

13229

No. _____

Supreme Court of Illinois

Dooley

vs.

Stipp et al

71641  7

STATE OF ILLINOIS,
13
SUPREME COURT,
Third Grand Division.

1861
No. 41.

Dodley
-75

1861
Thipp

13224

Prepared

Clinton Des

Feb 2 1861

Hon J. D. Caton

Chief Justice

R E Williams My

Self on the appraising Council

in Case of Stipp vs Bouley

Bouley vs Stipp McCalls in the

Superior Court at Ottawa

The records are now in the office

at Ottawa. I have an abstract of

my record but it does not show

the pages of the record. You want

an order that the Clerk may return

the records for the purpose

of making abstracts & assigning &

summing in error. Yours H

C H Moore
for Stipp

If Judge Caton will grant the
order above it will greatly alleviate
both parties

R. E. Williams
att for Bouley

The Clerk will send the
record as within requested
J. B. Eaton

i

Record sent to C.
H. Clough & also
Shaw in 285-
41

State of Illinois }

McLean County }

vs John Rouse being duly sworn
deposes and says that he proposes
to go surety for George Stepp on an appeal bond to the
Supreme Court in the case of Bailey vs Stepp & co
from this county that I am worth over and above
all my liabilities the sum of Two thousand
dollars. ~~all~~ of which is in ~~personal~~ ~~estate~~
~~and the balance in~~ ~~imminence~~ real estate in this
State

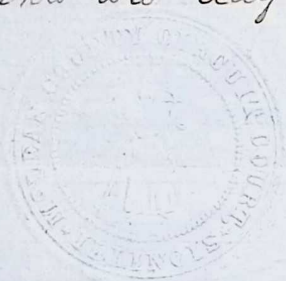
Subscribed & sworn to before me
this 22^d day of March, 1860.

Wm. McCallough, Clerk

J. McLean Cir. Court

Wm. McCallough Clk

By L. Barn Dept



Step 146 40

Dooley

Officer of Justice

Filed April 20, 1860
L. Leland
Clerk



STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of McLean Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of McLean County, before the Judge thereof, between William Dooley

plaintiff, and George W. Stipp & James Nicoll

defendant, it is said manifest error hath intervened, to the injury of the aforesaid George W. Stipp

as we are informed by his complainant 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 11th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

J. B. Rein Deputy

George W. Stipp

No. ~~146~~ 41 U.S.

William Doley

WRIT OF ERROR.

This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.

L. Leland

J. B. Rine Clerk.

FILED

April 11

A. D. 1860

L. Leland

Clerk.



Know all Men by these Presents, That we George W. Stupp
& James McCall
as principals and John Rouse
as security, are held and firmly bound
unto William Dooley

in the penal sum of five hundred (500) dollars
good and lawful money of the United States, for the payment of which, well and truly
to be made, ~~the said~~ we

bind ourselves, our heirs, executors and administrators,
jointly, severally and firmly by these Presents.

Witness, Our hands & seals

this fifth day of April A. D. 1860

The Condition of the above Obligation is such, That, whereas the above named
George W. Stupp, William Dooley
did, at the September Term of the McLean Circuit Court,
held in and for the County of McLean in the
State of Illinois, A. D. 1859 recover a judgment against the above bounden
George W. Stupp,

for the sum of One hundred
and thirty seven dollars and twenty seven cents
said George W. Stupp to reverse which said judgment, the

has sued out a Writ of Error from the Supreme Court, within and for the Third
Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the
said George W. Stupp

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said
judgment, and all judgments, costs, interest and damages which the said Supreme Court
shall adjudge against the said George W. Stupp,
and abide the order and judgment of said Su-
preme Court in this behalf, then this obligation is to be void, otherwise to remain in full
force and effect.

Geo. W. Stupp [SEAL.]

John Rouse [SEAL.]

[SEAL.]

[SEAL.]

No. 146 41

SUPREME COURT,

THIRD GRAND DIVISION.

George W. Stapp

vs.

William Dooley

SUPERSEDEAS BOND.

Filed April 10, 1860

L. Leland Clerk.

Mr. Stapp will get
Hanna to fill this
out then sign it
Sgt Boyd to sign
it then mail it to
me
C H Moore

1
Reas continued and held at the Court House in Bloomington
in the County of McLean in the Eighth Judicial Circuit of the State
of Illinois before the Hon David Davis Judge of said Circuit in
a certain cause therein pending wherein William Dooley was
Complainant and George W. Stepp and James Nicolls were
defendants -

State of Illinois
McLean County ss.

Be it remembered that heretofore to wit on the
20th day of August A.D. 1857 came William Dooley by Cord
Williams & Wacker his attorneys and filed in the office of the
Clerk of the Circuit Court of said County his bill of complaint
against George W Stepp and James Nicolls in words and
figures as follows to wit =

State of Illinois
McLean Circuit
Court September Term
1857

To the Hon David Davis Judge & Chancellor
of the 8th Judicial Circuit =

Your orator William Dooley
humbly complaining would most respectfully shew unto
your honor that heretofore to wit on the 1st day of July 1855
orator was indebted to one James Culbertson in the sum of
twelve hundred and thirty five & ⁶⁸/₁₀₀ dollars and orator on
said day made and delivered to said Culbertson his orators
promissory note due one day after date for said sum and it
was the specified by way of obtaining usurious interest that said
sum of money in said note specified should bear fifteen per
cent per annum interest after due orator would shew that while
said Culbertson was the holder of said note orator made
several payments on the same that were indorsed on said
note orator would shew that after said note had been some
time due and said payments had been made on the same
said Culbertson sold and assigned said note to one George
W. Stepp and that afterwards to wit on the 1st day of December

9

1856 and said Stipp proposed to orator to ascertain the amount due upon said Note calculating the interest on the same at fifteen per cent from the date of the said note and up to the 25th day of March 1856 said Stipp told orator if orator would give said Stipp a new note for all the balance due on said old note calculating interest on the entire sum for which said old note given at 15 per cent per annum up to March 25th 1856 said new note to fall due on said 25th day of March 1856 that said Stipp would give up said old note and take said new note and wait with orator until said 25th day of March 1856 - otherwise said Stipp would at once sue orator on said old note orator being largely indebted and much embarrassed at said time assented to said arrangement and the amount of said new note upon a calculation made as above stated to wit - counting interest on said old note from its date at 15 per cent and extending the time to the 25th of March 1856 was found to be Eleven hundred and Seventeen dollars that would be due on said 25th day of March 1856 calculating the interest on said old note at 15 per cent per annum from the date of said old note until the said 25th day March 1856. And thereupon orator in full satisfaction of said old note and for the forbearance to be obtained on said 1st day of December 1856 made and delivered to said George W. Stipp his orators. promissory note for the sum of Eleven hundred and Seventeen dollars due on the said 25th day of March 1856 and it was provided by way of obtaining usurious interest in said last mentioned note that the same was to bear interest after maturity at two per cent per month. Orator would further show that on the making of said arrangement and giving said last mentioned note said old note was to have been given up to orator but orator avers that by accident he left the place where said settlement was made and forgot said old note and thereby left the same in the possession of said Stipp = Orator would further show that on the 11th day of October 1855 orator was indebted to said Stipp - a sum of money which with interest on the same at the rate of 15 per cent per

anum until the 1st day of March 1856 would amount to the sum
 of Five hundred & ninety three $\frac{88}{100}$ dollars and said Stipp
 proposed on said 11th day of October 1855 that if orator would
 give said Stipp his orators promissory note for said sum of
 five hundred and ninety three $\frac{88}{100}$ dollars which was
 the debt due with 15 per cent on the same until the 1st day
 of March 1856 said Stipp would wait with orator until
 said 1st of March 1856 and orator in view of his orators
 great embarassment at the time, consented to said arrang-
 ment and on said 11th day of October 1855 orator made
 and delivered to said Stipp his orators promissory note
 for five hundred and ninety three $\frac{88}{100}$ Dollars due on
 the 1st of March 1856 and it was provided in said
 last note by way of obtaining usurious interest that
 said last mentioned note should bear twenty per cent interest
 after due orator would further show that on the 3rd day of
 December 1855 orator was further indebted to said Stipp
 on account Twenty five dollars and on said 3rd day of
 December 1855 orator gave to said Stipp his orators due
 bill for said Twenty five Dollars. Orator would further
 show that at the Spring Term 1856 of your honors court on
 the Common Law side thereof in said McLean County said
 Stipp commenced against & Orator two actions of Assump-
 sit on said old note first mentioned and on said new note
 given in satisfaction thereof as aforesaid and on said \$593. $\frac{88}{100}$
 note and on said \$25 $\frac{00}{100}$ due bill and was fraudulently
 proceeding to prosecute said suits upon all of said notes
 and said due bill and orator became very uneasy for fear
 that said Stipp would obtain Judgements on all of said notes
 and due bills and orator was at said time to wit in April
 1856 very much indebted and embarassed and said Stipp
 was threatening to break up orator and orator thought if
 he orator could get a years time on the indebtedness due
 from orator to Stipp and have the amount thereof properly
 adjusted orator could sell enough property to pay his orators
 debts and relieve himself from his embarassments. and
 said Stipp having the fraudulent advantage aforesaid by
 holding said old note that had been fully satisfied

4

proposed to orator that if orator would confess a judgement for the amount of all said notes (except the old note first mentioned) and said due bill together with interest on the same at the rate of fifteen per cent on the same from the dates of the notes and the due bill. Said Stipp would take said judgements with a stay of execution thereon for one year and deliver up to orator said old note and that the end of the said year the said Stipp would take the face of the said judgements without calculating any interest on the face of said judgements and orator under the pressure of his orators embarrassments and the fraudulent advantage said Stipp had over him, orator, by his said Stipp's having possession of said old note entered into said arrangement and did on the 8th day of April 1856 in the Circuit Court of said McLean County confess two judgements in favor of said Stipp - one for the sum of Twelve hundred & seventy eight $\frac{89}{100}$ Dollars and the other for the sum of Seven hundred and Nineteen $\frac{58}{100}$ Dollars being for the full amount due from orator to said Stipp on the said Note for \$ 1117 $\frac{00}{100}$ and said note for \$ 593 $\frac{88}{100}$ and said \$ 25 $\frac{00}{100}$ due bill including interest on all of the said notes and said due bill from their several dates at the rate of 15 per cent per annum to the end of the time that said executions was to be stayed to wit - the 8th day of April 1857 and said judgements were entered up with a stay of execution accordingly orator would further show that on the 18th day of October 1856 said Stipp assigned said two judgements to one James Nicolls but orator avers that said Nicolls took the assignment of said judgements with full knowledge of all the foregoing facts orator would further show that after said stay of executions had expired said Nicolls demanded from orator the amount of said two judgements together with six per cent interest thereon from the date of the rendition of said judgements orator would show that at the time the said stay of executions had expired the orator was still greatly indebted and embarrassed and that a large amount of orators Real Estate had been sold under executions and that the time within which orator could redeem said lands so sold as

aforesaid had nearly expired and orator would further show
 that said two Judgements in favor of said Stipp were also a
 lien upon said Real Estate and that orator could not find
 any person to purchase his said Real Estate that had been
 so sold under execution in order that orator might raise
 funds to redeem from said execution sales until orator
 could procure satisfaction of said two Judgements in
 favor of said Stipp and thereby remove the lien of said
 Judgements from said Real Estate orator offered to pay
 to said Nicolls who controlled said two Judgements in
 favor of said Stipp the full amount of the face of said two
 Judgements but said Nicolls refused to receive that and re-
 fused to satisfy said Judgements until orator should pay
 the face of said Judgements with six per cent interest thereon
 from the date of the rendition of said Judgement and it
 was impossible for orator to free his real estate and obtain
 money to redeem the same from said execution sales without
 procuring satisfaction of said two Judgements so controlled
 by said Nicolls and said Nicolls was fraudulently trying
 to prevent all persons from buying the real estate of orator and
 threatening that if any person did buy the same and redeem
 from the executions sales the said Nicolls would immediately
 sue out executions on said two Judgements so controlled
 by said Nicolls and levy the same on said land and
 said Nicolls was threatening that he said Nicolls would
 break up orator and was slandering the title of orator to all
 his, orators, real estate and said Nicolls was doing all he
 said Nicolls could to break up orator and orator had to
 save himself from ruin and insolvency to satisfy the said
 unconscientious claims of the said Nicolls and orator did on
 the 21st of May 1857 pay to said Nicolls on said Judge-
 ments the sum of \$418⁷⁸/₁₀₀ and on the 7th day of August
 1857 orator paid to said Nicolls the entire balance of said
 two Judgements rendered in favor of said Stipp together
 with six per cent interest on the face of the said Judgements
 from the date of their rendition - Orator avers that a large
 amount of the money so paid by orator to said Nicolls was
 for usurious interest over and above the rate of six per cent

6

per anum to wit= the sum of One Thousand dollars and
that the said sum of One Thousand dollars was extorted
from orator by the fraud and oppression of the said Stipp
and the said Nicolls wherefore orator says that said Stipp
and Said Nicolls be made defendants huto and either to
appear and answer this bill, and that upon a final
hearing hereof for a decree in favor of orator against said
Stipp and Said Nicolls for the said sum of One Thousand
so wrongfully and against law and against conscience
extorted from orator and for his costs and for general relief
v c

Lord Williams & Walker.
Compts Solis.

William Dooley

- vs -

George W. Stipp
James Nicolls

Bill in equity for relief

The clerk will please issue process on
this bill returnable to the September Term 1857 and oblige

Lord Williams & Walker
Compts Solis.

And thereupon issued out of said clerks office a writ of Sum-
mons in words and figures as follows to wit

State of Illinois
McLean County

s.s.

The People of the State of Illinois
To the Sheriff of said County Greeting=

We command you to summon George W.
Stipp and James Nicolls if to be found in your county
personally to be and appear before the Circuit Court of said
County on the first day of the next term thereof to be holden at
the Court House in Bloomington on the first Monday in the
month of September to answer to a certain Bill of complaint

filed in our said Circuit Court on the Chancery side thereof
 against them by William Dooley for Relief and have you
 then and there this writ and make return thereon in what
 manner you execute the same. Witness William
 McCullough clerk of said Circuit Court and the seal there
 of hereto affixed at Bloomington this 20th day of August in
 the year of our Lord One Thousand eight hundred and fifty
 seven

W^m McCullough clerk
 By H. Burr Deputy-

Which said writ of summons was by the Sheriff of said County
 returned into said clerk's office endorsed as follows to wit:-

Executed the within writ by delivering a true copy of the
 same to the within named Stipp & Nicolls Aug 21st 1857

Shiffs fees S & R.	\$1.10
Copies	1.00
Milage	.10
	\$2.20

J. H. Moore Shiff
 By Geo Parke Deputy-

and thereupon at the regular ^{September} term of said Circuit Court
 to wit on the 14th day of September A.D. 1857 the follow-
 ing order was made by said Court in this cause as appears
 of record to wit

William Dooley

vs
 George W. Stipp & James Nicolls Bill for Relief-

This day comes said complainant by
 his solicitor and on motion said defendants are by the Court
 ruled to answer said complainants bill or demur thereto within
 sixty days or the allegations thereof will be taken for confessed
 against them=

8

and thereupon afterwards to wit on the 14th day of October 1857 came the said defendants and file in this cause their demurrer to the complainants bill which said demurrer was in words and figures as follows to wit =

W^m Dooley
George W. Stipp
& James Nicolls

And now comes the said defendants and demur to said complainants bill of complaint and say that the matters and things in said complainants bill as therein set forth and alleged against them are insufficient to enable the said complainant to obtain relief in this court as prayed for in his said bill. and said defendants therefore prays that said bill may be dismissed -

And afterwards to wit on the 16th day of November 1857 came said defendant James Nicolls & filed here in his answer to said complainants bill of complaint in words and figures as follows to wit

The separate answer of James Nicolls impleaded with George W. Stipp to the Bill of complaint of William Dooley
This respondent in answer to the said complainants Bill or to so much thereof as he is advised it is material and proper for him to make answer unto he answers & says. It is true that respondent purchased of said defendant G. W. Stipp two judgements in the Circuit Court of said County of McLean against said complainant William Dooley & the same judgements have been paid off and discharged by said complainant. This respondent however says that at the time of his purchase of said two judgements of said Stipp he had no knowledge of the matters stated in said bill as to usury or fraud but truly believed that said judgements were both legally & equitably just & unpaid & indeed he had no reason to think otherwise as no defence whatever had been ~~been~~ made to the obtaining of said judgements by said Dooley

Respondent purchased said judgements in good faith and for a good full & valuable consideration & without any notice whatever that any equitable defence whatever existed to the full payment of the same. Respondent denies any and all combination or conspiracy with said defendant Stepp or otherwise. As to other matters stated in said bill he denies them & requires proof. Respondent further answering says that whatever equity may exist as between the complainant Dooley and the defendant George W. Stepp or others this respondent by reason of the premises aforesaid ought not to be prejudiced thereby and he prays to be hence dismissed with his reasonable costs & charges in this behalf expended

James Nicolls

Holmes Solicitor

Subscribed & sworn to before

md Dec'r 10, 1858 =

Wm M Cullough Clk

per H. B. Bun Deputy

10

and afterwards at the regular December Term of said Circuit Court to wit on the 26th day of January A.D. 1858 further proceedings were had in this cause as appears of record in words and figures as follows to wit

William Dooley

^{vs}
George W. Stepp & James Nicolls

Bill for Relief

This day come said defendants by their attorneys and here enter the demurer to said complainants bill and say the same is not sufficient to be answered unto And afterwards at said December Term of said Court to wit on the 27th day of January 1858 this cause came on to be heard on said demurer and the following order was made herein to wit-

William Dooley

^{vs}
George W. Stepp & James Nicolls

Bill for Relief-

This day again come said parties by their attorneys and this cause coming on to be heard on the demurer to complainants bill heretofore entered by said defendants and the Court being fully advised in the premises doth overrule said demurer. And now on motion leave is granted said complainant to amend his bill filed herein and said defendants are by the court ruled to answer said bill of complaint by the first day of next term and this cause is continued

And thereupon at the March Term of said Circuit Court to wit on the 5th day of April A.D. 1858 being the eighth day of said term the following order was made by said court in this cause as appears of record to wit-

William Dooley

^{vs}
Stepp & Nicolls

Bill for relief-

This day on motion of said defendants leave is granted them to file their answer to said complainants bill of complaint

And thereupon on said 5th day of April A.D. 1858 came the said George W. Stepp and filed herein his answer to said complainants Bill of complaint in words and figures as follows to wit:-

The separate answer of George W. Stepp to the Bill filed against him in the Circuit Court of McLean County by William Dooley

This respondent saving and answering unto himself all and manner of exception that may be taken to the many and manifest errors in accuracies and misstatements in said bill contained for answer to so much of said bill as he is informed it is material for him to answer answering says - That true it is that the said complainant was on the 1st day July 1855 indebted to one James Culbertson but of the amount of that indebtedness or its nature your respondent knows nothing except as herein after stated that the fact that this respondent heard of said Culbertsons note against said Dooley was from the said Culbertson who called upon this respondent and proposed to sell said note to this respondent and respondedent then refused to purchase said note that afterwards the complainant came to this respondent and said that he complainant was indebted to said Culbertson in about the amt in said bill specified that he complainant was paying him Culbertson 15 per cent interest & that Culbertson was wanting the money and was annoying him Dooley about it and that he Dooley had not the money & then said complainant asked this respondent to purchase the said note from Culbertson and as an inducement for this respondent stated and promised that if respondent would buy said note from said Culbertson and give him ^{Dooley} time for the payment of the same that he Dooley would pay respondent the same interest that he was paying Culbertson. respondent further answering says that he in consideration of the promises and undertakings of the said

Dooley did buy said notes from the said Culbertson about October 1855 that after the said note was so bought by respondent at the request of said complainant the said complainant and respondent were together and the said complainant agreed that if this respondent would give him complainant until about the 25th day of March 1856 to pay the same he complainant would give respondent a new note with a Mortgage on real estate to secure the same with two per cent interest per month after due to compensate this respondent for the delay and as a consideration that complainant should not be sued by respondent during that time respondent here avers that he accepted the promise of the said complainant so made as aforesaid drew out a new note for about the amount of \$1117.00 as in said bill for the amount, which complainant signed that it is true that the old note was not given up at the ^{time} said new note was made because the said Dooley was to come in with his wife and execute to your respondent a Mortgage to secure the said last note and when this was done the said old note was to be given up to the said complainant that said new note was not a satisfaction of the old note or to be so understood between complainant and respondent until the same was secured by said Mortgage - Dooley refused to make the Mortgage - that the said note for about \$593.88 was given in lieu of some ten or twelve notes on complainant of small denominations but by respondent at complainant's request but respondent expressly denies that any 15 per cent interest was taken or compiled upon said small notes that it is true that the comp. Dooley did confess two Judgments in favor of this respondent for about the amounts in said comp's bill named which included a medical bill of this respondent's against complainant of seven years standing and that it is true that a greater amount than ten per cent was added to said notes in said Judgements but your respondent here avers that the additional amount so agreed to be given by complainant to this respondent was given in consideration that this respondent would take

his Judgement with a stay of execution for 12 months which respondent did do. This respondent further answering says that the said Dooley never paid this respondent any money either as principal or interest and that the complainants promise to pay a larger amt than ten per cent upon the amt due upon said notes was in consideration that this respondent did and would wait upon the said Dooley for the money due on said several notes from time to time and after they severally became due and would not and did not enforce the collection of the same by judgt and execution in a Court of Law.

Respondent further answering says that another consideration for the amount of money due and specified in the two judgts in said complainants bill named was that a number of the notes & account then & before that time held & owned by the said respondent and against the said complainant were small notes within the Jurisdiction of a Justice of the Peace & upon which respondent could have obtained a Judgement before a Justice of the Peace had execution thereon and enforced the collection of the same by selling the personal property of the said complainant and complainant agreed if respondent would surrender up to complainant said notes last aforesaid and consolidate them with other in a large note giving the complainant a longer time in which to pay the said notes then due and depriving this respondent of his speedy remedy for the collection of said small notes by several actions before a Justice of the Peace and said respondent here avers that he in consideration that the complainant would pay him the amount specified in said notes for \$592.88 with the twenty per cent per - interest after said note become and was due did surrender to complainant the said small notes and did deprive this respondent of his speedy and cheap remedy for the collection of his small notes against the said complainant. Respondent further answering files copies of the notes but not account upon which the two Judgts were conferred by said complainant which were

14

made part of this answer - That by separate decisions of the Supreme Court of the State of Illinois notes given in the form that these notes are given are not usurious but can be collected by Law and respondent is informed and believes that the same Supreme Court at their last sessions at Springfield affirmed their former decisions making them even stronger than those now published - And this respondent further answering says that the said complainant persuaded the said respondent to buy these notes upon complainant and gave him longer time for the payment and thus save complainant being sued at that - - - and in consideration that respondent would & did advance the money for said notes on complainant and would and did give him complainant a longer time for the payment of the same & each of them & would & did stay his executions upon the judgements complainant did agree to pay respondent a larger sum of money than said notes & ten per cent interest thereon and ought so to do. Respondent here denies ever receiving any money or valuable thing from complainant in payment of either interest or principal due to him from said complainant that it is true that respondent did assign the said two Judgements so confessed by said complainant to this respondent to this and respondent Nicolls and as this respondent is informed and believes the said Dooley has paid said Judgements in this way. The said Dooley sold the said respondent Nicolls a large amount of land or Real Estate getting a certain sum of money down and the balance in payments of one, two, & three years and that the said Dooley did take said Judgements not on the cash payment but on one of the time payments of the said Nicolls but of this respondent cannot answer definitely - Respondent knows nothing about threats or slandering of title by the said Nicolls - This respondent further answering will insist that on the hearing of this that said bill is insufficient for a decree against it if no answer was filed in this. that the said - does not

file copies of the notes & Judgts mentioned in said bill
 That the bill itself shows that true considerations was
 given by this respondent to complainant for the amount of
 money agreed to be paid respondent by said Dooley
 to wit see of money and a forbearance to sue on notes of
 complainant as they became due - That the complain-
 ant confessed Judgements for the amounts due waiving
 the defence of usury set up in said bill
 That there is no equity in the bill - Respondent further
 answering denies all fraud or conspiracy to wrong &
 and defraud the said complainant - And now
 having fully answered he prays to be dismissed with
 his reasonable cost

(denies)

G. W. Stipp =

Moore Solr

State of Illinois

McLean County

G. W. Stipp being duly sworn says
 that his answer above signed is true in substance &
 in fact & further he says not

Subscribed and sworn to before
 me this 5th April 1858 =

G. W. Stipp =

Wm McCallough Clerk

By L. Burr Deputy

Copy of Notes on Which Dooley
 Confessed Judgement

Bloomington 4 Octo. 1855

Ozior before the first day of March next I promise to pay
 George W. Stipp or order Five hundred and ninety
 three dollars and eighty eight cents value received with
 twenty per cent interest per annum after due

- William Dooley -

16

Blomington 3 Dec 1855
Due George W. Stipp or order Twenty five dollars
value received in full of medical account

William Dooley -

\$1.117/- Blomington 1 Dec 1855 -
On or before the 25th day of March next I promise
to pay George W. Stipp or order Eleven hundred &
Seventeen dollars value received with two per
cent ~~interest~~ a month interest after due

= William Dooley =

and Thereupon afterwards on said 5th day of April A.
D. 1858 came the complainant and filed herein his
Replication to the several answers of said defendants
in this cause which said Replication was in words and
figures as follows to wit = " =

State of Illinois

McLean Circuit Court March Term 1858

William Dooley

vs
George W. Stipp and
James Nicolls

In Equity for Relief =

And the said complainant by way
of Replication to the several answers of the said defendants
herein says that all the matters and things in the said bill
contained are true and that the said answers so far
as they or either of them deny the allegations of the bill
are wholly untrue and this complainant is ready to
prove in any manner the Court may direct wherefore com-
plainant prays for relief as in the original bill

R. E. Williams
Sol Pro compt

17

and thereupon afterwards at the regular December Term of said Court to wit on the 10th day of December A. D. 1858 this cause came on for hearing and the following proceedings were had herein to wit

William Dooley

vs
George W. Stipp
& James Nicolls

Bill for Relief

This day comes said complainant by Williams & Packard his attorneys and also come said defendants by their attorney and this cause coming on to be heard on the bill answer of said defendants and replication thereto oral proofs and all exhibits and the Court having heard the evidence herein and the arguments of Counsel and not being fully advised in the premises what decree ought to be rendered herein doth take the same under consideration

And afterwards at the regular September term of said Circuit Court to wit on the 15th day of September A. D. 1859 Final decree was rendered by said Court in this cause in words and figures as follows to wit

William Dooley

vs
George W. Stipp
James Nicolls

Bill for Relief

This cause having been at a prior term argued and submitted upon the pleadings and papers filed and offered in evidence and the Court having taken the same under advisement until now And now the Court being fully advised is considered by the Court that as there is no proof that the defendant Nicolls obtained said Judgement with knowledge of the usury in the same that the complainant as to said defendant Nicolls is not entitled to any relief and that the said Nicolls be hence

dismissed with his costs. It is further considered and decreed by the court that as the court is satisfied from the pleadings that interest from the date of the notes up to the stay of the execution on the Judgement confessed was computed on the total indebtedness at the rate of fifteen per cent per annum and the court is satisfied from the pleadings (it being directly charged in the bill and not at all denied in the answer) that it was the agreement between the complainant and defendant Stipp at the time said Judgements were confessed that said Judgements were to be satisfied by the payment of the face of said Judgements at the end of the stay of the executions or twelve months from the entry of said judgements by confession it is therefore considered by the court that inasmuch as complainant confessed a judgement for the 15 per cent interest and did defend said actions at law on the ground of usury that the complainant is not entitled to relief as to the amount of the face of said Judgements by confession. But it is considered and decreed by the court that inasmuch as it was the agreement of the parties upon which said Judgements were confessed and it appearing by the proof and pleadings it being admitted that defendant paid as charged in the bill the face of the Judgements confessed together with six per cent interest on the face of said judgements up to the end of the stay of execution that the complainant is entitled to have paid back to him the said six per cent interest on the face of said Judgements confessed to the end of the stay of execution together with interest on the amount so over paid at six per cent from the end of the stay of execution up to the date of this decree amounting to the sum of One hundred and thirty seven dollars and twenty seven cents. It is therefore considered and decreed by the Court that complainant have and recover of and from the defendant George W. Stipp the said sum of one hundred and thirty seven dollars and twenty seven cents together with interest on the same at the rate of six

19

per cent per annum from the date of this decree until
the same is paid and all the costs of this cause (except
such costs as were made by making defendant Nicolls
a party) for which let an execution issue and the costs
made by making said Nicolls a party are to be paid
by complainant

State of Illinois } ss
McLean County }

I, Wm. McCullough, Clerk of the Circuit Court
in and for said County, do hereby certify that the foregoing is a
true and complete transcript of the Records and files of my
office, pertaining to the foregoing cause.

Given under my hand and Seal of office this
28th day of January, A. D. 1860.

Wm. McCullough, Clerk.

By L. Burr. Deputy.



Let a supersedeas issue - Bond five
hundred dollars - John Rouse surety
March 28. 1860. J. Deaton

Dooly vs Stipp Nicolls

Error from McLean & Sills

Assignment of Errors

- 1st The Court Erred in rendering a decree against Stipp for 137.27.
- 2 The Court Erred in rendering any decree against the respondents Stipp
- 3 The Court Erred in not Entering a decree dismissing the bill & against Dooly for Cost
- 4 The Court Erred in rendering a decree for the complainant without proof when Nicolls answer denied all the allegations in the bill & Stipp answer denied or avoided all the allegations of the bill
- 5 The Court Erred in rendering a decree in favor of the complainant without proof
C H Brown for
Stipp.

In Attest and certum
R. G. Williams
for Seal

41. ~~1446~~ 70-13
William Dooley

vs
George W. Stipp +
James Nicolls
~~~~~

Filed April 10-1860  
L. Leland  
Clerk

Clerks fees. \$5.00 pd. by Stipp.  
U. M. C. C. C. C. C.



# Error from McLean.

Record No 285

GEO. W. STIPP,

vs.

WILLIAM DOOLEY.

Abstract of Record.

1 Dooley gave Culbertson a note for \$1235.68, dated July 1, 1855, due in one day, and agreed to pay 15 per cent interest. Dooley made some payments, which were endorsed on said note. Culbertson after said note was due, sold it to Stipp. Stipp and Dooley, Dec. 1, 1856, computed amount due on old note at 15 per cent. Stipp threatened to sue Dooley if new note was not given. 2 Dooley gave new note for \$1117, due March 25, 1856, with two per cent per month after due, and by accident left old note in Stipp's possession. Dooley also owed Stipp, Oct. 11, 1855, a sum 3 of money, which with 15 per cent to March 1, 1856, amounted to \$593.15. Stipp proposed to wait for this sum, if Dooley would give his note, due March 1, '56; Dooley consented, and gave 4 note to draw 20 per cent after due. Dooley owed Stipp an account of \$25.00, for which he gave 5 his due bill. At the spring term of court, 1856, Stipp sues Dooley on all the notes and due bill. Dooley was greatly embarrassed, and Stipp was threatening to break him up. Dooley and Stipp came together, computed amount actually due; Dooley in open court, spring term, 1856, confessed 6 two judgments in favor of Stipp—one for \$1278.89, and one for \$719.58, being the amount due on notes given by Stipp to Dooley, excluding the note given to Culbertson; that when said judgments were entered, interest was computed at the rate of fifteen per cent, from the date of each 7 up to the 7th of April, 1857, being the time when it was agreed that executions should be issued on said judgment, and that it was agreed that said Stipp should take the face of said judgment on the 7th of April, 1857. Oct. 18, '56, Stipp assigned said judgment to James Niccolls, who took 8 them with a full knowledge of all the facts above stated. Niccolls claimed amount of judgment and six per cent interest from date. Dooley was still greatly indebted to other parties—a large amount of his real estate had been sold on execution and redemption about expired, and Dooley in order to raise money to redeem the land, had to satisfy these liens, and did pay the said Niccolls the amount of each judgment and six per cent thereon; that a large amount of said sum paid by 9 Dooley to Niccolls was usurious interest. Bill to be answered on oath, prayer for decree for one thousand dollars, and for general relief. Subpoena and return, respondents ruled to answer, Oct. 14, '57. Stipp and Niccolls file their demurrer, Nov. 16, '57. Niccolls files his answer, acknowl- 10 edging that he bought the judgments against Dooley of Stipp, and that Dooley has paid them; 11 denies all knowledge of fraud or usury in said judgment; denies all other allegations in the bill. 12 Court overrules demur; leave granted to Dooley to amend bill, April 5, '58; Stipp files his answer; 13 says he bought Dooley's note from Culbertson at Dooley's request; that new note was to be given 14 by Dooley to Stipp for amount of old note to Culbertson, with a mortgage on land to secure the 15 same; that this was the reason why both notes remained with Stipp; that Dooley never gave the 16 mortgage; that said note of 593.88 was given by Dooley to Stipp for ten or twelve small notes 17 Stipp then had against Dooley; denies that any fifteen per cent was computed on this note; admits commencement of suits, and that Dooley and Stipp settled the whole matter by Dooley coming into open court and confessing the two judgments as stated in the bill, with stay of execution for twelve 18 months; admits that more than ten per cent was computed on said notes in said judgments; says the consideration for said money over the ten per cent interest was the stay of execution, twelve 19 months on each judgment; forbearance to sue when notes were due, and giving up to Dooley several notes that could have been sued before a justice of the Peace and speedily collected, and taking a large note that could only be sued in the circuit court; denies that Dooley ever paid Stipp any 20 money, or that Stipp ever loaned Dooley any money; that Stipp bought the notes or most of them; files copies of both notes as part of his answer; denies that they are usurious; that the 20 per cent in one and 2 per cent per month in the other after due, are penalties which do not attach or corrupt the notes if paid promptly; says nothing about fifteen per cent being included in the judgment for the twelve months; execution was to be stayed or that Stipp agreed to take face of the judgments at any time within twelve months after the rendition.

21 Admits the assignment of said judgment to Niccolls, and that Dooley in a sale of lands to Niccolls did take these judgments in lieu of a time payment, and will insert on the hearing that Bill is insufficient for a decree; no copies of notes or judgments mentioned in said bill were filed; that bill itself shows the true consideration time given by respondent to complainant for amount of both judgments, that complainant in open court confessed the two judgments is a waiver of the 22 usury set up in this bill; copies of notes and replication of complainant, hearing and decree; that as to Niccolls, Dooley is entitled to no relief; that as to Stipp, the court being satisfied from the pleadings that interest at 15 per cent was computed from the date of the notes up to April 7, 1857, when execution could be issued, it being so charged in bill 23 and not denied in answer, and that Stipp did agree to take the face of said judgments at any time within 12 months; decree that as Dooley did defend said suit on the ground of usury, and confessed judgments for amount really due, no 24 relief as to amount of judgments is to be given, but for the six per cent interest on said judgments, from the rendition of this decree, Sept. 15th, 1859, amounting to \$137.27. 25 A decree is rendered against Stipp. Assignment of errors—pages 26 to 38, inclusive, contains copies of proceedings in the two cases at the time when Dooley confessed the judgments in Stipp's favor.

Errors assigned by Stipp.

1. The court erred in rendering a decree against Stipp for \$137.27. 2d. court erred in rendering any 26 decree against Stipp. 3. The court erred in not dismissing the bill and entering a decree against Dooley for cost. 4. The 27 court erred in rendering a decree for Dooley without proof, when Niccolls's answer denied all the allegations of the bill, and Stipp's answer denied or avoided all the allegations of the bill. 5. The Court erred in rendering a decree in favor 28 of the complainant without proof.

Errors assigned by Dooley.

1. The court erred in deciding that Dooley was not entitled as to any portion of the judgments confessed. 2. The court 29 erred in not rendering a decree in favor of Dooley for amount of usury above ten per cent in the face of the two judgments. 3. The court erred in not entering a decree in favor of Dooley for the whole amount of said judgments confessed, less the original indebtedness and ten per cent interest thereon from its date.

GEORGE W. STIPP,

vs.

WILLIAM DOOLEY.

ERROR FROM McLEAN.

1st and 2d error. The court erred in rendering a decree against Stipp for \$147.27. The bill shows clearly that Stipp sued Dooley in the court below on the notes, and that Dooley knowing all about the facts surrounding each note, goes to Stipp and makes a compromise, confesses two judgments, spring court, 1856, one for \$1278.80, the other for \$719.58, with a stay of execution for 12 months. If there was any usury in the notes, he should have availed himself of it in the first suits at law, he did do this (see judgments) and in person confessed the judgments in open court. Dooley's remedy for usury was as good in the court of law as in equity. See Lansing vs. Eddy, 1 J. O. R. 49, 3d J. O. R. 395 and 400, Br. 61, 126, 147, 193, 194, 2d Blackford 270, 380, 5 Blackford 1, 2 Ind. 128, 2d Eq. Dig. 125; see 138 cases there cited, also, 126, see 145, page 127, see 154, 2 Porter 263, 1 Freeman, ch. 258, 22 Ills. 82, 161. 3d error. "The court erred, in not entering a decree dismissing the bill, and against Dooley for cost." The judgments being final as the amount due from Dooley to Stipp by operation of the statute it draws six per cent interest after last day of term, unless interest was waived or added in the judgment. Dooley says in his bill that 15 per cent was added in both cases; Stipp's answer expressly denies that 15 per cent was even computed on the lesser claim of \$593.88, and no where admits that said judgments were to be satisfied by Dooley paying the face of each one year after the rendition of said judgment; no proof was offered to sustain the bill; decree expressly states why it was so decreed, "because it was charged in bill and not denied in answer." See 22 Ills. 455, 21 Ills. 44, 2d Gilman 682, 21 Ill. 500, 16 Verm. 179. 4th and 5th error. Court erred in rendering a decree for Dooley without proof, when Niccolls's answer denied allegations of bill, and Stipp denied or avoided all the allegations in the bill. See 22 Ills. 455, 21 Ills. 44 and 500; 2 Gilman 682.

MOORE & GREENE, for Stipp.



70841-13

Abstract of Record in  
Cases 1468285 to be  
Consolidated there as one  
& paid off's points

Filed Apr. 29-1861

L. Ireland  
Clerk