

No. 14596

Supreme Court of Illinois

Gordon

vs.

ELL
Good ~~ELL~~

April 7, 1864
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 46 1/2
1864

(Reported)
Gordon
vs

Woodell

1864

Kankakee City Ill
June 19th 1863 } 3

L Leland Gay

Dear Sir:- Will you please to inform me,
whether there was any writ of error issued in the case of
Taylor vs Eth Gordon. Error from this Co. and what was
the return to the writ. And also please to send me
one of the copies of the plffs brief, abstract & points, if in
the case if you have any yet. Enclosed is \$1 for your
trouble

Yours &
Thos. P. Bowfield

[Gazette Print, Kankakee City, Illinois.]

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

April Term, A. D. 1864.

SETH W. GORDON, }
vs. } Error to the Kankakee Circuit Court.
ROBERT GOODELL. }

DEFENDANT'S ABSTRACT OF RECORD.

Rec'd
page

- 1 Declaration in Assumpsit, filed January 28, 1862, by Seth B. Gordon, upon two promissory notes made by Robert Goodell, to Seth and Billings Taylor, one for \$300, dated October 25th, 1858, and due in twelve months after date with 10 per cent. interest, after maturity. The other note for \$45, dated October 25th, 1859, at twelve months, with 10 per cent. interest, and both endorsed to said Seth B.

- 3 Powers of Attorney, in the usual form, authorizing a confession of judgment upon the above mentioned notes, including \$25, Attorneys fees; affidavits of the execution of the notes, and Powers of Attorney.
- 6 Bond for costs filed same date.
- 7 Cognovit for confession of judgment of the same date.
- 9 Judgment entered by confession for \$468,11, and release of errors of the same date.
- 13 February 4th, 1862. Robert Goodell files a petition which the plaintiff has substantially set forth, excepting this portion. "That at the next term of Court, he intended to move the Court to vacate said judgment, and allow him to make his defences to the notes.
- 15 Execution dated January 28th, 1862, in the usual form set out, and returned endorsed. "Received for plaintiff \$103 and interest, and Sheriff's costs, excepting costs of the April term, 1862. April 26th, 1862."
- 17 April 18th, 1862, of the April term, upon hearing defendants' motion to vacate the judgment; it was overruled "and defendant allowed to plead to the merits without the judgment being vacated."
- 26 April 12th, 1862. Bill of exceptions filed, which is substantially set forth in plaintiffs abstract, with the following exception, which was omitted.

Judgment was stayed, "and the defendant allowed to plead to the merits without the judgments being vacated."

The defendant is satisfied with the plaintiffs abstract of the record with the foregoing exceptions, which are set forth.

THOMAS P. BONFIELD,
Of Counsel for Defendant in Error.

POINTS AND BRIEF OF THE DEFENDANT IN ERROR.

The plaintiff in error recovered a judgment by confession in vacation, upon certain notes assigned to him, which were largely tainted with usury.

The defendant in error, upon application, showing such facts and alleging his intention to move the vacation of said judgment, obtained an order staying further proceedings, and at the subsequent term of Court, upon pressing his motion to vacate the judgment, obtained leave only to plead to the merits "without said judgments being vacated."

The defendant plead the general issue, and two special pleas of usury, upon which the plaintiff joined issue.

The issues were tried by a jury, a verdict was found for the plaintiff assessing his damages at \$103, and the judgment was reduced by the Court to that amount. Upon this trial the defendant was sworn and testified not only to the usury, but that the notes were not assigned until after due, and gave this testimony without any objection from the plaintiff.

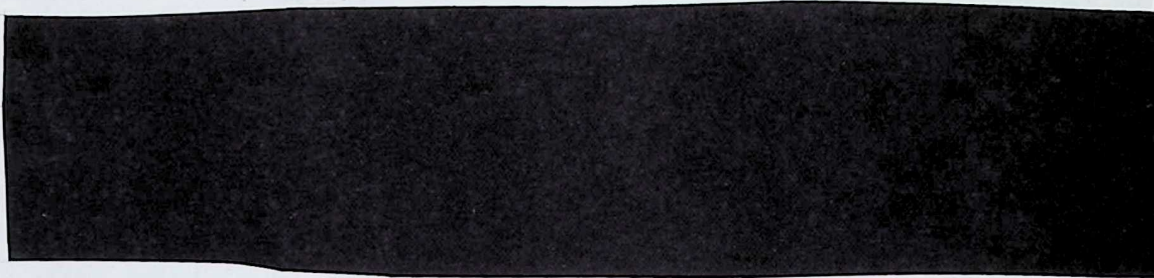
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12

13

14

II.



III.

The 2d and 3d instructions of defendant refers to facts in evidence, upon which they were to base their conclusions.

THOMAS P. BONFIELD,
Of Counsel for Defendant in Error.

Gordon 46 1/2

Goodell

Defts Abstract Brief
& Prints

Filed April 22 1864
L. Leland CWR

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Kankakee County, GREETING:

Because, In the record and proceedings, and also in the rendition of
the judgments of a plea which was in the Circuit
Court of Kankakee County, before the Judge thereof, between
Seth B. Gordon

plaintiff, and Robert Goodell

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

as we are informed by his
complainant the record and proceedings of
which said judgments 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 Robert Goodell

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 record 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 Robert Goodell

notice, together with this writ.

Prickney H. Watson
Witness, The Hon. John A. Eaton, Chief Justice of our
said Court, and the Seal thereof, at Ottawa, this 28th
day of January in the year of our Lord One
Thousand Eight Hundred and Sixty-four.

L. Leland

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

45 46 1/2

No. 5th M. Gordon
vs.

Robert Goodell

SCIRE FACIAS.

Filed April 5th 1864

Al. Chase Clerk.

I have served this writ by reading the same
to the within named Robert Goodell
this 10th Day of February 1864

Jacob Obrecht Sheriff
of Hancock County
Illinois
by J. M. Obrecht
Dept-

fees servis 5-0
mileage 5-0
return 1-0
\$11-0

Sheriff's fees paid by plaintiff
J. O

Printed By BEACH & BARNARD, 14 South Clark St.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1863. }

SETH B. GORDON,

vs.

ROBERT GOODILL.

} ERROR TO THE KAN-
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ABSTRACT OF RECORD.

Rec. p. 1 **Declaration in Assumpsit**, filed January 28, 1862, by Seth B. Gordon, assignee of S. & B. Taylor, against Robert Goodill, on two promissory notes, one for \$300, dated "Aroma, October 25, 1858, due twelve months after date with ten per cent. interest after maturity, expressed to be for borrowed money. The other note for \$45, dated Aroma, October 25, 1859, at twelve months with ten per cent. interest, it being for borrowed money, both endorsed to the plaintiff.

3 **POWERS OF ATTORNEY** in the usual form, authorizing a confession of judgment on each of the notes with \$25 attorney's fees, and releasing errors.

AFFIDAVITS of execution of notes and powers of attorney.

6 BOND FOR COSTS filed same date.

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9 JUDGMENT entered same date by confession for \$468.11, and release of errors.

10 February 4, 1862, defendant files a petition stating that January 14,
11 1858, he borrowed of Seth Taylor \$50, and gave him therefor his note
for \$61.25 payable nine months after date; that \$50 of the note was
principal, and \$11.25 interest for nine months, on that sum; that Octo-
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included the first note, which was taken up and cancelled, and \$100
loaned to him by the Taylors; that the remainder of the note was for
interest and usury, for the \$61.25 and \$100, for one year from October
25, 1858. He may be mistaken about the amount borrowed from the
12 Taylors at the time of giving the \$300 note; he might have borrowed
\$150 instead of \$100; his best recollection is it was \$100. In either
event the remainder was interest. At the maturity of the \$300 note,
he and the Taylors agreed to extend the time of payment of it for one
year, on his giving a note for usurious interest for that time, when he
made the \$45 note sued on, which was given for that usurious interest.
That the notes were not assigned to the plaintiff until after maturity.
That he paid the Taylors in 1860 \$35 interest or usury on the notes.
13 States the entry of the judgment in vacation; that it included \$50,
which plaintiff pretends was reasonable attorney fees; that he did not
confess the judgment nor authorize it to be done, otherwise than by the
powers of attorney. Says he has a good defence to the notes and inter-
est at the next term; prays to be allowed to make the defence. Says
he has 160 acres of land in that county unincumbered, except by said
loans; that an execution has issued on the judgment, which is levied on
his property, and asks for an order for staying proceedings. Feb. 4, 1862.

14 Judge STARR certifies to probable cause and orders a stay of proceed-
ings.

- 15 Execution dated January 28, 1862, in the usual form set out.
- 17 At April Term, 1862, April 28, leave granted to defendant to plead.
- April 19, 1862, Pleas filed. 1st, General issue.
- 18 2d, Plea to all but \$100 ; that January 14, 1858, defendant borrowed
of S. & B. Taylor \$50 for nine months, and corruptly agreed to pay
\$11.25 for the loan for that time, for which he made the note of \$61.25,
and on the 25th October, 1858, the Taylors agreed to loan him \$100 and
the former loan, for one year, for \$138.75 unlawful interest and usury
therefor, for that time. In pursuance of said corrupt agreement, the
Taylors loaned him the \$100, and re-loaned the 61.25, for which defend-
19 ant made them the note of \$300 declared on, which includes said \$100,
\$61.25, and \$138.75 usury, for the loan, use and forbearance of said \$100
and \$61.25 for one year ; and on the note of \$300 becoming due, the
Taylors corruptly agreed to extend the time of payment for one year, at
25 per cent. per annum. In pursuance of said corrupt agreement, the
defendant made to the Taylors the note of \$45 sued on, the same being
for all of said money, at the rate of 25 per cent. ; and it was agreed be-
tween defendant and the Taylors that the \$300 note should continue to
draw 10 per cent. interest. The note of \$45 is all usury. On October
25, 1860, defendant paid the Taylors \$35, part of the usury on said loan,
use and forbearance of the note in the declaration mentioned, for one
year thereafter ; that the notes were due before endorsed to the plaintiff.
- 20 3d, Plea to all but \$100 ; that January 14, 1858, defendant applied to
the Taylors for a loan of \$50, who agreed to loan him that sum for nine
months at three per cent. per month. They loaned him that sum for
nine months, for which sum and unlawful interest, he gave them his note
for \$61.25 at nine months, which embraces the \$50, and \$11.25 usury,
for the loan of \$50 for nine months. On October 25, 1858, defendant,
desiring to re-loan said last sum for one year, and a further sum of \$100,
applied to the Taylors, who agreed to loan him said sum for one year, and
in consideration that he would pay them \$138.75 unlawful interest for
the loan, &c., of \$61.25 and \$100 for one year, and in pursuance of

21 said corrupt agreement, defendant made to the Taylors the note of \$300, which includes said sum of \$61,25 and the new loan of \$100, and the balance was usury. October 25, 1859, defendant applied to the Taylors to extend the time of payment on the \$300 note for one year. The Taylors corruptly agreed with defendant to extend the time of payment one year, in consideration that defendant would pay 25 per cent. per annum unlawful interest, and that the note should continue to bear ten per cent. according to its tenor and effect, and that the remainder of said unlawful interest should be secured to the Taylors by a note. That defendant gave them the note of \$45, for said unlawful interest on the \$300 note for one year. On October 25, 1860, it was corruptly agreed between the defendants and the Taylors, that the payment of the two notes of \$300 and \$45, should be extended one year, and that defendant should pay them unlawful interest at 20 per cent. per annum, during said period that the same was extended to, and until the same was paid; that defendant improperly paid the Taylors \$35 on said unlawful and usurious interest.

22 The notes sued on were not assigned to plaintiffs until after maturity.

April 21, 1862. Replication filed protesting that the notes were not given for the usurious consideration alleged, and averring that the notes were assigned to the plaintiff before maturity, for a valuable consideration, and without notice of the usury, concluding to the country.

24 April 22, 1862, jury empannelled, proceeded to trial and after evidence closed, plaintiff "enters his motion for a non-suit, which motion to take non-suit by the plaintiff the court denies." Thereupon the plaintiff moves to vacate the original judgment in this cause, and the court being advised on the matter, the motion to vacate judgment entered by plaintiff is denied; to which opinion and ruling of the court, in overruling and denying said motions, the plaintiff excepts.

25 VERDICT for plaintiff for \$103. Plaintiff moves to set aside verdict; motion denied. Ordered that the judgment entered in vacation be reduced to the amount of the verdict, and that the same draw interest from the time of rendition; to all which plaintiff excepts, and is given 90 days to file bill of exceptions.

26 April 12, 1862, BILL OF EXCEPTIONS filed. The plaintiff gave in evidence the notes declared on, and their endorsements.

27 The DEFENDANT offered himself as a witness, and testified: I borrowed of Seth Taylor \$50 in the forepart of the year 1858, until October coming. I agreed to pay 25 per cent. I gave a note for principal and interest, \$61.25. I borrowed \$100 of Billings Taylor in October, 1858. It was at old Mr. Miller's. Revilla Bebee said it was the same kind of a note that the previous \$50 note was. Bebee asked me to sign it. Don't recollect anything else that was said. Mr. Taylor did not say anything. He paid me the money. I think that is all that was said at time about the money. Bebee wrote the note. I agreed to pay 25 per cent. per annum on \$160, on which sum the interest was computed at that rate and put into the note. I have no idea what the amount of the note was. I did not know at the time what the amount of the note was; no one stated it to me. I depended on them to have it right. In October, '59, I told Seth Taylor I could not pay it. He agreed to take my note for the interest. I gave him my note for forty-five dollars. It called for ten per cent. interest. Had conversation with Seth Taylor in October, 1860. Paid him interest up to that time—all due on the notes. I paid him \$47. The interest was \$46.50. Next had conversation about Christmas, last winter, with Seth Taylor. He asked me if I could do anything for him? Told him I could not. I asked him to wait another year. He said he could not, and if I did not pay him up he would sell my farm. Wanted me to give him a deed of the place and he would lease it back to me. I borrowed of Seth Taylor \$50 for 9 months, until Oct. afterwards, at 25 per cent. interest per annum, and gave Billings Taylor note for \$161.25, for said loan, which includes \$50 borrowed and \$11.25 interest for 9 months. This was January 14, 1858; note at 9 months. Oct. 25, 1858, I applied to B. Taylor for loan of \$100 more. He agreed to lend me that, and what I then owed. I gave him the \$300 note in evidence. Did not read last note, nor was it read to me. All I got on it was \$100 loaned at that time. I gave this note, and the \$61.25 note, making \$161.25, and the remainder of the \$300 note was interest and usury for the use of the money loaned for one year. It was done at R. Beebe's house. He wrote the note. In Oct., 1859, I gave S. & B. Taylor my note for \$45, (in evidence) as usury over and above the 10 per

28

29

cent., to extend the payment of the \$300 note one year longer. The note was to stand, bearing 10 per cent. as it called for. In Oct., 1860, I paid Seth Taylor \$47, usury, to extend the notes one year longer. Seth Taylor had the notes in Oct., 1860. They were not endorsed, and he claimed to own them, and did not pretend then to me that he did not own them. The plaintiff and the Taylors never claimed until about the time this judgment was rendered, that the notes were endorsed to the plaintiff. I have no learning.

This was all the evidence.

After evidence closed, and before case was submitted to jury, plaintiff entered motion, and asked leave to take a nonsuit. Motion overruled—plaintiff excepted.

Thereupon plaintiff entered his motion to vacate the judgment before rendered in the cause. Motion overruled—plaintiff excepted.

30

Court, at plaintiff's request, gave the following instruction :

1. The law presumes that the notes in evidence were endorsed by the payees before they became due, and unless the jury believe, on their oaths, from the evidence, that the notes were transferred after they became due, the law is for the plaintiff, and he is entitled to recover of and from the defendant as much as appears was due at the time of the rendition of the judgment.

Plaintiff prayed the following instructions, which were refused :

31 To the refusal to give 2d and 3d instructions, plaintiff excepted.

The Court, at the instance of the defendant, gave the following instructions, to which the plaintiff excepted :

1. If the jury find, from the evidence, that Seth and Billings Taylor loaned the defendant money, and took a greater rate of interest than ten per cent. per annum, and the notes in question were endorsed after they became due, the plaintiff is entitled to a verdict for only the principal sum borrowed, less any sums the defendant has paid thereon, as interest, usury, or otherwise, without any interest whatever.

32 2. If the jury find that the said Seth and Billings Taylor loaned money to the defendant at a greater rate of interest than ten per cent. per annum, and the said notes were endorsed after they became due, then the plaintiff forfeits all interest, and is entitled to nothing but his principal to be returned to him, and to be credited upon the principal with any and all sums by him paid on said transaction.

3. If the jury find that the Taylors have had possession of the notes in question after the same became due, exercising acts of ownership over the same, attempting to collect the same as their own, collecting money thereon as their own, they are facts which the jury may consider as evidence that they were not endorsed and transferred before they became due; and the jury may also take into consideration, with reference to time of such endorsement, the handwriting of the endorsements upon the back of the notes, the color of the ink, and other appearances indicating whether they were made at the same time, or at different times.

(8)

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Plaintiff moved to set aside the verdict, for the following reasons :

1. The verdict was contrary to the evidence.
2. The Court erred in not granting leave to plaintiff to take a nonsuit.
3. The Court erred in overruling plaintiff's motion to vacate the judgment.
4. The Court erred in refusing plaintiff's instructions.
5. The Court erred in giving defendant's instructions.
6. The Court erred in not granting a new trial, and not setting aside judgment.

Court ordered judgment for \$103 and interest from rendition.

Motion to set aside verdict overruled, and plaintiff excepted.

ERRORS ASSIGNED.

GOOKINS, THOMAS & ROBERTS,

Att'ys for Pl'ff in Error.

122.133 116 1/2

Gordon

vs

Goodill

Abstract

23

1. The vestige was continued to the end of the road.
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GOULDING, THOMAS & SONS

100, 100, 100, 100

Filed April 23-1863
L. L. Land
Clerk

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shall order in this behalf; and have you then there the names of those by
whom you shall give the said Robert Goodell

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our
said Court, and the Seal thereof, at Ottawa, this first
day of April in the year of our Lord One
Thousand Eight Hundred and Sixty-three



L. Leland

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

467

Seth B. Gordon

No. 733 vs.

Robert Goodell

SCIRE FACIAS.

The within name
is not found in
my county may

10th 1863

Jacob Obrecht
Sheriff

FILED May 19..... A. D. 1863

L. L. Linn Clerk.



SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
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25 VERDICT for plaintiff for \$103. Plaintiff moves to set aside verdict; motion denied. Ordered that the judgment entered in vacation be reduced to the amount of the verdict, and that the same draw interest from the time of rendition; to all which plaintiff excepts, and is given 90 days to file bill of exceptions.

26 April 12, 1862, BILL OF EXCEPTIONS filed. The plaintiff gave in evidence the notes declared on, and their endorsements.

27 The DEFENDANT offered himself as a witness, and testified: I borrowed of Seth Taylor \$50 in the forepart of the year 1858, until October coming. I agreed to pay 25 per cent. I gave a note for principal and interest, \$61.25. I borrowed \$100 of Billings Taylor in October, 1858. It was at old Mr. Miller's. Revilla Bebee said it was the same kind of a note that the previous \$50 note was. Bebee asked me to sign it. Don't recollect anything else that was said. Mr. Taylor did not say anything. He paid me the money. I think that is all that was said at time about the money. Bebee wrote the note. I agreed to pay 25 per cent. per annum on \$160, on which sum the interest was computed at that rate and put into the note. I have no idea what the amount of the note was. I did not know at the time what the amount of the note was; no one stated it to me. I depended on them to have it right. In October, '59, I told Seth Taylor I could not pay it. He agreed to take my note for the interest. I gave him my note for forty-five dollars. It called for ten per cent. interest. Had conversation with Seth Taylor in October, 28 1860. Paid him interest up to that time—all due on the notes. I paid him \$47. The interest was \$46.50. Next had conversation about Christmas, last winter, with Seth Taylor. He asked me if I could do anything for him? Told him I could not. I asked him to wait another year. He said he could not, and if I did not pay him up he would sell my farm. Wanted me to give him a deed of the place and he would lease it back to me. I borrowed of Seth Taylor \$50 for 9 months, until Oct. afterwards, at 25 per cent. interest per annum, and gave Billings Taylor note for \$161.25, for said loan, which includes \$50 borrowed and \$11.25 interest for 9 months. This was January 14, 1858; note at 9 months. Oct. 25, 1858, I applied to B. Taylor for loan of \$100 more. He agreed to lend me that, and what I then owed. I gave him the \$300 note in evidence. Did not read last note, nor was it read to me. All I got on it was \$100 loaned at that time. I gave this note, and the \$61.25 note, making \$161.25, and the remainder of the \$300 note was interest and usury for the use of the money loaned for one year. It was done at R. Beebe's house. He wrote the note. In Oct., 1859, I gave S. & B. Taylor my note for \$45, (in evidence) as usury over and above the 10 per

29 cent., to extend the payment of the \$300 note one year longer. The note was to stand, bearing 10 per cent. as it called for. In Oct., 1860, I paid Seth Taylor \$47, usury, to extend the notes one year longer. Seth Taylor had the notes in Oct., 1860. They were not endorsed, and he claimed to own them, and did not pretend then to me that he did not own them. The plaintiff and the Taylors never claimed until about the time this judgment was rendered, that the notes were endorsed to the plaintiff. I have no learning.

This was all the evidence.

After evidence closed, and before case was submitted to jury, plaintiff entered motion, and asked leave to take a nonsuit. Motion overruled—plaintiff excepted.

Thereupon plaintiff entered his motion to vacate the judgment before rendered in the cause. Motion overruled—plaintiff excepted.

30 Court, at plaintiff's request, gave the following instruction :

1. The law presumes that the notes in evidence were endorsed by the payees before they became due, and unless the jury believe, on their oaths, from the evidence, that the notes were transferred after they became due, the law is for the plaintiff, and he is entitled to recover of and from the defendant as much as appears was due at the time of the rendition of the judgment.

Plaintiff prayed the following instructions, which were refused :

2. The defendant is not a competent witness to prove the time the notes were endorsed to the plaintiff, nor to show that plaintiff knew of the original consideration of the notes; and as there is no evidence before the jury, on the point of the time of assignment of the notes, or knowledge on the part of plaintiff of original consideration and usurious consideration, the jury should find a verdict for the plaintiff, for so much as the judgment calls for.

3. The defendant is not a competent witness, for himself, to prove the time of the assignment of the notes in evidence, and the jury are bound, by their oaths, to reject the testimony of defendant, so far as the same applies to the time the notes were endorsed to the plaintiff; and if the defendant has failed to prove the time said notes were endorsed, than by his own testimony, then the jury are bound, upon their oaths, to find a verdict for the plaintiff.

31 To the refusal to give 2d and 3d instructions, plaintiff excepted.

The Court, at the instance of the defendant, gave the following instructions, to which the plaintiff excepted :

1. If the jury find, from the evidence, that Seth and Billings Taylor loaned the defendant money, and took a greater rate of interest than ten per cent. per annum, and the notes in question were endorsed after they became due, the plaintiff is entitled to a verdict for only the principal sum borrowed, less any sums the defendant has paid thereon, as interest, usury, or otherwise, without any interest whatever.

32 **2.** If the jury find that the said Seth and Billings Taylor loaned money to the defendant at a greater rate of interest than ten per cent. per annum, and the said notes were endorsed after they became due, then the plaintiff forfeits all interest, and is entitled to nothing but his principal to be returned to him, and to be credited upon the principal with any and all sums by him paid on said transaction.

3. If the jury find that the Taylors have had possession of the notes in question after the same became due, exercising acts of ownership over the same, attempting to collect the same as their own, collecting money thereon as their own, they are facts which the jury may consider as evidence that they were not endorsed and transferred before they became due; and the jury may also take into consideration, with reference to time of such endorsement, the handwriting of the endorsements upon the back of the notes, the color of the ink, and other appearances indicating whether they were made at the same time, or at different times.

33

Plaintiff moved to set aside the verdict, for the following reasons :

1. The verdict was contrary to the evidence.
2. The Court erred in not granting leave to plaintiff to take a nonsuit.
3. The Court erred in overruling plaintiff's motion to vacate the judgment.
4. The Court erred in refusing plaintiff's instructions.
5. The Court erred in giving defendant's instructions.
6. The Court erred in not granting a new trial, and not setting aside judgment.

Court ordered judgment for \$103 and interest from rendition.

Motion to set aside verdict overruled, and plaintiff excepted.

ERRORS ASSIGNED.

1. In refusing plaintiff's motion for leave to submit a nonsuit.
2. In refusing his motion to vacate the judgment.
3. In refusing instructions as prayed by plaintiff.
4. For giving instructions as prayed by defendant.
5. In refusing to grant a new trial.
6. In rendering judgment as given.

GOOKINS, THOMAS & ROBERTS,

Att'ys for Pl'ff in Error.

46¹/₂ 133

Gordon

vs

Goodill

Abstract

33

Filed Apr. 23-1863

L. G. Leland

Q. C. K.

1. The Court ordered in accordance with the petition to assess the Judge.
2. The Court ordered in accordance with the petition to assess the Judge.
3. The Court ordered in accordance with the petition to assess the Judge.
4. The Court ordered in accordance with the petition to assess the Judge.

1. The Court ordered in accordance with the petition to assess the Judge.
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3. The Court ordered in accordance with the petition to assess the Judge.
4. The Court ordered in accordance with the petition to assess the Judge.

GOV. J. A. ROBERTS

APR 23 1863

Printed By BRACH & BARNARD, 14 South Clark St.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION; }
APRIL TERM, A. D. 1863. }

Seth B. Gordon,

vs.

Robert Goodill,

ERROR TO KANKAKEE CIRCUIT COURT.

Points of Plaintiff in Error.

In this case, a judgment by confession was entered in vacation, in favor of the plaintiff in error, who was the assignee of certain promissory notes, alleged to have been tainted with usury.

The defendant obtained an order staying execution, and at the succeeding term of the court, leave was granted him to plead, accordingly, Defendant pleaded the general issue, and two special pleas setting up usury in the consideration of the note.

Plaintiff replied, denying the usury, and averring that the notes were assigned to him before maturity for a valuable consideration, and without notice of the usury.

A jury was impaneled and the issues tried. Upon the trial, the defendant was sworn and testified under the statute as to the usurious con-

(2)

sideration, and was the only witness sworn. The court permitted the defendant to testify not only to the fact of usury, but also that plaintiff received the notes after their maturity, and with knowledge of their usurious consideration. Thereupon the plaintiff moved the court for leave to take a nonsuit, and also to vacate and set aside the judgment, but the court denied the motions, and plaintiff excepted.

I.

III.

The jury in the second and third instructions for defendant, were not told to find from the *evidence*; they were allowed a latitude outside of the evidence. This precise point is decided in the case of *Matthews vs. Hamilton*, 23 Ill., 472. The court say :

“The instruction is objectionable, in the first place, because it does not require the jury to found their belief of the fact of agency on the evidence in the case. The jury may have had other reasons than the evidence adduced to conclude that Strong was plaintiff’s agent, and if so, this instruction authorized them to act upon them instead of the evidence. Before the instruction was given, it should have been so modified as to preclude the danger of misleading the jury in that respect.” 20 Ill., 464, 485.

~~122~~ 133

Gordon

²
Good

Platts per

Filed May

1883

STATE OF ILLINOIS, }
SUPREME COURT, ss.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of Kankakee 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 Kankakee County, before the Judge thereof, between
Seth B. Gordon

Complainant, and Robert Goodell

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

as we are informed by 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.

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

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

133 462

Sett B. Gordon

No.

vs.

Robert Goodell

WRIT OF ERROR.

FILED *April 1st* A D. 1863

L. Leland

Clerk.



In the Supreme Court-
of the State of Illinois-
Third Grand Division.
In Vacation.

Seth B. Gordon }
vs. } Error to the Kanebaker
Robert Goodill } Circuit Court.

And now on this 24th day of
September, 1863, it being found that the judg-
ment of reversal heretofore rendered in this
cause, was erroneously entered up, it is
therefore ordered by the Judges of this court-
the order submitting this cause for decision and the said
that ~~such~~ judgment be set aside and for
nothing esteemed, and that this cause be
continued until the next term of said
Court.

The clerk will enter the above order,
24th Sept: 1863.

J. D. Coarow
P. H. Walker
" "
L. A. R. R. R.

~~122~~ 46 $\frac{1}{2}$

Order to be
continued by
the state

46 ¹/₂

Gordon

v

Goodell

} Error to Kankakee.

On looking over depts brief I see he suggests as a reason for the plaintiffs desiring to suffer a non-suit, that he held a deed of trust, which he wished to enforce. He replies,

1. If that is so, it furnishes an additional reason for allowing the motion. The law does not favor forfeiture. It would only require the debtor to do justice, by paying principal and simple interest. A low standard even, of morals or honesty, will require that,

2. The rule to be established will apply as well to other, as to usury cases, and such a one ought to be adopted as will accord with the general principles of our law and promote the ends of justice

Guthrie Thomas & Roberts,
for Peffer & Son.

46 $\frac{1}{2}$ - 56

Gordon

^N
Gordill,

Additional sug-
gestion by plff
counsel,

Supreme Court of the State of Illinois

Third Grand Division }
April Term A.D. 1863 }

With B. Gordon E
vs E Error from Hancock
Robert Goodill E Circuit Court

I do hereby enter myself security
for costs in this cause and acknowledge
myself bound to pay or cause to be paid all
costs which may accrue in this action either
to the opposite party or to any of the officers of
this court in pursuance of the laws of this State
dated March 19th A.D. 1863

Attest
J. Corry

Nathaniel Mellen

State of Illinois E
Hancock County E & Elon Curtis Clerk
of the Circuit Court of said County do
hereby certify that I am well acquainted
with Nathaniel Mellen whose name is subscribed
to the above security for costs, and also
with his pecuniary circumstances and
that I have no doubt but he is largely
sufficient, and ample, and good for
all costs that can accrue in the above
case



Witness my hand & Seal of
said Court this 19th day of March
A.D. 1863 Elon Curtis Clerk

1st
State of Illinois
Kankakee County ss & Shew before the Hon
Charles R Starr Judge of the 20th Judicial
Circuit of said State, at a term of the Circuit
Court of the said County begun and held
on the second Monday of April A.D. 1862

Present

Hon Charles R Starr. Judge

Eben Curtis Clerk

James W Rogers Sheriff

G H Wood State Atty

That Eben Curtis Clerk of said Court

Be it remembered that on the
28th day of January A.D. 1862, in vacation
after the January Term, A.D. 1862 of the Circuit
Court of said County, the following declaration
was filed in the office of the clerk of the Court
aforesaid which is in the words and figures
following to wit;

Now and Cognovit

State of Illinois Kankakee County, ss

Circuit Court Invocation
after the January term A.D. 1862

That B Gordon Plaintiff in
this suit by George Hardy his attorney comes
and complains of Robert Goodell Defendant
in this suit of a plea of trespass on the case on
promises For that whereas the said Defendant

herebefore to wit on the twenty fifth day
of October A.D. 1858 at Channah in the County
of Kankakee in said State to wit at Channah
in the County of Kankakee aforesaid made

his certain promissory note in writing by him subscribed bearing date the day and year last aforesaid and then and then delivered the same to Seth ^{Taylor} and Billings Taylor and thereby then and then promised the said Seth ^{Taylor} and Billings Taylor to pay them or order at Arona Twelve Months after date thereof the sum of Three hundred dollars with interest at ten per cent per annum after the same being for money loaned, said plaintiff further complaining says that the said defendant heretofore to wit on the 25th day of October 1859 at Arona in the County of Kankakee in said State made his other promissory note in writing by him subscribed bearing date the day and year last aforesaid and then and then delivered the same to Seth Taylor and Billings Taylor, thereby then and then promised the said Seth Taylor and Billings Taylor to pay them or order at Arona Kankakee County aforesaid Twelve months after the date thereof the sum of forty five dollars with interest at the rate of ten per cent per annum being for borrowed money which promissory notes were then and then transferred to said plaintiff by the said Seth ^{Taylor} and Billings Taylor in the words and characters following to wit: Pay to S. V. Gordon, S & V Taylor, with indorsement or order was made on said notes

But although the said notes have become due and the said defendant hath been requested to pay,

29
the same to said Plaintiff he both
refused so to do and still refuses to do
at Aurora in the County of Kanebakee and
State of Illinois aforesaid to the damage
of said Plaintiff in the sum of four hundred
and sixty eight dollars and eleven cents
and therefore he brings suit &c

Geo. Vandy

Plaintiff's Attorney

And at same time there was filed in
said office, with said declaration two certain
promissory notes in the words and figures
following, and also filed at same
time with said notes, and attached to said
notes promissory of atty in figures & words following
first one & promissory of atty, to wit

\$3.00.00. Aurora October 25th 1858

Twelve Months after date for
value received I promise to pay to
Seth & Billings Jaylor or order at
Aurora Three hundred dollars with
interest at ten per cent per annum
being for borrowed money, after maturity
Robert Goodill

Know all men by these presents
That whereas the subscriber am justly
indebted unto Seth and Billings Jaylor
upon a certain promissory note bearing
even date herewith for the sum of Three hundred
and dollars made payable to said Seth &

364
Billings Taylor or order and due Twelve
Months after date thereof with interest at ten
percent per annum after maturity

Now therefore in consideration
of the premises and of the sum of one
dollar to me in hand paid the receipt whereof
is hereby acknowledged I do hereby make
constitute and appoint Thomas P Bonfield
or any attorney of any Court of Records
to be my true and lawful attorney
irrevocably for me and in my name
place and stead to enter my appearance
before any justice of the peace or in
any Court of Records in any of the States
or Territories of the United States or elsewhere
either in term or vacation at any time
from and after the date hereof at the option
of said ^{the} Seth & Billings Taylor to waive service
of process and confess a judgment in
favor of said Seth & Billings Taylor or his
assigns or legal representatives upon the
said note for the above sum or for as
much as appears to be due according to
the tenor and effect of said note with
interest thereon at the rate aforesaid
together with Attorneys fees of twenty five
dollars And my said Attorney is
also authorized in my behalf to file
a cognovit for the amount that may
be so due with an agreement thereon
that no writ of error or appeal shall be
prosecuted nor any bill in equity filed

42
to interfere in any manner with the
operation of any judgment that may
be entered by virtue hereof, and also
to release all errors that may intervene
in ^{the} entering up of the said judgment
or issuing execution immediately
thereon hereby authorizing and confirm-
ing all that my said Attorney may do
by virtue hereof
In presence of { Robert Goodale
Nathl Mullen } Seal

And that indorsed on said note at the
time same was filed as aforesaid is the fol-
lowing words and figures viz
"Pay to S. B. Goodale"
"S & B Taylor"

And at same time of filing said note and
power of Attorney, there was an affidavit
indorsed on said power of Attorney in
the words and figures following viz

State of Illinois
Kankakee County ss E Nathaniel Mullen
being duly sworn deposes and says that
he witnessed the execution of the within note and
power of Attorney and knows the signature
to be that of Robert Goodale and genuine
Subscribed and sworn Nathl Mullen
before me this 27th day
of January A.D. 1862
George Handy J.P.

44^m
And said second note above mentioned
and power of Attorney thereto attached
is in the words and figures following viz

\$45.00

Armona October 25, 1859

Twelve Months after date for value
received & promise to pay to Seth & Billings
Taylor or order at Armona in Keweenaw
County forty five dollars with interest at ten
per cent per annum reckoning for borrowed
money

Robert Goodill

Know all men by these presents
that whereas the subscribers are jointly and
severally indebted unto Seth & Billings Taylor upon
a certain promissory note bearing even date
herewith for the sum of forty five dollars
made payable to the said Seth and Billings
Taylor or order and due twelve months after
the date thereof with interest

Now therefore in consideration of
the premises and of the sum of one dollar
to me in hand paid the receipt whereof is
hereby acknowledged I do hereby make
constitute and appoint Thomas B. Bonpils
or any attorney of any Court of Record to be
my true and lawful attorney in and out of court,
for the and in my name place and stead to enter
my appearance before any justice of the peace
or in any Court of Record in any of the
States or Territories of the United States or
elsewhere either in term ~~time~~ or in vacation

5m
at any time from and after the date hereof at
the option of ^{the} said Seth and Billings Taylor to receive
service of process and confess a judgment in
favor of said Seth and Billings Taylor or his
assigns or legal representatives upon the
said note ~~with~~ for the above sum or for as much
as appears to be due according to the tenor and
effect of said note with interest thereon at the rate
aforesaid together with Attorneys fees of twenty five
dollars And my said Attorney is also authorized
in my behalf to file a cognovit for the amount
that may be so due with an agreement therein
that no writ of error or appeal shall be prosecuted
nor any bill in equity filed to interfere in
any manner with the execution of any judgment
that may be entered by virtue hereof and
also to release all errors that may intervene
in ^{the} entering up of ^{the} said judgment or issuing
execution immediately thereon hereby
ratifying and confirming all that my said
Attorney may do by virtue hereof

Witness my hand and seal at Aurora this
25th day of October A.D. 1869

In presence of {
Nathl Mellen

Robert Goodill *Esq*

And that indorsed on said note at
the time the same was filed as aforesaid is the
following words and figures viz
"Pay to S. B. Gordon"
"S & B Taylor"

6th
And at the time of the said filing
of said lost named note and power of
Attorney as aforesaid there was and is an
affidavit indorsed on said lost named
power of Attorney in the words and figures
following viz

State of Illinois
Kankakee County ss. Nathanial Mullen
being duly sworn deposes and says that
he witnessed the execution of the within note
and power of Attorney and knows the signature
to be the Robert Goodells and genuine
Subscribed and
Sworn to before me this
27th day of January
1862 George Handy J.P. Nathan Mullen

And that at the time of filing said
notes and power of Attorney there was then and
therewith filed in said office a certain bond
for cost in the words and figures following
viz

State of Illinois
Kankakee County ss. Circuit Court in
vacation after the January term A.D. 1862
Seth B. Gordon
vs
Robert Goodell I do hereby enter
myself security for costs in this cause and

7^m
acknowledge myself bound to pay or cause
to be paid all costs which may accrue in
this action either to the opposite party or to any
of the officers of this court in pursuance of the
laws of this state

Dated this 28th day of January 1862

Matthi Mullen

And that at the same time of said filing
of said declaration notes and power of Attorney
as aforesaid there was therewith then and there
filed in said Office a certain plea in the
words and figures following viz

State of Illinois

Franklin County ss & Circuit Court

In vacation after the January
term A.D. 1862

Robert Goodell

vs

Wm B Gordon

vs

Cognovit-

And the said Robert Goodell defendant in
the above entitled suit by R. Whittmore
Attorney comes and defends the wrong and
injury when so answered service of process
and says that he cannot deny the action of
the said plaintiff nor but that neither defendant
did undertake and promise in manner and
form as the said plaintiff hath there of above
complained against him nor but the said plaintiff
hath sustained damages on occasion of the non-

8th
performance of the several promises and undertakings in the said declaration mentioned including the sum of fifty dollars for his reasonable attorney's fees for entering up this judgment over and above all other costs and charges by him about his suit in this behalf expended to the sum of four hundred sixty eight dollars and eleven cents, and the said defendant further agrees that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof nor any bill in equity filed to interfere in any manner with the operation of said judgment and that he hereby releases all errors that may intervene in entering up the same

J. Whittemore

Defendant's Attorney

And that said declaration powers of Atty notes affidavit's bond for cost and plea were at the time they were filed in said office, marked in the words and figures following viz;

Filed Jan'y 28 1862

E. Lewis Clerk

by J. B. Welch Deputy

And afterwards to wit on the day next year aforesaid that is to say said 28th day of January A.D. 1862 judgment was entered of record in said Court on said note in the words and figures following viz

9th
January 28th Dec 1862
Pettr 13 Boston
No 1487 vs
Robert Goodell
Cognovit \$472.²¹

And now at this day comes the said
plaintiff by George Handy Esquire his Attorney
and files his declaration in an action of
Trespass on the case on promises against the
said defendant and files also two warrants of
Attorney signed and sealed by the said defendant
the execution of which is duly proven to the
satisfaction of the Court (by affidavit on file)
authorizing any attorney of any Court of
Record to appear in this Court waive notice
of process and confess judgment in favor
of the said plaintiff and against the said
defendant for the amount due upon two
promissory notes annexed to said warrants of
Attorney: also for the sum of fifty dollars
Attorneys fees besides the costs of ^{this} suit

Thompson came also & Whitham
Esquire an attorney of this Court in behalf of
said defendant and files his cognovit
by which he waives service of process and
confesses and consents that judgment may
be entered in favor of the said plaintiff
and against the said defendant for the sum
of four hundred and sixty eight dollars
and eleven cents it being the amount due
upon said notes including Attorneys fees
And said Attorney releases all errors

in entering up this judgment (either in law or equity) or in issuing execution thereon and consenting to the issuing of immediate execution on the same. It is therefore considered and ordered by the Court that the said plaintiff have and recover of the said defendant his damages ~~and~~ to the said sum of four hundred and sixty eight dollars and eleven cents so as aforesaid confessed together with his costs and charges by him about his suit in that behalf expended and that he have execution for the same.

And afterwards took on the fourth day of February A.D. 1862 a certain petition was filed in the said office in said cause ~~in~~ in the words and figures following viz

State of Illinois
 McLean County ^{Es} Circuit Court of said
 County
 Peter B Gordon
 vs
 Robert Goodell ^{Es} Judgment in vacation
 after January term 1862

To the Honorable Charles R. Stone
 Judge of the 20th Judicial Circuit of the State of
 Illinois & presiding judge of the Circuit Court of
 said county
 Your applicant Robert Goodell
 of said County respectfully represents unto

11
your Honor that on or about the 14th day
of January 1858 your applicant borrowed of
Seth Taylor the sum of fifty dollars and
gave the said Taylor therefor a note signed
by your applicant for the sum of \$61.²⁵ payable
to said Taylor or order in 9 months after the
date thereof. fifty dollars of such note being
principal & eleven dollars & twenty five cents
being interest and usury for the use of said \$50-
for 9 months as aforesaid. On the 25th day
of October A.D. 1858 your applicant made to
said Seth Taylor & one Billings Taylor a certain
note on file
in said cause for the sum of \$300⁰⁰ payable
to the said Seth & Billings Taylor in one
year after the date thereof with 10 per cent
interest after due and the said last mentioned
note embraces the amount of the said note
first above mentioned which was taken up
and cancelled and the sum of one
hundred dollars loaned by your applicant
from the said Seth and Billings Taylor on
or about the said last mentioned day and year
and the remainder of the amount of said note
of \$300⁰⁰ was interest and usury for the use
loan and forbearance of the amount of said
note of \$61.²⁵ & said sum of \$100⁰⁰ for one
year from & after the 25th day of October
1858

Your applicant further
says that he may be mistaken as to the
amount loaned by him from the said Seth
& Billings Taylor at the time of taking
the last mentioned note of \$300⁰⁰ and that

your applicant might have borrowed \$150⁰⁰ instead of \$100⁰⁰ as ^{is} above alleged, but your applicants but recollections are that the sum borrowed was \$100⁰⁰ and in either event the remainder of said \$800⁰⁰ over and above the \$61²⁵ (the amount of the first note) was interest and money as aforesaid being a ~~greater~~ rate of interest than ten percent.

Your applicant further says that upon the maturity of said \$300⁰⁰ note your applicant & said Seth and Billings Taylor agreed to extend the payment thereof for one year by your applicants giving them a note for the various interest thereof for that time and thereupon your applicant made the said note of \$45⁰⁰ on file in said case payable to said Seth & Billings Taylor in twelve months after the date thereof and your applicant says that the said \$45⁰⁰ note was given as various interest for the extension on loan and forbearance of the said \$300⁰⁰ note above mentioned for one year from & after the time of the maturity of said \$300⁰⁰ note.

Your applicant further says that the said notes of \$300⁰⁰ & \$45⁰⁰ above mentioned were not assigned and transferred to said plaintiff until long after the maturity of the same. Your applicant further says that your applicant paid said Seth & Billings Taylor some time in the year 1860 the sum of \$35⁰⁰ interest or money upon said notes.

Your applicant further

13^m
further says that on or about the 28th day of
January 1862 one Seth B Gordon received
a judgment upon said note of \$300⁰⁰ & said
note of \$45⁰⁰ in the Keokuk Circuit Court
in vacation after the January term 1862
thereof against your applicant for the sum of
\$468.⁰⁰ damages besides costs of suit which
judgment included the sum of \$50⁰⁰ which said
plaintiff pretended was his reasonable attorneys
fees and ~~which~~ your applicant further
says that said judgment was obtained under two
warrants of attorney attached to said notes now
on file in said cause but that your applicant
did not confess said judgments or authorize
the confession thereof otherwise than by
making said warrants of attorney at the time of
making said notes

Your applicant therefore
says that he has a good defense to said notes
and intends at the next term of this court to
move the court to set aside said judgment
and allow said defense to be made to said
notes. And further says that your applicant
has 160 acres of land in said county between
Keokuk City and Molinee unincumbered
without it is for said loans and that an execution
has issued ^{upon} said judgment for the amount thereof &
costs of suit which has been levied upon the
personal property owned by your applicant
Your applicant therefore
prays that your Honor will grant your certificate
that there is probable cause for staying further

proceedings upon said judgment and
execution until the order of said Circuit
Court upon said motion

Robert Goosile

State of Illinois

Waukegan County ^{Es.}

Robert Goosile
being duly sworn deposes and says that he
has heard the foregoing application read to him
and that the same is true in substance and
in fact excepting those things ^{therein} set forth upon
recollection and belief & as to them he
believes them to be true

Robert Goosile

Sworn to and subscribed

before me this the 31st day

of January 1862

C. R. Starr Judge of the 20th Judicial Circuit
of the State of Illinois

I do hereby certify that there is
probable cause to set aside the judgment
decreed in the foregoing petition and
it is ~~therefore~~ ordered that all further
proceedings on said judgment and
execution be stayed until the further
order of the Circuit Court

Given under my hand in
vacation this 4th day of February A.D. 1862

C. R. Starr

Judge of the 20th Judicial Circuit
of the State of Illinois

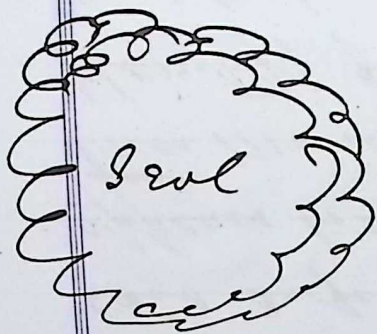
Filed Feb 4, 1862 Entered into book by J. B. McWhorter

15-^m
And the execution issued on said
judgment on the 28th day of January A.D. 1862
is in the words and figures following viz

State of Illinois
Kankakee County } The people of the State
of Illinois to the Sheriff of said County greeting
We command you that of the
Goods and Chattels Lands and Tenements
of Robert Goodell Defendant in your
County you cause to be made the sum of
four hundred and ^{sixty} ~~seventy~~ eight dollars and
eleven cents which Seth B. Gordon Plaintiff
lately in the Circuit Court of said County
in vacation after a term thereof begun and
held at Kankakee City on the first Monday
of January A.D. 1862 To wit; on the day
of the date hereof January 28, 1862 as of
said term, by confession of said ^{The} Defendant
received against ^{The} said Defendant and
which by ^{The} said Court was adjudged to the
said Plaintiff for his damages

And also the further sum of two
dollars and fifty five cents which was
adjudged to the Plaintiff for costs and
charges in that behalf expended whereof the
said Defendant does stand convicted as
appears to us of record And have you
these moneys ready to render to the said
Plaintiff for damages debt and costs aforesaid
and make return of this writ with an endorse-
ment thereon in what manner you shall have

16^m
executed the same in ninety days from
the date hereof



Witness Elon Curtis clerk of our
said Court and the seal thereof
at Vankhakee City this 28th day
of January A.D. 1862

Elon Curtis clerk
by J. B. Welch deputy

And induct on said execution in the fol-
lowing words & figures viz

Damages	\$468, 11
Costs plaintiffs	255-
.. Defendants	<u>155-</u>
Total amount	\$472, 21

Judgment given 28th 1862

This writ issued Jan'y 28 1862

Return day 90 days

Collect interest at six per cent per annum
from above mentioned date of judgment

Received January 28th 1862 at
3 o'clock P.M.

James W Burgess
Sherriff

And afterwards at said April term
of said ^{court} the following order was made and
entered of Record in said case, in words and
figures following viz

Friday April 18th 1862

Erth & B. Gordon

1487 vs

Robert Goodell

Ms. set aside judgment

Now comes the defendant
by J. P. Bonfield his Attorney on whose
motion it is ordered by the court that the
defendant do have leave to plead by two
o'clock tomorrow afternoon

And afterwards Twitt on the 19th day
of April A.D. 1862 a certain plea was filed in
said court in said court in the words and
figures following viz;

State of Illinois
Kankakee County ss. Circuit Court of
the April term A.D. 1862

Settled by Gordon
as
Robert Goodell
Incorporated in the Court
promises

And the said defendant comes and defends &c and says that he did not assume and promise in manner and form as the said plaintiff hath declared against him and if this be proved him self upon the country

And the said Dft for a further plea in
 this behalf says a ~~ctio~~ ~~more~~ because
 to all of said declaration but \$100⁰⁰ because
 he says that on the 14th day of January 1858
 said Dft at said County Courthouse of Seth Taylor
 & Billings Taylor \$60⁰⁰ for nine months and
 expressly agreed to give Eleven dollars and
 twenty five cents to them for the use loan and
 forbearance of said sum of money during said
 time, it being more than ten percent interest and
 in pursuance of such corrupt loan and
 agreement to secure the repayment of said
 loan with said unlawful interest the said Dft
 made to said Seth ^{Taylor} & Billings Taylor his note
 for sixty one dollars and twenty five cents payable
 in nine months which includes said sum of \$60⁰⁰
 and said unlawful interest of \$11²⁵ And on the
 25th day of October 1858 at said County the Dft
 during another loan of money applied to said
 Seth Taylor and Billings Taylor that they
 agreed to lend him \$100⁰⁰ besides sending
 the amount of said last mentioned note to him
 for one year thereafter for the sum of \$138⁷⁵
 unlawful interest and usury for the same thing
 for said length of time, the same being more than
 ten percent interest per annum, and in pursu-
 ance of said corrupt and unlawful agreement
 the said Seth and Billings Taylor loaned to the
 said Dft \$100⁰⁰ and advanced said Dft the other
 sum of \$61²⁵ and the said Dft made to said
 Seth Taylor & Billings Taylor said note of \$300⁰⁰
 in said declaration mentioned which

19^m

includes said sum of \$100⁰⁰ then borrowed and
 \$61²⁵ the amount of said note first mentioned and
 \$138⁷⁵ usury & unlawful interest for use loan
 and forbearance of said sum of \$100⁰⁰ & \$61²⁵
 for one year from & after the said last mentioned
 date as aforesaid and that upon said note of \$300⁰⁰
 mentioned in the plaintiffs declaration becoming
 due and maturing the said Seth & Billings Taylor
 corruptly agreed to extend the time of the
 payment thereof for one year thereafter in consid-
 eration that the deft paid them interest at the
 rate of twenty five per cent per annum therefor

And in pursuance of said corrupt agreement
 the said deft made to said Seth & Billings Taylor
 said note of \$45⁰⁰ in said plffs declaration
 mentioned, the same being for all of said money
 at the rate of twenty five per cent per annum over
 ten per cent per annum and it was agreed
 between the deft & said Seth & Billings Taylor
 that the said note of \$300⁰⁰ should continue to
 bear ten per cent interest and the said deft
 avers that said note of \$45⁰⁰ in said plffs declaration
 is all usury and part of said unlawful interest
 for the use loan and forbearance of said sum

and that on the 25th
 the usury between

of \$300⁰⁰ mentioned in said \$300 note in plffs declara-
 tion of October 1860 said deft paid said Seth & Billings Taylor
 therefor and forbearance of said note in said declaration
 mentioned for one year thereafter and that said note
 has long been due when they were transferred & continued
 to said plaintiff, and that on the 25th day of Oct. 1860
 said deft paid said Seth & Billings Taylor \$45⁰⁰ as
 part of the usury for the loan. Another the deft is
 ready to obey when you he pays judgment on

Another said debt for a further plea in this
 behalf says active wrong ~~was~~ as to all of said damages
 claimed by the plff in his declaration but \$100⁰⁰
 because he says that on the 14th day of January
 A^d 1858 said debt desiring a loan of \$80⁰⁰
 applied to Seth & Billings Taylor Thunfor and they
 agreed to lend said said Seth & Billings Taylor
 said sum for nine months at the rate of three
 percent per month interest and the said Seth & Billings
 Taylor loaned said debt said sum for nine
 months and said debt to secure the repayment
 of said sum together with said usury wrongfully
 gave said Seth & Billings Taylor his note of \$61²⁵
 payable to them in 9 months after the date.
 thereof which embraced said sum of \$80⁰⁰ and
 said usury of \$11²⁵ for the loan and forbearance
 of said sum of \$80⁰⁰ for 9 months aforesaid the
 same being a greater rate of interest than ten per
 cent per annum and on the 28th day of October
 to release said debt mentioned sum for one year ^{ending}
 A^d 1858 the said debt desiring to loan the further
 sum of \$100⁰⁰ applied to said Seth & Billings
 Taylor Thunfor and the said Seth & Billings
 Taylor agreed to loan said debt said sum for
 one year thenceforth for and in consideration
 that the said debt would pay them the said Seth &
 Billings Taylor the sum of \$138⁷⁵ usury
 and unlawful interest for the one loan
 and forbearance of said sum of \$61²⁵ & \$100⁰⁰
 for one year thenceforth the same being a greater
 rate of interest than ten percent per annum
 and in pursuance of said unlawful and
 corrupt agreement the said debt made to said

Sette & Billings Taylor said note of \$300⁰⁰ in
 said declaration which included said sum of
 \$61²⁵ the amount of said first above mentioned note
 and said sum or second loan of \$100⁰⁰ and the
 balance and remainder thereof was usury and
 unlawful interest as aforesaid and that on the 25th
 day of October A.D. 1859 the said debt applied to the
 said Sette & Billings Taylor to extend the payment
 of said note of \$300⁰⁰ mentioned in said debt's decla-
 ration for one year thereafter and the said Sette &
 Billings Taylor corruptly agreed with the debt to
 extend the time of the payment of said note of \$300⁰⁰
 for one year thereafter in consideration that the
 debt gave them unlawful interest at the rate of
 twenty five per cent per annum therefor and
 that the said note should continue to bear ten per
 cent interest according to the tenor & effect
 thereof and the remainder of said unlawful
 interest should be secured to them the said
 Sette and Billings Taylor by a note and that
 the debt thereupon executed & gave them said note
 of \$45⁰⁰ in said declaration mentioned for
 such unlawful interest over ten per cent for
 the loan use & forbearance of said sum of
 money mentioned in said \$300⁰⁰ note for
 one year after the maturity thereof and that on
 the 25th day of October A.D. 1860 at said county
 it was corruptly agreed between said debt and
 said Sette & Billings Taylor that the payment
 of said two notes of \$300⁰⁰ & \$45⁰⁰ mentioned
 in said debt's declaration should be extended for
 one year thereafter and that the debt should pay

23rd

ought not to be barred from having and
maintaining in full his aforesaid action
thereof against ^{him} the said defendant, protesting
that said various agreement was not made

as in said plea pleaded and that the said
was not given for such various consideration as in the said plea to said declaration mentioned
promissory notes in said declaration mentioned
for application nevertheless the said plaintiff
says that the said promissory notes in said
declaration mentioned were indorsed to said

plaintiff before said notes became due to wit:
on the day and year in said declaration in that behalf mentioned to wit

at the county aforesaid for a valuable consid-
eration and that the said plaintiff has not
at the time or times of the said notes being so
indorsed to the said plaintiff as aforesaid or
at the time of paying such consideration
for the said notes, ^{aforesaid} or at any time before actual
or any notice that the said notes were
given or made for the various ~~contract~~ in
the said consideration or upon the various
contract in the said plea or for any various
consideration or upon any various contract
whatsoever and of this the plaintiff puts
himself upon the country & set doth the like

Yandy & Sonny
Proff attys

Filed April 21st 1862

Edm Lewis Clerk

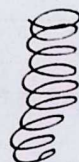
And afterwards to wit on the 22^d day of
April A.D. 1862 that day being one of the days of
of said April term A.D. 1862 of said Circuit Court
the following among other proceedings took place

Jethro B. Gordon

1489

15

Robert Gasdell



Now at assize judgment

Now comes the parties to this
suit by their respective attorneys whereupon it
is ordered by the court, that this cause do
now proceed to trial and on defendants
motion it is ordered that a jury do now come
for that purpose. Thereupon came the jurors
of a jury of good and lawful men for that purpose
to wit;

Francis Seguin H.S. Chatfield Jeremiah
Engraham Elijah Ingraham Ellingwood
Horace Penfield William Hawker Abijah
Vining William Love Jacob Shaffer
Lilus Grimes Joseph Vankirk William Stokes
Who are duly sworn and empanelled and sworn
well and truly to try the issues joined between
the parties to this suit and a true verdict give
according to the evidence. After hearing the
evidence and deliberation and the same is
done comes the plaintiff by George Hanny his
attorney and enters his motion for a writ
of habeas corpus to take away by the plaintiff the
court denies. Thereupon the plaintiff moves
to vacate the original judgment judgment
in this cause and the court being advised in the
matter the motion to vacate ~~original~~ judgment
entered by plaintiff is denied. To which opinion
and order of the court in overruling and denying

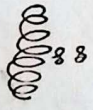
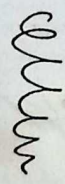
Last motions the plaintiff & cpts

Whereupon the jury having agreed on their verdict say we the jury find the issues joined for the plaintiff and assess his damages to the sum of One hundred and three dollars. Whereupon the plaintiff enters his Motion to set aside the verdict, and the Court being advised in the premises it is ordered that said Motion be and ~~the same~~ it is denied and overruled.

Whereupon it is ordered by the Court that the judgment heretofore entered herein against the Defendant in vacation be reduced to the amount of the verdict in this case and that the same draw interest from the time of rendition and that the plaintiff have execution therefor.

To all of which the plaintiff excepts. Whereupon it is ordered by the Court that the plaintiff do have thirty days in which to make up his bill of exceptions and file the same.

And afterwards to wit on the 12th day of July Ase 1862 a certain Bill of exceptions was filed in the office of the Clerk of said Court in said cause in the words and figures following viz:

State of Illinois
 Waukegan County  Circuit
 Court of the April term Ase 1862.
 L. B. Gordon
 W
 Robert Goodell  Br. It remembered

that on the trial of this cause in said court at said term thereof the said plaintiff gave in evidence two certain promissory notes (on which judgment had been rendered in vacation after the January term of said Court 1862 on cognovit which proceedings on said judgment were staid and defendant allowed to plead to the merits without the judgment being vacated which notes were in the words and figures following viz

\$300⁰⁰

Armsa October 25th 1858

Twelve months after date for value received I promise to pay to Seth & Billings Taylor or order at Armsa three hundred dollars with interest at ten per cent per annum being for borrowed money, after maturity

Robert Goodell

on which was the following indorsement

Pay to S. B. Gordon

S & B. Taylor

\$45⁰⁰

Armsa October 25th 1859

Twelve months after date for value received I promise to pay to Seth & Billings Taylor or order at Armsa in Vankhoke County forty five dollars with interest at ten per cent per annum being for borrowed money

Robert Goodell

Indorsed

Pay to S. B. Gordon

S & B. Taylor

27^a

Robert Robert Goodill
 The said defendant, then offered himself
 as a witness in defense who was sworn in the
 case and testified as follows. I borrowed the
 money of Seth Taylor it was in the forepart
 of the year 1858 I borrowed \$50 - until
 October coming I agreed to pay twenty five
 percent I gave a note for the principal and
 interest \$61²⁵ I borrowed \$100 of Billings
 Taylor in October 1858 it was at old Mr
 Mellens Revilla Bucke said it was the
 same kind of a note that the previous note of
 \$50 - was Mr Bucke asked me to sign it
 I don't recollect anything else that was
 said Mr Taylor did not say anything
 Mr Taylor paid me the money I think
 that is all that was said at that time about
 the money. Mr Revilla Bucke wrote the
 note I agreed to pay twenty five percent
 per annum on \$160⁰⁰ on which some interest
 was computed at that rate and put into the
 note I have no idea what the amount of
 the note was I did not know at the time
 what the amount of the note was no one states
 how ^{what} it was I depended on them to know
 it right In October 59 I saw Seth
 Taylor I told him I could not pay it
 He agreed to take my note for the
 interest I gave him my note for \$43⁰⁰
 The note called for ten percent interest
 The next conversation I had about it
 was in October 1860 with Seth Taylor
 I paid him the interest up at that time all

The interest due on those notes I paid him \$47.⁰⁰ The interest was \$46.⁵⁰ I must have a conversation about Christmas last winter with Seth Taylor He asked me if I could do anything for him I told him I could not I asked him to wait another year He said he could not do it and if I did not pay it he would sell my farm He wanted me to give him a deed for the place and he would leave back to me

Gordon
Burdell

Robert King died, was testified by Gordon

I borrowed of Seth Taylor \$50.⁰⁰ for 9 months until October afterwards at 25 percent interest per annum + gave him a Billings Taylor note for \$60.²⁵ for said loan which includes \$50.⁰⁰ borrowed & \$10.²⁵

interest for nine months This was on the 14th of January 1858 and the note was payable in 9 months after date. On the 23rd of October 1858

I applied to Billings Taylor for the loan of \$100.⁰⁰ more like the previous loan he agreed to lend it to me as well as what I owed them upon the first note for one year and I gave him the \$300.⁰⁰ note in evidence I did not read the last note nor was it read to me all I got on it was \$100.⁰⁰ loaned to me at the time I gave this note and also the first note of \$61.²⁵ making \$161.²⁵ and the remainder of said ^{\$300.⁰⁰} note was interest & money for the use of the money loaned for one year after the giving of the note This was done at Revilla Beckers home he wrote this note In October 1859 I gave Seth & Billings Taylor my note of \$45.⁰⁰ in evidence in this case as money over & above 10 per cent

to extend the payment of said \$300⁰⁰ note
 for one year longer and the note ^{was to} stand
 bearing 10 per cent as it called for and in
 October 1860 S. J. Taylor \$47⁰⁰ was
 to extend the notes one year longer S. J.
 Taylor had the notes in October 1860 they
 were not indorsed and he claimed to own
 them and did ~~not~~ ^{not} intend ~~to~~ ^{not} to own them
 did not own them The ~~plff~~ and
 the Taylors were claimed until about
 the time this judgment was rendered that the notes
 were indorsed to the ~~plff~~ I have no learning

This was all the evidence
 given in the case

After the evidence was closed and
 before the case was submitted to the jury
 the plaintiff by his counsel entered his
 motion and asked leave to take a nonsuit
 which motion was then and there overruled
 and leave for plaintiff to take a nonsuit
 refused by the court to which ordering the
 plaintiff ^{by his counsel} then and there accepted

Thereupon the plaintiff by
 his counsel entered his motion to vacate
 the judgment before rendered in said
 case which motion the court then and
 there overruled by which ordering of the
 of the court the plaintiff by his counsel
 then and there accepted

And therefore the plaintiff asks
the court to give the following instructions
to the jury

1st The law presumes that the
notes in evidence were indorsed by the
payee before they became due, and
unless the jury believe ~~from the~~
on their oaths from the evidence that
the notes was transferred after it became
due then the law is for the plaintiff and
he is entitled to recover of and from the
Def't as much as appears was due at the time
of the rendition of the judgment

2^d The Def't is not a competent
witness to prove the time the notes was
indorsed to the plaintiff nor to show that
plaintiff knew of the original considera-
tion of the notes, and as there is no evidence
before the jury on the point of time of
assignment of the notes or knowledge on
the part of Def't of original consideration
and various consideration the jury
should find a verdict for the plaintiff for
as much as the judgment calls for

3^d The Def't is not a competent
witness for himself to prove the time of the
assignment of the notes in evidence
and the jury are bound by their oaths to
reject the testimony of Def't so far as the

31st
Same applies to the time the notes were
indorsed to the plaintiff and if the Deft
has failed to prove the time said notes
were indorsed then by his own testimony
then the jury are bound upon their oaths
to find a verdict for the plaintiff

And the court then and then
refused to give said second and third instructions
as asked for by the plaintiff to
which refusal the plaintiff by his counsel
then and then accepted

And then upon the Deft asked of
and the court gave the following instructions
on the part of the defendant to the
giving of which the plaintiff by his
counsel then and then accepted

1st If the jury find from the evidence
that S. M. and Billings Lays for loaned the
defendant money and took a greater rate
of interest than ten per cent per annum and
the notes in question were indorsed after they
became due then the plaintiff is entitled to
a verdict for only the principal sum borrowed
less any sums the defendant has paid thereon
as interest money or otherwise without any
interest whatever

Given

If the jury find ~~from~~ that the said Seth & Billings Taylor loaned money to the defendant at a greater rate of interest than ten percent per annum and the said notes were indorsed after they became due then the plaintiff forfeits all interest and is entitled to nothing but his principal to be returned to him & is to be credited upon the principal with any and all moneys by him paid on said transaction

If the jury find that the Taylors have had possession of the notes in question after the same became due & exercising acts of ownership over the same, attempting to collect the same as their own collecting money thereon as their own they are facts which the jury may consider as evidence that they were not indorsed and transfers before they became due and the jury may also take into consideration with reference to time of such indorsements the hand writing of the indorsements upon the back of the notes, the color of the ink and other appearances indicating whether they were made at the same time or at different times

Whereupon the jury retire to consider upon their verdict and return into court with a verdict of one

hundred and three dollars for plaintiff

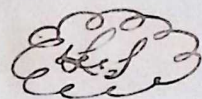
Thereupon the plaintiff ^{by his counsel} enters his motion to set aside the verdict for the following reasons

- 1st The verdict was contrary to the evidence
- 2^d The court erred in not granting leave to plaintiff to take ~~verdict~~
- 3^d The court erred in overruling plaintiff's motion to vacate judgment
- 4th The court erred in refusing plaintiff's instructions
- 5th The court erred in giving被告 instructions
- 6th The Court erred in not granting a new trial and setting aside ~~judgment~~ verdict judgment

Thereupon the court ordered the former judgment ~~reversed~~ reduced to \$103⁰⁰ and entered on the same from the time of rendition

Which motion to set aside the verdict the court then and there overruled to which ruling of the court in overruling said motion the plaintiff by his counsel then and there accepted

34
Therefore the plaintiff by his counsel
asks leave of ninety days in which to file
a bill of exceptions, and therefore the
court grants leave of ninety days in
which to file bill of exceptions

C. R. Starr 
Judge of the 20th Judicial Circuit

And upon the back of said bill of
exceptions is indorsed the following
words and figures viz;

"Filed July 12th 1862"
"E. Curtis clerk"
"by J. B. Welch"
"Deputy"

State of Illinois
Kankakee County ss. E. J. Olson Clerk
Clerk of the Circuit Court in and
for the said county in the State of Illinois
do hereby certify that the foregoing is a
full true and correct transcript of the
records and proceedings in the case
wherein Jethro B. Gordon is Plaintiff
and Robert Goodell is Defendant
appears from the records and files of said Court in my hands
Given under my hand and
the seal of said Court at Kankakee City
in said County this 16th day of March
A.D. 1863 E. J. Olson Clerk



Fees for Transcript \$8.37

State of Illinois

Supreme Court, 3^d Division

Seth B. Goodin

Robert Goodill

} Error to the Kankakee
Circuit Court

Comes now the plaintiff in error by Goodin Thomas & Robert his attorneys; and says that in the foregoing record and judgment manifest error hath intervened in this, to wit:

1 The said Kankakee Circuit Court erred in refusing the motion of the said plaintiff in error to permit and allow him to submit to and suffer a nonsuit in said case as in said record appears.

2. The said Circuit Court erred in refusing the motion of the said plaintiff in error to vacate the said judgment as in said record appears.

3. The said Circuit Court erred in refusing to instruct the jury as prayed by the said plaintiff.

4 The said Circuit Court erred in instructing the jury as prayed by the defendant.

5 & The said Circuit Court erred in refusing to set aside the verdict and to grant a new trial as prayed by the plaintiff.

6 & The said Circuit Court erred in refusing

during payment in said cause as therein
appear.

Wherefore the said plaintiff in error
prays that said judgment may be
reversed

Gordon Thomas & Roberts
Attys for ~~the~~ Plaintiff in Error

Now comes ~~the~~ defendant in error
and says, that these judgments in said cause
and record, and the matters and things
therein stated are good; and that he is not
therein.

Thos. P. Buckland
Attys for the Defendant in Error

#35-465
Gordon Thomas &
Roberts
vs
Robert Grosvenor

Transcript from
Vernacular
Cir Court.

Filed April 1st 1863
L. Deland
Clerk

Gordon Thomas &
Roberts
vs
Robert Grosvenor
properly