-

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stance, that one, or both of the parties, were inhabitants of the State or country where the contract was made. But with great deference, it does appear to me that all these cases stand upon a principle entirely independent of that circumstance. It is that of the *lex loci contractus*; that the law of the place where the contract is made, must govern the construction of the contract; and that whether the parties to the contract are inhabitants of that place or not. The rule, I apprehend, is not founded upon the allegiance due from citizens or subjects to their respective governments, but upon the presumption of law, that the parties to a contract are conusant of the laws of the country where the contract is made; that it is made with reference to those laws, and that they, therefore form a part of the contract. That this is the principle of the rule, is evident, from the exceptions to it. For where it appears that the place of performance is different from the place of making the contract, then it is to be construed according to the law of the place, where it is to be performed, though neither of the parties reside or owe any allegiance there."

"The rule, therefore, upon this subject, is, that the law of the place where the contract is made, is to control it, unless it appear, *upon the face of the contract, that it was to be performed at some other place; or was made with reference to the laws of some other place*; and the reason of the rule is not the allegiance due from the contracting parties to the government, where the contract is made, or is to be executed, but the supposed reference which every contract has to the laws of the State or country where it is made, or is to be executed, whether the parties are citizens of that State or country, or not."

It is upon the same theory that the court of Appeals of N. York in Jack *vs.* Nichols 1 Seld. 185; use this language: "But concede that the last contract was made in Connecticut, if it was to be performed in New York, it must *prima facie* be regarded *as having been made with reference to the laws of New York.*"

The place where the parties happen to be, at the time of making the contract, is, if they had in view the laws of another State or country, as to its execution, wholly immaterial, as will further appear by the case of Le Breten *vs.* Miles, 8 Paige, 261.—There the parties being in New York, made an ante-nuptial contract, with reference to the laws of France where they were supposed to have intended to reside. But were married and continued to reside in New York, yet the chancellor held that the contract must be construed and tested by the laws of France and not those of New York.

The rule, laid down in the case of Depau *vs.* Humphrey, 20 Martin's R. 1, that a contract may have two different places, the law of which enters into its construction does not at all affect the questions involved in this case. For the principle of the rule, is the election of the parties, as to what law shall govern and is in harmony with the cases above cited.

Parsons on Contracts, 2 Vol. 95, speaks in illustration of the doctrine of the case of Depau *vs.* Humphry, thus: "If a note be made *bona fide*, in one place, expressly bearing an interest *legal* there, and payable in another place in which so high a rate of interest is not allowed, it may be sued in the place where payable and the interest expressed, recovered. *Because the parties had their election to make the interest payable according to the law of either.*

So in the case of Pecks *vs.* Mayo, 14, Vermont 33, Redfield J., on the same subject says: "If a contract be entered into in one place to be performed in another, and the rate of interest differ in the two countries, the parties may stipulate for the rate of

Byles on Bills 442. 444

[12289-5H]

interest of either country, and *thus by their own express contract determine with reference to the laws of which country that incident of the contract shall be decided.*"

This doctrine, instead of limiting the power of the parties in subjecting their contract to the laws of a particular country, extends it so far as to authorize a legal severance of the agreement, making one part of it subject to the laws of one country, and the other part, to those of another country. And what we contend for is, complete subjectiveness of the contract to the will and intentions of the parties making it, as to the rule by which it is to be governed.

Sec 293 b

The plea alleges that the contract was to be performed in New York and that the parties made it, *with reference, in all respects, to the laws of that State*, and we submit that there is nothing, in the case of Depau *vs.* Humphrey or those that have adopted it at all against the materiality of that allegation. If the rate of interest agreed on in this case was but ten per cent. and legal by the laws of Illinois, then a presumption would arise, probably, that the parties, as to interest, contracted with a view to to the laws of Illinois; but as the rate stipulated is illegal by the laws of this State that presumption is out of the question.

II.

It appearing by the Pltfs., replications that the parties to the bills in question, all resided in the State of Illinois, the same are therefore inland bills and the notarial tificates were not competent evidence.

Kaskaskia Bridge Co. *vs.* Shannon, 1 Gil 15;

If the issues were material, then it was clearly error to strike them out. It can not be claimed that there was not evidence to sustain the pleas. The bills being payable in Newyork is evidence that they were made with reference to the laws of Newyork. The bill of exceptions does not 16 Ill 61 & cases cited purport to contain all the evidence. The Court below did not put the ruling on that ground, it is primâ facie error, and the other side has the burden of showing that of legal necessity it could do no injury. Worrall vs Parmelee 1 Comstock 519

2 Scam 35
1 Stew Ala 199
Dudley R 161
3 Rand R 316
2 Murph 157
1 McCord R 350
4 Barb S C. R 495
1 Conn R 260
2 Harr R 292

III.

The Court erred in excluding Archibald McAllister as a witness on the ground that he was an endorser of the bills. His interest was adverse to the party calling him, and he was competent to prove the facts offered to be proved by him, because the Pltfs. were the actors in and parties to the making of the usurious contract in question. 2 Stor R Eq Part 1 Page 25 / Opinion of Kent Justice

2 Greenleaf Ev. Sec. 207; Winton *vs.* Saidler 3 John Cases 185; Tuthill *vs.* Davis 20 John R. 285; Jordaine *vs.* Lushington, 7 T. R. 601; 1 Greenleaf Ev. § 383; 17 John, R. 179; Thayer *vs.* Crossman, 1 Metcalfe, 416; Lyon *vs.* Boilvin, 2 Gilman, 637; where Mr. J. Scates recognizes the true distinction.

2 Scam 285; Townsend vs Buck 1 Connecticut 260. Stafford vs Rice 5 Cow R 23. 3 Rand 413. Saund Pl & Ev 2 Part Vol 2 1159 Fay vs Whitney 16 Mass 118 4 Sergt & R 397 2 Binney 134 2 Geyer 35 3 Murphey 151 2 Harrison 192

Hayden vs Beck 3 Rand 316

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1 Mitch R 416
11 Pick R 417
20 John R 285

If the witness is to be deemed a joint debtor with the Deft. the release made him competent.

Leroy *vs.* Johnson, 2 Peters, 186;

IV.

The Court erred in excluding the Deft. as witness because by the pleadings the fact of usury was put in issue.

R. S. 295, § 7;

V.

The Court erred in refusing the sixth and last instructions asked for by Deft. If the bills were received by the Bank as personal security for the loan of money, at a rate of interest exceeding seven per cent., they are void.

Bank of U. S. *vs.* Owen, 2 Peters, 327; 3 McLean, 596; Chilicothe Bank *vs.* Swayne, 8 Ohio 257.

VI.

The Court erred in refusing the fifth instruction asked for by Deft.

See authorities above cited.

Powell vs Waters 17 John R
178 15 John R 55

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VII.

The Court erred in refusing the seventh and tenth instructions, respecting the competency of proving that the notes were void from the beginning, under the general issue.

Levy *vs.* Gadsby, 3 Cranch, 180; 13 Johns, R. 56; 1 L'd Ray, 89; Bank of Fulton *vs.* Stafford, 2 Wend. 483, 1 Phil. Ev. 319; Bernard *vs.* Saul, 1 Strange 499. See opinion of Lockwood J. in Sherman *vs.* Gasset, 4 Gil. 529.

13 Peters Andrews v Ford 89

VIII.

The Court erred in giving the last instruction, on the part of the Plffs. and in refusing the last instruction asked for by Deft. as to the effect of admitting by the pleadings, the incorporation of the Bank.

W. K. McALLISTER, & Smith
Of Counsel for Deft.

Cook for Defts
3 Spratt R 88
16 Ala R 61

[12089-57]

Supreme Court.

Edward McAllister
v
William Smith
et al

Appts Points &c

Sidney Smith &
W. K. McAllister
for Appts

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McAllister
v
Smith & Goodell

Appts Brief

AIII.

AIV.

Copied for Defts

Supreme Court -

McAllister

vs

Smith & Goodell -

T. L. Dickey attorney for appellees presents the following points -

There was no Error in Stiking out the Second & 3d Pleas -

1st

1st The matters therein alleged were immaterial - Because the validity of a Contract made in Illinois to be performed in New York is to be tested by the laws of Illinois - where it was made - where it violates the law of both States - 2nd The transaction as Stated in the pleas is an Illinois transaction - made in Illinois - between men of Illinois - and by its terms the money was to be loaned in in Illinois and its provisions for repayment in New York does not control its other features. the allegation that reference was had to the laws of New York is an allegation of a Conclusion of law - and erroneous & Cannot weigh -

2nd

It was not error to Stike out the pleas aforesaid after the evidence was all heard because there was no proof from which by any allowable inference they were Sustained - in this - There was no proof to support the 2nd plea on there points viz No proof to Show that the money was loaned by the Bank - The witness of the plaintiff who took the drafts swore he took them not

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for the bank - but for Smith & Goodell

There was no proof tending to support the allegation of a loaning to which the defendant was a party - ~~This~~ No witness alludes to Edward McAllister as a borrower - this variance is fatal

There is no proof tending to show a loaning contract on which the "difference of Exchange between Joliet & New York" was to be paid in addition to twelve per cent per annum -

In each of these particulars the proof fails to tend to support the 3rd plea -

~~As to the~~ The above reasons of the other variance between the proof and the pleas is equally fatal to the idea that the Contract in the 2nd Plea made was void because alleged to be an excess of the Bank Charter - As between the drawer & Acceptor of these drafts they are good - and no proof tends to put Edward McAllister in any other position than a common acceptance -

Plaintiffs deny that a loaning by a bank under our banking law for more than 7 - per cent is void - but insists that as our usury laws ~~expressly~~ name banks & Corporations - such contracts are only subject to the general usury law like those of natural persons -

And that the Bank is amenable to the State - to have her Charter forfeited if she has violated it & individuals can

$12289-59

not take advantage of such violation be this as it may - It is apparent that the argument that there is a want of capacity in the bank to contract found in the Ohio Case does not apply to this transaction - It would only prove the general loaning contract set up to be void for want of parties competent to make such bargain - & leave the fact of the money being loaned by the bank - which is a valid Consideration for a Contract Contained in the draft - that Ed. McAllister will pay it to Smith and Goodell - It must be observed that altho it were shown that Smith & Goodell were acting as mere trustees for the bank - yet this would not deprive them of their natural Capacity to Contract - A Contract by an infant may be voidable - yet a Contract by an adult - (tho acting for the benefit of an infant) and having no other interest is valid - - The draft is drawn by McAllister & Co - accepted by appellant & assigned to Smith & Goodell - all these parties have the legal capacity to contract - and money loaned by the Bank - (whether under a valid or void Contract is immaterial) is a valid Consideration for the draft - Again the proof no where shows that the Bank was organized under

5/12289-60

so this matter cant avail under the Gen issue
the General Banking law — and
in the Fourth plea in which that
allegation is contained — Edward
McAllister the acceptor is not alleged
to have been a party to any bargain
with the bank — and by the allegation
of that plea as well as by the
proof — he stands as an acceptor
for a valuable consideration
between him & the drawer — and
the consideration of the assignment
of the draft can not be called
in question by the acceptor —
In no possible view of the law
is there any possible defence shown
either by the proof — or by the pleadings
— The appellants ought not therefore
to have the judgment reversed —
T. L. Dickey

[12289-61]

M Allister 88

vs

Smith & Goodell

Written Suggestions
by T. L. Dickey
for Appellees

If the money was loaned by the Bank and he deny that there is any testimony tending to show this) still the note bill was not void

Commercial Bk of Manchester vs Salem
7th Howard Miss R 508
in which all the cases are reviewed and examined See also
Hackney's Bk 8th Wheaton 338

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McAllister

v

Smith et al

Additional

authorities

There are & in fact but two questions presented in this record -

1st - Did the facts set forth in the special pleas constitute a defence to the action, and

2d - Was Archibald McAllister a competent witness to prove the facts which Defts offered to prove by him

We contend that unless both these points are ruled in favor of Appellants the judgment must be affirmed, because

1st - If the pleas contain matter which would be a defence to the action, Yet the pleas were not stricken out until the evidence was closed, and there was no evidence tending to prove them, so that unless McAllisters testimony was improperly rejected, the defts were not prejudiced by striking out the pleas. And if the Instructions did contain abstract principles of law, Yet if there was no evidence on which to base them they were properly refused -

Again, if the matters alledged in the pleas did not constitute a defence, then the defendants were not prejudiced by the refusal of the Court to allow McAllister to testify to such irrelevant matter, even though he were a competent witness -

The question is not Which Law is to govern in executing the contract; but which is to decide

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the fate of a security which neither will execute -

Andrews Vs Pond 13 Peters 78 -

The Authorities of the plaintiff discussing the question what Laws are to govern the execution of a contract are therefore inapplicable - for this is not a question of the execution of a contract -

The parties living in this state, making the contract in this state, must be presumed to have contracted with reference to having their contract enforced in this State -

Residents of this State they could not be sued in New York -

In Chapman Vs Robinson 6 Paige 634 -
Chancellor Walworth says: If a contract for the loan of money is made here, upon a Mortgage of Lands in this State which would be valid here, it can not be a violation of the English Usury Laws, although the rate of interest was higher than is allowed to be taken by English Laws -

Dep Vs Humphries 20 Martin R. 1.

These decisions are explained and defended by Mr. Parsons in Parsons on Contracts 95 et sequiter

If Archibald McAllister was properly excluded as a witness, the whole case is at an end for in such case -

1st It did not prejudice the party that his pleas were stricken from the files when there was no evidence tending to support the pleas. the evidence being closed at the time the pleas were struck out -

2 The Instructions were properly refused if there was no evidence upon which to base them whether they contained abstract principles of Law or not -

Mc Allister was not a competent witness
Walton Vs Shelly / Term R 296 -

Mass 10 Mass 502 - 4th Mass 155 - 19th Mass 122 -
N.H. 1 New Hampshire 60 -

U.S. Henderson Vs Anderson - 3 Howards 93 -
B.K. - U.S. - " Dennis - 6 Peters 12 - 51 - 57
B.K. - Metropolis Vs Jones - 8 Peters 12 -
Sault Vs Boyd - 12 Peters 149 -
Smith Vs Strader - 16 Curtis 154 -
Taylor Vs Sutter - 2 Sumner 235 -

10 Martin 18 - 2 Swan 295 - 1 Green 386 note 2 -
2 Vermont 193 Chandler Vs Mason
1 Walker Miss 451 Drake Vs Kirby -

Nor do the authorities sustain the position taken by defendants that A. Mc Allister was a competent witness to show that the plaintiffs below were not innocent holders -

S17389-64

Penn Davenport Vs Freeman 3d Watts & Sergt 557
Appleton Vs Donaldson 3d Barr 53
1 Rawle 196
3 Watts & Sergt 558
2 Wharton 51
5 Wharton 358

Story Conflict Laws Sects 114. 17. 22 2d Ed

Ohio Drew Vs Brown 14 Ohio 482
Bradkin Vs Leyton 14 Ohio 489

Va Ford Vs Nichols 3d Brock 68

Maine 5th Green 374
Lyon Vs Robbins 2d Gilm 637

10 Martin R 1.
2 Carson Cook 83. 89. 95
6 Paige 534. 627. 13 Pick R 77
14 Vermt 33. 39.
2 Kent Com 461. 2.
4 Gil R 421 Sherman v Gassett
2 Metcf R 386.
13 Conn R 249.

Lex loci contractus, lex rei sitae, & lex fori in relation to the obligation & enforcement of contracts

The position of the witness furnished a prima facie objection to his competency which he himself is incompetent to remove

2 Yeates 154 Norman v Norman et al Is competent

88 Mc Allister v Smith & Goodell Dog 151 Brief

As to the plea that the bills were void under the laws of this state we reply. The distinction is this when there is a general statute in relation to usury before the passage of the law under which the bank was organized

88 Mc Allister v Smith & Goodell 151 Brief

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