

No. 11948

Supreme Court of Illinois

Sammies

vs.

Clark

71641  7

Peoria
Christopher Sammis
Ralph Clark et al.

59

1852

11948

Peoria

Proceedings at a Circuit Court begun and held at the Court House
in the City of Teona, in and for the County of Teona in the State of Illinois,
on the first Monday of March in the year of our Lord one thousand
eight hundred and fifty two, it being the first day of said month. Present
the Honorable William Kellogg, Judge of the Tenth Judicial Circuit in the
State of Illinois, to wit:

Wednesday March 3rd A.D. 1852.

Ralph Clark,
Enos P. Clark,

vs

Debt

Christopher Hammis.

This day came the plaintiffs by H. P. Merri-
man their attorney and the defendant by Anslow Peters his attorney,
and issues being joined, it is ordered by the Court that a Jury be em-
pannelled to try said issues, whereupon came a jury of twelve good
and lawful men, to wit: George Sturce, John Hornbaker, Lewis W.
Vandergrift, Samuel L. Glasgow, Bazelael Washburn, W. L. Stone,
H. W. Bushnell, Darius Jones, Casper Yinger, Roswell Walker
and Anderson Erined, who being duly chosen, tried and sworn,
well and truly to try the issues joined and a true verdict give accor-
ding to evidence do say, We of the Jury do find that the defen-
dant does owe to the plaintiffs the sum of one hundred and sixty two
dollars and twenty three cents debt and assess the plaintiffs damages for the
detention of said debt to the sum of thirty eight dollars and eighty two cents.
Therefore it is considered that the said Ralph Clark and Enos P. Clark have and recover
of the said Christopher Hammis the sum of one hundred and sixty two dollars and twenty
three cents their debt aforesaid and the sum of thirty eight dollars and eighty two
cents, their damages aforesaid, together with their costs and charges by them about their
suit in this behalf expended and that they have execution therefor.

Thursday March 4th A.D. 1852

Ralph Clark, Enos P. Clark,

vs

Debt.

Christopher Hammis.

This day came the defendant by

Onslow Peters, his attorney, and entered a motion for a new trial in this cause, because the verdict is against law & evidence.

Friday March 12th A. D. 1852.

Ralph Clark, Enos J. Clark,

vs

Debt.

Christopher Hammis.

This day came on to be heard the motion of the defendant for a new trial in this cause, on consideration whereof, the court being fully advised in the premises over-ruled said motion, whereupon the defendant prayed an appeal in this cause to the Supreme Court of this State, which is allowed on the defendant's filing an appeal bond in the office of the clerk of this court in thirty days, in the penal sum of four hundred dollars, with Onslow Peters as his surety and conditioned according to law;

Know all Men by these presents, that we Christopher Hammis as principal and Onslow Peters as surety are held and firmly bound & obliged to Ralph Clark and Enos J. Clark in the sum of four hundred dollars to the payment of which sum to the said obligees, we bind ourselves & each of us, our & each of our executors & administrators jointly & severally & firmly by these presents. In witness whereof we have hereunto set our hands & seals, this sixth day of April in the year of our Lord one thousand & fifty two.

The condition of this obligation is such, that whereas the above named obligees, at the March Term of the Circuit Court, holden in and for the county of Peoria & commencing on the first Monday of March 1852, recovered a judgment against the said Christopher Hammis, and the said Hammis hath appealed from the said judgment to the Supreme Court of the State of Illinois, said judgment being for the sum of one hundred & sixty two dollars & 23 cents debt & 38 dollars & eighty two cents damages besides costs of suit. Now therefore if the said Hammis shall duly prosecute his said appeal & in case the judgment shall be affirmed, shall pay whatever judgments, interests, costs & damages that shall be awarded against him, then this obligation shall be void, otherwise to remain in full force & effect.

Chris Hammis [ES] Onslow Peters [ES]

Peoria Circuit Court March 3/52
Raeph & Enos T. Clark

vs

Christopher Hammis

The declaration in this case was
filed in said court on October 5th 1848, & is in the words &
figures following, to wit:

In the Peoria Circuit Court,

October Term A.D. 1848,

State of Illinois, } ss.

County of Peoria, }

Raeph Clark and Enos T. Clark plain-
tiffs in this suit complain of Christopher Hammis, defen-
dant in this suit of a plea that he render unto said plain-
tiffs the sum of one hundred and sixty five dollars which
he owes to and unjustly detains from them.

For that whereas the said defendant heretofore to wit:
on the second day of October in the year of our Lord one
thousand eight hundred and forty eight at the county
of Peoria aforesaid was indebted to said plaintiffs
in the sum of one hundred sixty five dollars for the
goods, wares and merchandize before that time sold
and delivered by said plaintiffs to said defendant at
his request, also for so much money before that time
lent and advanced to said defendant at his request
by said plaintiffs, also for money before that time
paid, laid out and expended ^{for said defendant & at his request} by said plaintiffs, also
for money before that time had and received by said
defendant for the use of said plaintiff, also for so much
money found to be due & owing to said plaintiffs from
said defendant upon an account then stated between them,
also for interest upon and for the loan and forbearance of
divers large sums of money for long spaces of time before then
elapsed by said plaintiffs to defendant, and then due and

owing from defendant to plaintiffs; said sum to be paid by said defendant to said plaintiffs, when he the said defendant should be thereunto afterwards requested, whereby and by reason of said sum of money being and remaining wholly due and unpaid an action hath accrued to said plaintiffs to demand & have of & from said defendant the said sum of money above demanded.

For the said defendant although often requested so to do has not as yet paid the sum of one hundred and sixty five dollars above demanded or any part thereof to the said plaintiffs, but he to do this has hitherto wholly refused & still refuses to the damage of said plaintiffs of one hundred and sixty five dollars and therefore they bring suit to.

H. P. M. S. Merriman

Atty for Plff.

And said plaintiffs further aver that the above cause of action accrued in the State of New York and that the legal rate of interest in said State is seven per centum per annum."

To this declaration the defendant filed several pleas, which terminated in issues to the county:— but the only questions intended to be reserved for revision in the supreme court, properly arise under the general issue; and the other pleadings are therefore omitted:—

To maintain the issue on their part, the plaintiffs introduced evidence to shew that on the 9th day of July 1844, the plaintiffs sold to deft a bill of goods amounting to the sum of two hundred & eighty three dollars & fifty one cents, upon an order originally sent by deft to Baldwin & Bibles New York from merchants in New York City. It appeared, that at the time of the sale of the goods the plaintiffs were merchants doing business in the City of New York & the deft. was a merchant doing business in Peoria, Illinois:— On the 20th of May 1845 the deft. paid the plaintiffs the sum of one hundred & sixty dollars in part

"V." It was also proved that the following account was in hand writing of defendant and made out by him & furnished to the witness in 1848. which account is in the words & figures following to wit:

44

Christopher Sammis

To Baldwin, Dibblee & Nork.

July	8	By Bill of Goods	1591.82				
		" 3. 4. 23. Int	378.54	1970.36			
		" Cash of Insurance	35.89				
45		" 3. 10. 23. Int	9.78	45 67	2016	3	
May	14	" Bill of Goods	450.71				
		" Int 2. 6. 16	80.24	530 95			
		" Cash of Insurance	4.49				
		" Int 3. 00. 16	95	5 44	536	39	
					2552	42	
44	Augt	28 To Cash	950				
		" Int 3. 10 Mo.	254 91	1204 91			
45	May	20 " Cash	119				
		" Int 3. 00. 11 day	25 24	144 24			
	Nov	22 " Cash	300 00				
		" Int 2. 6 . 8	52 94	352.94	1702	9	
					850	33	

payment of the account.

The deft. procured the goods by sending an order therefor to Plffs. in New York & the Plffs. in fulfillment of the order, packed up & shipped the goods & they were duly received by the deft. in Teoria, with the invoice, shewing the purchase was made on six months credit from date of bill.

Proof was introduced to shew, that it was the custom of the Plffs. & Merchants in New York generally, to charge interest on goods sold, after the bills matured and that the goods purchased as aforesaid were received by deft. in Teoria with the bill marked, that the goods were sold on six months.

It was also proved that the deft. had long been a merchant in Illinois & had purchased his goods generally in New York City - and one witness said he supposed Mr. Hammis must have known it was the custom of New York merchants to charge their customers, country merchants, interest on their accounts for goods after the bills matured. -

^{"B."}
^ The legal rate of interest in the state of New York was shewn to be seven per cent. The statutes of New York, regulating the rate of interest may be referred to on the hearing of this case in the Supreme Court & be considered part of this case, so far as they are applicable or proper to be considered by the court in determining the questions presented in this case.

And this agreed statement is to stand in place of a bill of exceptions & errors to be assigned upon the record the same as if the bill of exceptions had been taken, signed & allowed by the Circuit Judge.

¹⁷
This was all the evidence in relation to interest.

¹⁸
The Jury returned a verdict for Plffs. for one hundred & sixty two dollars & twenty three cents debt and thirty eight dollars

eighty two cents damages, that being the amount of interest on the account. — On which the court rendered the following Judgment, to wit:

Proceedings at a circuit court begun and held at the Court House in the City of Teoria, in and for the County of Teoria in the State of Illinois, on the first Monday of March in the year of our Lord one thousand eight hundred and fifty two, it being the first day of said month. Present the Honorable William Kellogg, Judge of the Tenth Judicial Circuit in the State of Illinois, to wit:

Wednesday March 3rd A.D. 1852.

Ralph Clark,

Enos S. Clark,

vs

Debt.

Christopher Hammis.

This day came the plaintiffs by H.C. Merriam their attorney and the defendant by Anslow Peters his attorney and issues being joined. It is ordered by the court, that a Jury be empannelled to try said issues, whereupon came a Jury of twelve good and lawful men, to wit: George Wines, John Hornbaker, Lewis R. Vandergrift, Samuel S. Glasgow, Bazaluel Washburn, H. S. Stone, W. N. Bushnell, Darius Jones, Casper Yinger, Roswell Walker and Anderson Grimes, who being duly chosen, tried and sworn well and truly to try the issues joined and a true verdict give according to evidence, do say, We of the Jury do find that the defendant does owe to the plaintiffs the sum of one hundred and sixty two dollars and twenty three cents debt and assess the plaintiffs damages for the detention of said debt to the sum of thirty eight dollars and eighty two cents; Therefore it is considered that the said Ralph Clark and Enos S. Clark have and recover of the said Christopher Hammis the sum of one hundred and sixty two dollars and

payment of the account.

The deft. procured the goods by sending an order therefor to Plffs. in New York & the Plffs. in fulfillment of the order, packed up & shipped the goods & they were duly received by the deft. in Teoria, with the invoice, shewing the purchase was made on six months credit from date of bill.

Proof was introduced to shew, that it was the custom of the Plffs. & Merchants in New York generally, to charge interest on goods sold, after the bills matured and that the goods purchased as aforesaid were received by deft. in Teoria with the bill marked, that the goods were sold on six months.

It was also proved that the deft. had long been a merchant in Illinois & had purchased his goods generally in New York City - and one witness said he supposed Mr. Hammis must have known it was the custom of New York merchants to charge their customers, country merchants, interest on their accounts for goods after the bills matured.

^{"B."}
^ The legal rate of interest in the State of New York was shewn to be seven percent. The statutes of New York, regulating the rate of interest may be referred to on the hearing of this case in the Supreme Court & be considered part of this case, so far as they are applicable or proper to be considered by the court in determining the questions presented in this case.

And this agreed statement is to stand in place of a bill of exceptions & errors to be assigned upon the record the same as if the bill of exceptions had been taken, signed & allowed by the Circuit Judge.

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This was all the evidence in relation to interest.

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The Jury returned a verdict for Plffs. for one hundred & sixty two dollars & twenty three cents debt and thirty eight dollars

twenty three cents their debt aforesaid, and the sum of thirty eight dollars and eighty two cents their damages aforesaid, together with their costs and charges by them about their suit in this behalf expended and that they have execution therefor."

The only question to be submitted to the Supreme Court is whether on the proofs & facts as above recited, the jury were justified in rendering their verdict ^{including} interest on the account, and the judgment of the court is to be entered according to its determination of that question.

Orson Peters, for Deft.

H. O. & A. L. Merriam,
for Plffs.

State of Illinois
Peoria County

I Jacob Gale clerk of the Circuit Court within and for the county of Peoria in the State of Illinois do hereby certify, that the foregoing is correctly copied from the Records of the proceedings in a certain cause in said Court of Ralph Clark and Enos P. Clark are plaintiffs and Christopher Sammis is defendant as the same remain of Record and on file in my office -

In testimony whereof I hereto set my hand and the seal of said Court at Peoria this 28th day of June A.D. 1852
Jacob Gale, clerk.

And the said Appellant comes & says that on the record & proceedings of said circuit Court & in the rendition of the judgment aforesaid there is manifest error in this to wit, that the circuit Court rendered judgment for instant, & for a greater amount of interest ~~the~~ against the said Appellant, than it ought to have done - wherefore the said Appellant prays that said judgment may be reversed annulled & for nothing esteem'd &c -

Peter & Blakely for Appellant.

And the said Appellee comes and
says that there is no error in the record
of the judgment & proceedings made
in the Court below And prays that the
same be affirmed by this Hon. Court

J. O. Merriam
for Appellee

Georgia

Samuels v. Clarke.

Transcript. & appt. of errors

Filed July 25th 1852.
J. H. Landis Clerk.

ts. J. W. Clark.