

No. 12933

Supreme Court of Illinois

Webber et al.

vs.

Whittaker

ABSTRACT.

CHRISTOPHER C. WEBBER, Et AL }
VS
SPEIR WHITTAKER. }

ERROR FROM ROCK ISLAND.

Assumpsit on a Promissory Note, dated Davenport, Iowa, Dec. 23, 1857, due in Six Months, for \$1,100, payable in Iowa, with 10 per cent after due.

8 Plea 1. General issue.

2nd. Said Note was executed and delivered in Iowa, and sets forth a verbatim copy of the Iowa Statute. See Iowa Statutes, Dec. 6, 1852: The law provides for not to exceed 10 per cent interest by agreement, and that in no case shall the Plaintiff, when
13 unlawful interest has been contracted for, recover more than the principal sum, without interest or cost. The Court in which the suit is pending shall render judgment of forfeiture in favor of the State of Iowa, for the use of the School fund of the County, for
20 10 per cent penalty against the Plaintiff. That for the use of the
21 sum \$1,000 Six Months, the defendants were to give \$100, being
22 the rate of 2 per cent month, the same being more than 10 per cent
23 a year, and being part of the \$1,100 in said Note mentioned, the sum loaned being only \$1,000.

25 3d. Plea, usury by the laws of Iowa. 4th. Sett off, to which.
30 Plaintiff joins issue. To the second and third pleas, a general demurrer. Demurrer sustained. Defendants stand by the demurrer. Jury trial, and a verdict for the Plaintiff, for \$1,127.25. On the
36 trial, the Plaintiff offered the note in evidence and rested. The
38 defendants then offered evidence to prove, that at the time of the execution of said promissory note, they had paid \$112, the said sum being usurious, according to the laws of the State of Iowa, where said contract was made, to which evidence the Plaintiff objected, and which objection was sustained, and exceptions taken.

112 & 113

Christopher G. Huber
stab

u
Sheris Whitaker.

Abstract of aunts

Filed April 22, 1859

L. Leland
Clerk

Defendants moved for a new trial which was overruled.

Assignment of errors :—

1st. The Court erred in sustaining the demurrer to the 2nd and 3d pleas.

2nd. The Court erred in refusing to admit the evidence to show usury.

3d. In overruling the motion for a new trial.

Points. 1st. The demurrer to the 2nd and 3d pleas should have been overruled, instead of being sustained.

2nd. The testimony offered to prove usury was proper, and the Court should have received it.

SHUMWAY, WAITE & TOWNE,
Plaintiff's Att'ys.

ABSTRACT.

CHRISTOPHER C. WEBBER, Et AL
vs
SPEIR WHITTAKER.

ERROR FROM ROCK ISLAND.

Assumpsit on a Promissory Note, dated Davenport, Iowa, Dec. 23, 1857, due in ²~~Six~~ Months, for ^{2,416.86}~~\$1,100~~, payable in Iowa, with 10 per cent after due. *Oct 11.*

8 Plea 1. General issue.

2nd. Said Note was executed and delivered in Iowa, and sets forth a verbatim copy of the Iowa Statute. See Iowa Statutes, Dec. 6, 1852: The law provides for not to exceed 10 per cent interest by agreement, and that in no case shall the Plaintiff, when
13 unlawful interest has been contracted for, recover more than the principal sum, without interest or cost. The Court in which the suit is pending shall render judgment of forfeiture in favor of the State of Iowa, for the use of the School fund of the County, for
20 10 per cent penalty against the Plaintiff. That for the use of the
21 sum ^{2,000}~~\$1,100~~ ⁷~~Six~~ Months, the defendants were to give ^{416.86}~~\$100~~, being
22 the rate of 2 per cent month, the same being more than 10 per cent
23 a year, and being part of the ^{2,416.86}~~\$1,100~~ in said Note mentioned, the sum loaned being only ^{2,000}~~\$1,100~~.

25 3d. Plea, usury by the laws of Iowa. 4th. Sett off, to which
30 Plaintiff joins issue. To the second and third pleas, a general demurrer. Demurrer sustained. Defendants stand by the demurrer.
32 Jury trial, and a verdict for the Plaintiff, for ^{2,307.64}~~\$1,100~~. On the
36 trial, the Plaintiff offered the note in evidence and rested. The
38 defendants then offered evidence to prove, that at the time of the execution of said promissory note, they had paid ¹⁰⁰~~\$100~~, the said sum being usurious, according to the laws of the State of Iowa, where said contract was made, to which evidence the Plaintiff objected, and which objection was sustained, and exceptions taken.

Defendants moved for a new trial which was overruled.

Assignment of errors :—

1st. The Court erred in sustaining the demurrer to the 2nd and 3d pleas.

2nd. The Court erred in refusing to admit the evidence to show usury.

3d. In overruling the motion for a new trial.

Points. 1st. The demurrer to the 2nd and 3d pleas should have been overruled, instead of being sustained.

2nd. The testimony offered to prove usury was proper, and the Court should have received it.

SHUMWAY, WAITE & TOWNE,
Plaintiff's Att'ys.

Christopher C. Thibodeau

et al

vs -

Sherrill Whitthakes

Abstract of Deeds

Know all men by these presents, That
Lewis M. Webber & Christopher C. Web-
ber as principals and John Deere as se-
curity are held officially bound unto said
Whittaker in the penal sum of two thou-
sand two hundred and fifty six dollars
good & lawful money of the United States
for the payment of which, well & truly to
be made, the said Lewis M. Webber, Chris-
topher C. Webber & John Deere bind them-
selves their heirs, executors & administrators
jointly, severally & firmly by these presents
Witness our hands & seals -

Dated this 11th day of December A.D. 1838.

The condition of the above obliga-
tion is such, That whereas, the above
named John Deere did at the
September Term of the Circuit Court
held in & for the County of Rock Isl-
and in the State of Illinois A.D. 1838
recover a judgment against the above
bounden Lewis M. Webber & Chris-
topher C. Webber for the sum of one
thousand one hundred & twenty seven
& ²⁵/₁₀₀ dollars, to reverse which said
judgment, the said, Lewis M. Webber
& Christopher C. Webber have sued out
a writ of Error from the Supreme Court

within & for the Third Grand Division
of said State. Now if the said Lewis
McWebber & Christopher C. Webber shall
duly prosecute said writ of Error & stay
or cause to be paid, all judgment
costs, interest & damages which the said
Supreme Court shall adjudge against
the said Lewis McWebber & Christopher
C. Webber & abide the order & judgment
of said Supreme Court in this be-
half, then this obligation is to be void
otherwise to remain in full force & virtue

L. M. Webber, S.
C. C. Webber, S.
John Deere, S.

The sum of two above are reported to be worth
fifty American dollars
Quincy Merrill clerk
Circuit Court N. D. Sec. It.

State of Illinois

La Salle County's Henry & Patsy of
the City of Rock Island being duly
sworn says that he is acquainted
with pawning affairs. Of John Deo
Security named in the pawner's
bond, & believes him to be worth
over & above all just debts paid
at least the sum of fifty thousand
dollars -

Sworn this 16 day of
December A.D. 1838

H. P. Patsy

S. Island Clerk S. C.

Supreme Court
L. M. Webber +
C. C. Webber

Ad.

Spir Whittaker

Cypresidean Bond.

Filed Jan. 24. 1887
L. Leland
clerk

To the Clerk of the Circuit

The People of the State of Illinois,
Court for the County of Rock Island Greeting:

Because, In the records and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Rock Island County, before the Judge thereof, between
Spier Whitaker

plaintiff, and Lewis M. Webber & Christopher Webber

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Defendants

by their complaint, and we being informed as we are informed corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid; command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the records and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 24th day of January in the Year of Our Lord one thousand eight hundred and fifty-nine.

L. Leland

Clerk of the Supreme Court.
by J. R. Rice Deputy

¹¹³
Lewis M. Webber v
Christopher C. Webber
^{vs}
Spier Whitaker

Writ of Error

This writ of Error is made
a supersedeas and as
such is to be obeyed
by all concerned.

L. Leland Clerk
by J. B. Rice Deputy

Filed Jan. 24. 1857.
L. Leland Clerk

STATE OF ILLINOIS, } ss.
SUPREME COURT,

The People of the State of Illinois,

To the Sheriff of the County of

Rock Island

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~Circuit~~ *Circuit* Court of *Rock Island* County, before the Judge thereof, between *Spier Whitaker*

plaintiff, and *Lewis M. Webber & Christopher B. Webber*

defendants, it is said that manifest error hath intervened, to the injury of the said *defendants*

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

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

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *24th* day of *January* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*nine*.

L. Leland
Clerk of the Supreme Court.
By *J. B. Rice* Deputy

Lewis M. Webber &
 Christopher C. Webber
 vs
 Spier Whitaker

Scire facias

Shiffs fees
 Service 50
 miles travel 115
 Return 10
 65

Filed Feb. 28. 1859
 L. Leland
 clk.

I have executed this writ by sending the same to
 Officer Whitaker he acknowledging and accepting service
 thereon this 26th day of January A.D. 1859.

Wm. D. Morrill Sheriff
 Sheriff's Return County of Harris
 Bay Co. N.H. Daughtry Dep.

In Supreme Court.

Spur Whitaker }
v
L. M. Webber &
C. C. Webber }

Spur Whitaker }
v
C. C. Webber
L. M. Webber &
John Allen }

Two cases in the
Supreme Court of Illinois from
the Rock Island Circuit Court.

It is agreed that the bill of
exceptions in each of the above
cases may be so amended, in
the Supreme Court record, as to
show, that the pleas of the de-
fendant were passed upon, by the
jury, and that the defendants
went to the jury and they rendered
a verdict for the plaintiff on all
the pleas, to which the defendant
does not apply & by which the
defendants admitted, and the state
ment in the bill of exceptions, as it
now stands, that the defendants
withdrew their pleas is not correct.

Dec 29th 1855

S. Whitaker
By his attorney, Grant-
Mason & Pleasant

113
Lewis Mr. Webber &
Christopher & Webber
vs
Spier Whitaker

Christopher & Webber
Lewis Mr. Webber and
John Deere. —
vs
Spier Whitaker

Stipulation of parties
to amend record. —

Filed Jan 28 1858
L. Leland
clerk

Hear before The Hon J. Wilson Drury
Judge of The sixth Judicial Circuit
of The State of Illinois, at a Term
of The Circuit Court. begun & held at
The Court House within & for the County
of Rock Island, on the first Monday
the 6th day of ~~June~~ ^{September} AD 1858 -

Present

Hon J. Wilson Drury Judge

O. W. Beardsley Sheriff

Quincy McNeil Clerk

Be it remembered, that on the 10th
day of July 1858. Spier Whitaker
by his Attorney, sued out of the
Clerks Office of the Court aforesaid
a certain writ of summons in
Ex parte, which is in the words
& figures following, to wit=

State of Illinois }
Rock Island County }

The people of the State of Illinois
To the Sheriff of Rock Island County Greeting
We command you to summon
Christopher C. Webber Lewis M. Webber
& John Dew, if found in your county
personally to be and appear before the
Circuit Court of said County on the
first day of the next Term thereof, to
be holden at the Court house in Rock
Island, on the first Monday of September

next. Then & there to answer unto Spier
Whittaker of a plea of trespass on the case
upon promises to his damages in the
sum of Three Thousand Dollars as
he says, and have you then & there this
writ, and make return thereon in
what manner you execute the same,

LP

Witness Drancy McNeil. Clerk of the
said court. and the seal thereof affixed.
this 10th day of July in the year of
our Lord. on thousand Eight Hundred
and fifty Eight, Drancy McNeil Clerk
which said writ, was afterwards, to wit
on the 15th day of July 1858. returned
by the Sheriff of said county, with
the following endorsement thereon. "I
have executed this writ by reading
the same to all the within named
defendants July 15. 1858. J M. Beardsley
Sheriff by M D Merrill deputy, and
the said writ was thereupon filed in
the said clerks office and became
a part of the records herein.

Be it also remembered that on the
10th day of July aforesaid Spier Whittaker
by his attorney J Grant. filed in
the Clerks Office aforesaid. his certain
declaration in assumpsit against
Christopher C Webber. Lewis M Webber

& John Deere. which said declaration
is in the words & figures following to
wit =

State of Illinois
Rock Island Circuit
Court

Rock Island September Term 1858

To wit

Christopher C. Webber, Lewis
M. Webber and John Deere now sum-
moned to answer Spier Whitaker in a
plea of Assumpsit, and thereupon
Spier Whitaker complains of said Christo-
pher C. Webber, Lewis M. Webber and John
Deere, for that the defendants on the 11th
day of October 1857 - at Davenport in the
State of Iowa, to wit at said County,
by their promissory note of that date, by
them made and subscribed, by the name
and description of C. C. Webber & M. Webber
and John Deere for Value received undertook
& promised to pay to the order of said plaintiff,
the sum of Twenty four hundred & sixteen
900 Dollars at James Grants Office
with ten percent interest after one. in
seven months after date, which period has
now elapsed, yet though often requested, the
said defendants have not paid said
sum of money, or any part thereof,
but refuse and neglect so to do. To the

plaintiffs damages of three thousand
Dollars and therefor he was
J. Evans atty for
plaintiffs

Copy of note read upon
2416 ^{3d} Decemr Octobr 11-1857
Seven months after date we promise
to pay to the order of S. Whitaker twenty
four hundred & sixteen 89/100 Dollars payable
at James Grants office with ten
percent interest after one value
received

C. C. Webber
L. W. Webber
John Deere

and afterwards to wit on the 20th day of
Septemr 1858 at the term of Court aforesaid
the said defendants by their attorneys
filed their certain pleas to the plaintiffs
declaration which said pleas are in the
words & figures following to wit.

State of Illinois }
Rock Island County }

To Ltr Ad 1858

Rock Island Circuit Court

Christopher C. Webber }

Lewis W. Webber }

John Deere }

and
Saml Whitaker }

Defendants

1st and the said defendants by their Attorneys
R. M. Marshall and H. F. Peltz come &
defend the wrong and injury which &
and say that they did not undertake or
promise in manner and form as
the said plaintiff hath above thereof
complained against them and of this
they put themselves ^{upon the} Country. and the
plaintiff does likewise. Grant

2^d

Grant for plffs

And for a further plea in this behalf the
said defendants by leave of the Court first had
se according to the form of the Statute &c. as to
the four hundred & sixteen & 8/100 dollars of the
said Two thousand four hundred & sixteen & 8/100
dollars in the promissory note in the plaintiffs
Declaration mentioned, say that the said plaintiff
acted non. because they say that the said prom-
issory note was executed & delivered by the said
defendants to the said plaintiffs at Davenport
in the County of Scott State of Iowa. and
was then made payable, and with reference
had to the laws of said state of Iowa. And
that long before and at the time of the
Execution and delivery of the said promissory
note as aforesaid. The General Assembly
of the said State of Iowa. at a session
thereof begun and holden on the sixth day of
December in the year A D 1852 at the City

of Iowa City in the said State, had provided among other things by a certain Statute then and there enacted that the rate for the forbearance of money should be ten per centum per annum by agreement in writing and no more. And that no person or Corporation should at or within the said State receive in money goods or things in action any greater sum or value for the loan ~~or~~ forbearance of money, than after the said ^{rate} in the said Statute provided, which said Statute is entitled and is in the words and figures following to wit.

"An act to regulate the interest on money
"Section 1. Be it enacted by the General Assembly
"of the State of Iowa, that the rate of interest
"shall be six cents on the hundred by
"the year on money due ^{on} Express Contract
"unless a different rate be expressed in writing
"on all moneys after the same becomes
"due, when there is no contract fixing
"the rate of interest on judgments and ~~debts~~
"for the payment of money when there is no otherwise
"expressed on money lent without a contract
"fixing the rate of interest and on money received
"for the use of another & retained beyond a reason-
"able time without the owners consent Express
"or implied on money due upon settlement of
"matured accounts from the day the balance

" is ascertained: on money due on open account
" after six months from the date of the last
" item and on all money due, or to be-
" come due when there is a contract to pay
" interest and no rate stipulated,

" Sec 2. parties may agree in writing for
" the payment of interest not exceeding
" ten cents on the hundred by the year.

" Sec 3. Interest shall be allowed on all
" moneys due on judgments and decrees
" of any competent Court or tribunal at the rate
" of six percent per annum unless a different
" rate is fixed by the contract, on which the judgment
" or decree is rendered, in which case the judgment
" or decree shall draw interest at the rate expressed
" in the Contract, but no judgment or decree
" shall draw more than ten percent per annum
" which rate must be expressed in the judgment
" or decree

" Sec 4 No person shall directly or indirectly
" receive in money, goods, or things in action
" or in any other manner any greater
" sum or value for the loan of money, or upon
" contract founded upon any bargain rate
" or loan of Ware, Merchandise, Goods Chattels
" lands & tenements than is in this act pro-
" vided.

" Sec 5 If it shall be ascertained in any
" suit brought, on any contract, that

no rate of interest has been contracted for
greater than is authorized by this Act, either
directly or indirectly in money, property
or other valuable thing, the same shall
work a forfeiture of ten percent per annum upon
the amount of such contract to the School
fund of the County in which the suit is
brought, and the plaintiff shall have
judgment for the ^{principal} ~~promised~~ sum, without
interest or cost. The Court in which
said suit is prosecuted shall render judgment
against the defendant in favour of the State of
Iowa for the use of the School fund of said
County whether the said suit is contested
or not, and in all cases, when the unlawful
interest is not apparent on the contract
or writing, the person contracting to pay the
unlawful interest shall be a competent
witness to prove that the contract is usurious and
in no case when unlawful interest is con-
tracted for, shall the plaintiff have judgment
for more than the principal sum, whether
the unlawful interest be incorporated with
the principal or not.

Sec. Nothing in this act shall be so
construed so as to prevent the proper bona fide
assignee of any usurious contract recovering
against the debtor the full amount of the
consideration paid by him for such contract.

" the amount of the principal money
" but the same may be recovered, of such
" moneys in the proper action before any court
" having competent jurisdiction,

And so much of Chapter 57, title 13, of the
" laws as may conflict with the provisions
" of this act is hereby repealed. This act to
" take effect in thirty days from and after
" its publication in the "Iowa Capitol Reporter"
" and the "Iowa Republican"

and the said defendants aver that the
said Statute was afterwards to wit on the 9th
day of February 1855. at the State of Iowa
afore said published in the said Iowa Capitol
Reporter and in the said Iowa Republican
+ so became + were of effect from thence
forth + until and at the time of the making
of the Corrupt and usurious contract here-
inafter next mentioned. And the said defendants
further aver that before making of the said
promissory note in the first Count of the
plaintiff's declaration mentioned to wit on
the 11th day of October 1857 at Des Moines
aforesaid in the State of Iowa aforesaid it
was corruptly + against the form of the said
above mentioned Statute agreed by + between
the said Christopher C. Webber and the said plaintiff
that he the said plaintiff should lend and advance
to the said Webber a certain large sum of money

to wit the sum of Two thousand Dollars and that
he the said plaintiff should forbear and give
day of payment for the said sum of money from
the time of lending & advancing the same for
and until seven months from the day of the date
of said lending & advancing. And that for the
forbearing and giving day of payment of the
said sum of two thousand Dollars as aforesaid
he the said C. B. Webber should give & pay to the
said plaintiff a certain large sum of money
to wit the said sum of four hundred & sixteen
89100 Dollars and that if the said sum of
Two thousand Dollars so to be lent & advanced
and the said sum of Four hundred & sixteen 89100
Dollars so to be paid for the lending & forbearance
of the said two thousand Dollars, should
remain unpaid after the day when as by
the said corrupt & usurious & unlawful contract
the same were made payable that then &
from thenceforth said Webber should give &
pay for the forbearing of the same interest
after the rate of ten percent interest, and
that for the securing the payment of the said
sum of two thousand Dollars so lent and
advanced & forbore and of the said other sum of
four hundred & sixteen 89100 Dollars, so to
be paid for the said lending & advancing and
forbearance and the said further interest of
ten per cent said webber as principal and

Webber & Deere as sureties, should execute and deliver to the said plaintiff, their certain promissory note of that date wherein the said four hundred & sixteen ⁰⁰/₁₀₀ Dollars should be incorporated together with the said two thousand Dollars, and wherein in the said further interest of ten per cent should be nominated & described. And said defendants further say that in pursuance and in part performance of the said corrupt, unlawful and unlawful contract the said Webber as principal and the said Webber and Deere as sureties afterwards to wit on the said Eleventh day Oct to wit at Davenport in the aforesaid State of Iowa did make and deliver to the said plff the said promissory note in the first Count of the said plaintiffs declaration mentioned and that afterwards in further pursuance of the said corrupt & unlawful agreement on the year and day aforesaid at Davenport aforesaid the said plaintiff did lend and advance to the said Webber the said sum of Two Thousand Dollars, and the said defendants further say that the said sum of four hundred & sixteen ⁰⁰/₁₀₀ Dollars so agreed to be paid for the lending and advancing of the said sum of two thousand Dollars and for the forbearance of the same for and until the said seven months

from the date of said agreement and the said
further interest of ten per cent. so agreed to be
paid and so in the said promissory note mentioned
as aforesaid for the forbearance of the said two thousand
Dollars from and after the expiration of the said
seven months from the day of the date of
said agreement. exceed, the rate of ten per
centum per annum for the loan or forbearance
thing. contrary to the aforesaid statute in such case
made and provided, whereby and by force of the said
statute in such case made and provided. the said
promissory note as to the said four hundred and sixteen
and 00/100 Dollars so in the said note described was
and is void. and ^{this} the said defendants are ready to verify
wherefor they pray judgment &c

3^d Plea

And for a further plea in this behalf the said defendants
by leave of the court, herefor this purpose first had
and obtained according to the form of the Statute &c
as to the four hundred & sixteen 00/100 Dollars paid
of the said two thousand four hundred & sixteen 00/100 Dollars
in the said promissory note, in the said first count of
the plaintiffs declaration mentioned say Actio Non
because they say that the said promissory note was ex-
ecuted and delivered by the said defendants to the said plaintiff
at Doverport. to wit in the County of Scott and state
of Iowa and was then made payable and with reference
had to the laws of the said state of Iowa: and that
long before and at the time of the execution and
delivery of said promissory note as aforesaid. The laws

Assembly of the said state of Iowa at a session
thereof begun and holden on the 6th day of December
AD 1852 at the city of Iowa City in the said state
of Iowa has provided among other things by a certain
statute then and there enacted, that the rate for the
forbearance of money should from thenceforth be
ten per centum per annum by agreement and no
more and that no person or corporation should from
thenceforth at or within the said state by ^{any} direct, shift
or indirection receive in money goods or things in
action any greater sum or value for the loan or
forbearance of money than after the said rate in the
said statute provided which said statute is entitled "An
act to regulate the interest on money" and is in the
words and figures following, to wit (See for Statute in
2^d plea in this answer)

And the said defendants aver that the said statute
was afterwards to wit. on the 7 day of February AD 1853
at the State of Iowa aforesaid published in the said
Iowa Capital Reporter and in the said Iowa Repub-
lican and so became and from thenceforth of Effect &
until and at the time of the making of the corrupt
and vicious contract hereinafter next mentioned,

And the said defendants further aver that before the making
of the said promissory note in the first count of the bill
declaration mentioned to wit on the 11th day of October AD
1854 at Davenport aforesaid in the state of Iowa aforesaid
it was corruptly and against the form of the statute
above mentioned in such case made and provided, agreed

by and between the said C. C. Webber and the said plaintiff that the said plff should lend and advance to the said Webber a certain large sum of money to wit, the sum of two thousand Dollars and that the said plaintiff should forbear and give day of payment for the said sum of money from the time of the lending and advancing the same even months from the day of the date of the said lending and advancing and that for the forbearing and giving day of payment of the said sum of Two Thousand Dollars as aforesaid he the said Webber should give and pay to the said plaintiff a certain other large sum of money to wit the sum of Four hundred and sixteen and 00/100 Dollars and that if the said sum of Two thousand Dollars etc be lent and advanced and the said sum of Four hundred and sixteen 00/100 Dollars so to be paid for the lending and forbearing of the said Two thousand Dollars should remain unpaid after the day when as by the said corrupt, vicious, and unlawful agreement the same was made payable, that then and from thenceforth the said Webber should give and pay interest at ten per cent.

And that the securing the said sum of Two thousand Dollars, so lent and advanced and the said sum of four hundred and sixteen & 00/100 Dollars so to be paid for the loan and forbearance of the said sum of Two thousand Dollars and the said interest, the said C. C. Webber, L. W. Webber and John Dure should execute and deliver to the said plaintiff their certain promissory note of that date for the said aggregate sum of Two thousand four hundred

and Sixteen & 87/100 Dollars payable seven months
after date, with interest at ten per cent after maturity,
and the said defendants further say that in pursuance
of the said corrupt, unlawful and usurious agreement
and in part performance thereof the said C. C. Webber
L. M. Webber & John Dene afterwards to wit. on the 11th
day of October 1857 at Davenport in the state of Iowa did
make and execute & deliver to the said plaintiff the said
promissory note in the first Count of the plaintiffs de-
claration mentioned, and that afterwards, to wit on the day
and year aforesaid at Davenport aforesaid, the said plaintiff
did in further pursuance of the aforesaid corrupt and unlawful
agreement lend and advance to the said Webber the
said sum of Two Thousand Dollars.

And the said defendants further say that the
said sum of Four Hundred and sixteen & 87/100 Dollars is
agreed to be given and paid by the said Webber to the said
plaintiff for such loan and forbearance as aforesaid &
is wound as aforesaid exceeds the rate of ten per centum
per annum contrary to the statute in such case made
and provided, thereby and by force of the statute in
such case made and provided the said promissory note became
and is as is the said Four hundred and sixteen & 87/100 Doll
and Void and that the said defendants are ready to verify.

Therefore they pray a judgment &c

H^l Plea H
Linn

R. W. Warshall &
J. F. Jolly atty for Defs

H^l and for a further plea in this behalf the said defendants

by leave of the Court here for this purpose first had
and obtained according to the form of the Statute &c
say Actio Pro because they say that the said plaintiffs
before and at the time of the commencement of this
suit to wit. at the County of Rock Island aforesaid was
and still is indebted to the said defendants in a large
sum of money to wit. the sum of three thousand
Dollars for money before that time lent and advanced
to and paid, laid out and expended for the said plaintiff at
his special request and for money, by the said plaintiff
before that time had and received to and for the use of the
said defendants and for money due and owing from the
said plaintiff to said defendants for the interest upon
and forbearance of divers large sums of money, due
and owing from the said plaintiffs to the said defend-
ents and by the said defendants forbearance to the said
plaintiffs for divers large spaces of time before this Elapsed
which said sum of money, so due and owing to the
said defendants as aforesaid exceed the damages sus-
tained by the said plaintiffs, by reason of the non perform-
ance by the said defendants of the said supposed and
promised and undertakings, in said declaration men-
tioned out of which said sum of money is due and
owing from said plaintiff to the said defendants, the
said defendants are ready and willing to and hereby offer
to set off and allow to the said plaintiff the full
amount of the said damages, according to
the form of the Statute in such case made
and provided and thus the said defendants are

ready to verify wherefore they pray judgment of

R. M. Marshall Dr

H. F. Tully Attys for

Defendants

Spier Whittaker

To C. C. Webber L. M. Webber and John

Dew.

To money recd for our use \$160-

" " ad & lnt 440-

" " " " " 400-

To money laid out & expended by you on our }
and against 500

To money over paid you 160-

To " lnt 1200-

And afterwards to wit, on the twenty fifth day of the
month of September aforesaid, and at the term of
the Court aforesaid, the plaintiff by his attorney
filed his replication to defts 4th plea, which is in
the words and figures following to wit-

Spier Whittaker

vs
C. C. Webber
L. M. Webber &
John Dew

Rock Island Circuit Court
September Term A.D. 1858

And the said plaintiff as to said
plea of the defendants fourthly above pleaded, says,
he ought not to be barred from maintaining his
action, because he says he is not indebted, and

did not promise assume and promise the debt
has therein set forth, and this he prays may be
inquired of by the Court, Grant. Withinson & Associates
Attorneys for plaintiffs

And the said defendants doth the like,
Tully and Marshall
Attorneys for Def^t

and at the same term aforesaid at the Court aforesaid
said and on the same day aforesaid to wit the 25
day of September 1858 the said plaintiff by his atty
filed his demurrer to defendants second and third
pleas which demurrer is in the words and figures
following to wit,

Spier Whitaker }
vs }
C. C. Webber }
L. M. Webber & }
John Deere }

Rock Island Circuit Court
September Term A.D. 1858

Demurrer of plaintiff

And the said plaintiff as to
said pleas of the defendants, secondly and thirdly
above pleaded, says, that he ought not to be barred
by any reason of anything in said pleas alleged,
Because the said pleas and the matters therein set
forth are not sufficient in law to bar the plffs
action and this he is ready to verify, Wherefore by
reason of the insufficiency of said pleas, ^{he prays judgment} and his

damages by reason of the non-performance
of the promises in his declaration named,

Grant Wilkinson & Pleasant
Attys for Plaintiff--

And afterwards to wit, at the same term of the
court aforesaid and on the 25th day of the
month of September aforesaid the following pro-
ceeding was had to-wit--

Spice Whittaker

vs
Christopher C. Webber
Lewis W. Webber &
John Deere

Defendants

This day came the
parties by their attorneys and this cause
coming on to be heard upon plaintiffs de-
murrer to defendants second and third pleas
and the court having heard the arguments of the
counsel and being sufficient advised in the
premises doth sustain the said demurrer therefore
defendants abide by said demurrer, and issue being
joined upon the first and fourth pleas of defendants
there came a jury of twelve men, R. J. Smith, W^m H.
Shadingle, Amos A. Stephens, John Lusk, C.
J. Jennings, W^m A. Edwards, D. J. Cleland, W^m
Kend-Ophirum Johnson, W^m A. Luce, J. C. Rundlett &
Jesse Maxwell, who were each and severally sworn
to well and truly try the issue joined and having heard

the verdict returned their verdict into Court which is as follows to wit "We the jury find the issue for the plaintiff and assess his damages at the sum of Two Thousand Five Hundred and seven Dollars and sixty four cents" It is therefore ordered by the court that plaintiff have and recover of defendants the said sum of Two Thousand and seven Dollars and sixty four cents together with his costs in the behalf expended and that he have execution therefor and defendants enter a motion for a new trial.

And afterwards to wit at the same term of the Court aforesaid. and on the first day of October A.D. 1850. the following proceedings was had, to wit
Spin Whitaker

Christopher C. Webb } Assumpsit
Lewis W. Webb & }
John Reed }

This day again came the parties by their attorneys and this same came on to be heard ^{upon} of defendants motion for a new Trial and the court having heard the same and being sufficiently advised of the premises overrules the said motion. It is therefore ordered by the Court that plaintiff have and recover of defendants the said sum of Two Thousand ^{Five hundred} and seven Dollars and sixty four cents together with his costs in the behalf expended and that he have execution therefor. thereupon on motion of defendants by their attorneys, it is ordered by the

Court that defendants have leave to file their bill of exceptions herein in thirty days from this date.

And afterwards to-wit- on the 31st day of October A.D. 1858 the said defendants by their attorney deposited in the Clerk's office of the Court aforesaid their said bill of exceptions which is in the words and figures following to-wit-

State of Illinois }
Rock Island County }^{ss}

Spier Whitaker }
vs } Sept Term A.D. 1858
Christopher B. Webber }
Lewis M. Webber } Rock Island Circuit Court
John Deane } Assumpsit

Sept 1858

Be it remembered that on this day the above entitled "cause" being called and the plaintiff having before that time filed his demurrer in law to the defendants second and third pleas and joins issue with the said defendants on their first and fourth pleas herein, the said demurrer was argued by the counsel in open court, and the court having heard the argument of counsel did adjudge the said demurrer good in law, and the said plaintiff not bound to answer the said second and third pleas of the defendants and thereupon issued having been joined with the said

defendants on their first and fourth pleas herein and a jury having been empaneled and sworn to try the issues on said pleas, the plaintiff submitted in evidence to said jury the promissory note in plaintiff's declaration mentioned and here closed his case, thereupon the said defendants offered evidence to prove that at the time of the execution of said promissory note they had paid to said plaintiff the sum of One Hundred and sixty Dollars, the said sum being in violation according to the laws of the state of Iowa when said contract was made to which said evidence said plaintiff objected and thereupon the Court having heard the argument of counsel, sustained said objection, whereupon said defendants withdrew their first, second third and fourth pleas, and thereupon the said jury rendered their verdict in favour of said plaintiff and assessed his damages at \$2507.64 that being the amount due for principal and interest upon said promissory note in the said declaration mentioned and thereupon the defendants moved for a new trial, which motion coming on for a hearing, was overruled by the Court and thereupon the Court approving said verdict, rendered judgment in favour of said plaintiff, that he have and receive of the defendants, the amount of said sum of \$2507.64

To all of which several rulings of the Court, sustaining said demurrer and approving said verdict, and refusing to admit the testimony

offered by the said defendants to the said jury and
overruling the motion of defendants for a new
trial and rendering said judgment the said
defendants by their counsel do except and pray
the Court to sign and seal, this their Bill of Ex-
ceptions, and make the same part of the record
herein, which is done

(Signed)

D. W. Dwyer Seal
Judge

State of Illinois
Rock Island County I Denny McNeil clerk of
the Circuit Court in and for said County do
hereby certify that the above is a true copy
of the complete record in the above case and
comprising the summons declaration Pleas 1, 2, 3, 4,
demurrer Replication Judgment and bill of
exceptions

In Testimony whereof I hereunto
set my hand and the seal
of said Court this 26th day of
November A.D. 1858
Denny McNeil

And now Come the said Christopher
C. Rubber Lewis M. Rubber & John Deere
plaintiffs in error by Marshall & Peltz
their Attornies & assign for error in the
above Error the following -

1st The Court below erred in sustain-
ing the Demurrers to the 2^d and 3^d pleas
by the defendants below pleaded

2nd The Court erred in rendering judg-
ment against said depts below for the
amount of said promissory note & the
unworn interest therein stipulated

3rd The Court erred, in refusing to
receive the testimony offered by Defen-
dants below, to prove that at the time
of the execution of said promissory note
they had paid to said Jeff the sum of
\$160. the same being unworn, according
to the law of Iowa, where the contract
was made

4th The Court erred, in refusing to al-
low depts below to prove offsets & in
instructing the jury to assess the dam-
ages at the face of said note together
with said unworn interest

5th The Court erred in approving the
assessments made by the jury

6th The Court erred in rendering

the said second and third pleas of the defendants and
thereupon issued having been joined with the said

final judgment against the de-
fendants below for the amount
so assessed by the jury

Marshall Pate

Atty for P. & J. in Error

Let a supersedeas issue in this
Cause Bond in Sum of three thousand
and sixteen dollars with Nelson and
Fry as Surety

J. D. Catron

Christopher C. Webber
Lewis M. Webber &
John Deere 113

Spier Whitaker
Transcript and
Assignment of Error

Filed January 24 1859
L. Leland
Clerk

ABSTRACT.

CHRISTOPHER C. WEBBER, Et AL
vs
SPEIR WHITTAKER.

ERROR FROM ROCK ISLAND.

Assumpsit on a Promissory Note, dated Davenport, Iowa, Dec. 23, 1857, due in Six Months, for \$1,100, payable in Iowa, with 10 per cent after due.

8 Plea 1. General issue.

2nd. Said Note was executed and delivered in Iowa, and sets forth a verbatim copy of the Iowa Statute. See Iowa Statutes, Dec. 6, 1852: The law provides for not to exceed 10 per cent interest by agreement, and that in no case shall the Plaintiff, when
13 unlawful interest has been contracted for, recover more than the principal sum, without interest or cost. The Court in which the suit is pending shall render judgment of forfeiture in favor of the State of Iowa, for the use of the School fund of the County, for
20 10 per cent penalty against the Plaintiff. That for the use of the
21 sum \$1,000 Six Months, the defendants were to give \$100, being
22 the rate of 2 per cent month, the same being more than 10 per cent
23 a year, and being part of the \$1,100 in said Note mentioned, the sum loaned being only \$1,000.

25 3d. Plea, usury by the laws of Iowa. 4th. Sett off, to which
30 Plaintiff joins issue. To the second and third pleas, a general demurrer. Demurrer sustained. Defendants stand by the demurrer. Jury trial, and a verdict for the Plaintiff, for \$1,127.25. On the
36 trial, the Plaintiff offered the note in evidence and rested. The
38 defendants then offered evidence to prove, that at the time of the execution of said promissory note, they had paid \$112, the said sum being usurious, according to the laws of the State of Iowa, where said contract was made, to which evidence the Plaintiff objected, and which objection was sustained, and exceptions taken.

39

Defendants moved for a new trial which was overruled.

Assignment of errors :—

1st. The Court erred in sustaining the demurrer to the 2nd and 3d pleas.

2nd. The Court erred in refusing to admit the evidence to show usury.

3d. In overruling the motion for a new trial.

Points. 1st. The demurrer to the 2nd and 3d pleas should have been overruled, instead of being sustained.

2nd. The testimony offered to prove usury was proper, and the Court should have received it.

SHUMWAY, WAITE & TOWNE,
Plaintiff's Att'ys.

1128 113

Christopher to Phileas
et al

5
Specie Whitaker
Abstract of papers

12933

Filed April 22-1859

L. Beland

Clerk

STATE OF ILLINOIS, }
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the Circuit

Court for the County of Rock Island Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Rock Island County, before the Judge thereof, between
Spier Whitaker

plaintiff, and Christopher & Webber, Lewis, M. Webber
and John Deere

defendants, it is said manifest error hath intervened, to the injury of the aforesaid defendants

as we are informed by their complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law!

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 24th day of January in the Year of Our Lord one thousand eight hundred and fifty-nine.

L. Seland

Clerk of the Supreme Court.
by J. B. Rice Deputy

Christopher C. Webber,
Lewis M. Webber and
John Deeres

vs

Spirer Whitaker

Writ of Error

This writ of Error is
made a supersedeas
and as such is to be
obeyed by all concerned.

L. Leland Clerk
by J. B. Rice Deputy

Filed Jan. 24. 1857.

L. Leland
Clerk

STATE OF ILLINOIS, }
SUPREME COURT,

ss. The People of the State of Illinois,

To the Sheriff of the County of

Rock Island

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *vicinit* Court of *Rock Island* County, before the Judge thereof, between *Spier Whitaker*

plaintiff, and *Christopher C. Webber, Lewis M. Webber and John Deere*

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

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

Spier Whitaker

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

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *24th* day of *January* in the Year of Our Lord One Thousand Eight Hundred and Fifty- *nine*.

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

Christopher C. Webber,
Lewis M. Webber and
John Deere —

^{vs}
Spier Whitaker
Scire facias

Sherriff fees

Service	50
Deeds Paid	105
Return	<u>155</u>

Filed Feb. 22. 1839
L. Leland Clerk

I have executed this writ by making the same
to Spier Whitaker. He acknowledges and accepts service
thereon this 26. day of January A.D. 1839.

M. D. Morrison Sheriff
West Salem Green Co. Me
By C. A. M. Daughman. Clk
" " "

Know All Men by these presents, That
Christopher C. Webber Lewis M. Webber
& John Gere as principals, and Will-
iam Pizzell as security, are held firmly
bound unto Spier Whittaker in the
penal sum of three thousand & seven
dollars, good & lawful money of the
United States, for the payment of which
well & truly to be made, the said Chris-
topher C. Webber Lewis M. Webber John
Gere & William Pizzell bind them-
selves, their heirs executors & admini-
strators, jointly, severally & firmly by these
presents,

Witness our hand & seal.

Dated this Eleventh day of Decr. A.D. 1858

The condition of the above obligation
is such, That Whereas, the above named
Spier Whittaker did at the September
Term of the Circuit Court, held in &
for the County of Rock Island in the
State of Illinois A.D. 1858, recover a
judgment against the above bounden
Christopher C. Webber Lewis M. Webber
& John Gere for the sum of two thou-
sand five hundred & seven & 6/100 dollars
to w^{ch} the said judgment the
said Christopher C. Webber, Lewis M.
Webber & John Gere have owed out a

Unit of Error from the Supreme Court-
within for the said Grand Jurisdiction
of said State, Now if the said Christopher
C. Webster, Lewis M. Webster, & John Deere,
shall duly prosecute said Unit of Error
& pay or cause to be paid all judgments
costs interest & damages which the said
Supreme Court shall award against
Christopher C. Webster, Lewis M. Webster
& John Deere & abide the order & judg-
ment of said Supreme Court in this
behalf, then this obligation is to be
void otherwise to remain in full force
& effect.

L. C. Webster J. S.

L. M. Webster L. S.

John Deere L. S.

Wm. Grizzle L. S.

The Securities above are reported to be worth
fifty thousand dollars During M^ortal ch^ock
Circuit Court R. D. Colls

State of Illinois
County of Saline ss. Henry F. Potts
of the City of Rock Island being duly
sworn says that he is acquainted
with Wm Fizzel Security named
on the foregoing bond, & that he
is reputed to be wealthy - and in
the judgment of a person of worth
over & above his just debts, at least
the sum of five thousand dollars
would be due him

16 day of Dec 1838,

L. Island Clerk S. C. -

H. F. Potts

Supreme Court
C. C. Webber 103
L. M. Webber 132
Jno. Derr

Adm.
Spirer Whittaker

Supremacy Bond

Filed Jan. 24. 1838
L. Leland
Clerk

Supd. refused hear
Deft. withdrew pleas

ABSTRACT.

CHRISTOPHER C. WEBBER, Et AL
vs
SPELR WHITTAKER.

ERROR FROM ROCK ISLAND:

Assumpsit on a Promissory Note, dated Davenport, Iowa, Dec. 23, 1857, due in Six Months, for \$1,100, payable in Iowa, with 10 per cent after due.

8 Plea 1. General issue.

2nd. Said Note was executed and delivered in Iowa, and sets forth a verbatim copy of the Iowa Statute. See Iowa Statutes, Dec. 6, 1852: The law provides for not to exceed 10 per cent interest by agreement, and that in no case shall the Plaintiff, when
13 unlawful interest has been contracted for, recover more than the principal sum, without interest or cost. The Court in which the suit is pending shall render judgment of forfeiture in favor of the State of Iowa, for the use of the School fund of the County, for
20 10 per cent penalty against the Plaintiff. That for the use of the
21 sum \$1,000 Six Months, the defendants were to give \$100, being
22 the rate of 2 per cent month, the same being more than 10 per cent
23 a year, and being part of the \$1,100 in said Note mentioned, the sum loaned being only \$1,000.

25 3d. Plea, usury by the laws of Iowa. 4th. Sett off, to which
30 Plaintiff joins issue. To the second and third pleas, a general demurrer. Demurrer sustained. Defendants stand by the demurrer. Jury trial, and a verdict for the Plaintiff, for \$1,127.25. On the
36 trial, the Plaintiff offered the note in evidence and rested. The
38 defendants then offered evidence to prove, that at the time of the execution of said promissory note, they had paid \$112, the said sum being usurious, according to the laws of the State of Iowa, where said contract was made, to which evidence the Plaintiff objected, and which objection was sustained, and exceptions taken.

39 Defendants moved for a new trial which was overruled.

Assignment of errors :—

1st. The Court erred in sustaining the demurrer to the 2nd and 3d pleas.

2nd. The Court erred in refusing to admit the evidence to show usury.

3d. In overruling the motion for a new trial.

Points. 1st. The demurrer to the 2nd and 3d pleas should have been overruled, instead of being sustained.

2nd. The testimony offered to prove usury was proper, and the Court should have received it.

SHUMWAY, WAITE & TOWNE,
Plaintiff's Att'ys.

112 & 113

Aristophanes &
Prother Hall

Sheir Whittekes

Alfred Spence

Filed April 22, 1859

L. Leland
Clerk

1
Hears before the Hon J. Wilson Drury Judge of the
sixth Judicial Circuit of the State of Illinois, at a
term of the Circuit Court, begun and held at the
Court House, within and for the County of Rock Island
on the first Monday the 6th day of September A.D. 1858

Hon J. Wilson Drury Judge
C. M. Prandley Sheriff
Quincy McNeil Clerk

Be it remembered that on the 10th day of July
1858. Spier Whittaker, by his Attorney, send out of the
Clerks office of the Court aforesaid a certain writ of
summons in Assumpsit, which is in the words and
figures following to wit -

State of Illinois 3d
Rock Island County 3d

The People of the State of Illinois,
To the Sheriff of Rock Island County, Greeting

2
We command you to summon Lewis M. Webber
and Christopher C. Webber if to be found in your County
personally to be and appear before the Circuit Court of
said County on the first day of the next Term thereof to
be holden at the Court House in Rock Island on the
first Monday of September next. then and there to answer
unto Spier Whittaker of a plea of Trespass on the Case
upon promises to his damages in the sum of
Fifteen Hundred Dollars as he says and have
you there and there this writ, and make return
thereon in what manner you see cause. The same

Witness Quincy McNeil Clerk of the said

Seal

Court and the seal thereof affixed this
10 day of July in the year of our
Lord one Thousand Eight Hundred
and fifty Eight.

(signed) Quincy M. Neil Clerk

which said writ, was afterwards, to wit= on the
15th day of July 1858 returned by the Sheriff of
said County, with the following endorsement
thereon, "I have executed this writ by reading
the same to all the within named defendants
July 15. 1858"

(signed)

C. M. Peardley Sheriff

By M. D. Merrill Deputy

and the said writ was thereupon filed in the
said Clerk's Office and became a part of the
records herein,

It is also remembered that on the 10th
day of July aforesaid John Whittaker by his atty
J. Grant filed in the Clerk's Office aforesaid, his
certain declaration in assumpsit against Lewis
M. Hobbs and Christopher M. Hobbs which said
declaration is in the words and figures following to
wit=

State of Illinois

Rock Island Circuit Court

September Term 1858=

Rock Island

To wit=

Lewis M. Hobbs & Christopher

Webber were summoned to answer Spier
Whitaker in a plea of Assumpsit. And there-
upon Spier Whitaker complains of said
Lewis M. Webber & Christopher C. Webber
for that the defendants on the 11th day of October
1857 at Davenport in the state of Iowa to wit
at said County by their promissory note of
that date by them made and subscribed
by the name and description of Lewis M.
Webber & Christopher C. Webber, for value received
undertook and promised to pay to the order of
said plaintiff the sum of Eleven Hundred
Dollars at Whitaker & Grants office with two
per cent per month after due in six months after
date which period has now elapsed. yet though
after request the said defendants have not
paid said sum of money or any part thereof
but refused and neglect so to do. So the plffs
damages of Fifteen Hundred Dollars and
thereupon he sues

I Grant Attorney at Law
Copy of Note sued upon
\$1100.00 Davenport Dec 23, 1857

Six months after date We promise to pay
to the Order of Spier Whitaker the Sum of
Eleven Hundred Dollars. Value received
payable Whitaker & Grants office in Davenport
two per cent per month after due.

(Signed)

L. M. Webber
C. C. Webber

7

And afterwards to wit on the 20th day of
September 1858 at the term of the Court of
said The said Defendants by their Attorneys
filed their certain pleas to the Plaintiffs
declaration which said pleas are in the words
and figures following to wit

State of Illinois }
Rock Island County }
3rd

To September A D 1858
Rock Island Circuit Court

Levi M. Hibbs &
Christopher C Hibbs

and

8 Spin Whitaker

Plaintiffs

18th

And the said defendants
by their Attorneys R. M. Marshall and
H. J. Putty come and defend the
wrong and injury whereto and say that
they did not undertake or promise to in man-
ner and form as the said plaintiffs both
above thereof complained against them and
of that they put themselves upon the country
and the plaintiffs both likewise the like

2nd

Grant for help

And for a further plea in their behalf the
said defendants by leave of the Court first
had & according to the form of the Statute &c
as to the One Hundred Dollars of the said Claim

9

Hundred Dollars in the promissory note in
 and as to the two per cent per month after due
 the plaintiffs declaration. mentioned, say that
 the said plaintiffs Actio Non because they
 say that the said promissory note was Executed
 and delivered by the said defendants to the said
 plaintiffs at Des Moines in the County of
 Scott. State of Iowa and was then made
 payable and with reference had to the laws
 of said State of Iowa. and that long
 before and at the time of the Execution
 and delivery of the said promissory note
 as afore said, The General Assembly
 of the said state of Iowa, at a session

10

Thereof begun and holden on the 21st
 day of December in the year AD 1852
 at the City of Iowa City in the said state,
 had provided among other things, by a
 certain Statute then and there Enacted
 that the rate for the forbearance of money
 should be ten per Centum per Annum
 by Agreement in writing and no more
 And that no person or Corporation shall
 at or within the said state receive in money
 goods or Things in action any greater sum
 or value for the loan or forbearance of money
 than after the said rate in the said Statute
 provided which said statute is entitled and
 is in the words and figures following
 to wit:—

10 "An act to regulate the interest on money
"Section 1 Be it Enacted by the General
"Assembly of the State of Iowa. that the
"rate of Interest shall be six cents on the
"Hundred by the year on money due on Ex-
"press Contract unless a different rate be expressed
"in writing, on all moneys after the
"same becomes due when there is no contract
"fixing the rate of Interest on judgments &
"decree for the payment of money when there
"is no other rate expressed on money lent
"without a contract, fixing the rate of interest
"and on money retained for the use of another
"and retained beyond a reasonable time with-
"out the express consent. Expressed or
"implied: on money due upon settlement
"of matured accounts from the day the
"balance is ascertained, on money due on
"open account, after six months from the
"date of the last item and on all money
"due or to become due when there is a con-
"tract to pay interest and no rate stipulated
"Sec 2 Parties may agree in writing for
"the payment of interest not exceeding two
"cents on the Hundred by the Year.
"Sec 3^d Interest shall be allowed on all mon-
"ey due on judgments and decrees of any
"competent Court or tribunal at the rate
"of six per cent per Annum unless a different

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"rate is fixed by the Contract, on which the judgment
 "or decree is rendered, in which case the judgment
 "or decree shall draw interest at the rate expressed
 "in the contract, but no judgment or decree shall
 "draw more than ten per cent per annum
 "which rate must be expressed in the judgment
 "or decree,

"Sec 4 No person shall directly or indirectly
 "receive in money goods or things in action
 "or any other manner any greater sum or value
 "for the loan of money or upon contract, founded
 "upon any bargain sale or loan of Wares
 "Merchandise, Goods Chattels lands and
 "tenements than is in this act provided

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"Sec 5 If it shall be ascertained in any suit
 "brought on any contract that a rate of
 "interest has been contracted for greater than
 "is authorized by this act, either directly or indirectly
 "in money, property or other valuable thing, the
 "same shall work a forfeiture of ten per cent per
 "annum upon the amount of such contract
 "to the School fund of the County in which the suit
 "is brought, and the plaintiff shall have judgment
 "for the principal sum without either interest or
 "cost. The Court in which said suit is pro-
 "secuted shall render judgment against the
 "defendant in favour of the State of Iowa for
 "the use of the School fund of said County whether
 "the said suit is contested or not and in all

12

- 14 " Cases. When the unlawfull interest is not
" apparent on the Contract or writing. The
" person Contracting to pay the unlawful
" interest shall be a competent witness
" to prove that the Contract is usurious and
" in no Case when unlawfull interest
" is Contracted for. shall the plaintiff have
" judgment for more than the principal
" sum. whether the unlawfull interest be
" incorporated with the principal or not =
" Sec 6. Nothing in this act shall be so
" construed so as to prevent the bona fide
" apigree of any usurious Contract. recovering
" against the usurer. the full amount of the
" Consideration paid by him for such Contract
" less the amount of the principal money but
15 " the same may be recovered, of such usurer
" in the proper action before any court having
" competent Jurisdiction.
" Sec 7. So much of chapter 57. title 13-
" of the Code as may conflict with the provision
" of this Act is hereby repealed. This Act
" to take effect in thirty days from and after
" its publication in the "Iowa Capital Reporter"
" and the Iowa Republican"

And the said defendant avers that the
said Statute was afterwards - to wit - on
the 9th day of February A D 1853 at
the State of Iowa first published in the

16 said "Iowa Capitol Reporter" and in the
said Iowa Republican and so became
and was of Effect from thence forth &
until and at the time of the making
of the Corrupt and venious Contract here
before in-after next mentioned And the
said defendants further aver that before
making of the said promissory note
in the first Count of the plaintiffs
declaration mentioned to-wit on the 23^d
day of December A.D. 1857 at Davenport
aforesaid in the State of Iowa aforesaid it
was corruptly and against the form
of the said above mentioned Statute
agreed by and between the said
17 Breves M. Hebbes and the said plaintiff
that in the said plaintiff should lend &
advance to the said Hebbes a certain
large sum of money to-wit the sum
of One Thousand Dollars and that in the
said plaintiff should for bear and give day
of payment for the said sum of Money
from the time of lending and advancing
the same for and until Six Months from
the day of the date of said lending and
advancing. And that for the forbearing
and giving day of payment of the said
sum of One Thousand Dollars as aforesaid
in the said Lewis M. Hebbes should give

give and pay to the said plaintiff a certain
 large sum of money to wit the said sum
 of One Hundred Dollars and that if
 the said sum of One Thousand Dollars
 so to be lent and advanced and the said sum
 of One Hundred Dollars so to be
 paid for the lending and forbearing of
 the said One Thousand Dollars should
 remain unpaid after the day when as by
 the said corrupt, usurious and evil and full
 contract the same were made payable
 that then and from thenceforth the said
 Webber should give and pay for the forebear-
 ing of the same, interest after the rate of
 two per cent ^{per month} interest, and that for the securing
 the payment of the said sum of One
 Thousand Dollars so lent and advanced
 and foreborn and of the said other sum
 of One Hundred Dollars so to be
 paid for the said lending and advancing
 and forbearance and the said further
 interest of two per cent per month said
 Geo. M. Webber as principal and C. C.
 Webber as surety should execute and deliver
 to the said plaintiff their certain prom-
 = isory note of that date wherein ^{the} said
 said One Hundred Dollars should
 be incorporated together with the said One
 Thousand Dollars, and wherein the said

further interest of two per cent per month should be nominated and described. And said defendants further say that in pursuance and in part performance of the said corrupt, unlawful and malicious contract the said Hebbes as principal and the said C. C. Webb as surety afterwards to wit on the said 23^d day of December 1857 to wit at Davenport in the aforesaid State of Iowa, did make and deliver to the said plaintiff the said promissory note in the first Count of the said plaintiffs declaration mentioned and that afterwards in further pursuance of the said corrupt and unlawful agreement on the year and day aforesaid at Davenport aforesaid, the said plaintiff did lend and advanced to the said Lewis H. Hebbes the said sum of One Thousand Dollars. And the said defendants further say that the said One Hundred Dollars so agreed to be paid for the lending and advancing of the said sum of One Thousand Dollars and for the forbearance of the same for and until the said six Months from the date of said agreement & the said further interest of two per cent per month, so agreed to be paid and so in

the said promissory note mentioned as
aforesaid for the forbearance of the said
One Thousand Dollars from and
after the expiration of the said Six
Months from the day of the date
of said agreement exceeds the rate
of ten per centum per annum for the
loan or forbearance thereof. Contrary
to the aforesaid Statute in such case made
and provided, whereby and by force of
the said Statute in such case made and
provided the said promissory note as to the
^{in as to the said interest of ten per cent per month}
said One Hundred Dollars, ~~is~~
~~the said note described.~~ was and is void, and

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thus the said defendants are ready to verify
wherefor they pray judgment &c

3rd Plea

~~And for a further plea in this behalf~~
~~the said defendants by leave of the Court~~
~~here for this purpose first had and obtained~~
~~according to the form of the Statute &c~~
~~As to the One Hundred Dollars in~~
~~the said promissory note in the said~~
~~first Count of the plaintiffs declaration~~
~~found say Verdict Now because they say~~
~~that the said promissory Note was executed~~
~~and delivered by the said defendants to the said~~
~~plaintiff at Rapaport to-wit in the County~~
~~of Scott and State of Iowa, and was then~~
~~made payable and with refused had to~~

A. J. Pelly
Attorney for Defendants

25
3^d Plea And for a further plea in this behalf the said Defendants by leave of the Court here for this purpose first had and obtained according to the form of the Statute & say ~~Adversely~~ ^{Adversely} because they say that the said plaintiff before and at the time of the commencement of this suit. to wit = At the County of Rock Island aforesaid was and still is indebted to the said Defendants in a large sum of money. to wit the sum of ~~Three Thousand~~ ^{Five} ~~Dollars~~ ^{Hundred} Dollars for money before that time lent and advanced to and paid laid out and expended for the said plaintiff at his special request and for money by the said plaintiff before that time had and received to and for the use of the said Defendants and for money due and owing from the said plaintiff to said Defendants for the interest upon and forbearance of divers large sums of money due and owing from the said plaintiff to the said Defendants and by the said Defendants forbearance to the said plaintiff for divers large spaces of time before then

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Elated which said sum of money is
 due and owing to the said defendants
 as aforesaid Except the damages sus-
 tained by the said plaintiff by reason
 of the non performance by the said de-
 fendants of the said supposed promises
 and undertakings in said Declaration
 mentioned out of which said sum
 of money is due and owing from
 said plaintiff to the said defendants
 the said defendants are ready and
 willing to and hereby offer to set
 off and allow to the said plaintiff the
 full amount of the said damages
 according to the form of the Sta-
 ute in such case made and
 provided and thus the said defendants
 are ready to verify wherefor they
 pray judgment &c

J. H. Marshall &
 H. J. Putz Attys
 for Defendants -

Spier Whittaker Dr

To L. M. Nelson & C. Nelson

1887
 Sept 23 To money used by you for our use \$1500.00
 " " advanced & lent you by us \$1500.00
 " " paid laid out & expended for
 " " your use and at your request \$1500.00
 " " money now paid you \$1102.00

27 And afterwards to wit on the 25th day of the month of September aforesaid and at the term of the Court aforesaid the plaintiff by his Attorney filed his replication to defendants fourth plea which is in the words and figures following to wit=

Spur Whitaker }
 vs } Rock Island
 Lewis M. Webb } Circuit Court
 Christopher C. Webb } September Term 1858

28 And the said plff
as to said plea of the defendants ~~fully~~
above pleaded, says, he ought not to
be barred from maintaining his action
because he says he is not indebted
and did not assume to promise the
def't as therein set forth and this he
prays may be enquired of by the
Court.

Grant Wilkinson & Pleasant
Attorneys for P^lffs

And the said expenditures with the like
Duty & Marshal
Attorneys fee Dept

And at the same time aforesaid
at the Court aforesaid and on the same

29 day ofonsaid to wit the 25th day of
September 1858 the said plaintiff by
his Attorney filed his demurres to defts
second and third pleas which demur
is in the words and figures following
to wit

Spier Whitaker } Rock Island Circuit
vs } Court Sep Term 1858
Lewis M. Webb }
Christopher C. Webb } Demurrer of Plff

And the said plaintiff as to said
pleas of defended into, secondly and ^{thirdly}
30 above pleaded says, that he ought
not to be barred by any reason
of anything in said pleas alleged.
Because the said pleas and the matters
therein set forth are not sufficient
in law to base the plffs action and
thus he is ready to verify. Wherefore
by reason of the insufficiency of the
said pleas the ^{plff} prays judgment and
his damages by reason of the non-
performance of the promises in his
declaration named

Grant Wilkinson & Plaintiffs
Attorneys for Plaintiff
and the defts doth likewise
And afterwards to wit at the same

31 term of the Court aforesaid and on
the 25th day of September aforesaid
the following proceeding was had
to-wit-

Spina Whutaku

Assumpsit
Lewis M. Webb
Christopher C. Webb

32 This day came the
parties by their Attorneys and this cause
coming on to be heard upon plaintiffs
demurrer to defendants second and third
and the Court having heard the
arguments of the Counsel &
being sufficient advised in the prem-
ises both sustain the said demurrer
thereupon defendants abide by said
demurrer and issue being joined
upon the first and fourth pleas
of Defendants - then came a
Jury of Jurors sent R. J. Smith Wm. H.
Shadwiner Amos A. Stephens John Luck
J. Jennings Wm. H. Edwards. D. J. Cleland Wm.
Hens Ephraim Johnson Wm. H. Luce J. C. Rindell
and John Maxwell, who were each
and severally sworn to well and truly
try the issue joined and having heard
the Evidence returned their verdict in to
Court which is as follows to-wit "We

the Jury find the issue for the plaintiff
and assess his damages at \$1127. 25
Eleven Hundred & twenty seven Dollars
and twenty five cents" and defendants then
a motion for a new trial

And afterwards to wit at the
same term of the Court aforesaid
and on the first day of October AD
1838 the following proceedings were
had to wit

Spencer Whitaker

vs
Lewis M. Webber
Christopher C. Webb

} Affirmed

This day again
came the parties by their Attorneys
and the cause on to be heard upon
defendants motion for a new trial
and the Court having heard the same
and being sufficiently advised of the
premises overrules the said motion. It
is therefore ordered by the Court that plaintiff
have and recover of defendants the said
sum of Eleven Hundred twenty seven
Dollars and twenty five cents together
with his costs in the behalf expended and
that he have Execution therefor. Therefore
motions of defendants by their attorneys it
is ordered by the Court that defendants have

leave to file their bill of Exceptions herein
in thirty days from this date

And afterwards to-wit. on the 31st day
of October AD 1858 the said defendants
by their Attorneys filed in the Clerk's
Office of the Court aforesaid, the said bill
of Exceptions which is in the words and
figures following to-wit

State of Illinois }
Rock Island County } ss

September Term AD 1858

Spur Whitaker

Rock Island Circuit
Court

Lewis M. Hubbard

Appraiser

Christopher C. Hubbard

36

Sep 1858

It is remembered that
on this day the above entitled cause being
called and the plaintiff having before that
time filed his demurrer in law to
the defendants second and third pleas
and joined issue with the said defend-
on their first and fourth pleas herein.
The said demurrer was agreed by the
Counsel in Open Court and the Court
having heard the arguments of Counsel
did adjudge the said demurrer good in

- 37 law and the said plaintiff not bound to answer the said second and third pleas of the defendants and thereupon issue having been joined with the said defendants on their first and fourth pleas herein and a jury having been empanelled and sworn to try the issues on said pleas the plaintiff submitted in Evidence to said jury the promissory note in plaintiff's declaration mentioned and here closed his case thereupon the said defendants offered evidence to prove that at the
- 38 time of the Execution of said promissory note they had paid to said plaintiff the sum of One Hundred and twelve Dollars the said sum being usurious according to the laws of the State of Iowa where said contract was made to which said evidence, said plaintiff objected and thereupon the Court having heard the argument of counsel sustained said objection whereupon said defendants withdrew their first, second, third and fourth pleas and thereupon the said jury rendered their Verdict in favour of said plaintiff and assessed his damages \$112 ²⁵/₁₀₀ Eleven Hundred twenty five Dollars and twenty five cents that being the amount due for principal and interest upon said

leave to file their bill of Exceptions herein
 that same from this date,

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promising note in the said declaration
 mentioned and thereupon the defendants
 moved for a new trial, which motion
 coming on for a hearing, was over-
 ruled by the Court and thereupon
 the Court approving said Verdict
 entered judgment in favour of said
 plaintiff, that he have and receive of
 the defendants, the amount of said
 sum of \$1127²⁵

To all of which usual rulings of
 the Court, sustaining said demurrer
 and approving said Verdict, and
 refusing to admit the testimony offered
 by the said defendants, to the said
 40 Jury and overruling the motion of defendants
 for a new trial and rendering said
 judgment, the said defendants by their
 Counsel do Except and pray the Court
 to sign and enter their said bill of Ex-
 ceptions and make the same, part
 of the record herein

Signed *D. W. Quay* Esq
 Judge

State of Illinois
Rock Island County

J. Quincy McNeil

Clerk of the Circuit Court in and for
said County do hereby certify that the
above is a true copy of the complete
records in the above case and com-
prising the summons, declaration
Pleas 1. 2. 3. 4. Demurrer. Replication. Judgment
and bill of Exceptions

In testimony whereof I
hereunto set my hand and
the seal of said Court
this 26th day of November
A.D. 1858

J. Quincy McNeil clk

Final judgment against the de-
fendants below for the amount
so assessed by the jury

Marshall & Puleys
Atty for Pff in Error

Let a supersedeas issue in this cause
bond in the sum of \$2256⁰⁰ - for his
deeds surety

J. D. Catron

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Lewis M. Weber &
Christophe C. Weber

vs
John Whittaker

Transcript of
of errors.

Filed Jan. 24. 1859
J. Leland
Clerk