

No. 14696

Supreme Court of Illinois

Ramsey

vs.

Perley

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

Wm. M. Hall
Ramsey & Perley
No. 186 *76*
1864

J. W. Middleton & Co., Stationers, 196 Lake St.

Ramsey
vs
Perley

1864
perley

It is before the Circuit Court of Marshall County in the State of Illinois [On the Chancery side thereof] at a term thereof begun and holden at the Court House in the City of Vacon in said County of Marshall in the State of Illinois, On Monday the fifth day of October in the year of Our Lord One thousand Eight Hundred and eighty three, Present the Hon Samuel V. Richmond Judge of the 53rd Judicial Circuit of the State of Illinois, presiding, James H. C. Boat States Attorney for said Judicial Circuit, Joseph R. Taggart Sheriff of said Marshall County & holden Arnold Clerk of said Circuit Court,

Be it Remembered that On the 24th day of September AD 1863, the Complainant files his Bill of Complaint in said Court which said Bill is in the words and figures following "to wit"

[Here the parties waive the filing of the Copy of the Original Bill of Complaint and exhibit the original]

On the same day "to wit, On the 24th day of September AD 1863, a summons was issued out of said Court, which is in the words and figures following "to wit"

"The People of the State of Illinois

To the Sheriff of Marshall County "Greeting"

We Command you to summon, John A. Perley & Samuel V. Fleming to appear before Our Circuit Court, On the first day of the next term thereof to be held at Vacon within and for the said County of Marshall, On the first Monday of October AD 1863, then and there in Our said Court to answer the matters contained in a certain Bill filed in said Court On the Chancery side thereof by Silas Ramsey for Relief



Hereof you not and make due return of your
doings herein. Witness Sheldon Arnold Clerk
of our said Court and the seal thereof at
Vacon this twenty fourth day of September in
the year of our Lord One thousand Eight
Hundred and sixty three

Internal Revenue
Sept 24, 1863
S. H.

Sheldon Arnold
Clerk,

On the back of which said summons there appears an Endorsement
in the words and figures following "to wit"

I have served this writ by delivering a true copy of the same to the
within named John A. Perley. On this the 25th day of September
AD 1863, as within Commanded,

J. R. Taggart
for A. M. Taggart Deputy
Sheriff of Marshall County, Ills,

I Cannot find the within named Samuel V. Fleming in my
County, Vacon, Ills, Sep 26th AD 1863,

J. R. Taggart, Sheriff
of Marshall Co, Ills,

Afterwards "to wit" On the 15th of October AD 1863, the same
being One of the days of said term of said Court, Of the
October term AD 1863, and Order was Entered of Record
in said Court, which is in the words and figures following
"to wit"

Silas Ramsay
vs.

John A. Perley &
Samuel V. Fleming

1 Bill for Relief

On this day Comes the Complainant by
George O. Barnes & Ranget & Haw his
solicitors, and as well the said
Defendant John A. Perley, by Peleg S. Perley

His solicitor, and the Defendant Perley Enters a demurrer to
the Complainants Bill of Complaint herein, and thereupon
Comes the Defendant Samuel V. Fleming, and in Open
Court in his Own proper person, waives the service of process
upon him, and Enters his appearance herein, Whereupon
On Motion of the Complainant by his solicitors the said
Defendant Samuel V. Fleming, is by the Court ruled to
plead, answer, or demur herein instantler, and the said
Samuel V. Fleming, being three times solemnly Called
Comes not to plead, answer, or demur herein, as he was
bound to do in Compliance with the rule of this Court, but
Makes default, It is therefore Ordered, adjudged and
decreed by the Court, that the Complainants Bill of
Complaint and the matters and things therein stated be
taken for Confessed as to said Defendant Samuel V. Fleming

And thereupon this Cause is to be heard upon the
demurrer of the Defendant Perley, and was argued by
Counsel, and the Court having Considered said demurrer
and being fully advised in the premises, doth Order
that said demurrer be sustained, Whereupon leave is
by the Court given the said Complainant to amend his
said Bill of Complaint herein, and thereupon it is ordered
by the Court that this Cause be Continued,

Pleas before the Circuit Court of Marshall County in the
State of Illinois [On the Chancery side thereof] at a
term thereof begun and holden at the Court House in the
City of Vaco in said Marshall County, On Monday the
twenty fifth day of January in the year of Our Lord
One thousand Eight Hundred and fifty four, Present
the Hon Samuel V. Richmond Judge of the 23^d Judicial

Circuit of the State of Illinois presiding, James St. C. Poal
States Attorney for said Judicial Circuit, Joseph R. Taggart
Sheriff of said Marshall County & Sheldon Arnold Clerk of
said Circuit Court,

Be it Remembered that on the 14th day of January A.D. 1864
the Complainant filed in said Court, his amended Bill
of Complaint, which said amended Bill is in the words
and figures following to wit:

State of Illinois } ss In the Marshall County Circuit Court
County of Marshall) and October Term thereof A.D. 1863

Silas Ramsey
vs
John A. Perley &
Samuel L. Fleming }

Bill for relief

To the Hon. J. L. Richmond Judge of
Said Court

"A"

Your Orator Silas Ramsey humbly
Complaining Shows unto your Honor, that at Lacey in
the said County of Marshall on the 18th ^{day} of November
A.D. 1857 One Samuel L. Fleming made and executed
his certain promissory in writing for the sum of
\$562.00 to the above named John A. Perley, a copy
of which note is hereto attached and marked exhibit "A"
and is made a part of your Orators bill of com-
plaint, and which note was given as your Orator is
now informed and believes for about the sum of
\$480 or \$500 your Orator not being able to state the exact
amount, money loaned them and there by the said
John A. Perley to the said Samuel L. Fleming and
payable to the above named John A. Perley or to his
Order; And that in and by which note the said Flem-
ing promised to pay to said Perley or to his Order the
said sum of \$562.00 in four months after the date
thereof; the sole and only Consideration of said note being
the said \$480 or \$500 then and there at the date of said note
loaned by said Perley to said Fleming, and all the balance
of said note, to wit; 62¢ to 82¢ thereof being for and in consid-
eration of an unlawful corrupt and vicious agreement &
contract then and there made between said Perley &

Fleming, that in consideration that the said Perley would forbear and give day of payment of the said sum of money then and there loaned the said Fleming would until said note should become due, that said Fleming would pay said sum of money therefor, which sum agreed to be paid for such forbearance greatly exceeds the interest at the rate of ten per cent per annum. whereby the same became forfeited, And that said note so made and executed by said Fleming to said Perley, was afterward signed by your Orator without any consideration whatever than as aforesaid as security, and thereafter was delivered to said Perley; and that the Character of security was then and there well known to said Perley, and appeared upon the face of said note by your orator writing immediately after his signature to said note the word "Security," And your Orator further represents unto your Honor that the said note was made, executed and delivered to the said Perley and paid at maturity, but was afterwards sued upon in this Honorable Court at the January Term thereof A.D. 1860, And that at said Term judgment was rendered upon said note against the said Samuel L. Fleming and your Orator for the sum of Five Hundred and Eighty One Dollars and two Cents damages and four Dollars and sixty five Cents Costs of Suit, And that said judgment was rendered solely upon said note and upon and for no other consideration or thing whatever, and that said judgment bore date the first day of February A.D. 1860, And that the same together with all costs has been fully paid by your Orator. The said note and proper proofs and vouchers whereof appear and are on the files and Records of this Honorable Court, and will be produced by your Orator upon the final hearing hereof

2

And your Orator further shows unto your Honor that he never made any defense to said Suit, and never filed or authorized any one else to file any plea or pleas in said Suit, or in any ^{way} to appear for for your Orator, because that your Orator then nor for a long time after knew any corrupt or unlawful agreement between the said Perley and the said Fleming as hereinafter alleged and charged, and because also that your Orator then nor for a long time thereafter knew of any corrupt, unlawful and usurious contract or contracts between the said Perley and the said Fleming as hereinbefore alleged and charged, nor of any contract between said Perley & Fleming as hereinafter charged, whereby the said Perley after the maturity of said note, without the knowledge or consent of your Orator contracted and agreed with the said Fleming to extend the day of payment on the said note; And your Orator distinctly alleges and charges that the plea of the general issue appearing to have been interposed by the said S. L. Fleming and your Orator, was without your orator's knowledge or consent;

3

And your Orator alleges and charges the fact to be, that ~~that~~ the said note as given as aforesaid was given upon a corrupt usurious and unlawful agreement between the said Samuel L Fleming and the said John A Perley, whereof until long after the rendering of the said judgment and the payment thereof with all costs, your Orator was kept in total ignorance, whereby the said John A. Perley contracted to have and take and receive of and from the said Samuel L Fleming a greater rate of interest than ten per Cent per annum interest upon the moneys actually loaned by the said Perley to the said Fleming and for which the said note was given &

whereon your Orator was security: And your Orator distinctly alleges and charges the fact to be that your Orator was not a party to such corrupt and unlawful agreement so made by the said Perley and Fleming, and never consented thereto, and never knew, or heard of the same until long after the said judgment had been recovered and paid, to wit; until about the 18th day of December A.D. 1862 and then only; And now only knows thereof upon information and belief: And your Orator further alleges and charges the fact to be that after the said note became due and before the same was sued upon, to wit. On or about the 7th day of July A.D. 1859 another Contract was made and entered into, greatly to the injury and prejudice of your Orator, by and between the said John A Perley and the said Samuel L Fleming, and whereof until about the 1st day of January A.D. 1863 your Orator was wholly ignorant, and which contract was without the knowledge or consent of your Orator, whereby the said John A Perley for a certain promissory note of the said Samuel L Fleming for the sum of \$94.25, a copy of which note is hereto attached and marked exhibit "B" & made part of this bill, then and there made executed and delivered by the said Fleming to the said Perley for the said sum of \$94.25 and payable to the said John A Perley or to his Order, two months after the date thereof, contracted and agreed with the said Fleming to make payment on said note of \$562.00, of the interest due thereon up to that date to wit; up to the 7th day of July A.D. 1859, which interest amounted to about \$44. And also in consideration of the balance of said note extend the time and give

4

"B"

day of payment on the said note of \$562.00 for the space of two months from that date, or for some other space of time unknown to your ^{and your orator} orator, distinctly alleges and charges the fact to be that he never knew or heard of said last mentioned agreement until about the 15th day of January 1863

5 And your orator further alleges and charges upon information and belief that after the said note of \$562.00 became due and before the same was sued upon, to wit: at Lacon in the said County of Marshall on or about the 14th day of December A D 1859 the said John A Perley without the knowledge or consent of your orator again contracted and agreed with the said Samuel L Fleming to give further day of payment on said note of \$562.00 (but what day is unknown to your orator) in consideration that the said Fleming would execute to the said Perley the promissory note of said Samuel L Fleming for the sum of \$45.63 payable with ten per cent interest on the first day of February A D 1860 (a copy of which note is hereto attached marked Exhibit "C" and made part of this your orator's bill the original whereof your ^{orator} will produce on the final hearing hereof) which note was then and there accordingly made executed and delivered upon such contract or agreement by said Fleming to said Perley; and by each of which said last mentioned contracts and agreements your orator insists and charges that he was wholly released from liability upon said note of \$562.00 and that the said suit on said note of \$562.00 and the judgment so rendered thereon on the first day of February 1860 was as to your orator inequitable, unjust, oppressive fraudulent and contrary to law; But your orator alleges

7

and distinctly charges the fact to be that he was wholly ignorant of the said last mentioned agreements or contracts, and each of them until long after the said judgment had been rendered and paid by by your Orator, to wit; until about the 15th day of January A D 1863

6

And your Orator would further represent unto your Honor and Charge the fact to be that the said Samuel L Fleming nor any one else has ever paid to your Orator the money so unjustly collected of your Orator upon said judgment nor any part thereof and that he the said Samuel L Fleming is now wholly and totally insolvent and so has been ever since the rendition of the judgment aforesaid on the first day of February A D 1860 and that your Orator is wholly without remedy in the premises by any suit or proceeding at law or in equity against the said Samuel L. Fleming for the recovery of the money so unjustly and unlawfully recovered of and from your Orator upon the aforesaid judgment, And your Orator distinctly charges that he never had any consideration whatever for the signing of said note, and that the judgment so rendered as aforesaid was rendered upon said note and on and for nothing else, and that your Orator never either alone or with the said Samuel L Fleming owed the said John A. Puley any sum of money whatever, and that the judgment so rendered as aforesaid against your Orator and the said Fleming and so as aforesaid paid by your Orator was as to your Orator. Onerous, unjust, oppressive, fraudulent and unlawful; and that no part thereof has ever been refunded to your Orator by any person whatever

7 And your Orator alleges charges and insists that, on account of the aforesaid corrupt and unlawful agreement as to interest between the said Perley and Fleming whereof until about the 18th day of December A.D. 1862 your Orator was ~~was~~ wholly ignorant your Orator is entitled equitably to have of and from the said John A. Perley all the interest and moneys any way paid to made or had by the said John A. Perley on account of said note

8 And your Orator alleges insists and Charges that an account of the several Contracts hereinbefore set out, and on account of each of them, so made by the said Perley with the said Fleming after the maturity of the said note of \$562.00 and whereof your Orator was wholly ignorant until about the 15th day of January A.D. 1863 to extend the term of payment of said note your Orator was wholly released from any liability at law on said note of \$562.00 and that the judgment so as aforesaid rendered thereon as to your Orator was onerous, oppressive, unjust and contrary to law, and that your Orator is in equity entitled to recover back of and from the said John A. Perley the whole of said judgment and Costs together with interest on the same from the date of its rendition to wit; February 1st 1860

That the said Samuel Fleming is interested in the decree to be rendered herein, and will if said satisfaction of said judgment is set aside and vacated be liable to pay the same to said Perley and said judgment as to said Fleming ought to be Decreed to be and remain in full force as to him and execution ordered thereon, or said.

Fleming in some way compelled to pay and satisfy the same in accordance with law and equity. In as much therefore as your Orator is perilled in the premises by the strict and harsh rules of law, and can only have full and adequate redress in this Honorable Court, your Orator humbly prays your Honor that the said John A. Perley and Samuel L. Fleming may be made party defendant to this your Orator's bill for relief, and that your Honor may grant unto your Orator the people's most gracious writ of subpoena to be issued out of this honorable Court and under the seal thereof at the suit of your Orator; and that the said John A. Perley and Samuel L. Fleming may be required to be and appear at the next term of this Honorable Court, then and there to answer, under the rules of this Honorable Court, all and singular the matters and things in this your Orator's bill of complaint contained, and under oath, the answer under oath, being hereby expressly waived; And that on the final hearing hereof a Decree of this Honorable Court may be entered herein requiring the said John A. Perley, within some short day to be by this honorable Court appointed, to refund and pay unto your Orator the said sum of Five Hundred and Eighty one Dollars and two Cents, the amount of the damages of said judgment aforesaid, and also the said sum of Four Dollars and sixty five cents, the costs of the suit aforesaid, together with interest on the whole of said sums from the first day of February A.D. 1860 until the time of payment to your Orator and that in default of payment an execution issue upon such Decree as is done on judgments at law and that your Orator may

have such other and further relief as is agree-
able to Equity and good Conscience, And your Orator
as in duty bound will ever pray &c

Silas Ramsey

By Bangs & Shaw & Barnes

State of Illinois } ss
Marshall County }

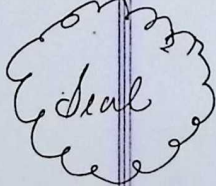
Silas Ramsey the within
Complainant being first duly sworn, On oath
says that the matters and things contained in
the foregoing bill as therein alleged are true in
substance and in fact except as to matters and
things therein alleged to be true on information
and belief, and as to those things he believes
the said bill to be true.

as Ramsey

Subscribed & sworn to before me
this 23rd day of April 1863

G. O. Barnes

Notary Public



\$562.00

Lacon Ills Nov 18. 1857

Four months after date, for value received we or
either of us promise to pay John A. Perley Or order five
hundred and sixty two dollars

Samuel L Fleming

Silas Ramsey Security

On the back of which note is the following indorsement

Rec^d pay for interest on the within note up to
this date by note. Lacon July 7. 1859

Exhibit "A"

Exhibit "B"

Exhibit "B"

\$ 74.25

Lacon July 7th 1859

Two months after date for value received I promise to pay John A Perley or order ninety four & $\frac{25}{100}$ dollars

Saml L Fleming

And on the back of which ^{note} is the following indorsement

"Without recourse

John A Perley"

Exhibit "C"

\$ 45.63

Lacon Dec 14, 1859

On the first of February next for value received I promise to pay John A. Perley or order forty five & $\frac{63}{100}$ dollars with ten per cent interest from date

Saml L Fleming

On the back of which note is the following indorsement

"Without recourse

John A Perley"

The Clerk of the Circuit Court will please issue subpoenas in Chancery for John A Perley and Samuel L. Fleming according to the prayer of said bill, returnable to the Oct. Term of said Court 1863 and directed to Shff of Marshall Co. to execute

Bangt Shaw & Barnes & Winslow
for Compl^t

Exhibit "C"

Afterwards "to wit" On the 26th day of January AD 1864
the same being One of the days of said term of said Court
Of the January term AD 1864, the Defendant Perley files
his demurrer to Complainants amended Bill, which
demurrer is in the words and figures following "to wit,"

State of Illinois }
Marshall County } ss

In the Circuit Court of said County
Of the October Term AD 1863

In Chancery

Silas Ramsey }
John A Perley }
and }
Samuel L. Ramsey }

Bill for Relief - Demurrer

The demurrer of John A Perley one of
the defendants to the Bill in Complaint of Silas Ramsey,
complainant,

This defendant by protestation not confessing or acknowl-
edging all or any of the matters or things in and by the said
Bill set forth and complained of to be true, in manner
and form as the same are therein set forth and alleged,
saith he is advised by his counsel that there is no mat-
ter or thing in the said Bill contained, good and suffi-
cient in law to call this defendant in question in this
Honorable Court for the same, but that there is good cause
of demurrer thereunto, and therefore this defendant saith
that the Complainants said Bill in case the obligations
therein contained were true, which this defendant doth in
no sort admit, contains not any matter of equity wherein
this Court can ground any decree or give the Complainant
any relief or assistance as against him this defendant
wherefore and because this Bill prays for relief and for

discovery and is not sworn to, and for divers other
errors and imperfections in the said Bill appearing
this Defendant doth demur in law thereto, and humbly
demands the judgment of this Honorable Court, whether
he shall be compelled to put in any further or other answer
to said Bill and humbly prays to be hence dismissed
with his reasonable costs in this behalf most wrongfully
sustained

P. S. Perley
Solicitor for John A. Perley

Afterwards "to wit" On the 5th day of February AD 1864, the
same being one of the days of said term of said Court
Of the January term AD 1864, an Order was Entered
of Record in said Court, which is in the words and
figures following "to wit"

W. H. Ramsey

vs.

John A. Perley &
Samuel S. Fleming

On this day Comes the Complainant
by 1 Barnes & 1 Bangs & Shaw his solicitors
and as well the Defendant John A. Perley
by Perley his solicitor, and this Cause come on to be heard
upon the demurrer of the Defendant John A. Perley to the
Complainants amended 1 Bill of Complaint, herein, and
was argued by Counsel, and the Court having considered
said demurrer, and being fully advised in the premises,
doth order that said demurrer be sustained, and the
Complainant abide by his said amended 1 Bill, Whereupon
it is Ordered, adjudged, and decreed by the Court that
Complainants said amended 1 Bill of Complaint herein be
dismissed, It is therefore Considered by the Court that

the said Defendants have and recover of and from the
said Complainant their Costs and Charges in this behalf
Expended, and that Execution issue therefor,

Afterwards "to wit" On "to wit" On the 13th day of April AD 1864
an agreement was filed in the Office of the Clerk of said
Court, which is in the words and figures following "to wit",

State of Illinois }
Supreme Court } Third Grand Revision
April Term AD 1864

Silas Ramsey
vs.

Errors to Marshall

John A. Perley

Samuel V. Fleming

It is agreed that in making
up record in the above cause

the Clerk need not insert the Original Bill and
denumer thereto, Defendants also agree to Enter their
appearances & Join in Error without service of Sci Fa,

Peluy S. Perley

Atty of John A. Perley

State of Illinois } ss. J. Sheldon Arnold Clerk of the Circuit
Marshall County } Court within and for said County of Marshall
in said State, do hereby Certify that the
foregoing is a true, correct, and complete copy of the matters
and things therein contained in said Cause mentioned
therein as the same appears of record in my Office

In testimony whereof I have hereunto
set my hand and affixed the seal
of said Court at Evans this sixteenth
day of April, A.D. 1864.

J. Sheldon Arnold
Clerk,



And now comes the same plaintiffs in Error
and sheweth that on the record and proceedings
of said there is manifest error to wit
^{Said} The Court erred in sustaining Defendants
(Plaintiffs in Error)
Perley defendant to Complainant's Bill of
Complaint

The judgment was for Defendants and the Bill
dismissed when by the law of it said is
should have been in plaintiffs favor.

Wherefore and because of said errors
plaintiffs pray that said judgment be
reversed and that he be restored to all
things which he hath lost by reason
thereof by Bangs & Shaw.
Barnes & Morrison
his atty

& defendants join in error
Lyle Dickey
for depts

1867 78
Silas Ramsey
W.

John A. Perley Et. al

Copy of Record

Filed April 19. 1864
L. Leland
Clerk

Ramsay
vs.
Fleming & Lecky. } 186.

Ottawa, April 26, 1864.

I authorize Thomas M. Shaw, Esq., to
submit this case for defendant upon brief
written or printed, filed or to be filed.

James A. Blair Esq.,
for defendant.

186 78
Ramsey
Puley tel.

Stipulation

Filed Apl. 27, 1864.
L. Island
Clk.

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT, }
To the Clerk of the Marshall Court for the County of Marshall Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the brief Court of Marshall County, before the Judge thereof, between Silas Ramsey

plaintiff, and John A. Berley & Samuel L. Fleming

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

as we are informed by him his 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.

Printed by W. Walker

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty four

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

186

Silas Ramsay
No. 186 vs.
John A. Perley et al

WRIT OF ERROR.

FILED April 19th A. D. 1864

L. Leland
Clerk.

Supreme Court, Third Grand Division,
April Term, A.D. 1864.

Silas Ramsey

vs.

Emmeline Marshall.

John A. Sullivan
Saml. S. Fleming

~~Argument for Plaintiff~~
Argument for Defendant Perley.

This case comes here upon demurrers to the bill, and the question is whether the bill shows a complete case, entitling the complainant, in equity, to the relief asked. If anything is lacking - any material fact - or if any such fact is not well pleaded, then the demurrer was properly sustained, and there is no error in this record. A bill may be good enough after answer, and upon a hearing, for the court to grant relief upon, which is not good on demurrer.

Ramsey was the maker of the note with Fleming as the agent of the note being "we or either of us promise to pay, &c., &c." and the word "security" written after his name did not alter his undertaking, or change his liability to the payee. There is no allegation that Perley knew

otherwise that Ramsey was only a security. The bill alleges "that the character of security was then and there well known to said Lerley" and appears upon the face of said note by the complainant's writing immediately after his signature to said note the word "security" - but this must be taken as meaning that the defendant knew the character of the paper, the "security" he was taking - knew whether it was a promissory note or a personal bond, or knew whether the note was good or not - or that the "character of security" was known to Lerley by the complainant's writing the word ~~after~~ "security" after his signature - and not that Lerley knew that Ramsey was only a security on the note, for the bill does not say that. But if it is insisted that the allegation should be taken in the latter sense, then the fact (and it is a material fact if the bill is good at all) is not admitted - therefore is not admitted by the complainant.

But even if Ramsey was only a security on the note, there is no allegation in the bill, nor does it appear thereby in any way, that he used any diligence

to ascertain the facts of the transaction,
or to find out whether he had any de-
fence to the suit on the note. The facts
set up in the bill were within the knowl-
edge of Fleming, who is a joint maker
of the note with Ramsey, and it was
the duty of the bill when he was
sued upon the note, to make inquiry of
Fleming, and find out whether any
defence existed to the action. It does not
appear that the facts relied on in the bill
were concealed of purpose from Ramsey, nor
is there any pretence of any collusion
or conspiracy on the part of Fleming
and Leroy. The universal rule is, that
when a party tries to set aside a judgment
at law, he must show diligence. - 3 Gr. &
Wat. on New Trials, 1440; Vilas et al. vs. Jones et al., 1 Comstock, 274.

There is no allegation in this bill that
Fleming was able to pay the note at the
time payment was extended, and
that he was insolvent -
nothing showing that he suffered
any actual injury from such extension;
so that even if he had any defence to
the suit on the note, it was at most
a strictly legal defence, and not an
equitable one, and he is therefore not

entitled to relief in this proceeding. For all that appears by the bill, Fleming may have been insolvent when the note was made, and even after and this may have been well known to Ramsey. The court of chancery will not set aside a verdict after he has had a trial at law, unless he impeaches the justice and equity of the verdict. - *Vilas vs. Jones*, 1 Connstock, 274.

The bill does not show but what Ramsey had some other defense to the suit at law, of which he failed to avail himself. It is not shown ~~there~~ that he ~~did~~ ~~not~~ even appeal to the action.

As to the relief asked upon the ground that the payee gave day of payment, &c., it is a fatal objection that the consideration for such agreement is in both instances unlawful, and therefore void. In the same case cited above, *Vilas et al. vs. Jones et al.*, 1 Connstock, 274, it is decided, that "an agreement made by a creditor with the principal debtor to forbear the payment of the debt in consideration of an exorbitant premium paid for such

forbearance, is void, and therefore can not operate to discharge the sureties." The court says, it is not merely the forbearance which discharges the surety, but the doing so by an agreement founded upon a valid consideration. Here, in the first instance, the forbearance was for two months, and the sum agreed upon for such forbearance was \$50.25; in the second instance, it does not appear expressly for how long payment was extended, but the inference is irresistible that the extension was to be until the maturity of the note given for such extension, that is, a little less than two months, and the sum agreed upon therefor was \$45.63; in both cases much more than the legal interest on \$562. for two months. By our statute, contracts tainted with usury are void - at least unlawful - as to the interest, and these notes given for such extensions being entirely for interest, and forming no valid consideration for the promises to forbear. Lerley might have sued upon the note of Ramsey and Fleming at any time, in spite of such agreements.

After Ramsey, as the bill alleges, became
aware of the facts set up in the bill, ~~for~~
in January, 1863, he appears to have slept
on his rights, if he had any, and let
two terms of the Marshall Circuit Court
go by before attempting to enforce them;
and no reason is given for such delay.

It is a sufficient answer to the author-
ity cited by the plaintiff in error, Story's
Eq. Jur., sec. 147, that there is no surprise or
fraud in this case. And the whole sec-
tion, taken together, is an authority in
favour of the defendant.

As to the cases of Bell vs. Gardner, 4 Man. &
Grang., 24, and Kelly vs. Solari, 9 Mees. & Wel., 54, cited by
the plaintiff in error, it is enough to say,
that they are not cases of bills in chan-
cery ~~to~~ asking relief against judgments
at law. In the first case, if the plain-
tiff had remained ignorant of the alter-
ation of the bill of exchange, and
judgment had gone against him, and
he had paid the judgment, and had
then brought his bill to recover the
amount so paid, such relief would have

been refused if the bill had shown that he might have ~~been~~ ascertained the fact of such ~~alteration~~ by the exercise of diligence.

The plaintiff in error has quoted fully from the U.S. Equity Digest, but without referring to the cases decided, so that it might be seen what were the points before the court, and it is not deemed necessary to notice these authorities further.

The plaintiff in error says that he was not put upon inquiry, but it is insisted for the defendant that the service of the summons in the suit at law was sufficient to put the plaintiff upon inquiry, and that upon being served upon the note he was bound to exercise reasonable diligence to ascertain whether he had any defence to it. It does not appear that he used any diligence whatever.

The bill is badly drawn, and is vague and uncertain, and is therefore bad on demurrer.

As an example of this, it does not appear how judgment was rendered against the plaintiff in error - whether by default, or upon a trial. There is a casual remark about a plea, but whether it was ever pleaded in that suit, or in any suit, ~~and~~ ^{or} by whom, ~~and~~ whether in person or by attorney, does not appear.

The plaintiff has a remedy at law, and "if relief can be given at law, then there is no ground for an application to a court of chancery for relief." 1 Story's Eq. Jur., note to sec. 146; *Perine vs. Striker*, 7 Paige, 518.

Even if the facts set up in the bill entitle the plaintiff to any relief, he is at most entitled to a new trial of the suit at law, where the facts alleged as constituting his defense could be tried by a jury. But he does not pray for a new trial, but for a decree for the amount of the judgment, interest and costs. If he is not entitled to the relief ~~prayed for~~ in his bill, then the bill is bad on demurrer.

A copy of the abstract, showing by notes on the margin wherein it differs from the bill, is attached hereto.

James St. Clair Boal,
for defendant Perley.

* That in consideration that the said Perley would forbear and give stay of payment of the said sum then and there loaned the said Fleming would until said note should become due that said Fleming would pay said sum of money therefor which sum agreed to be paid for such forbearance greatly exceeds the interest at the rate of ten per cent. per annum, whereby the same became forfeited."

This is a literal quotation from the bill on file in the Circuit Court and from the transcript of the record, and this almost unintelligible statement constitutes the "full allegations as to usury" mentioned in the abstract.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1864.

SILAS RAMSEY,	} Error to Marshall.
<i>Plaintiff in Error,</i>	
vs.	
JOHN A. PERLEY, SAMUEL L. FLEMING.	
<i>Def'ts in Error.</i>	

ABSTRACT, POINTS AND BRIEF, FURNISHED BY PLAINTIFF IN ERROR.

This was a Bill in Chancery, filed by plaintiff in error against defendants in error, in the Marshall County Circuit Court, to October Term 1863, and amended in vacation after the term. The bill as amended is substantially as follows :

That complainant and defendant Fleming, on the 18th November 1857, gave their promissory note to defendant Perley, for \$562, due in four months after date, which was given, as complainant is now informed and believes, for about the sum of \$480, or \$500,—not able to state exact amount,—money, borrowed by Fleming,—the only consideration being said \$480, or \$500, then and there loaned by Perley to Fleming, and all the balance of said note, \$62 to \$82, being in consideration of an unlawful, corrupt and usurious agreement and contract then and there made between Perley and Fleming, that Perley would forbear, &c., until note should come due—full allegations as to usury.

That complainant signed note as security, which was known to Perley, (1.) and also appeared on face of note. That the note was not paid at maturity, but was sued upon in Marshall County Circuit Court, at January T. 1860, and at said term judgment rendered on it against makers for \$581 65-100, and costs, and that the judgment and all costs has been fully and wholly paid by complainant.

(1.) "That the character of security was then and there well known to said Perley, and appeared upon the face of said note by your orator writing immediately after his signature to said note the word 'security.'"

This does not amount to an allegation that Perley knew that Ramsey was only a security on the note. The fact is not well pleaded.

(1.) "That the plea of the general issue appearing to have been introduced by the said S. S. Fleming and your order was without your order's knowledge or consent."

It does not appear whether any plea was pleaded in that suit, or any suit, or if pleaded what became of it, or who signed it, or how judgment came to be rendered - whether by default or on a trial.

Complainant made no defence to said suit on note, and never authorized any one to defend, or in any manner to appear for complainant, because then, and for a long time afterwards, he knew nothing of the usurious and unlawful agreement as hereinafter alleged and charged; nor of any contract between Perley and Fleming, as hereinafter charged, whereby Perley, after the maturity of the note, without the knowledge or consent of complainant, contracted and agreed with Fleming to extend the day of payment on the note. And, that the plea of the general issue filed in said suit at law, appearing to have been filed by Fleming and Ramsey, was filed without complainant's knowledge or consent. (1.) That complainant was kept in ignorance of the usurious agreement until long after the payment of the judgment. Complainant did not hear of the agreement until 18th December 1862, and then and now only knows upon information and belief. That after maturity of the note, to-wit: July 7th, 1859, another contract was made to the injury and prejudice of complainant, between Perley and Fleming, and of which complainant was totally ignorant until January 15th, 1863; and which contract was made without the knowledge or consent of complainant, whereby Perley, for a certain promissory note of Fleming for \$93,25, made by him and payable to Perley two months after date, contracted and agreed with Fleming to endorse payment on said note of \$562, of the interest due thereon up to that date, to-wit: July 7th, 1859, which interest amounted to \$44, and also in consideration of the balance of said note, extend the time, and give day of payment of the note for \$562 for the space of two months from that date, or for some other space of time unknown to complainant; and complainant distinctly alleges and charges that he never knew or heard of the last mentioned agreement until January 15th, 1863.

That again on the 14th December 1859, Perley and Fleming, without the knowledge or consent of complainant contracted and agreed between them, to give further day of payment of the note for \$562, but what day is unknown to complainant, in consideration that Fleming gave to Perley his note for \$45,63, payable with 10 per cent. interest, February 1st, 1860. By each of which agreements last mentioned, complainant insists he was wholly released from all liability on said note for \$562, and that said suit on the note and the judgment was as to complainants inequitable, unjust, oppressive and fraudulent, and contrary to law.

Again denies all knowledge or consent as to last mentioned agreements, and that neither of them came to his knowledge until 15th December 1863.

That Fleming has not nor has any one else ever paid and refunded to plaintiff the money so unjustly collected of him, nor any part thereof, and that Fleming is wholly and totally insolvent, and so has been ever since the rendition of said judgment, and that suit or proceeding against Fleming would be useless and unavailing. That complainant never re-

ceived any consideration whatever for said note, and that the judgment was rendered on the note alone, and for no other cause of action; and insists that by reason of the premises, complainant is entitled to have, of, and from Perley all the money and interest paid on the judgment.

That Fleming is interested in suit, and if satisfaction of the judgment is set aside as to Ramsey, be liable to pay the same; and that as to Fleming, it ought to remain in full force, and be revived, and execution ordered thereon against Fleming, or he in some way compelled to pay the same.

Prays that Perley and Fleming may be made defendants, and that they be required to answer this bill.

Oath to answer waived. Prays for process.

And that on final hearing hereof, Perley be required to pay complainant the amount paid on said judgment and interest; that in default of payment, that complainant may have execution. Prayer of a general relief.

Bill sworn to, and exhibits of all the notes mentioned, attached.

Demurrer to amended bill sustained, and complainant abiding by his bill.

Decree entered dismissing bill, and against complainant for costs.

Errors Assigned.

- 1st. The court erred in sustaining demurrer to complainant's bill.
- 2d. Judgment was for defendant when it should have been for plaintiff.

BRIEF OF PLAINTIFF IN ERROR.

I.

Equity will relieve against a judgment at law, if at the time of the trial he was ignorant of his defence.

The whole matter of the bill is rendered much more clear and distinct by the abstract, and presented much more favourably; and in order to ascertain whether the bill was obnoxious to a demurrer, it will be necessary to read the bill itself.

186. 78

Silas Ramsey

vs.

John A. Lerley &

Saml. S. Fleming.

Argument for
defendant Lerley.

Filed Apr. 29, 1861
L. Veland
Clerk