

No. **12652**

Supreme Court of Illinois

Warner.

vs.

Crane

TRUSTEES OF THE 

My

Wife

201

12652

1858

X H

Repaired.

1
United States of America,
State of Illinois, }
County of Winnebago, }

I have before the Honorable
Selden W. Church, Judge of
the Winnebago County Court, at a
regular Term of said County Court
within and for the County of Winne-
bago and State of Illinois, begun
and holden at the Court House
in the City of Rockford in said
County of Winnebago on the First
Monday of July, being the First
day of said month in the year
of our Lord one thousand eight
hundred and fifty seven, and
of the Independence of the United
States the Eighty Second:

Present:

The Honorable Selden W. Church, Judge,
William Heeling, Clerk,
Samuel A. Church,
Sherriff.

Also: William Heeling, Clerk.

At said term came on before
said court the cause of Eliza H.
Frank against Ben Davis and Wm
H. Warner, a full statement and
verdict of which and of all records,
papers and matters therein, follows, to wit:

2 In the Winnebago County Court.

Eliza H. Crane

v.
Ben. Davis

Ulysses H. Warner

} Transposes the
case in prison.

Be it remembered, that on
the sixth day of June, in the June
Term of the Winnebago County Court
in the year of our Lord one
thousand eight hundred and fifty
seven, before the Honorable Elders
H. Church, Justice of the said Court,
this cause was brought on for
trial:

The parties having filed their papers
in said court in the following order, to wit:

State of Illinois }

Winnebago County }

Winnebago County Court

Of the June Term A.D. 1857

Eliza H. Crane

v.
Ben. Davis &

Ulysses H. Warner

} Transposes the case
in prison.

Damages of \$100.

The Clerk will please issue a
warrant in the above entitled case
commanding the Sheriff to summon
the Defendants to appear the first day
of the Term. Docket H. H. Hayden
A.D. May 12th 1857. S. H. H. H.

Endorsed

Win. C. Ford

Eliza W. Crane

Ben. Davis

Ulysses H. Warner

Grand Jur. Linn Co.

Filed May 10

1857

W. Martin, Clerk

State of Illinois)

Winnebago County) Winnebago County Court

Eliza W. Crane

Ben. Davis

Ulysses H. Warner

I do hereby

enter myself

as counsel for

costs in this

cause, and acknowledge myself
bound to pay or cause to be paid
all costs which may accrue in this
action either to the opposite party
or to any of the officers of this court
in pursuance of the laws of this State.

Dated this 11th day of May A.D.

1857

William H. Ogden

4

Indorsed
Wine Court
Elyz McGee
vs
Ben. Davis &
Myers & H. Warner
Security for costs

Filed. May 18. 1857.
W. H. Allen (Clerk.)

State of Illinois)
Winnebago County) ss

The Winnebago County Court
June 18. 1857

Elyz McGee plaintiff in this
suit by William H. Ogden her attorney
complains of Ben Davis and Myers &
H. Warner who were summoned
in a plea of Dispute in the case
upon promises: To that whereas
the said Defendant heretofore, to
wit, on the Thirtieth day of Au-
-gust in the year of our Lord and
thousand eight hundred and fifty
six at Rockford to wit at the
County of Winnebago and State of
Illinois, made their certain prom-
-ising a vote in writing, bearing date

a certain day and year therein mentioned, to wit: The day and year last aforesaid, and then and there delivered the said note to Edward C. T. Kitchel by which said note the said Defendants then and there promised to pay Edward C. T. Kitchel or order Five hundred dollars Sixty days after date for value received being for borrowed money and the said Edward C. T. Kitchel to whom or to whose order the said note was payable then and there endorsed assigned and transferred the said note to the said Plaintiff. By means whereof the said Defendants became liable to pay said plaintiff said sum of money mentioned in said note and the said Defendants then and there acknowledged of the premises, promised to pay the amount of the said note to the Plaintiff, according to the tenor and effect thereof.

And it is to be noted for that whereas, after the Defendants on the said day of April in the year of our Lord one thousand eight hundred and fifty seven in the County aforesaid were indebted to the Plaintiff in the sum of Three hundred dollars, for the price and value of goods

and chattels then and there
 sold and delivered by the Plaintiff
 to the Defendants at their request;
 and in the sum of Three hundred
 Dollars for the price and value
 of work then done and materials
 for the same provided by the Plaintiff
 for the Defendant at their request;
 and in Three hundred Dollars for
 money then and there lent by the
 Plaintiff to the Defendants at their
 request; and in Three hundred
 Dollars for money then and
 there paid by the Plaintiff for
 the use of said Defendants at their
 request; and in Three hundred
 Dollars for money then and there
 received by the Defendants for the
 use of the Plaintiff; and in Three
 hundred Dollars for money then
 and there found to be due from
 the Defendants to the Plaintiff
 on an account then and there
 stated between them - and whereas
 the Defendant afterwards, to wit,
 on the day and year aforesaid,
 in the County aforesaid, in considera-
 tion of the premises, respectively
 promised to pay the said several
 (last mentioned) moneys respec-
 tively to the Plaintiff on request;
 yet they have disregarded their
 promise and have not paid any

7 of the said moneys, to support
burial, to the damage of said Plain-
tiff of Three Hundred Dollars,
and thereupon said Plaintiff
brings suit, &c.

William M. Ogden

Attorney for Plaintiff.

Ben Davis & Whissas, Attorneys,
To Eliza Moore
To Goods sold and delivered to Jan.
Wells, for her and Materials, &c. \$500.
Money Lent, \$500.
Money paid, &c., \$500
Attorney fees and received, \$500
Due on Loan, &c., \$500

(Copy of endorsement on note)
\$500
Eliza Moore
To Eliza Moore for
value received of Ben Davis & Whissas
Edward & Mitchell order Two
hundred dollars being for borrowed
money
Ben Davis
Edw. H. Warner

(Copy of endorsement on note)
Edward & V. Mitchell

Endorsed
Wm C. Smith
Eliza Moore
Ben Davis &
Edw. H. Warner

W. H. Rader
S. H. Rader

Filed May 18,
1857. W. H. Rader
Clerk.

County Court

State of Illinois
Winnebago County

The People of the State of Illinois
to the Sheriff of said County - Greeting:
We command you that you summon
Ben Davis & Thomas M. Warner
if they shall be found in your County,
personally to be and appear before
the County Court of said County, on the
first day of the next term thereof,
to be holden at the Court House in
Rockford, in said County, on the first
Monday of June, A. D. 1857 to
answer unto Ezra Meane in a plea
of Trover on the case on promises
to the damage of the said plaintiff
as the Jury in the sum of Two hundred

7 Dollars. And have you then
 and there this writ, with an en-
 dorsement thereon, in what manner
 you shall have executed the same.
 Witness my Writing Hand, (Seal of
 our said Court, and the Seal thereof,
 at Bedford aforesaid, this eighth
 day of May, A. D. 1857.
 (Seal) William Miller Clerk.

Endorsed
 G. Docket C. 1854 Page 80
 Winnebago County Court.

Eliza W. Lane
 Benⁿ H. Lane
 Mysses H. W.

State of Illinois May 10th
 Winnebago County 1857

I duly regard the within by reading
 the same to the within named Benⁿ
 David Mysses H. W. as I am
 therein commanded.

Samuel J. (Shuck) Sheriff
 By James Slane Atty
 Paid - Carrier, 100
 Milbaga 10
 Nathan 10 \$1.20
 Ayden & Morrey.

Filed - May 20. 1857. Wm. Miller Clerk

Harriet. Entoy - Judge's docket.
New Cases. - Winchby county court.
June Term, 1879.

1864

Liza Anne

Rev. David

Leslie Rogers Brown

Wm. H. Barnes

5 5 Plaintiff asks leave to withdraw
Motion for a new trial - leave
given -

[illegible]

[Faint handwritten notes, possibly "Left sample - by experiment for ..."]

8th 9th Motion for New Trial - Motion
presented Dept. 3 program appeal to

the Supreme Court - It is granted upon condition that ^{with} defendants shall bond with three others as security in the sum of \$300 within thirty days

Will go to
Hartford
with
the
plaintiff

Dea Davis impleaded
 with H. M. Warner
 add
 Sigs H. Lane

And the said defendant
 Davis impleaded &c comes and defend
 the wrong and injury when &c and
 says that she did not undertake
 and promise in manner and form
 as the said Plaintiff hath above
 alleged against him & if this he puts
 himself upon the Country &c
 Satisfy & Pardon

And the said Plaintiff will please
 take notice that defendant Davis
 will give in evidence and insist
 upon as defence that the General
 issue in this cause That the Plaintiff
 in this cause has no beneficial interest
 in the premises upon which this Suit
 is brought; and that the note in
 the declaration was endorsed to the
 Plaintiff long after maturity thereof;
 That the Principal interest in
 said premises is in one Edward C. C.
 Kitchell, and that this suit is pro-
 voked for his benefit; That the note
 in question in this cause was created
 for money loaned by the said Kitchell

to this defendant. That the interest recovered in and by said note was much more than the rate allowed by Law, upon the Sum of money (ten per cent per annum) being eight dollars for the use of One Hundred & twenty two Dollars for sixty days, until the maturity of said note; That after the maturity of the said note, to wit on the 13th day of October 1856 again paid the said Edward C. R. Ritchell the Sum of eight dollars, to wit: for and upon this Defendant day of payment of the period of 60 days from the maturity of said note, to wit until the 13th day of December 1856.

And that at the expiration of said first period, this defendant paid the said Ritchell the Sum of ten Dollars further to extend the time of payment of the monies in said promissory note for the further period of sixty days, to wit: until the 13th day of February A. D. 1857. And at the expiration of said last mentioned period this defendant paid the said Ritchell the further Sum of ten dollars, again to extend the time of payment of said monies for the further period of sixty days, to wit until the 13th day of April A. D. 1857.

And the defendant avers that each and every of said payments for the extension of the time of payment of said monies, in said note mentioned, was at the rate of more than ten per cent per annum for such forbearance, and was usurious & unlawful by the Laws of this State — That for such Loan and forbearance of said monies the said Kitchell was entitled only to the sum of twelve & 50/100 Dollars; and not the sum of Thirty six dollars, as he has exacted and taken of this defendant, — foregoing That for such Loan and forbearance the said Kitchell has exacted and received of this defendant the sum of Forty three & 50/100 Dollars, over and above the interest allowed by law therefor — And this defendant upon the trial of this cause will insist upon the forfeiture by said Kitchell, to be deducted from the monies mentioned in said note of One hundred and Eight Dollars, being three times the amount of interest received and taken for the Loan & forbearance of said money as aforesaid, and this defendant will insist upon recovery his full costs, having —

Ben Davis p^r Latham & Stearns

Endorsed.
Ben Davis
impleaded with Warner

ads
Eliza Mearns

His Honor

Filed June 1

1857

Washington
D.C.

about the said plaintiff, both the title & the facts.

On motion of the plaintiff,

Whereas Mr. Warner
impleaded with Ben
Davis ads
Eliza Mearns

about the said defendant Warner
impleaded with Ben Davis by Luther
& Brown his attorneys comes & departs
the wrong & injury when he and says
he did not undertake and promise
in manner and form as the said
Plaintiff and by his said declara-
tion has alleged against him
and of this he puts himself upon
the country &c

to bid for a further plea

in this behalf leave of the Court being first had and obtained the said Defendant Warner impleaded to ask the said promissory note in Stiffs declaration mentioned says actio non, because he says That he signed the said note mentioned in the Plaintiffs declaration, only as Surety for the other Defendant in this cause Ben Davis which was then well known to the said Edward C. Ketchell the person to whom said note was made payable; That the said Ben Davis was then and was then after maturity of said note solvent and well able to pay the same; That after the making of said note and while the said Ben Davis remained entirely solvent and able to pay the same to wit on the thirtieth day of October A. D. 1856, the day on which the said note became due and payable; The said Edward C. Ketchell - he then being the owner and holder of said note, - without the knowledge or consent of this Defendant contracted and agreed with the said Ben Davis, for a valuable consideration then paid him by the said Davis, to extend the time of the payment of

the monies in said note mentioned sixty days from and after said 13th day of October A.D. 1856; and at the expiration of said period of sixty days, The said Edward at Kitchell - he still being the owner of said note, without the knowledge or consent of this defendant, & in compliance with the said Defendant Davis, and for a valuable consideration paid him by said Davis, extended the time of payment of the said monies in the said note specified for a long time to wit for the period of sixty days, to wit after the 13th day of December A.D. 1856, and that since the expiration of said last period and period, said Kitchell has at diverse times he being the owner and holder of said note, for good and valuable considerations to him paid by said Davis, forbore and given said Davis day of payment of said monies mentioned in said note, without the knowledge or consent of this defendant. That long after the said note became due and the said Kitchell, had forbore and given day of payment to said Davis of said monies, without the knowledge or consent of this defendant, to wit

the first day of April a/d 1857, the said defendant New Davis became equally insolvent & worthless. That the said note was indorsed to the said Plaintiff Long after the same became due, & without consideration, and this the said defendant is ready to verify wherefore he prays judgment &c

And for a further plea in this behalf, said defendant Warner in & pleaded as to the said promissory note in said Plaintiffs declaration mentioned action, non because he says, That the said Plaintiff is not a bona fide holder of the note upon which this suit is brought, but that the same was indorsed to her long after the maturity thereof and without any consideration. That this defendant only signed said note as surety, for the other defendant New Davis, and that the said Edward & Hitchell to whom said note was made payable well knew the fact, That after the making said note as aforesaid, and at the maturity thereof to wit on the 13th day of October a/d 1856, the said Edward & Hitchell he then being the owner & holder thereof for a

valuable consideration to him
 Said by said Defendant Davis
 extended to said Davis, the time
 of payment of the moneys men-
 tioned in said note for a long
 Period, to wit for the Period of
 Sixty days from and after the
 maturity of said note, all of
 which was without the knowledge
 or consent of this defendant. And
 this, this defendant is ready to
 verify wherefore he prays judg-
 ment &c. *J. H. & Brown*

And for all the Plea in
 this behalf made by said defend-
 ant Warner explained &c as to
 the said promissory note in said
 Plaintiff declaration mentioned
 says action was brought he says:
 That the said promissory note in
 the Plaintiffs declaration mentioned
 is the only cause of action upon
 which this suit is brought. That
 the entire beneficial interest in said
 note is now in one Edward A
 Ketchell, who is, the payee therein
 named, and that the same was
 endorsed to the Plaintiff long after
 the same became due; That this
 defendant only signed said note as
 Surety for the other defendant Ben

Davis, and that the said Ketchell at the making thereof well knew the fact. That at the maturity of said note the said Ketchell then being the owner & holder thereof, for and in consideration of Eight dollars then paid him by said Davis, extended the time of payment of the monies therein mentioned for the period of Sixty days to wit from the 13th day of October until the 13th day of December 1856, without the knowledge or consent of this defendant, and that after the maturity thereof the said Ketchell from time to time by agreement with said Davis, and for a valuable consideration to him paid by said Davis, extended the time of payment of the monies in said note mentioned until the 13th day of April 1857, all of which was without the knowledge or consent of this defendant, and this he is ready to verify Wherefore he prays judgment &c

Spaethorn & Brown
for Plaintiff

Endorsed
 M. Mc Warner
 implorated to
 ads
 Eliza Moore

Heas

Dated June 1.

1857. W. M. Mulin
 Clerk

Leathrop & Brown

Eliza M. Moore

Ben Davis
 Weymouth Warner

Please issue a subpoena
 for Edward C. R. Ketchell and
 Chester Crane - on part of Defts
 & obliges Leathrop & Brown
 attys for Defts

June 1, 1857

Do W. M. Mulin

Clerk.

Endorsed

Dated June 1

1857

W. M. Mulin Clerk

State of Illinois,)
Winnebago County. } ss.

I, the People of the State of Illinois
to the Sheriff of said County - Do hereby
command you to summon
Edward C. V. Mitchell and Heirs,
to appear before the County
Court of said County, at Rockford,
on the first day of June, A.D.
1854, at two o'clock in the
after noon, to testify and the
truth to speak in behalf of the
- defendants in a cause now pending
in said Court, wherein Eliza Moore
is Plaintiff and Edward V. Mitchell & Heirs
- Defendants. And I have you
then and there to do right, with
a return thereon showing in what
manner you have executed the
same. Witness, William Martin,
(Clerk of said Court, at Rock-
ford, this first day of June,
A.D. 1854, and the seal of
said Court.
(Seal) William Martin, Clerk.

Enclosed
Winnebago County Court
In the matter of
Eliza Moore
v.

Davis & Warner

Subpoena on part of Clerk

State of Illinois, }
 Winnebago County, } June 1st 1857

I duly served the within by
 reading the same to the within
 named Edward Mitchell and
 Chester Francis as I am therein
 commanded.

Edw. I. Church, Sheriff.
 By James Adams Depy

Fees - 20
 - 10
 - 10

Sartorius & Brown
 at Chicago.

Aliza H. Crane } June Term
 vs } 1857
 Ben Davis & }
 Myssie C. Warner } Winnebago
 County Court

The Plaintiff moves the Court
 that the Defendants be ordered to
 elect to either stand by their pleas
 or plea & retire

W. H. Dodge
 Atty. at L.

Endorsed
 Wm C Court
 Eliza H. Crane
 vs
 Ben Davis &
 M. H. Warner

Filed June 2-
 1857 W. Martin
 Clk

Winchester Court
 Eliza H. Crane
 vs
 Ben Davis & M. H. Warner
 June Term 1857

And the said plaintiff
 as to the said plea of the said
 Defendant Warner by him secondly,
 thirdly, fourthly, above pleaded saith
 that the same and the matters
 therein contained in manner and
 form as the same are above pleade-
 red and set forth are severally
 not sufficient in law to bar or
 preclude him the said plaintiff
 from having or maintaining his
 aforesaid action thereof against
 the said Defendant Warner and
 that said plaintiff is not bound
 by law to answer the same and

24 this he is ready to verify wherefore
by reason of the insufficiency of
said pleas the said plaintiff
prays judgment and his damages
by reason of the not performing
of the said several promises in
said declaration mentioned to
be adjudged to him &c
W H Ogden
Respectfully

Indorsed
Win. C. Smith
Eliza H. Smith
Ben Davis
W. H. Warren

Remitted to elect
Warren's pleas

Filed June 2^d
1857. W. H. Smith
CK

which afterwards to wit on the
fifth day of June in the year
of our Lord one thousand eight
hundred and fifty seven, said last

25th named day being one of the days of
the June Term of said Western
County Court of the year last past =
= said, the following among other
proceedings were in said Court had
and entered of record, to wit:

ex. 65 Eliza M. Crane
v.
Ben. Davis
Myers & Co. Carriers

On motion of said Plaintiff's
Attorney, leave is given, to wit =
= deem the motion of said Plaintiff
heretofore filed, & had the
Court having fully and maturely
considered the merits of cause
= set upon the Plaintiff of the
Plaintiff to the effect of the said
Defendant which sustains the
said demand.

ex. 65 Eliza M. Crane }
Ben. Davis } Promises
Myers & Co. Carriers }

On motion of the Defendants,
leave is given them to amend their
plea herein.

And afterwards, to wit: on the
 sixth day of June in the year
 last aforesaid, the said Attorney
 for the Plaintiff filed in the said
 Court the vote in this case de-
 cided on, which is in the words
 and figures following, to wit:

\$200. Rockford, Chicago 19th
 1856.

Sixty days after date, for
 value received, I promise to the
 Edward & T. Ritchel, or Order,
 Two Hundred Dollars, being for
 borrowed money.

Wm. H. Davis
 Cashier of the Bank of the West

Know all Men by these Pres-
 ents, That whereas we the Sub-
 scribers are jointly indebted unto
 Edward & T. Ritchel, upon a certain
 Promissory note, bearing even date
 herewith, for the Sum of Two
 Hundred Dollars, made payable
 to the said Edward & T. Ritchel,
 or Order, and due Sixty days
 after the date hereof, being for
 borrowed money. & View Thereof,
 in consideration of the premises,
 and of the sum of One Dollar,
 to us in hand paid, the receipt
 whereof is hereby acknowledged,

we do hereby make, constitute,
and appoint Wm H Ogden or any
attorney of any Court of Record, to
be our true and lawful attorney,
invariably, for us or in our name,
place and stead, to enter our
appearance before any Justice of
the Peace, or in any Court of Record,
in any of the States or Territories
of the United States, or elsewhere,
either in term time or in vacation,
at any time from and after the
date hereof, at the option of the
said Edward & V. Kitchel to receive
service of process, and accept a
judgment in favor of the said
Edward & V. Kitchel, or his assignee
or legal representative upon the said
note, for the principal sum, or for as
much as appears to be owing accord-
ing to the tenor and effect of said
note, and fifteen dollars attor-
ney's fees. And our said attorney
is also authorized in our behalf to
file a caveat for the amount that
may be so owing, with an agreement
therein that no writ of error or
appeal shall be presented, nor any
bill in equity filed, to interfere in
any manner with the execution of
any judgment that may be entered
by virtue thereof, and also to release
all error that may intervene in the

entering up of the said judgment, or
issuing execution immediately thereon.
Whereby ratifying and confirming
all that our said Act of the 11th of Feb 1851
do by virtue hereof, and for the
consideration above mentioned we
do hereby further stipulate and
agree that all right, interest or
benefit accruing to ourselves by
virtue of an Act of the General
Assembly of the State of Illinois,
entitled "an Act to exempt Homesteads
=leads from Execution",
approved Feb 11th 1851,
is hereby waived, and released,
and any property which we now
hold or may hereafter acquire,
which would be exempt from levy
and sale on execution, by virtue of
said Act, is hereby made subject
to such levy and sale, by virtue
of this agreement, the same as
though such Act had not passed.

Witness our hand and seal
this Thirtieth day of August
A.D. 1856.

Ben Davis (Seal)

In presence of (Seal)

(Seal).

Indorsed

Ben Davis

\$200. Oct 12th 56

Dated June 6. 1857.
W. H. L. C. K.

Jay & Eliza Mearns
Edward & L. Mitchell

and afterwards, to wit on
said sixth day of June, the
said Defendant Mearns, Mearns,
by his attorneys, filed his amended
pleas, as follows:

That Winnebago County Court:
Mearns, Mearns, impleaded
with Mearns, Mearns &c

Eliza Mearns

and said Defendant
Mearns impleaded by Leathrop
& Brown his attorneys comes and
denies the wrong and injury where
and says that he did not under-
take and promise in manner
and form as the said Plaintiff
 hath above thereof alleged against
him and if that he puts himself
upon the Country Leathrop & Brown
attys for Deft
Mearns.

and for a further Plea in this
 behalf leave of the Court being first
 had and obtained, the said Defendant
 Haines, implicated &c as to the said
 promissory note, in the Plaintiff's
 declaration mentioned says action
 2^d man, because he says, That he
 signed the said note mentioned
 in the Plaintiff's declaration, as
 Surety for the other Defendant
 in this cause Ben Havis which
 was then well known to Edward
 & H. Mitchell the, the person to whom
 said note was made payable. That
 said Ben Havis was then, and
 until a long time after the matur-
 ity of said note, remained entirely
 solvent and well able to pay the
 same; That after the signing the
 said note, and while the said
 Ben Havis remained entirely sol-
 vent, and able to pay the same,
 to wit on the 12th day of October
 A.D. 1836, the day on which said
 note became due and payable;
 the said Edward & H. Mitchell -
 the payee in said note, he then
 being the owner and holder of
 said note, without the knowledge
 or consent of this Defendant, con-
 -tracted and agreed with the said
 Defendant Ben Havis, for & in
 consideration of the sum of Eight

dollars then paid him by said Davis, to extend the time of payment of the monies in said note mentioned for the period of sixty days then next ensuing to wit from the 13^d day of October until the 13^d day of December 1856; That the said Edward C. V. Ketchell is the real owner of said note and the person for whose benefit this Suit is prosecuted, and that the same was not endorsed until long after the maturity of the note, nor until long after the expiration of said period of sixty days the time for which the payment of said monies was extended as aforesaid. And this the said defendant is ready to verify and therefore he prays Judgment &c.

And for a further plea in this behalf by leave &c. the said defendant ^{with impleaded} as to the said promissory note in Suff Declaration mentioned says action was because he says, That the Plaintiff is not a bona fide holder of said note upon which this Suit is brought, a fact that the same in fact belongs to one Edward C. V. Ketchell the payee thereof for whose benefit this Suit is prosecuted and who endorsed the said note to the Plaintiff long

after maturity thereof. That this
 defendant only signed said note
 as surety for the other defendant
 Ben Davis, which fact at the
 making thereof was well known to
 the said Edward C. V. Ketchell.
 That after the making said as
 aforesaid, and at the maturity
 thereof to wit on the 13th day
 of October 1856, the said Edward
 C. V. Ketchell - he then being the
 owner and holder of said note,
 and without the knowledge or consent
 of this defendant, procured in con-
 sideration of eight dollars, then
 paid him by said Davis, contracted
 and agreed with the said Davis,
 to extend the time of payment of
 the monies mentioned in said note,
 for the term of sixty days after
 maturity thereof to wit until the
 13th day of December A. D. 1856.
 And this defendant further avers
 that at the expiration of said
 period of sixty days to wit on
 said 13th day of December 1856,
 the said Edward C. V. Ketchell, he
 then being the owner and holder
 of said note, again contracted &
 agreed with the said defendant
 Davis for and in consideration
 of the further sum of ten dollars

then paid the said Mitchell by said Davis further to extend the time of payment of the monies in the note mentioned for the period of sixty days to wit until the 13th day of February 1854, all of which was without the knowledge or consent of this defendant, and this defendant further avers, that at the expiration of said last mentioned period to wit on the 13th day of February 1854, the said Mitchell he then being the owner and holder of said note, for and in consideration of the sum of ten dollars then paid to him by said Davis, contracted and agreed with the said Davis to extend the time of payment of the monies in said note mentioned for the further of sixty days to wit, from the 13th day of February until the 13th day of April 1854, all of which was without the knowledge or consent of this defendant, and this the said defendant is ready to verify wherefore he prays judgment &c.

And this defendant, for a further plea in this behalf leave &c. as to the said promissory note in said Plaintiff declaration

mentioned said note now because
 he says - That the said Plaintiff
 has no interest in the said several
 supposed promises and undertakings
 upon which this suit is brought,
 that the same belong to one Edward
 & V. Mitchell, for whose use this
 suit is prosecuted, and that the
 said note was not assigned to
 the said Plaintiff until long after
 maturity thereof, and that the said
 Edward & V. Mitchell is the payee
 in said promissory note and now
 the beneficial owner of the same.

That this defendant, at the
 making of said note, signed
 the same as the holder of said
 defendant Ben Davis, and in no
 other capacity, all of which was
 then well known to the said
 Edward & V. Mitchell, That af-
 -terwards and after the maturity
 of the said note to wit on the 23rd
 day of December - 1856, the said
 Edward & V. Mitchell - he then
 being the holder and owner of
 said note, for and in consideration
 of the sum of ten dollars then
 paid him by said Davis, con-
 -tracted and agreed with the said
 Davis, (without the knowledge or
 consent of this defendant) to ex-
 -tend the time of payment of the

monies in said note mentioned for
the period of sixty days from that
date to wit until the 13th day of
February A.D. 1857. And this the
said Defendant is ready to verify
he prays Judgment &c

Seathrop & Brown
Attys for Defendant
Warner

Endorsed
In Winnebago Co Court

M. M. Warner impleaded &c

vs
Elija Mearns
Debt

Filed for Trial
Winnebago Co
Ct

Seathrop & Brown

And on said sixth day of
June the said Plaintiff filed her
demands to the foregoing, as follows:

Elija Mearns	Win. Co Court June Term 1857
vs	
Ben. Davis	And the said Plaintiff says that the said second Debt &
Wm. M. Warner	

fourth plea by the said Defendant
 Answer above pleaded and the matters
 therein contained in manner and
 form as the same are above pleaded
 and set forth are severally insuffi-
 -cient in law to bar or preclude
 her the said plaintiff from having
 her aforesaid action brought against
 the said Defendant Warner and
 that she the said plaintiff is not
 bound by law to answer the same,
 and this she is ready to verify where-
 -upon for want of sufficient pleas
 in this behalf the said plaintiff prays
 judgment and bid damages by reason
 of the not performance of the said
 several promises in the said libel-
 -ation mentioned to W. H. Golden & Co.,
 and for cause of Remover the
 said Plaintiff sets forth & shows
 to the fact now true that said second
 third & fourth pleas each amounts
 to the general issue.

2nd

That the said fourth plea is double
 and contains a two fold answer to
 the declaration in this; that the
 said Wm. Warner thereby pleaded
 and alleged that the property &
 ownership of said note is in Edward
 & E. Mitchell that the said note belongs
 to said Mitchell and also that said

Noted after said note became
 extended the time of payment thereon
 and that said Warner signed said
 note only as Surety for the other
 Defendant Ben Davis

3^d had that said W. H. Ogden
 second third & 4th Affs atty
 fourth pleas are
 otherwise informal
 & insufficient

Endorsed
 Wm. Co. Court

Eliza McGee

Ben Davis

W. H. Warner

Remitted to
 Warner's pleas

Filed June 6,

1857

W. H. Miller

Clk

Ogden

atd afternoon, to wit on the
 Sixth day of June aforesaid, being
 one of the days of said June
 term, the following among other
 proceedings were in said Court had
 and entered of record, to wit:

as to Eliza M. Lane }
 v. }
 Ben Davis } Premises
 Myself - H. Warner }

On motion of said Defendant
 Warner, leave is given him to amend
 his plea herein, and the said
 Defendant files his amended
 plea, and the said Plaintiff have
 - ing filed her demurrer to said
 amended plea, the Court after hear-
 - ing arguments thereon, sustaining
 the same, to which ruling of the
 Court said Defendant excepts

as to Eliza M. Lane }
 v. }
 Ben Davis } Premises
 Myself - H. Warner }

This day come the said
 parties by their attorneys, and
 issue being joined herein, by agree-

ment of parties this cause is submitted to the Court for trial without the intervention of a Jury, and the evidence and arguments of counsel were heard by the Court until the hour of adjournment.

And among the papers on the files of said Court in this cause are the following three, the first of which is in the proper hand writing of the said Judge of said Circuit Court, to wit:

Eliza M. Francis

Ben Davis

M. McWane

Have seen the note, was present at the time of making — note has been in "W. Mitchell" — \$892 paid to Ben Davis at the making of this note. Have tried Clerk for Mitchell, the time of the note has been extended \$60 days paid \$50 for the extension of the note, sixty days, do not know if any thing farther being paid — the time to which extension would be due in December, think note was not extended farther than 13 Dec.

There was a Balance, of \$12.00.
on the part of Jany — heard, a
conversation some time in the
winter, in relation to the note,
think the note, was not extended,
We have a book in which we
enter, all notes that are extended.
I am up of Extended notes —
Can't say when the endorsement
was made Can't say whether it was
endorsed in October or not, we
don't know as Mitchell is agent of
Haindiffe, they have had business
transactions together —

The note was not paid, before
I heard any thing about it about
the note, I have no recollection,
as to whether the note was endorsed, —

x

Mitchell

Knows the note, am the
Payee in the note, paid \$12.00, at
the time of making the note, I don't
know David paid \$8. on 16th October —

\$4.00 was put into my hands some
time in Jany to go for interest if
not paid —

The note might have been
endorsed within the last two months

Endorsed Filed Jany 6, 1857
Wm. Miller (Ck)

Affidavit of witness.

State of Illinois,

Winnebago County,

Superior Court, June Term, 1837.

Charles Crane of said County being duly sworn, deposes and saith that he attended said Court as a witness 6 days at this Term, in a case between Eliza M Crane Plaintiff and Davis & Warner Defendants, at the instance of Warner and travelled miles. (Charles Crane

Sworn to and subscribed before me, this 6 day of June, A.D. 1837.

W. H. H. (Clk.)

Endorsed

Filed in Court this 6 day of June, A.D. 1837.

W. H. H. (Clk.)

Affidavit of witness.

State of Illinois,

Winnebago County,

Superior Court, June Term, 1837.

Edward A. V. A. of said County being duly sworn, deposes and saith, that he attended said Court as a witness 6 days, at this Term, in a case between Crane Plaintiff and Davis & Warner Defend-

ants, at the instance of Warner
and travelled $\frac{1}{2}$ miles.

Edward C. V. Mitchell
Surrendered and Subscribed
before me, this 6 day
of June A.D. 1857.
W. H. M. Clerk.

Endorsed
Said Deputy found this 6
day of June A.D. 1857.
W. H. M. Clerk.

And afterwards, to wit: on
the ninth day of June, in the
year of our Lord one thousand
eight hundred and fifty seven,
said last named day being one
of the days of said June Term
of the said Winchester County Court,
the following among other proceed-
ings were in said Court had and
entered of record, to wit:

Tuesday, June 9. 1857.

or by }
Aiza McLean }
Ben Davis }
Wm. H. M. } Premises

This day again came the

Said parties by their Attornies, and this cause having heretofore been submitted to the decision of the Court without the intervention of a jury, and the Court having heard and considered the allegations and proofs of the parties, finds the issue to be for the Plaintiff, and assessing her damages in the sum of (\$183.48) one hundred and eighty three dollars and forty eight cents, and thereupon the said Defendant Warner moves the Court for a new trial herein, which motion — the Court being duly advised thereon — is overruled by the Court. It is therefore considered and ordered by the Court that the said Plaintiff have and recover of the said Defendant the said sum of (\$183.48) one hundred and eighty three dollars and forty eight cents, her damages assessed as aforesaid, as also her costs and charges herein expended, and that she have execution therefor. And thereupon the said Defendant Warner prays an appeal to the Supreme Court of the State of Illinois, which appeal is allowed, provided the said Defendant Warner enter into bonds in the penal sum of three hundred dollars, and with condition as

required by law in the case of such appeals, signed and sealed by himself as principal and by Jesse Blinn as scruit, in the office of the Clerk of this Court, within thirty days from the entry of this order.

And on the sixteenth day of June, in the year of our Lord one thousand eight hundred and fifty seven, in pursuance of the order of said Court made and entered at the June Term thereof of the year last aforesaid, the said Defendant Wykes & Co. Warner filed in the office of the Clerk of said Court his appeal Bond, as follows:

I know all men by these presents. That we Wykes & Co. Warner as principal and Jesse Blinn as surety are hold and firmly bound unto Eliza Moore in the sum of Three Hundred Dollars, to be paid to the said Eliza Moore her Executors, administrators or assigns; to which payment well and truly to be made we bind ourselves our heirs, executors and administrators jointly and

45 Generally, firmly by these presents,
Witness our hands and Seals
Dated at Rockford Ill this 15th
day of June A.D. 1857.

Whereas at the June Term
1857 of the County Court of Winnebago
County Illinois in a certain
cause then pending in said
Court, wherein the said Eliza M.
Franc was Plaintiff, and the said
Abner H. Warner and one
Ben Davis were Defendants; the
said Eliza M. Franc recovered a
Judgment against the said Abner
H. Warner and Ben Davis, for
the sum of One Hundred Eighty
three Dollars and fifty eight cents
besides costs of suit; and whereas
the said Defendant Abner H.
Warner then prayed an appeal
from said Judgment to the Su-
preme Court of the State of Illinois,
which appeal was allowed upon
condition the said defendant Warner
enter into Bonds in the sum of
Three Hundred Dollars with Jesse
Blinn as Surety - within thirty
days from the rising of said Court
conditioned according to Law -
Now the condition of this
Obligation is such that if the

46 Said Myestes-Mc. Warner shall
pay the said Judgment, cost
interest and damages in case the
Judgment shall be affirmed, in
the Supreme Court of the State of
Illinois and also shall duly
prosecute the said appeal, then
this obligation shall be null and
void, otherwise to remain in full
full force and effect.

W. H. Warner (Seal)
Esqr. Plim (Seal)
Executed in presence of
Wm. Leathrop

Endorsed
In Minutes of C. t.

W. H. Warner
impleaded with Ben Davis

ad,
Eliza M. Kane

Appeal Bond

Filed June 16th
1857.

W. H. Miller
(C. K.)

Leathrop & Brown

Eliza M. Grand

Dee Bill

Ben. Armit

Assccts.

Mysses M. Warner

1837

June Fil. p. 1. 1. 10. Summ. 2 1/2 100.

Rec'd 10. 1. 1/2 10. Fil. inc. 10.

Fil. Rem. 10. Subp. 1/2 100

Dec. 2 wds 10. Fil. 2 1/2 dem. 10

Fil. 10. 10. die. on 10. Ent. inc. 10

cr. all. do 20. 10. 10. 10. 10.

As. Judg. 10. Ent. Jud. 10

Rec'd Judg. 10.

Judges fees 10. 10. 10. 10. 10. 10. 10. 10.

Defendants' costs:

1837

June Ent. opp. 10. Fil. 10. Subp. 10

Subp. 1/2 100. Fil. pleas 10

Fil. am. pleas 10. Dec. 1/2 10. 10

Fil. dem. 10. cr. leave am. 10.

Fil. 10. 10. 10. 10. 10. 10. 10. 10.

Exp'd 10. 10. 10. 10. 10. 10. 10. 10.

Witness E. C. R. Mitchell

10. 10

C. Crane

10. 10

State of Illinois, }
County of Winnebago, } ss:

I, William Hutton, Clerk of
the County Court of said County of Win-
nebago in the State of Illinois,
do hereby certify, that the above
and foregoing is a full, true and
correct transcript of all the papers
on file in my office and of all
the orders and proceedings entered
of record in the case of Elizabeth
Cous against Ben Davis and
Whysie & Co. Warner, defendants,
as appears by a careful comparison
thereof with the original records
of said Court in my office remaining
Given under my hand
and the Seal of said
Court at my office in
Rockford, this
Eight day of Febru-
ary, A. D. 1858.
William Hutton,
Clerk.



In the Supreme Court of the State
of Illinois of the
April Term 1858.

Algon M Warner
Impleaded with Geo. Davis
vs
Eliza Crane } Appeal

And the said Appellant
A M Warner impleaded &c by Sa-
thorp. Brown his Attorney comes
and says: that in the Record
and proceedings in this case there
is manifest error in this Court:

That the Court, Error in sus-
taining the demurrer of the
Appellee, to the Second, Third
and Fourth, Amended Pleas,
of said Appellant, and each
and every of them, and setting
judgment against said Appellant
upon said demurrer -

And the said Appellant prays that
the same judgment proceedings may be
vacated, reversed, annulled, &c.

And for Maugh, 1 Bottomed
Saltrop 1 Brown
Atty. for Appellan V.

Winchby Court Court
Eliza H. Coan
v.

Ben Davis &
Wm. M. Wain
Transcript.

Sup Court
201

Ulysses M. Brown
In person

vs
Elihu Crane

Assignment of
Errors

Filed April 24 1857

Sealed
1857

Sattrop & Brown
Attys. Appell.

days from the use of money

The 3^d Plea alleges Moral Omissions by
Ritchie by agreement and contract with Bond
in consideration of the payment of being sure of
Money without the knowledge or consent of
Bonded Bond, that Bond signed the note
as surety and that Ritchie ~~then~~ knew
the fact that he did so

The 4th Plea is in substance thus
Just Record

The plea is intended to show that
on the day that Bond signed the note
he was under the necessity of a timely discharge
of duty & that he was signing a contract
and application of the doctrine

That the giving bond was ~~not~~ given
upon without the consent of his surety under
a valid and binding contract to do so
appears to be done as well settled as any
question of his penance

Though the question arising on this bond
does the record should have been there

him a party and the debt I was the principal
part of the debt in this; and in respect to
the paper of the note: and whether, for
such a debt, there is any binding upon
me, shown by the record, between Ritchie
and him, which would discharge him

He called the debt loaned was not
a loan with him, in respect to Ritchie
but that in respect to him the debt
was paid. They may have been
paid ~~to~~ to him, and themselves, since
paid and they are between themselves.

But as respects Ritchie by giving in the
note as notes they assumed the liability
of principal and it does not rest with them
now to deny the relation and make a new
one without the consent of the payee of the note

Thus Ritchie and I are in an unbroken
relation, and without the consent of
Ritchie pay him liability to him. That he

it would be to get at all the facts, ^{it} was
in the contract they entered into made it

We insist that in the eye of the
law the joint maker, of a promisory note
and old principles, both figures either in
respect of character, and may have been an
accommodation party. And it does not
with facts today such liability of the party
voluntarily assumed it. In this Point See
Story on Notes 421. 422. Story on Sales
12. Story on Bills 14. 152. Story on Sales
12. 13. 14. 15.

The record in this case shows that
between Davis & Warner, Warner was an
accommodation ^{party} of the note but as between
themselves & between they were both principals
in the same plan, and certainly developed go
beyond the allegation that Warner was an
accommodation party and that ^{parties} he was
to be so. This might have been true without
any notice, either note being of the other
parties it was the knowledge of the first

material claim and with which he has no
concern

The above doctrine, seems to be the
doctrine, of Judge May, and of the court, and
authorities above referred to, but the English
cases seem to lay down a doctrine a little dis-
tinct from the above and in these instances
I have admitted the rule distinctly so, that one
of course must make up his mind right there
regarding a party in respect to his paper
provided the paper comes at the time of
the question. In *Wright v. Brown* 10 Cal. 451
The case of *Wright v. Brown* 10 Cal. 451 has been before
451 has been like the action on a promissory
note against joint makers. One of them placed
as much as the dye wanted has placed in
this case, but the court ^{held} the plea insufficient
on demurrer. It alleged the Pkg. requested
notes as jointly with the other ^{party} and the plaintiff
knew it. The court held the plea insufficient
and said that it should have stated on
demurrer that the Pkg. created because the
dye is not only going up and then there is
joint maker of a note, but the request is a

Rincos and O. 1, a party and state of a
relation was assumed by him it must have been
of special interest with the people of Mexico
when it was made, and that such special
interest should have been covered
in the Plan, which made the relation appear
upon the record. The Court holding that the
allegation of his being party and that the people
knew it was, making an allegation that he
knew the maker this was an allusion
to the party and that the people knew it.

The attempt to visit accommodations
proves that in O. 1, the people of the country with
the rights of the people, have attempted to
at times in the night to look and have
yet has succeeded. The Court always
held such facts to the libelous they are
known or the fact of the lies or notes
On this Point see 1 Big Case Law Page 105
23 Big Case Law Page 26-27 10-136

These Plans are behind the people
the true reason the Court held that they are
in the law of the people or People 15 Big Case
Law Page 45. because they do not allege that
the people are to be and do not know

as ready and learned as holding that the
Plan alleges that the ^{100 men} that was an all
consideration party, the 100 and the 100
the 100 and the 100 by the 100 and the 100
because the English Plan was.

It may be observed that, there have
in American cases, where first making
note, and held discharges because they
indisputable, and have had been from
the point, D. In all these cases, others
where I have advised that the parties, doing
by their debt. But I have been, and other
things in that case, had appeared in other
forms, generally that they had been no
binding contract to give time. In the case
18th 249, a first making of note was de-
clared as a party but the question
of liability there seems not to have been either
decided, and the question was raised in the
construction of the 97 Chap. Act of 2d Mar-
ch 1858, which was an act for the bene-
fit of persons becoming bondsmen, and by
other persons, allowing such description to give
notice to the court that the bond was

note of which he found in his old diary
giving date Sunday Jan 18th, in the
center third night 18th 19. This is a
remedio ad and would be a bona
ad construction. and does not appear to be
copied to parts who had taken away, then
as hints, but to show and account for the
particular who sign for other parts, and
has understood ^{the matter} the facts that the plan in
this last ^{part} of good can have no effect
on one and when a different rule prevails

It was, however, also that the student
had been a young of time under a bridge
in order to find out what which would
have been the paper and put it out
of his power and for some time length
of time.

But the 12 & 14th of the day should show
any actual group time but nearly impossible
was to be so. and for a while the effort
in them to extend was in fact given
and the note

It does not appear by these facts that
there was any agreement that would break the
Nashua traffic, for a year that appears to
a year had commenced at the day after the
explosion, ^{was quite} and no impediment or obstacles
to his doing so is shown. 24 Vermont 296

What to bind on a good consideration
24 Vermont 296. 2 Pick 581

Payment of part of the debt is a valid
interim discharge release of the creditor's liability
3d Mass. 114 376

Payment of what is advanced after note
binding does is not a valid consideration on the
part of the creditor 5 Pick 458.

As to the discharge does not discharge one
of 18 Mass. 114 362. Rights on notes 194 Mass
page 245

The Plaintiff would show they should not
release of any debt to be shown as to the note
18 Mass. 114 362. 12 Mass. 114 362
Story on Promissory 555 and 561. Story on
Debt 114 362

My three One actual giving has or any
binding agreement to or 2 Pick 581, 24
vermat 296

My three to. Construction which can be used
the Pensions 3 to 4 Lane 376 - 8 Pick 458
1 Lane 274

The Subject shall be explained
for the purpose
for explaining

Supreme Court
U. S. v. Warrick
201 23 }
v. v. v. }

August

In Supreme Court.

Ulysses M. Warner
Plaintiff

Elizer Crane
Defendant

Action was brought on a joint & several promissory note (so appearing on its face) made by one Ben Davis and left. Ulysses M. Warner, & payable to Edward A. Kitchell; & indorsed by Kitchell to Plaintiff: After due-

The Suit was brought against Davis and Warner;

The parties averred in their Pleas: Warner, Pleaded the Ben. issue and Three Special Pleas: Each Special Plea, setting up one defense in substance that Warner had signed said note as Surety, for the other defendant Ben Davis, which was then well known by Kitchell the payee. That Kitchell still being the owner and holder of the note, at maturity thereof, for cause in consideration of eight dollars to him, ^{paid} by left. Davis, extended the time of the payment of said note

for the Period of sixty days, after the Maturity
of the note, which Extension of Time was
without the Knowledge or Consent of
Dr. W. Warner

3^d Plea Shows that there like Contracts
between Ketchell and Defendant Davis
the principal, without Knowledge of
Warner

4th Plea Shows one Contract between
Ketchell & Davis, for Extension of Time
for sixty days, in consideration of 10% Paid
by Davis: This Contract made in December
1856, without the Knowledge or Consent
of Defendant Warner, Ketchell still
being the holder and owner of the note

To Each of Dr. Warner Special Plea
the Court Sustained a Demurrer, and
upon trial rendered judgment
against both Defendants, for \$153.42

Defendant Warner alone appealed -

Defendant Warner offers for Error
the Sustaining the Plaintiff's Demurrer
to his 2^d, 3^d & 4th Pleas in the Court
Below.

The Same 2^d, 3^d & 4th Pleas of Warner
and Each of them Contained Matter
which was a good defense to the action
as to him. —

Each Plea Shows, that
Warner only signed said note as
Surety for Davis; And that Ketchell
the payee of said note, at the Execu-
-tion thereof, knew the fact; That
Ketchell being the holder & owner of
the note, after Maturity thereof for a good
and valuable consideration paid him
by Davis, extended the time of the
payment of said note for a definite
time, without the knowledge or consent
of Warner.

The Law seems, to be well settled
that, any valid Contract between
the Creditor, and principal debtor
extending the time of payment of the
debt for a definite period, without

The Consent of the Surety, discharges
the Surety; And the rule is the same
at Law as in Equity

Goodnerdal vs. Johnson cal. 13 Ill. 347—

Quindal vs. The People 1. Gilman. 409

The People vs. Johnson 1. Phil. Rep. 332.

Story Equity Jurisprudence § 326 *note*.

Harrell vs. Poppton cal. 23. Et. Rep. 142.

Carpenter vs. King 9 Metcalf 511—

Harwin vs. Brooks 21. Pickney 195

2. Kilm. 639. ; 2. Phil. Ch. R. 554.

Burke vs. Currier 8 Exors 66

Bank of St. Louis vs. Cundick adm. 5 Ohio 131.

American Leading Cases (4th Ed) Vol. 2.

Page 400, & cases there cited; Or Same Vol
of (3^d Edition) Page 295.

Smith vs. Drake 3 Exors 215.

The Witness of the relation of principal
and Surety is a ^{material} fact; is a ^{fact} of
Fact; And when the relation exists, it
may be shown, by parol evidence—if
not disclosed upon the face of the Contract.

And where the Creditor Contracts
with a knowledge of the fact that one
of the joint or joint several ^{parties} ~~parties~~
of a promise, states is a mere Surety

for the other, by such knowledge. He becomes subject to all the incidents of the relation. Between the debtors; the same as if the relation of principal and surety appeared upon the face of the contract.

Harris v. Brooks. 21. Pickings 195-
Carpenter v. King. 9. Metcalf 571-
Grafton Bank v. Thomas Kent. 4 St. Hanslie 224.

The word "surety" added to the name of a joint and several promisor maker of a promissory note, only operates as notice to the payee and subsequent holders, of the true relation existing between the maker. And notice of the fact at the time of making the note in some other manner is just as binding upon the payee, and subsequent holders with such notice.

Harris v. Brooks. 21. Pickings 195-
Carpenter v. King 9 Metcalf 571- same, 547
Snuffitt v. Atwood v. Reed St. Ind. 504-

The doctrine laid down in the case
of Murrey vs Bay Ct. 15 English
Com Law Repts. 46, of signing the
surety in a joint & several promissory
note, not only to show that he is
a surety & that he has given to
the principal ~~contract~~ his consent, but
also that the party agreed to become
the note of the surety in that char-
acter only. has never been followed
in any case in this country, so far
as we are able to find — the knowledge
of the fact has been held sufficient;

Even if the alleged agreement
set up in these pleas between
Kitchell and Davis the principal
& the subject amounted to giving
illegal interest for the forbearance
of the debts yet such agreement
was not void, (4 Sear. 24) And
Kitchell having received the
money was bound by the agreement.

And had Kitchell attempted
to have sued this note before the
expiration of the new credit, he
might have been enjoined, or
an action maintained against
him by Davis for his breach of
contract;

1 B Monro. Reports. 325.

The case of Villars & Bacon v Jones
& Piercy, 1 Comstock 375, holding the
payment of interest void, no con-
sideration for extension of time. Acts
upon the Statute of N.Y. making
all usurious contracts void, and
would not be questioned, in State where
contract was not void for that reason.

These cases not only establish the General
 doctrine, that an Extension of Time; for
 a definite period, given for a consid-
 eration; to the principal will discharge
 the surety, but also show that the fact
 of the relation of principal and surety
 may be proved by parol; where the
 fact does not appear from the face
 of the contract itself, and that the policy
 may be thus changed with knowledge
 of the fact.

L. L. Look &
 Jm Lutton of ~~recess~~
 for Pff in error

Mr Stephen Court

201

Allyson & the Warren
 Insured or a

vs

Eliza Crane

Agreement

L. L. Look &
 Jm Lutton

Supreme Court

Eliza Ann Sipples

vs.

Myers, the Governor of the State

Appellant

vs. the State

And the said
Appellant of the State being
that there is such error in the
and proceedings in this case as to the Court below
as the appellant by the following reasons

So, the State

appellants

201
Plymouth
Village

Spice in Garden

In the garden

April 201

Delaware
Ch. H.

In Supreme Court:

Wly set M. Warner, } Appellant
impleaded &c. }
vs. }
Elija Crane - } appellee.

Points made by Plaintiff's Counsel

- 1 The action in the Court below was on a joint & several note made by the Appellant and Ben Davis, to Edward A. Kitchell.
- 2 The Appellant pleaded separately, the general issue, and three Special pleas - the substance of which Special Pleas was that Kitchell was in fact the owner of the note; and that Warner was in fact only surety for Ben Davis, and that Kitchell knew that fact at the time the note was made; and that when the note fell due Kitchell, without the knowledge or consent of Warner, made a valid contract and received pay from Davis, the principal debtor, for extending the time of payment of the note.
That the time was so extended first for 60 days, and afterwards for several periods of time.

3 The Appeller demurred to the Special
pleas, and the Court below sustained
the demurrer, and the principal error
alleged is the sustention of the demurrer
to said pleas.

4. The Appellant insists that the
pleas stated a perfect defence to the
action against Warner - and in support of
that position the following authorities are
referred to -

Hardner et al. vs. Watson et al. 13 Ill. 347.
Davis et al. vs. The People 1 Gil. 409.
The People vs. Jansson 7 Minn. Repts. 332
Story's Eq. Jurisprudence Sec. 326 & Note.
Furriel vs. Poyntons et al. 23 Vermont Repts. 142
Carpenter vs. King 9 Metcalf 511
Harris vs. Brooks 21 Pickering 195.
2 Gilman, 139. 2 Johns. Ch. Rep. 554.
Burke et al. vs. Leago et al. 8 Texas 16.
Bank of Chambersville vs. Carroll 5 Ohio 121.
American Leading Cases (4th Ed. 1 vol. 2, page 400,
(or same volume, 3rd Edition, page 295.)
Smith vs. Doak, 3 Texas, 215.

5. That the fact that Warner was merely security, although a joint ^{and} maker, (and that fact not appearing on the face of the paper), is provable by parol -

Harris vs. Proctor, 21 Pickering	195.
Carpenter vs. King & Miteal	571.
Grafton Bank vs. Kent, 4 N. H.	221.

6 That the word "surety" appertained to one of several maker's names is merely notice of the fact of that relationship between the maker, and also a notice to the payee or any subsequent holder that such signer is only surety; but the fact can be proven whether it appears on the paper or not.

21 Pickering	195.
9 Miteal	571. & 547.
21. Grad.	504.

7th. If it is objected that the contracts and agreements mentioned in the several pleas were for an usurious consideration paid for for loaned, the answer is, that usury does not render the contract void in this State; (H. Can. 24.1); And such agreement, being upon

a sufficient consideration does in fact
and in law extend the time of payment,
and preserves the right of action
upon the note until the expiration of
the time agreed upon.

(17 B. Monro's Rep. 325.)

In the State of New York, by Statute,
Wholly ~~void~~ renders the Contract void,
and, void things are as no things, and hence
the decision and reasoning in the case
of *Villa, & Bacon vs. Jones & Percy*, (1 *Cont.*
276), but there are no such consequences
under our laws; the Contract remains
good, and the only effect is the forfeiture
of the interest so reserved or taken.

J. L. Lusk
Mr. Saltus, Attorney
for P. H. in Error

Mr. Lusk per Court

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Allyson & Co.
Superior Court

as

W. H. Crane

Printed & Published by
Mr. P. H. Crane

Lusk & Saltus
per Applicant

In Superior Court

Ulysses M. Warner } Appellant

vs
Eliza Crane } Appellee

Points made by Plaintiff Counsel.

1. The action in the Court below was on a joint & several promissory note, made by the appellant and Ben Davis, to Edward Ketchell;
2. The Appellant pleaded Separately: the Grav. issue and three Special Pleas: the Substance of which Special Pleas were, that Ketchell was in fact the owner of the note; And that Warner was in fact only Surety for Ben Davis, and that Ketchell knew that fact at the time the note was made, and that when the note fell due, Ketchell without the knowledge or consent of Warner, made a valid contract and received pay from Davis the principal debtor, for extending the time of payment of the note.
That the time was so extended.

just for 60 days, and afterwards for several periods of time =

3. The appellee demurred to the Special Pleas. And the Court below sustained the demurrer, and the principal error assigned is the sustention of the demurrer to said Pleas.
4. The Appellant insists that the Pleas stated a perfect defense to the Action against Warner. And in support of that position the following Authorities are referred to:
- | | |
|----------------------------------|----------------------|
| Gardner & Co vs Watson et al | 13. 208 347 |
| Kear et al vs The People | 1. 511 409 |
| The People vs Jackson | J. John et al R. 332 |
| Story Eq Jurisprudence | Sec. 326 & note |
| Tubill vs Boynton et al | 23. 1 Mount. 142 |
| Carpenter vs King | J. McCoy 311 |
| Harris vs Brooks | 21. Pickens 195 |
| 2. 511 637 | 2. 1000th Rep. 53/4 |
| Burke et al vs Clegg et al | 8. Texas 66 |
| Bank of Steubenville & Canal | 5. Ohio 131 |
| American Trading Cases (4. 3d) | Vol. 2, page 940- |
| or same Vol. (3 ^d Ed) | page 295. |
| Smith vs Cook | 3. Texas. 215 |

5. That the fact that Warner was merely
 drawing although a joint & several maker
 (and that fact not appearing on the
 face of the paper) is provable by parol
 Havin vs Brooks 21 Pickens 195
 Carpenter vs King 9 Metcalf 511.
 Crofton Bank vs Hunt. 4 N H 221.

6 That the word "Surety" appended to
 one of the Several makes Warner is
 merely notice of the fact of that relationship
 between the makers, and also as notice
 to the payee or any subsequent holder of
 that such signer is only Surety. But
 the fact can be proven whether it appears
 on the paper or not.

21. Pickens 195.

9 Metcalf 511. & 527

21. Wm 2 204 -

If it is objected that the Contracts and
 agreements mentioned in the Several
 Pleas, was for an Unlawful Consideration
 paid for, forbearance, the answer is
 that Unlawful does not void the Contract
 Contract void in the state (4. Scam 24)

And such agreement being upon a sufficient
consideration, does in fact and in Law
suspend the time of payment, and suspend
the right of action upon the note until
the expiration of the time agreed upon
1. B Monroes Rpts 325-

In the State of N.Y. Statute passing
renders the contract void - and void
things are as no things - and hence
the discussion and reasoning in
the case of Villas & Bacon vs Jones &
Piercy (1 Comstock 275) but there
are no such consequences under
our Laws; the contract remains
good and the only objection is the
forfeiture of the interest & discount
or taken.

I am, Dear Sir,
Yours faithfully,
Wm. Lathrop Mason
Att'y for P. & F. in Conn

In Supreme Court

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Wm. Lathrop Mason
Imprested &c

vs

Elihu Crane

Plaintiff in Error
by P. & F. Counsel

Look relative to
for P. & F. counsel

In Supreme Court.

Relyses M Warner } Appellant
vs }
Elegu Crane } Appellee

Points made by Plaintiff Counsel

1. The action in the Court below was on a joint & several promissory note, made by the appellant, and Ben Davis to & for Edward Ketchell
2. The Appellant pleaded Superiority; the Sub. issue and then Special Pleas; the substance of which special pleas was: That Ketchell was in fact the owner of the note; and that Warner was in fact only surety for Ben Davis and that Ketchell knew the fact at the time the note was made, and that when the note fell due, Ketchell, without the knowledge or consent of Warner made a valid contract and received pay from Davis the principal debtor for extending the time of payment of the note; That the time was so extended for 60 days and afterwards and afterwards for several periods of time.

3. The Appeller Demurred to the Special Pleas, and the Court below sustained the demurrer, and the principal error assigned is the Sustention of the Demurrer to said Pleas:

4th The Appellant insists that the Pleas stated a perfect defense to the action against Warner, and in support of that position the following authorities are referred to:

Bardine et al. vs Watson et al. 13. H. 347
Davis et al. vs The People 1. Kil 409
The People vs Johnson 7. John Rep. 332.
Story Equity Jurisprudence Sec. 326, Note
Ferrill vs Boynton et al. 23. Vt. 142.
Carpenter vs King 1. May 511.
Harris vs Brooks 21. Pick. 195.
2. Kil 639. 2. John's Ch. R. 552.
Morton et al. vs Gruenert et al. 8. Texas 66
Bank of Montreal vs Carroll 5 Ohio 131.
American Trading Cars. (4 Ed) Vol. 2
page 400. Or same Vol. (3-Ed) page 295.
Smith vs Cook 3 Texas 215 —

5 That the fact that Warner was merely a guaranty on the note, although a joint

Several makes (and that fact not appearing on the face of the paper) is provable by parol.

Hains vs Brooks, 21, Pickens 195
Carpenter vs King 9, Metcalf 571.
Brafton Bank, vs Hunt, 4 N. H. 221.

6. That the word "Lynch" appended to one of the Several makes names, is merely notice of the fact of that relationship, between the maker, and does as notice to the payee, or any subsequent holder that such signer is only sheriff but the fact can be proven whether it appears on the paper or not:

21, Pickens 195—
9, Metcalf 571. & 577
21, Wend. 504—

7. If it is objected, that the Contract and agreement, mentioned in the Several Pleas. was for an Unlawful Consideration paid for, forbearance — the answer is that usury does not render the Contract void in this State 14 S. C. 249

And such agreement being upon a sufficient
consideration, does in fact, and in Law
Extend the time of payment, and suspend
the right of action upon the note
until the expiration of the time
agreed upon —

1. B. Morris Repts 325.

In the State of N.Y. by Statute
Every Under the Contract Void —
And Void things are as no things;
And Hence the decision and Ma-
jority in the case of Villas & Bacon
vs Jones & Bacon Piercy 1, Comstock 275,
but there are no such consequences
under our Law in the Contract. Money
goods, and the only effect is the
forfeiture of the interest so received
and taken — J & Loff &
Wm La throp ~~attorney~~
for P. & L. in Error

In defense Cont.

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Alleged to be
imperfect &c.

Eliza Green

Prints & L. & L.
By P. & L. Counsel

Loth & L. & L.
for P. & L.