

12298

No. _____

Supreme Court of Illinois

Bonney.

vs.

Smith.

71641  7

State of Illinois - vs -
In the Supreme Court at Ottawa
To the June Term A.D. 1856.
Error to Peoria County -

Charles C. Torrey
plaintiff in error
versus
Michael Smith
defendant in error

To the Clerk of said Court:
You will please issue
process in this cause, directed
and returnable as the law requires.
Peoria June 5th 1856.

Charles C. Torrey
plaintiff in error

Page

1.

1.

Be it remembered that heretofore to wit: on the 17th day of December in the year of our Lord one thousand eight hundred and fifty five there was filed in the office of the Clerk of the Circuit Court of Peoria County in the State of Illinois a declaration and copy of note sued on in a certain Cause wherein Charles C. Bonney is Plaintiff and Michael Smith defendant which said declaration and copy of note sued on are in the words and figures following, to wit:

State of Illinois }
County of Peoria }

In the Circuit Court for said County
Of the March Term A.D. 1886

Charles C Borney, the plaintiff in
this suit, complains of Michael Smith,
the defendant in this suit, of a plea
of trespass on the case, upon promises;
For that whereas the said defendant,
on the first day of November, in the year
of our Lord One thousand eight hundred
and fifty five, at Peoria, in the County
and State aforesaid made his certain
promissory note in writing, and deliv-
ered the same to the said plaintiff
and thereby then and there promised
the said plaintiff to pay him or order
Thirty Dollars, with interest for value
received, thirty days after the date
thereof, which period has now elapsed,
yet the said defendant, though often
requested so to do, hath not paid the
sum of money in the said note
specified, nor any part thereof, to the
damage of the said plaintiff, of
One hundred Dollars, Wherefore he
brings suit &c

signed Charles C Borney

3.
Copy of Note sued on

\$30 ^{20/100} Florio November 1st 1885

Thirty days after date, for value received, I promise to pay to Charles Le Bonney or order, Thirty Dollars with interest thereon

(Signed) Michael Smith

III.

And afterwards to wit; on the 17th day of January in the Year of our Lord one thousand eight Hundred and fifty six the Defendant filed certain pleas in said cause which said Pleas are in the words and figures following, to wit:

"State of Illinois }
Peoria County } ss. 4.

In the Circuit Court
March Term AD 1856-

Michael Smith }
at } Assumpsit
Charles Le Bonney }

IV.
And the said Defendant by George F
Hauding his Attorney comes and defends
the wrong and injury when &c. and says
actio non because he says that the said
promissory note in the said declaration
mentioned was made without any good
or valuable consideration whatsoever, that
is to say, that the sole and only consider-
ation of and for the said promissory
note, was a certain instrument of writing
in substance as follows to wit

Know all men by these presents, that
whereas on the twenty third day of June
anno Domini One thousand Eight hundred
and Fifty five, the Board of Supervisors
of the County of Peoria, in the State of
Illinois did enact and ordain as follows,
to wit: "Be it enacted and ordained by
the Board of Supervisors of the County of

Peoria, in the State of Illinois, now
 in session at the Court House in the
 City of Peoria, that Charles Le Bonney of
 the City and County aforesaid be and he
 is hereby made, constituted, appointed and
 confirmed the true and lawful Commis-
 sioner and Attorney in fact of and for
 said County, and is hereby vested with
 full and competent power, authority and
 discretion to enquire into and examine
 the matter of the right, title, interest,
 Estate, claim and demand of said County
 both at law and in equity in and to
 all and any lots, tracts or parcels of
 land situate within the City of Peoria,
 or any addition thereto, and thereupon, for
 and on behalf and in the name, place
 and stead, and by the authority of the
 County aforesaid, to Grant, bargain, sell,
 convey, quit claim and confirm, or other-
 wise lawfully dispose of all and any such
 lots, tracts, or parcels of land, and such
 right, title, interest, Estate, claim and
 demand of said County thereto, for such
 price or consideration and to such person
 or persons and upon such terms and con-
 ditions, as he shall think expedient and
 proper and the said Commissioner is

6.
hereby authorized and empowered to make,
sign, seal and deliver and acknowledge
all and any such deeds, releases and
conveyances (without covenants on behalf
of said County) as he shall deem expedi-
ent in the premises and to make, constitute
appoint and confirm such substitutes,
agents and attorneys in this behalf as
he shall think proper; and their power
and authority to revoke at pleasure and
all and whatsoever the said Commissioner
shall lawfully do or cause to be done in
this behalf is hereby ratified and confirmed.

VII.
"Be it further enacted and ordained that the
said Commissioner shall make or cause to
be made the inquiry and examinations
aforesaid, at his own risk and expense,
that he shall in due time offer for sale
all such right, title and interests, estate,
claim and demands as he shall consider
the said County to have in and to all and
any such lots, tracts or parcels of land
(excepting the Court House square, or any
other such lots, tract, or parcel of land
lawfully dedicated to public use) and
shall bargain, sell and discharge the same
as he shall deem expedient for said County.

and that the proceeds of such bargain and sale shall be paid to and received by the said Commissioner or his agent duly authorized, and that he shall from time to time, pay over to the Treasurer of said County, taking his receipt therefor, one equal half of all monies which said Commissioner shall from time to time receive from such bargain and sale, and that he the said Commissioner shall be, and he is hereby entitled to have, receive and keep, and appropriate to his own use, the other equal half of such proceeds in full compensation for such services as he shall render, and such expenses as he shall incur in this behalf.

VII.

But it is further enacted and ordained, that the said Commissioner be and he is hereby authorized, empowered and directed to compromise and settle fairly and justly all conflicts, in the premises, between legal and equitable titles, avoiding unjust extortions from adverse claimants on the one hand, and connivance against the interests of the County on the other; and when the County holds the legal, and another party the equitable title to any lot, tract or parcel of land

8.
other things being equal, the preference
shall in the first instance be given
to such other party, it being the true
intent and meaning of this act and
ordinance, to afford equal justice to
all parties, and at the same time to
fully secure to the County, the proper
benefit, in manner aforesaid, of the
said right, title interest, Estate, Claim
and demand; " Now on this first day
of November in the year of our Lord
One thousand Eight hundred and fifty
five. A. D. the said Charles C. Downey,
Commissioner and attorney in fact for
the County of Berico as aforesaid, for
and in behalf and in the name, place
and stead and by the authority of the
County aforesaid, and for and in consider-
ation of the sum of Thirty dollars, to me
paid by Michael Smith of the said
County and State, the receipt whereof
is hereby acknowledged, have bargained
sold and with Claimed, and by these
presents do hereby, bargain sell and with
Claimed unto him the said Michael Smith,
all that Certain lot, track or parcel of
land situate lying and being in the
County of Berico, in the State of

VIII.

Illinois, and known and described as fol-
 lows, to wit: Part of Lot Number Ten in
 Block Number Seven in the City of Peoria.
 Commencing at a post on Washington
 Street Forty Eight feet from the Corner of
 Hamilton and Washington Streets, thence
 along a line parallel with Hamilton
 Street, Sixty four feet, thence along a
 line parallel with Washington Street
 Twenty four feet, to the dividing line
 between Lot Number Ten and Lot
 Number Nine in said Block thence
 parallel with Hamilton Street along
 the said dividing line Sixty four feet
 to Washington Street thence along Wash-
 ington Street Twenty four feet to the
 place of beginning; together with all
 the right, title, interest, Estate, Claims
 and demands both at law and in
 Equity of the said County thereto, to
 have have and to hold the same togeth-
 er with the appurtenances thereto be-
 longing, to him the said Michael Smith
 and his heirs and assigns forever, In
 testimony whereof I the said Charles
 LeBourey for and on behalf, and in
 the name, place, and stead, and by
 the authority of the County of Peoria

1X.

aforesaid have hereunto set my hand
and seal at Peoria on the first day
of November above written
(Signed)

Charles C. Donney 
Commissioner and attorney
in fact for Peoria County

State of Illinois }
County of Peoria } ss.

Be it remembered that on this
first day of November A.D. Eighteen
hundred and fifty five, before me the
undersigned Clerk of the County Court and
of the Board of Supervisors of said County
personally appeared Charles C. Donney, whose
name appears subscribed to the foregoing
deed, and who is personally known to
me to be the real person described in and
who executed the said deed, and did ack-
nowledge that he signed, sealed, and
delivered the said deed, freely and
voluntarily for the uses and purposes
therein expressed.

In testimony whereof I
have hereunto subscribed my hand and affix-
ed the seal of said County

Signed Charles Kittell
Clerk



11.
and this, ^{he} the said defendant is ready to
verify, wherefore he prays judgment &c

George T Harding
Atty for Defendant

XI.
and for further plea in this behalf.
the said defendant says actio non
because he says that after the appointment
of the said Charles Bonney, Commissioner
and attorney in fact for the County of
Reverie as in the said defendant's preceding
plea set forth, and before the making
of the said instrument of writing, to
wit: on the fifteenth-day of September
in the year of our Lord One thousand
Eight hundred and fifty-five, the Board
of Supervisors of the said County of Reverie,
then in session made a certain order
rescinding the said appointment of
the said Charles Bonney and revoking
and annulling the authority delegated
to him, and this he the said defendant
is ready to verify, wherefore he prays
judgment &c

Signed

George T Harding
Atty for Defendant

and for further plea in this behalf
 the said defendant says act^o non because
 he says that at the time of the making
 and delivering of the said promissory note
 the County of Reoria was the owner of
 the land described in the said instrument
 in the said defendants first plea set
 forth, and that the said plaintiff pre-
 tended and alleged that he had full
 power to sell and convey the same,
 and therefore the said defendant made
 and delivered to the said plaintiff the
 said promissory note in consideration
 whereof he the said plaintiff executed
 and delivered to him the said defendant
 the instrument of writing aforesaid, and
 the said defendant avers that the sole and
 only consideration of the said note was the
 said instrument of writing in his ^{said} first
 plea set forth and the said defendant
 further avers that the said plaintiff had no
 power or authority whatsoever to sell and
 convey the said land, except the suppo-
 sed power and authority conferred on him
 the said plaintiff, by the said act and
 ordinance recited in the said instrument
 in the said first plea set forth, and
 that the said defendant is ready to verify

XII.

wherefore he prays judgment &c
signed

George L. Harding
Att for Defendants

and for further plea in this behalf the said defendant says actio non because he says that after the making of the said appointment of the said Charles L. Bonney Commissioner as aforesaid, the said Board of Supervisors by their resolution appointed a certain Committee of five members thereof to consult with the said Commissioner and with him to determine and fix the price at which the said lots, tracts and parcels of land should be offered for sale; and by the said resolution further declared that no such lot, tract or parcel of land should be offered for sale until such price had been determined and fixed by the said Committee and the said Commissioner unanimously; and the said defendant avers that the said Committee and the said Commissioner have never unanimously or otherwise determined or fixed the price at which the said lot, tract or parcel of land in the said deed mentioned should be sold; and that he the said defendant

XIII.

14
is ready to verify; wherefore he prays
judgment &c
signed

George A Harding
Atty for Defendants

X 14.
X 14.

State of Illinois } ss. 16.
County of Plover } In the Circuit Court for said County

Charles Bonney }
vs
Michael Smith }

XVI.
And the said plaintiff:
as to the said pleas of the said defendant,
by him firstly, secondly, thirdly, and
fourthly herein pleaded, and severally
as to each of said pleas, saith that the
same, and the matters therein contained,
in manner and form as the same are plea-
ded and set forth, are not sufficient
in law to bar or preclude him the said
plaintiff from ~~maintaining~~ ^{or maintaining} having
his aforesaid actions therefor against the
said defendant, and that he the said
plaintiff is not bound by law to an-
swer the same, and that he the said
plaintiff is ready to verify. Wherefore,
by reason of the insufficiency of the
said pleas and severally of each of
them in this behalf, the said plaintiff
prays judgment, and his damages by reason
of the not performing of the said promises in
the said declarations mentioned to be adjudged
to him, &c (signed) Charles C. Bonney
pro se

Proceedings at a term of the Circuit Court
begun and held at the Court House in the City of
Peoria, in and for the County of Peoria, in the State of
Illinois on the second Monday of May in the year
of our Lord one thousand eight hundred and fifty six
it being the twelfth day of said Month, Present the
Honorable Jacob Gale Judge of the sixteenth judi-
cial Circuit in the State of Illinois, David D. Irons,
Sheriff and James S. Barkman, clerk, to wit:

Saturday May 31st A.D. 1856

Charles C. Bonney,

vs

Assumpsit.

Michael Smith,

XVII.

This day this Cause came on to be
heard on the demurrer of the plaintiff to the plea of the
defendant herein, On consideration whereof, the Court being
fully advised in the premises is of opinion that the said
plea and the matters therein set forth are sufficient in
law to bar the plaintiffs action herein against said
defendant. Therefore it is considered that the said
Michael Smith go hence without day and have
and recover of the said Charles C. Bonney his costs and
charges by him about his defence in this behalf
expended and that he have execution therefor.

State of Illinois, }
County of Peoria. } I, James S. Barkman, clerk of
the circuit Court in and for Peoria County in the State of

18.
Illinois, do hereby certify that the foregoing is a
correct transcript from the Records of the proceedings
in a certain cause wherein Charles C. Bonney is plain-
tiff and Michael Smith is defendant as the same
remains of record and on file in my office.

In witness whereof, I have hereunto set my hand
and affixed the seal of said Court at my office
at Peoria, this seventh day of June in the year of
of our Lord one thousand eight
hundred and fifty six.

James S. Barthman, Clerk.

XV ///.

State of Illinois vs
 In the Supreme Court at
 Ottawa, of the June Term
 A.D. 1856.
 Charles B. Bonney, plaintiff in error,
 vs
 Michael Smith, defendant in error,

and now at the
 term aforesaid, before the Court
 aforesaid, comes the said Charles
 B. Bonney and says that in the
 record and proceedings aforesaid,
 and also in the rendition of the
 judgment aforesaid there is
 manifest error in this to-wit;
 that the aforesaid pleas of the
 said Michael Smith and the
 matter therein contained are
 not, nor is either of the said pleas
 sufficient in law to bar or preclude
 him the said Charles B. Bonney
 from having or maintaining
 his aforesaid action against the
 said Michael Smith, yet the
 said Circuit Court overruled the
 aforesaid demurrer of him the
 said Charles B. Bonney to the said
 pleas of the said Michael Smith,
 and each of them, as by the
 records aforesaid appears;
 there is also error in this, to-wit;

20.

that by the records aforesaid it appears,
that the judgment aforesaid in
form aforesaid was given for the said
Michael Smith against him the
said Charles B. Bonney, whereas by
the laws of the land the said
judgment ought to have been
given for him the said Charles B.
Bonney against the said Michael
Smith; And the said Charles
B. Bonney prays that the judgment
aforesaid for the errors aforesaid,
may be reversed, annulled, and
altogether held for nothing, and
that he may be restored to all
things which he hath lost by occasion
of the said judgment &c.

Charles B. Bonney
pro se.

xx.

State of Illinois: sch

21.

In the Supreme Court at Ottawa,
Of the same Term Ass. 1856

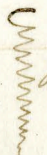
Michael Smith }
 } In error
 } add
Charles Bonney }

And hereupon, afterwards,
with at the same Term of the said
Supreme Court the said Michael Smith
by George F. Harding his attorney comes
here into Court and says that there is
no error either in the record and pro-
ceedings aforesaid, nor in the rendition
of the judgment aforesaid, and prays
that the said Justices of the Supreme
Court, now here, may proceed to examine
the record and proceedings aforesaid
and the matters aforesaid above assign-
ed for error, and that the judgment
aforesaid, in form aforesaid given
may be in all things affirmed &c

George F. Harding
Attorney for defendant in error

XXI.

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Charles Bonney  In Error
vs
Michael Smith

Records
Assignment of Error
consider in Error.

Filed June 24, 1856
S. Selund
Clerk.

In the Supreme Court at Ottawa.

Charles C. Bonney
vs.
Michael Smith

In Error

Brief of Plaintiff in Error.

The Plaintiff in error, who was also the Plaintiff below, declared in Assumpsit against the defendant on a promissory note only, to which declaration the defendant pleaded four pleas of want of consideration, to which pleas and each of them, the plaintiff demurred. The Court below overruled the demurrer of the plaintiff and gave judgment for the defendant. Thereupon the plaintiff brings his cause into this Court by writ of error, and assigns for error the overruling of his demurrer, and the judgment of the Court below for the defendant.

The only question which can be presented by the first plea is whether the deed of Conveyance therein set forth, be on its face a nullity, and consequently no consideration in law for the giving of the promissory note declared on. And this inquiry depends upon, or resolves itself into a single other, namely, whether the Appointment by the County of Peoria, through its Board of Supervisors, of the plaintiff a Commissioner to sell and convey such lands and titles as such County might have in the City of Peoria, be valid and effectual, or void and of none effect in law. By act of Congress of March 2^d 1833. the County of Peoria by its Commissioners, was authorized to enter the North East fractional quarter of Section Nine, Township Eight North, Range Eight East in Peoria County

Illinois, whereof the premises deeded by said Commissioner are a part. - That the proceedings to Convey, were in proper form, and effectual in law, and that the deed upon its face is good and sufficient, see Statute of January 3rd 1837, re-enacted in Revised Statutes 1845, page 132, section 15. - also, as incidentally relating thereto, the Statute of January 7th 1835, re-enacted in Revised Statutes 1845, page 108, section 26. - See also Laws of 1851, page 50, Sec. 1 & 2. - page 51, section 4. -

The Statute of 1855, (see Laws of 1855, page 132) provides only for Lands "theretofore sold" & leaving the former laws in full force. - See also Constitution 1849, Art. 7, Sec. C. -

By the Second plea is raised the question whether, having made such Appointment of such Commissioner, the Board of Supervisors have power, by their own mere resolution, without notice and without any proceedings either at law, or in Equity, to revoke such appointment. -

That they have no such power, because the authority of the Commissioner is "coupled with a vested interest in the thing," see Story on Agency, 4th edition Sec. 477. - 2nd Conn. Inst. page 18. - 2nd Hunt's Commentaries, 2^d edition, pages 643 & 644. & authority cited. - It may perhaps be possible that the destruction of the Corporation might terminate the Agency, but surely no ex parte act of such Corporation could do it. -

If such Commissioner abuses his trust, the Court of Chancery affords a ready & adequate remedy. -

This Commissioner may have expended much time, great labor, and large sums of money in examining

titles, - preparing abstracts, - publishing notices, - procuring blanks &c - and let us suppose him to have done so for years, would it for a moment be contended that by the mere caprice of the Board of Supervisors, he can be deprived of the fruits of his labors. At the least, be driven to a long and expensive course of litigation, to obtain redress? -

The third plea admits the title of the County, but denies the power of said Commissioner to convey, - raising questions similar to those presented by the first plea. -

The fourth plea raises one question to wit, whether, after having appointed such Commissioner, the Board of Supervisors could, without his consent, bind him by appointing a Committee of prices, without whose concurrence he could not act. -

The Plaintiff in error supposes such proposition simply absurd, wherefore he cites no authorities against it. -

The principle involved, if once admitted, would lead to consequences as dangerous, as they would be novel and extraordinary. -

Charles W. Dorney

Brief
146

Charles C. Bonney &
" In Error
Michael Smith

Brief of Plaintiffs
in Error -

Filed June 24, 1856,
L. Leland
Clerk

146

Charles C. Bonney
vs

Michael Smith
1836

Opinion of the
jurors

1836

Examinations

12298

1856

