

No. 14573

Supreme Court of Illinois

Gould

vs.

Bishop Hill Coloney

71641  7

STATE OF ILLINOIS,
April 5, 1864
SUPREME COURT,
THIRD CL. AND DIVISION.

~~1863~~
No. 89 18

J. W. Middleton & Co., Stationers, 196 Lake St.
(Reported)

1864

Love

Book of
Calamity

X
14573

Supreme Court of Illinois

April Term at 1864 at Ottawa

Argument of H. Bigelow for plaintiffs in error

Nathaniel B Gould

Mary Jane Gould

vs

The Bishop Will Colony

Error to Henry

By reference to the record it will be seen that there are but two questions to be determined by this Court, and that all others are disposed of in the stipulation which was made and filed so that both of the questions could be made and determined without misunderstanding, and thus avoid the necessity of bringing the case to this Court a second time as was thought would be the inevitable result had the Court below stricken the defendants pleas from the files which practice was supposed to be the correct one in cases like this.

There questions are. 1st Is the defendant a Corporation, or such a Corporation as (within the meaning of the law of 1853)

is prohibited from interposing the defense of usury in this case?

2^d If it is a corporation within the meaning of the law, ought the Courts to enforce its Contracts as made by its authorized Agents, or will they adopt a construction of the law governing them that will in a great measure destroy the effect of such obligations fairly made?

The first question I ~~do~~ think cannot be better answered, than to refer to the very law which created the defendants and which will be found in the private Session Laws of 1853 page 328.

By reference to the first section of that law it will be seen that seven persons therein named "and their associates and successors", were "Constituted and appointed a body politic and corporate by the name and style of The Bishop Hill Colony", and by that name they and their successors" were to have "perpetual succession", and were capable of suing and being sued and they were allowed to "have a common seal" which might be altered at pleasure.

Now the question whether all or nearly all of the powers conferred upon the corporation could not have been exercised by the individual members of the corporation or ^{well,} has

nothing to do with the fact of the exist-
ence or nonexistence of the corporation, for
it is of no sort of consequence what it
may or may not do, and if the defend-
ant "The Bishop Hill Colony" is a cor-
poration in fact and in law. then by
a law approved shortly after the appro-
val of the act to incorporate the defend-
ants the defendants and all other corpo-
rations were deprived of the right to in-
terpose the defense of usury in any
action.

This latter law may be found on page
599 of "Scates Treatise and Blackwells Stat-
utes" and the first section of it reads
as follows.

"Section 1 That no Corporation shall
hereafter interpose the defense of usury
in any action."

If the defendants be in fact and in
law a real defendants, - if a judgment
of this or any other Court can be enforced
against "The Bishop Hill Colony" (as it has
often been done) then it is a Corporation
of some kind, and if it is a corporation
and there is any meaning in the English
language, then by the first section of the
law last cited it is deprived of the right
to interpose the defense of usury in this

or any other action ~

Such a proposition seems to me too clear for argument, and if I am correct then the first question presented in this record is answered ~

By referring to the laws of 1853 page 34 ~~34~~ it will be noticed that the law prohibiting Corporations from interposing the defense of usury, went into effect February 11th 1853, while the law incorporating the defendants although approved January 17th 1863, did not go into effect, - did not in fact become a law, until sixty days after the adjournment of the legislature and therefore the defendants never had the right to interpose the defense of usury in any action whatever ~

Did the Court below decide correctly in rendering judgment for the amount of the principal of the note and six per cent interest? (When this case was decided the case of "The Hartford Insurance Co vs Wadden" (28 2lls Rep 260) had not been published and the Court below had not the benefit of the decision last named) ~

If the legislature intended to deprive Corporations of the right to interpose the defense of usury in any action, it will not do to say that this simply preven-

ted the defendants from interposing such a plea. for the word plea is not used in the law, but the fair legitimate deduction to be drawn from the law is that Corporations shall (in all actions at law at least) abide by and perform their agreements. and the law at the time it was passed was no doubt a wise one, and intended to aid them in raising money as well as to secure persons who trusted them a certain return of what they had loaned with the rate of interest agreed to be paid by ^{such} Corporations. In short the law was intended to take Corporations entirely without the pale of usury laws and leave their contracts and agreements to be fully performed as they are made. and their agreements to pay interest ought to be construed like all other legitimate agreements.

Now can the Court in this case compel the defendants to perform a part of its agreements and leave a part unperformed? The promise is good as a whole or it is good for nothing, and there is really no real reason for saying that the defendants shall pay six per cent interest on its notes than there is in saying it shall pay nine or any other rate per cent Cent. There is no ^{reason} necessity for saying that the law fixes

the rate of interest on the note for the law of 1857 fixing the rate of interest at six per cent provides that the rate of interest shall be six per cent "unless otherwise expressly stipulated by the parties or unless otherwise provided by law". Here the rate of interest was expressly stipulated by the parties and their agreement and stipulation ought to be enforced as agreed upon, and besides the Contract was good at Common Law and therefore it may safely be said to be a case "otherwise provided by law".

It is a familiar principle that a Court of Law will not alter, change or in anywise modify a Contract legally made, but will enforce it as it finds it, and where there is any ambiguity or doubt about its meaning that construction will be adopted which will give it the greatest effect against the voluntary maker of it, and here the parties have made a fair legal Contract which both understand to mean that the defendants shall pay the principal of the note and twenty five per cent interest on it after due, and the agreement ought to be enforced as it is made and not another and different agreement which the parties did ^{and never intended to make} not make, (and which the Law could not make them having made a free agreement themselves) ~

the rate of interest on the note for the law of 1857 fixing the rate of interest at six per cent provides that the rate of interest shall be six per cent "unless otherwise expressly stipulated by the parties or unless otherwise provided by law". Here the rate of interest was expressly stipulated by the parties and their agreement and stipulation ought to be enforced as agreed upon, and besides the Contract was good at Common Law and therefore it may safely be said to be a case "otherwise provided by law".

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But this case does not differ in principle from the case of The Hartford Fire Insurance Co v. Madden (28 Ill. Rep 260). In that case this Court decided that Corporations ~~not~~ were not entitled to interpose the plea or defense of usury in any case. And the Court (Caton C.J.) says: "It might help us some if we found this provision in the general interest law from which we might infer ~~to~~ design to limit it to cases where the Corporation had agreed to pay usury"

This language it occurs to me shows very clearly that the Chief Justice had no doubts whatever that where Corporations had ^{any rate of interest whatever} agreed to ~~pay~~ ^{pay} ~~usury~~ they were to be held to a strict performance of their ^{contracts} in all cases, and I can see no reason why the Court in that case should ~~not have~~ ^{have} adopted the rule contended for by the ^{defendant} ~~party~~ in this case, if such is the law, and thus deprived the plaintiff there from recovering anything whatever as the principal and a part of the interest in that case had already been paid. The Court in that case further says, "There is an isolated provision of the law declaring that Corporations shall not make the defense of usury in any action" - It would be only a quibble to say that Corporations shall not plead usury. and yet to further say

that although they do not and cannot plead it yet the Court will in effect plead it for them, and only allow six per cent interest and thus nullify the law in one class of contracts, or rather lower the law to be that where the face of the note fails to show the usury, there the Court will enforce the payment of it, and yet where the rate of interest reserved in the face of the note is greater than ten per cent ~~suit~~ the Court will not allow over six per cent although in the latter case the amount of interest may not be one half as great as in the former case.

Such a construction it seems to me violates the plainest principles of law and justice, and rewards those who cover up their illegal acts and punishes only those who plainly declare to the world what they have done.

The defendants could have avoided the payment of the interest reserved on the face of the note by paying it at maturity, but it chose rather to refuse payments altogether and thus compel the plaintiff to bring suit and then attempt to plead a defense in a manner that the law clearly says it shall not do. Such a defense ought not to be permitted simply because the

Law says it shall not do, and therefore the judgment of the Circuit Court ought to be reversed and the Cause remanded, or what perhaps would be better for both parties, a judgment rendered by this Court for the amount of the note and twenty five per cent interest from the time it became due until the rendition of the judgment here.

It was the desire of both parties to have the questions fairly presented and thus to obtain a decision upon the whole case hence the stipulation was made presenting the facts and the views of the parties so far as they could agree, and no exception was to be taken to the manner in which the questions are presented or ^{to} any neglect of either party or to any imperfection of the record but the whole case was to be determined (as the stipulation says) upon the construction to be given to the law of 1853 prohibiting Corporations from interposing the defense of usury in any action, and since the rendition of the judgment below that law has received a construction by this Court which in my judgment must determine this case in favor of the plaintiff in error.

A Bigelow
Atty at large in error

N^o 89 18

Nathaniel B Soule
Mary Jane Soule
vs

The Bishop Will Cady

Written Argument of
A Bigelow for plaintiffs
in Error

Filed Apr. 21. 1864
S. Cady
Ch.

Henry County Circuit Court Record October Term 1862

State of Illinois

Henry County } ss Henry County Circuit Court October Term AD 1862

Pleas before the Honorable Ira O. Wilkinson, Sole Judge of the Sixth Judicial Circuit in the State of Illinois. At a regular term of the circuit court of Henry County and State of Illinois begun and holden at the Court House in Cambridge in said County of Henry and State aforesaid on Monday the thirteenth day of October in the year of our Lord one thousand eight hundred and sixty two it being the second Monday of said month.

Present Honorable Ira O. Wilkinson Judge

Adrian R. Hecumey Sheriff

Amos Gould Clerk

Hiram Bigelow State Atty.

Now Be that on the 30th day of Sept AD 1862 a summons issued out of said court in the words and figures following to wit:

State of Illinois

Henry County } ss The People of the State of Illinois

To the Sheriff of Henry County Greeting: You are hereby commanded to summon the Bishop Hill Colony to appear before the circuit court of Henry County on the first day of the next term thereof to be holden at Cambridge on the 2^d Monday of October next to answer the complaint of Nathaniel B. Gould and Mary Jane Gould in a plea of trespass, damages claimed \$2000⁰⁰ and have you then and there this writ. Witness Amos Gould clerk

of our said circuit court and the seal thereof at Cambridge
this 30 day of Sept in the year of our Lord one thousand
eight hundred and sixty two

(Seal)

Amos Gould Clerk

By W^m Calrymple Deputy

Upon which summons appears the following return to wit
"I have served the within summons on the Bishop Hill colony
by reading the same to Olof Johnson and by delivering a true
copy of the within to the said Olof Johnson there being no president
of said colony in this county and Olof Johnson being one of
the Trustees & general agent of said Bishop Hill colony This
second day of October AD 1862

Adam K Hickey Sheriff of Henry county

By A C Howard Deputy Sheriff

And afterwards to wit on the 30th day of Sept 1862 the
said plaintiffs by Bigelow their atty filed their declaration
in said cause

And afterwards to wit and at the term of said court after
said and on the second day thereof the following proceedings
were had in said cause to wit

Arminius B Gould

Mary Jane Gould

Assumpsit

The Bishop Hill colony } At this day came the said plain-
tiffs by Bigelow their atty and the said defendants by
Bennett their atty and this cause being called for the
hearing of motions &c And motion is made by defend-
ant to strike out second count in plaintiffs declaration

3

Upon consideration thereof by the court, It is ordered by the court that said motion be overruled

And afterwards to wit at the term aforesaid and on the 3^d day thereof it being the 15th day of October 1863 the following proceedings were had in said cause to wit

Nathaniel B Gould

Mary Jane Gould

vs

Assumpt

The Bishop Hill Colony) At this day this cause being again called came the parties herein by their attys as before and the said defendants by their atty demurs to plaintiffs declaration which upon consideration is by the court sustained and thereupon the said plaintiffs move the court for leave to amend declaration.

Motion sustained by the court and cause continued at the cost of said plaintiffs. It is therefore considered and adjudged by the court that the defendants have and recover of the plaintiffs their costs in this behalf at this term expended and that they have execution therefor

And afterwards to wit and on the 14th day of February 1863 the said plaintiffs filed in said cause their amended declaration in the words and figures following to wit

State of Illinois)

Henry County

In the Henry county Circuit Court in vacation after the October Term AD 1862 and to the March Term AD 1863

The amended Declaration of Nathaniel B Gould and Mary Jane Gould plaintiffs vs The Bishop Hill Colony

3

Upon consideration thereof by the court, It is ordered by the court that said motion be overruled

And afterwards to wit at the term aforesaid and on the 3^d day thereof it being the 15th day of October 1863 the following proceedings were had in said cause to wit

Nathaniel B Gould

Mary Jane Gould

vs

Assumpt

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State of Illinois)

Henry County

vs In the Henry county Circuit Court on vacation after the October Term AD 1862 and to the March Term AD 1863

The amended Declaration of Nathaniel B Gould and Mary Jane Gould plaintiffs vs The Bishop Hill Colony

4

defendant, the original declaration in this cause having been filed in and to the October Term AD 1862 of said Henry circuit court

- 1 Mary Jane Gould and Nathaniel B Gould of the county of Henry and state of Illinois plaintiffs in this suit by W Bigelow their attorney complain (in and by this their amended declaration) of the Bishop Hill colony (which is a corporation created by and under the laws of the state of Illinois) of the county of Henry aforesaid defendant in this suit in a plea of trespass on the case on promises For that whereas the said defendant heretofore (and whilst the said Mary Jane was sole and unmarried to any person whatever) to wit on the twenty ninth day of September in the year of our Lord one thousand eight hundred and fifty eight at Leander, &c that is to say at the County of Henry aforesaid made her certain promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year aforesaid and then and there delivered the same to the said Mary Jane in and by which said defendant by the name style and description of "Bishop Hill colony" "per O Johnson", promised to pay six months after the date thereof to the said Mary Jane (now the wife of the said Nathaniel B Gould) by her then name and addition of Mary Jane Jennings or order the sum of Seven hundred and twenty dollars and if not paid when due to pay her twenty five per cent interest thereon from the time the same became due until paid for value received, And the plaintiffs aver that the said promissory note so as aforesaid made executed and delivered to the said Mary Jane whilst she was sole and unmarried

5^c

and while her name was Mary Jane Jennings

And the plaintiffs further aver that the time limited for the payment of said note has long since elapsed and that the said defendant did not at the time said note became due nor has she at any time thereafter paid said note or any part thereof and so the plaintiffs say that the period of said defendant to pay said twenty five per cent interest on said note from the time the same became due until paid has become absolute by means whereof and by force of the statute in such case made and provided she the said defendant then and there became liable to pay to the said Mary Jane whilst she was sole and unmarried the said sum of money in the said promissory note specified according to the tenor and effect thereof and being so liable she the said defendant in consideration thereof afterwards to wit on the day and year aforesaid at the county of Henry aforesaid undertook and then and there faithfully promised the said Mary Jane whilst she was sole and unmarried to pay her the said sum of money in the said promissory note specified according to tenor and effect thereof

2

And whereas also the said defendant afterwards to wit on the twenty ninth day of September in the year of our Lord one thousand eight hundred and fifty eight at the county of Henry aforesaid made her certain other promissory note in writing and delivered it to the said plaintiff Mary Jane Gould which said promissory note was and is in the words and figures following to wit "\$120. For value received two months after date
"I promise to pay Mary Jane Jennings or order seven hundred dollars and if the same is not paid when due
"to pay her twenty five per cent interest thereon from the

time the same is due until paid

(Signed)

"Bishops Hill Colony"

"September 29th 1858

"per O Johnson"

And the plaintiffs aver that at the time said promissory note was made and executed as aforesaid the said Mary Jane Gould was the daughter of one Levi Jennings and the said Mary Jane was then sole and unmarried and her name in fact was Mary Jane Jennings. And the plaintiffs further aver that the said Mary Jane Jennings to whom or order said note is made payable were at the time of the execution of said note and ever since has been one and the same person & not other and different persons. And the said plaintiffs further aver that some time after the execution of date and delivery of said note the said Mary Jane Jennings described and mentioned in said note and daughter of said Levi Jennings and who then was and ever since her infancy had been sole separate single and unmarried & was at or about the month of December A.D. 1839 intermarried with and became the lawful wife of the said plaintiff Nathaniel B Gould, and ever since has remained and now at this time is the lawful wife of the said plaintiff Nathaniel B Gould and so the plaintiffs say that thus the name of the said Mary Jane Jennings described in the said note as the payee thereof by virtue of long established usage and the custom of the people and also by virtue of the law governing such cases became changed to the said name of Mary Jane Gould after the execution and delivery of said note and after the same became due and payable. And the plaintiffs further aver that the said promissory note has long since become due and payable and the

7

time limited for the payment thereof elapsed long before the said intermarriage of the said Mary Jane Jennings (now Mary Jane Gould) with the said plaintiff Nathaniel B Gould, and the said plaintiffs further aver that when the said promissory note became due and payable the said defendant did not pay the same to the said Mary Jane whilst she was sole and unmarried nor since her marriage has the said defendant paid the same to the said plaintiffs or either of them and the plaintiffs further aver that thereby the condition of the payment of said twenty five per cent interest mentioned in said note became forfeited and the said defendant became fully liable to pay the same to the said Mary Jane before her marriage and since her marriage to the said plaintiffs with the other of said principal sum of money mentioned in said note By means whereof and by force of the statute in such case made and provided the said defendant became liable to pay and there in consideration of the premises promised to pay to the said Mary Jane whilst she was sole and unmarried and whilst her name in fact was Mary Jane Jennings and to the said plaintiffs after their said marriage the amount of said sum of money mentioned in said note according to the tenor and effect of said note to wit at the place aforesaid

3

and also for that whereas the said defendant heretofore to wit on the 29th day of September AD 1838 at Cambridge to wit at the court of Henry aforesaid (and whilst the said Mary Jane was sole and unmarried) made her certain other promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year aforesaid and thereby then and there promised to pay six months after the date

thereof to the said Mary Jane now the wife of the said Nathaniel B Gould (by her then name and addition of Mary Jane Jennings) or order the sum of Seven hundred and twenty dollars and if the same was not paid when due to pay her twenty five per cent interest thereon from the time the same became due until paid and then and there delivered the said promissory note to the said Mary Jane By means whereof and by force of the statute in such case made and provided she the said defendant then and there became liable to pay to the said Mary Jane whilst she was sole and unmarried the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note and being so liable she the said defendant in consideration thereof afterwards to wit on the day and year aforesaid at the county of Henry aforesaid and look and then and there faithfully promised the said Mary Jane whilst she was sole and unmarried to pay her the said sum of money in the said promissory note specified according to the tenor and effect thereof

- 4 And whereas also the said defendant whilst the said Mary Jane was sole and unmarried to wit on the first day of June in the year of our Lord one thousand eight hundred and fifty nine at Cambridge to wit at the county of Henry aforesaid was indebted to the said Mary Jane in the sum of two thousand dollars of lawful money for the work and labor of the said Mary Jane by the said Mary Jane before that time done performed and bestowed for the said defendant and at her ~~request~~ ^{special instance} request and being so indebted she the said defendant in consideration thereof afterwards and whilst the said Mary Jane was sole and unmarried to wit on the day and year

aforesaid at the county of Keeney aforesaid undertook and
 there and there faithfully promised the said Mary Jane to pay
 her the said sum of money when she the said defendant should
 be therunto afterwards requested, And whereas also the said
 defendant heretofore to wit on the second day of June in the
 year of our Lord one thousand eight hundred and fifty nine
 at the county of Keeney aforesaid and whilst the said Mary Jane
 was sole and unmarried became and was and still is in-
 debted unto the said Mary Jane in the further sum of Two
 thousand dollars for money had and received of the said
 Mary Jane (whilst she was sole and unmarried) by the said de-
 fendant to and for the use of the said Mary Jane and also in the
 like sum for money before that time lent and advanced by the
 said Mary Jane (whilst she was sole and unmarried) to the
 said defendant at the special instance and request of
 said defendant ~~at the special instance and request of said~~
~~defendant~~ and also in the like sum for money then and
 there found to be due and owing to the said Mary Jane
 (whilst she was sole and unmarried) on an account then and
 there stated by and between the said Mary Jane whilst she
 was then sole and unmarried and the said defendant and
 being so indebted the said defendant then and there in consid-
 eration thereof promised to pay each of the before named sums
 of money and every part thereof to the said Mary Jane whilst
 she was still sole and unmarried when she the said defendant
 should be therunto afterwards requested

Yet the said defendant not regarding her said promises
 and undertaking but contriving and intending to deceive
 and defraud the said Mary Jane whilst she was sole and

unmarried and the said plaintiffs since their intermarriage in their behalf have not as yet paid the said sums of money or any part thereof to the said plaintiffs or either of them (although often requested so to do) But she to do this hath hitherto wholly neglected and refused and still doth neglect and refuse to pay the same or any part thereof to the said plaintiffs to the damage of the said plaintiffs of the sum of two thousand dollars & therefore they bring this suit &c

And the plaintiffs further aver that the said defendant at the time of the making of the said before named promises and undertakings and each of them was and now still is a corporation created by and existing solely under and as a creature of the laws of the said state of Illinois and as such corporation by her then agent and trustee she made executed and delivered each of the before named promissory notes as aforesaid and as such corporation she became indebted as aforesaid to the said plaintiffs

Hermin Bigelow
attorney for plaintiffs

The defendants will take notice that the sole and only instrument sued on in this case is the note copied in ~~this case is the note~~ the second account of the foregoing declaration and which is also correctly copied in and a correct copy thereof filed in and upon the original declaration filed in this case and to all of which the plaintiffs now refer

He Bigelow
Plffs atty

and afterwards to wit and at the March Term of the
 said circuit court ¹⁸⁶³ held on the 21st day of April
 of said term the following stipulation was filed by the
 parties in said cause to wit

State of Illinois } Of the March Term of the Circuit
 Henry County } & court of said county AD 1863

Nathaniel B Gould

Marj Jane Gould

Assumpsit

The Bishop Hill Colony } It is hereby stipulated and agreed
 by and between the parties to this case that for the purposes
 of the trial of the same in this court & in the Supreme court
 to which it may be taken that the defendant shall have
 leave to withdraw his pleas from the files and that the
 following shall be considered by the court as the facts
 (which for the purposes aforesaid shall be deemed proven)
 and the same shall in all things be regarded as properly
 pleaded to wit:

1st The Plaintiff Marj Jane White sole and unmarried
 loaned to the deft the sum of \$700 on the 29th day of
 September AD 1858 & the defendant executed its note

of that date to her for the sum of \$720 which note is in the following words and figures to wit:

" \$720. For value received six months after date I promise to pay Mary Jane Jennings or order Seven hundred and twenty dollars and if the same is not paid when due to pay her twenty five per cent interest thereon from the time the same is due until paid

September 29th 1858, "

" Bishop Hill Colony "

per O Johnson "

2^d It is admitted that the note is usurious to the extent of \$20, and the interest reserved thereon except the sum of 10 per cent from the time the note became due until the trial hereof (provided however the court is to determine the question whether the plaintiff is entitled to any & what rate of interest thereon) but it is denied by the plaintiffs that the defendant has the legal right to interpose the plea or defence of usury in this case and if the court shall decide that the defendant is a Corporation within the meaning of the law entitled "an act to prohibit corporations from interposing the defence of usury in any action" approved February 11th 1853 (See Laws 1853 page 34) and that by the terms and meaning of said law the defendant was prohibited from interposing the defence of usury then the plaintiff shall have judgment for the amount of the note and the interest reserved and promised to be paid thereon provided the court shall decide from the law the plaintiffs are entitled to recover more than the legal rate of interest but if the court shall decide and determine that by the terms of the said law the defendant is

entitled to interfere the defence of usury in this case then
 the plaintiffs shall have judgment for only the sum of \$700
 and costs. It being the object and intention of the parties
 hereto that this case shall be determined by the construction
 which the court shall put upon the aforesaid law whether by
 the terms thereof the defendant is a corporation or such a cor-
 poration as by said law is denied the right to plead usury
 & it is further agreed that the law of 1853 incorporating the
 defendant shall be considered by the court as construing
 said usury law as applicable to this cause where said law
 incorporating the defendant may be found on page 128 of the
 session laws of 1853. And if this case shall be taken to the
 Supreme Court of Illinois this agreement shall be deemed
 and taken to be a part of the record in the case and said
 Supreme Court shall try and determine the same as fully
 as if all of the above facts were properly pleaded and
 no exception shall be taken to the record in this case as
 the whole case shall be determined as aforesaid in the
 manner aforesaid upon the construction to be given to
 said first named law by the several courts to which
 this case may be taken or by which it may be tried

Dated April 21st 1863

Mary Jane Gould

Nathaniel B. Gould

by H. Bigelow their atty

The Bishop Hill Colony

By J. J. Bennett her atty

And afterwards to wit and at the term last aforesaid
and on the 20th day of April 1863 the following proceed-
ings were had in said cause to wit

Nathaniel B Gould
Mary Jane Gould

vs

} Assumpsit

The Bishop Hill Colony } At this day came the said plaintiffs
by Bigelow their atty and the defendant by Bennett
its atty and by the agreement of the parties this cause is
submitted to the court for trial and decision under written
 stipulations of the parties by their attorneys herein filed

And afterwards to wit and at the term aforesaid and on
the 20th day of April 1863 the following judgment was entered
in said cause to wit

Nathaniel B Gould
Mary Jane Gould

vs

} Assumpsit

The Bishop Hill Colony } At this day this cause being again
called came the parties herein by their attys as aforesaid and the
court having heard the cause and being now fully advised
in the premises, It is ordered by the court that the plaintiffs
have judgment against the said defendant for the sum
of Eight hundred ninety five & 90/100 dollars damages and
costs of suit. It is therefore considered and adjudged by the
court that the said plaintiffs have and recover of the defendant
the said sum of Eight hundred and ninety five & 90/100 ^{dollars}
damages together with their costs and charges in this

13⁵

behalf by them expended and that they have execution there
for against the said defendant

State of Illinois }
Henry County } I Amos Gould clerk of the circuit
court in and for said county hereby certify that the fore-
going is a true and correct copy of the original summons
the amended declaration the orders of the court entered
therein the written stipulations of the parties filed therein
and the final judgment rendered in said cause
by said ^{court} as appears from the files and records in my
office Given under my hand and seal of said
circuit court this 17th day of November AD 1863
Amos Gould clerk
By W. L. Dabrymple Deputy



Clerks fees \$5.00

And now come the said Nathaniel B Gould and Mary Jane Gould plaintiffs in error in the foregoing case and say that in the records and proceedings aforesaid there is manifest and material error in this to wit:

1st The Court erred in rendering judgment for only the principal sum of the note and six per cent interest thereon from its maturity.

2^d The Court erred in not rendering judgment in favor of the plaintiffs and against the defendants for the principal of the note and twenty five per cent interest thereon from the time it became due until the rendition of the judgment.

3^d The Court erred in rendering judgment in favor of the plaintiffs and against the defendants for the sum of \$895.90 only: The judgment should have been for the sum of \$1452.50 and Costs.

Therefore the said plaintiffs ^{that the said judgment} pray be wholly reversed and the cause remanded to the Circuit Court of Henry County with an order to the said Court to render a judgment for the sum of \$1452.50 in favor of the plaintiffs and against the defendants and interest at six per cent from the 25th day of April A.D. 1863, or that this Court render the proper judgment in the premises.

Wm Bigelow Plffs Attys

Blinder in Error.

And now comes the said Bishop
Bill along, by John J. Bennett
their attorney and says that in
the Record and proceedings aforesaid
there is not any error in manner
and form as in the foregoing assign-
ments and specifications of error
is alleged.

J. J. Bennett
Atty for Appellants

89

Nathaniel B. Goulet

Mary Jane Goulet

vs

The Bishop Hotel Company

Transcript of Record
from Honorable Circuit Court

Filed January 12. 1863

L. Deland
Clerk

N. Bigelow
Att. at Pleas in Court

Clerk fee for this transcript
\$5.00

21 - 1894 - 1

Supreme Court of Illinois;
April Ottawa Term A.D. 1864.

Nathaniel B. Gould

et al.

v.

The Bishop Hill Colony

Errors
Henz.

Argument of J. S. Bennett, atty for deft.

Two questions only are raised by the assignment of errors, on this record; 1st Is the defendant in error a Corporation, within the intent and meaning of the second section of an act of the Legislature of the State of Illinois, in force February 11th 1853, and precluded by that act from interposing the defense of usury in any action; and 2^d Second, if so - Did the Court below err in rendering judgment for the face of the note and six per cent interest thereon, upon the agreement of the parties, and the evidence and pleadings of Plaintiffs in error.

The act of the Legislature, referred to, reads as follows; -

"Section II. That no Corporation shall."
"hereafter interpose the defense of usury"

"in any action."
"Sec. 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."

These two Sections must be Construed together, and so Construed, if possible, as to give force and meaning to all its parts. The second Section is to have some force and effect as well as the first. - Its object was, as is quite manifest, to define "the term Corporation, as used in this act;" and to give a Co-temporaneous, legislative Construction to the term "Corporation" - in accordance with the meaning of the legislature. Courts ought therefore to give the act, that Construction ~~which~~ will Con-cord with this intention of the legislature - as expressed in the second section of this act.

Did they intend to include all Corporations, or only such as had "powers and privileges" extraordinary to individuals and partnerships?

Where Common law terms are used in a legislative enactment - it

Must be inferred, that they are intended to be used in the sense in which they are understood at Common Law, unless their meaning is defined in the act. The Legislature of 1853, so understood the Law, and hence, in the second section defined the meaning of the term Corporation as used in the act.

The Common Law meaning of the term "Corporation" is well defined and most Comprehensive. Any association or Company, existing by act of the Legislature - usually termed their "Charter" - is at Common Law as adopted in this Country - a "Corporation" - without regard to the powers supposed to be conferred.

If the Legislature had intended to adopt the Common Law meaning of the term Corporation, in this act of 1853, they would not have added the second section. The term would, in that case, not need to be "construed." There would, then, be no other Corporations to "include." "Associations and joint stock Companies" - existing by legislative enactment, and of the nature described, are embraced in the Common Law signification of the

term "Corporation".

It follows, therefore, that the second section of the act of 1853, either has no meaning, or else must be construed to limit the number of Corporations which can not interpose the defense of usury, to less than the whole number of Corporations. But the Court must give force to the second section of the act; and hence, the Court must hold that only those Corporations which possess "powers and privileges" extraordinary to those of individuals and partnerships, & not possessed by them are precluded from interposing the defense of usury.

This construction of the act itself, by a consideration of all its parts, is undoubtedly in consonance with the real intention of the legislature.

It was undoubtedly the object of the act, to prohibit all Corporations possessing extraordinary powers. Corporations, joint stock Companies & associations - existing by act of the legislature - such as Banks, Insurance Companies, Rail Roads and the like - themselves money lenders and money brokers - usury takers

perhaps, - in case the necessities of speculation, should force them to borrow at usurious rates - from interfering this defense.

And it can hardly be supposed to have been the intention of the legislature to extend this act to literary & Bible societies, cemetery associations, and all eleemosynary corporations, although all incorporated by act of the legislature. So it is not only quite manifest that the statute must be construed as contended for above - but that it is more rational to suppose such to have been the intention of the legislature.

This question was not determined in the case of Hartford Fire Ins. Co. vs. Madden 28 Ill. 260 - as is contended by the Counsel for the Plaintiffs in Error.

The only question before the Court in that case, aside from a question of evidence - was whether the Plaintiffs in that case were in contemplation of the act. The Court do not undertake to give a construction of that act. The Court there hold that the law applies to that

action." They decide that they could have no warrant for saying that this case was not in contemplation of the legislature, and therefore should be excepted. That "it is included in the law."

The court, however, in that case do decide - that the second section of the act of July 11, 1853, defines what is meant by a Corporation."

In the case of a fire insurance Company there could be no serious doubt - but that the act of the legislature includes them. They are usually, if not always, granted in their Charters extraordinary powers - "powers & privileges" which neither individuals nor Partnerships possess.

They are lenders; and not hirers of money. They live by legitimate and legalised speculation upon the industry, capital and product of the toil of others.

Their legislative protection against the liabilities to the ills, insecurities and mischances which befall individuals & partnerships is sometimes marvellous.

We pass now, to the Subordinate branch of this question, whether the Defendants in Error, possess any powers or privileges, not possessed by individuals or Partnerships.

The Defendants in Error were incorporated by act of legislature passed five days after the act under Consideration. (See Laws of Ills. of 1853. : Page 328). The objects of the Incorporation, are defined in Sec. 3^a to be "Manufacturing, milling, all kinds" - of Mechanical business, "Agriculture" - and Merchandising." These certainly are very common pursuits of both individuals and partnerships - nor is there any power, anywhere in this Charter, conferred, or supposed to be conferred - ~~which~~ ^{the} promotion of these objects - which either individuals can not exercise & do not exercise.

They are given a name & by that name are to sue & be sued &c.

Partnerships adopt ~~their~~ name by agreement of its Members; and by that name can sue & be sued &c. without an act of the legislature.

In common with all Corporations they have to speak by their Com-

more seal. That is rather a bur-
then than a privilege. If thought a
privilege Partnerships and ~~indi-~~
viduals, Can adopt & use a ~~seal~~.
They may purchase ^{hold} real Estate & Con-
vey the same - a power & privilege
possessed in common with individ-
uals & partnerships.

In short, a careful examination
of the charter of defendants in error
will satisfy any one that defend-
ants in error, are only a quasi
Corporations, or perhaps, an incor-
porated partnership - and who
could have exercised the same
rights and privileges without, as
with their charter; and that they
have no powers & privileges "which
are not enjoyed by individuals
or partnerships. Their relations as
between themselves rest in contract
, after all, by rules or By-laws a-
dopted by them - they regulate by
agreement & contract the terms
of membership. The members are
undoubtedly, individually liable
for their debts. Their objects are peace-
ful, profitable, Capital producing
pursuits of life. They are not

non-producers - living upon the
fruits of other men's toil; and they
do not come within that class of
Corporations, which ~~was~~ it was the
object of the Legislature to place un-
der disability - to set up ^{weary} or
a defense. They are chiefly farmers
& mechanics, and borrowers rather
than lenders of money, and are not
included in the act of Feb. 11. 1863.

The Court below erred in
not rendering judgment for \$700
only instead of \$895.90; but as
the defendants have not brought
this writ of error, and the error is
in favor of Plaintiffs in error -
they can not be heard to com-
plain.

But the position of Counsel for
Plaintiffs in error upon the other
questions, are untenable - and the
judgment of the Court below must
be affirmed, however the Court
may hold upon the right of defen-
dants ^{in error} to interpret the defense of non-

By a stipulation of the parties, the
facts of the case are agreed upon
and are agreed to be considered

as properly pleaded. It is also agreed that the note sued upon is usurious to the extent of \$20 and the interest reserved thereon - and that, if the Court shall decide that defendants cannot interpose the defense of usury - they shall then decide the further question, whether the plaintiffs are entitled to recover more than legal interest on the note.

On the 29th day of September A.D. 1858 Plaintiffs loaned defendants \$700 (\$600 in fact there being a mistake in the agreement of \$100 which this Court however, cannot consider) - and the defendants executed their note therefor, at that date, for \$720, due six months after date, with twenty five per cent, from its date, till paid, and with an evident understanding that it would not be paid when due. The rate of interest appears upon the face of the note, and upon this note the Declaration is framed, and the note is set out in the Declaration in habe verba. The Court below rendered judgment for \$895.50 - it being for \$720 the face of the

note, and interest on that sum from
the date of the note till judgment.

Plaintiffs say they should
have had judgment for \$1452.52
+ cost; and according to the princi-
ple contended for by Plaintiffs' Coun-
sel would now demand about \$1720
- this being in fact \$1120 of it in-
terest & usury. That is, to say the
least, modest and the favor of the
Counsel for Plaintiffs may be in-
ferred - also why he, innocently
suggests a judgment in this Court.

There is no doubt but
that defendant might have filed
their Bill, in the Court below, and
enjoined the collection of the ex-
cess of said note and interest
above the actual amount loaned
and six per cent thereon - upon
bringing the loan & interest into
Court.

That is the uniform rule in Chan-
cery - established by a series of ju-
dicial determinations, in most of
the states of the Union.

But the same rules govern Courts
of Law and Courts of Chancery.
There can be no good reason

Now assigned, why under the stipulation filed in this case, upon which the Court below decided the case the same rule should not apply. The Court below, however, was even more favorable to Plaintiff than ~~that~~ - the judgment is for the face of the note - (which it is agreed includes \$20 usury + in fact includes \$120) and six per cent interest thereon.

But it is said the Court can not vary the terms of the note but must give effect to all its parts.

This is a new doctrine applied to promissory notes. It is a matter of every day occurrence in Court to inquire into & introduce parol evidence to prove the consideration, the total & partial consideration of notes, their payment & partial payment; whether usurious, or obtained through fraud and circumvention, and was never regarded as an innovation upon, or violation of any rule of evidence or law.

No defense need be interposed by the Defendant, in a case where

the Plaintiff by his own pleadings and agreement, interposes it for him.

The object of interposing a defense, is to bring the ^{other defense} facts before the Court, by way of pleadings and evidence, that the law may have its operation upon those facts.

But when a Plaintiff brings before the Court the facts of defense, the Court must give operation to the law upon those facts.

In this case the Plaintiffs agree that the note is usurious, and that the rate of interest is unlawful. They declare upon it as drawing 25 per cent interest.

The Court could not do otherwise, than regard these facts, ~~was~~ on default. It would ~~sure~~ have been justified in rendering judgment for the sum loaned only.

But it is said by the Counsel for Plaintiffs, that the Court could as well have rendered given nine per cent as six.

Six per cent is declared by Statute to be the legal rate of interest, unless the rate be fixed by the agreement of parties - at a rate not to

exceed ten per cent. In this case
the rate was fixed by the par-
ties, in violation of law, and
by an agreement which was
usurious. It is as though no
agreement, concerning interest
had been made. The law, therefore,
would determine the rate of in-
terest, - and the law fixing it at
six per cent - the Court Commit-
ted no error, in allowing six per
cent interest. At least the Plaintiffs
can not be heard to complain.

In either case, therefore,
these Plaintiffs can not be
allowed to say, that this judg-
ment should be disturbed.

The Judgment of the Court
below should, therefore, be af-
firmed, with costs.

D. I. Bennett
Atty for Defs.

89. 18

Nathaniel B. Gould
et al.

v.
The Bishop Hill colony

Argument of
J. J. Burnett

att for defts.

Filed April 22. 1864
J. Gould clrk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT.

To the Sheriff of Henry County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Henry County, before the Judge thereof, between Nathaniel B. Gould & Mary Jane Gould

plaintiffs, and The Bishop Hill Colony

defendant, it is said that manifest error hath intervened, to the injury of the said plaintiffs

as we are informed by their complainant the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Bishop Hill Colony

that said Bishop Hill Colony be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if said Bishop Hill Colony shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Bishop Hill Colony

notice, together with this writ.
Prattley H. Walker
Witness, The Hon. John W. Gates, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 12th day of January in the year of our Lord One Thousand Eight Hundred and Sixty-four.



L. Leland
Clerk of the Supreme Court.
by J. D. Rice Deputy

89 18

William D Gould and

N^o. VS.

The Bishop Hill Colony

SCIRE FACIAS.

Filed February 20 A. D. 1864

J. L. Leland Clerk.

Shawto see on this writ

Deer 30

Mileage (18 miles) 1.80

Return 1.10

\$ 1.30

M Bigelow
Deputy Sheriff

I have duly served the within writ by reading the same to and delivering a copy thereof to C. J. Johnson who is principal agent principal clerk and attorney in fact of the within named defendants the Bishop Hill Colony, there being no President of said Bishop Hill Colony the business thereof being managed solely by Trustees of which said the above named C. J. Johnson is one.

Dated this 10th day of February A.D. 1864

John B. Hegin
Sheriff of Henry Co Mo
By Hiram Bigelow Deputy