

No. 12913

Supreme Court of Illinois

Safford et al

vs.

Vail

71641  7

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

To the Sheriff of the County of McHenry

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of McHenry County, before the Judge thereof, between Michael Vail

plaintiff, and Franklin Safford and Norman S. Safford

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

Defendants

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

Michael Vail

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

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof at Ottawa, this 30th day of August in the Year of Our Lord One Thousand Eight Hundred and Fifty-eight.

L. Deland
Clerk of the Supreme Court.

J. B. Rice Deputy

Served by reading to the within
 named Michael ~~Smith~~ ^{Smith} this 17th day
 of September AD 1858 John Eddy Suf
 J. M. Henry County
 By E. Smith Dep

Shr Fee Surin 30
 Mfg 12- 60
 10
 \$ 1.20

Franklin Safford et al
 102 07

Michael Bail

Sci fa

102

Filed Sept 17 1858
 Michael Smith

102



STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

McHenry Circuit Court.

MICAH VAIL VS. FRANKLIN SAFFORD AND NORMAN J. SAFFORD.

ASSUMPSIT.

ABSTRACT OF THE RECORD.

Declaration filed, March 4th, 1858.

1st count on promissory note, \$720, made by defendants payable to the order of plaintiff, and plaintiff ordered it to be paid to himself. Note dated 5th Feb., 1857: *One year after date at 10 per cent. after due.*

2d count; common, \$800.

Money paid out, &c.	} <i>Ad damnum.</i>
Had and received.	
Goods, &c., sold and delivered.	
Work and labor.	
Account stated.	

\$1,500.

Pleas filed in vacation, 20th March, 1858, by defendant as follows:

1st. General issue by both to whole declaration.

2d. *As to \$220.00 of said promissory note.* That the \$720 note was given for \$500, borrowed two years before and 20 *per cent. per annum*, interest amounting to \$220, and for no other consideration.

April 22.—Defendant, by leave of the Court, withdrew the general issue.

April 29.—Plaintiff demurs to special plea, and defendants join in demurrer. Defendants then move for judgment for a discontinuance.

Plaintiff enters cross motion for judgment against defendants by default.

May 5, 1858.—The court allows the cross motion for judgment by default, but gives judgment for defendant for the *costs* of the cross motion. The Court also sustained the demurrer to the special plea and adjudges against defendants' costs on demurrer. Also that plaintiff recover his damages.

The proofs were then submitted to the Court, and the Court assessed the plaintiff's damages at \$738, and judgment for that and costs.

Defendant excepted.

Bill of exceptions sets all this out again.

SUPREME COURT:

SAFFORD & SAFFORD
vs.
M. VAIL. } Error to McHenry.

And now come said plaintiffs in error and say that, in said record and proceedings, there is manifest error, and ask that said judgment and proceedings may be set aside and for naught held, and assign as points of error the following:

COON & ROGERS, Plff's. Att'ys.

POINTS OF ERROR.

1st. The Court erred in sustaining the motion of the plaintiff below for default, after the defendants had applied for a discontinuance.

2d. The Court erred in giving judgment for part of the costs of said motions and not for the whole of said costs.

3d. The Court erred in sustaining the demurrer to defendant's special plea.

4th. The Court erred in the assessment of damages without the intervention of a jury or the Clerk.

5th. The Court erred in assessing the damages in gross.

6th. The Court erred in proceeding in the case without disposing of defendant's motion for a discontinuance.

7th. The Court erred in not giving judgment for defendants below.

8th. The Court erred in giving judgment in favor of plaintiff below.

Errors assigned by

COON & ROGERS,
by T. L. DICKEY, Proxy.

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

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Had and received.

Goods, &c., sold and delivered.

Work and labor.

Account stated.

} *Ad damnum.*
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7th. The Court erred in not giving judgment for defendants below.

8th. The Court erred in giving judgment in favor of plaintiff below.

Errors assigned by

COON & ROGERS,
by T. L. DICKEY, Proxy.

STATE OF ILLINOIS, }
SUPREME COURT,

To the Clerk of the Circuit Court for the County of McHenry 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 McHenry County, before the Judge thereof, between Micah Dail

plaintiff, and Franklin Safford & Norman S. Safford

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

as we are informed by their complaint, and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plea 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 30th day of August in the Year of Our Lord one thousand eight hundred and fifty-eight.

S. Seland

Clerk of the Supreme Court.

by J. B. Rice Deputy

Franklin ¹⁸⁴⁵ Safford ~~Stal~~
v

Writ of Bail
Writ of Error

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

Leland Clerk
by J. B. Rice Deputy

Filed August 30th 1845
Leland
Clerk



Know all men by these presents
that we Franklin Safford & Norman
S. Safford Henry Knowles & Anson
P. Rogers of the County of McKendry &
State of Illinois are held & firmly
bound unto Micah Vail of the
same place in the penal sum of
eighteen hundred dollars which
sum well & truly to be paid we
bind ourselves our heirs executors
& administrators jointly severally
& firmly by these presents - Sealed
with our seals this 21st day of
August A.D. 1858

The condition of the above
obligation is such that whosoever the
above named Micah Vail did
at the April Term of the McKendry
County Circuit Court A.D. 1858
obtain a judgment against the above
binders Franklin Safford & Norman
S. Safford for the sum of seven
hundred & thirty eight dollars from
which judgment the said Franklin
Safford & Norman S. Safford have
procured a writ of error out of
the Supreme Court of the State of
Illinois directed to the said McKendry

County Circuit Court. And the
Honorable John D. Caton Chief
Justice of the Supreme Court of
the State of Illinois having ordered
that said writ of Error be made
a supersedeas on said Judgment
Now if said T. & N. S. Safford shall
procure that said writ of Error
with effect & in case said judg-
ment is affirmed shall pay
said Judgment & all interest costs
& damages, then this obligation
to be void otherwise to remain
in full force & effect

In presence of
A B Mason

H. Safford Seal
N. S. Safford Seal
H. Knowlton Seal
J. P. Rogers Seal

State of Illinois } ss. Asa P. Rogers being duly sworn
McHenry County } doth depose and say that he signed the
above bond and that he is a resident
of this County - and is now worth at least ^{two} ~~three~~ ~~four~~
Thousand dollars over and above all his debts
liabilities & Homestead Exemptions that the principal part
of his property consists in improved unencumbered Real Estate
situate in this Co and further doth that

Subscribed and sworn to before me
this 21 day of August 1835

A B Mason Notary Public

J. P. Rogers

State of Illinois
McHenry County.

Wm Knowles being duly sworn deposes and says that he is a Resident of this County and is now worth at least two thousand dollars over and above his liabilities and exemptions, that his property is mainly in improved unincumbered Real Estate - that he has read the above affidavit of Anson P. Rogers, and truly believes the same to be true and further deposes that

Subscribed and sworn to before me

this 2d day of August A.D. 1835

A. Moore Notary Public

H. Knowles

1002 - 104

J. + M. S. Safford

vs.

Much More

appeal Bond

Filed August 30, 1884
L. Leland
clerk

Pupard

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

McHenry Circuit Court.

MICAH VAIL VS. FRANKLIN SAFFORD AND NORMAN J. SAFFORD.

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2d count; common, \$800.

Money paid out, &c.	} <i>Ad damnum.</i>
Had and received.	
Goods, &c., sold and delivered.	
Work and labor.	
Account stated.	\$1,500.

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1st. General issue by both to whole declaration.

2d. *As to* \$220.00 of said promissory note. That the \$720 note was given for \$500, borrowed two years before and 20 *per cent. per annum*, interest amounting to \$220, and for no other consideration.

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The proofs were then submitted to the Court, and the Court assessed the plaintiff's damages at \$738, and judgment for that and costs.

Defendant excepted.

Bill of exceptions sets all this out again.

*Safford and Norman Safford Defendants
who are summoned etc. in a plea of trespass*

SUPREME COURT:

SAFFORD & SAFFORD }
vs. } Error to McHenry.
M. VAIL. }

And now come said plaintiffs in error and say that, in said record and proceedings, there is manifest error, and ask that said judgment and proceedings may be set aside and for naught held, and assign as points of error the following:

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7th. The Court erred in not giving judgment for defendants below.

8th. The Court erred in giving judgment in favor of plaintiff below.

Errors assigned by

COON & ROGERS,
by T. L. DICKEY, Proxy.

Safford and Norman Safford Defendants

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Safford shel

✓
Ch. Vail

Attest, & Peff's
Pomts.

Filed Apr. 26. 1859.
Shelton Cts.

Meacham

Ats

Franklin Safford
Norman Safford

Superior Court

April Term 1857

Term to the 1st of May

And the said defendant in error
by Church & Burr his attorneys
comes and defends &c. and says
that there is no such error or
errors in the record in this case
as is in and by the said plaintiff's
affirmation of errors supposed
and that he is ready to answer
Church & Burr
attys for deft

Safford and Norman Safford Defendants

Alpen Am
1859

break trail
at
saw the Suffer
from Suffer
in the

Filed April 19, 1859.
L. Leland
Clerk

Chas T Burr

United States of America

Tuesday April 10. A.D. 1858
United States of America

State of Illinois }
McHenry County } Ples before the
Honorable Isaac G.
Wilson Judge of the thirteenth Judicial
Circuit of the State of Illinois, and Pres-
iding Judge of the McHenry County
Circuit Court, at a Circuit Court begun
and held at the Court House in Woodstock
in said County on Tuesday the twentieth
day of April in the year of our Lord
Eighteen hundred and fifty eight
Present

Attest
Geo. D. Kafford Clerk

Hon. Isaac G. Wilson
Judge
John Eddy Sheriff

Micah Vail

or
Franklin Safford
Norman J. Safford

} Affampsit

And huctafors to wit on the 4th day of
March A.D. 1858 the Plaintiff in this suit
filed his declaration in the Office of Clerk of
the Circuit Court of said County aforesaid
which said declaration is in the words and
figures following to wit:

McHenry County Circuit Court In Vacation
before the April Term A.D. 1858

State of Illinois }
McHenry County } Micah Vail Plaintiff
in this suit by Anson
Sherry his Attorney complaining of Franklin
Safford and Norman Safford Defendants
who are Summoned &c. in a plea of trespass

on the case on answer. For that to being
 the said Defendant heretofore to wit
 on the fifth day of February in the year
 of our Lord one thousand eight hundred
 and fifty seven at Chicago to wit in the
 County of Cook and State of Illinois the
 foregoing note in writing bearing date the
 day and year aforesaid and then and there
 delivered the same to the Plaintiff in and
 by which said note said Defendant by
 the name and style and designation of
 J. J. Jeffers promised to pay to the
 order of the said Plaintiff by the name
 and style of J. J. Jeffers one hundred
 and twenty dollars with interest thereon
 at the rate of ten per cent after due one
 year after the date of said note for value
 received. And the sum to be paid or to be paid
 order said note was payable, then and there
 indorsed and under has been indorsed the
 said note to the said Plaintiff and there are
 three deliveries the same to indorse to the
 said Plaintiff, by means whereof and by
 force of the statute in such case made and
 provided the said Defendant became liable
 to pay said Plaintiff said sum of money
 in accordance with said note, and being so liable
 he contributed thereto, then and there
 indorsed and promised to pay the same
 to the said Plaintiff according to the tenor
 and effect hereof and ordering of the
 said note and of the indorsement
 aforesaid to wit at the place aforesaid.
 That where also the said Defendant
 afterwards to wit on the first day of the
 month of March in the year of our Lord one
 thousand eight hundred and fifty eight
 at Chicago in said County became and

were indebted unto the Plaintiff in a large
sum of money to wit Eight hundred Dollars,
dollars for money before that time lent and
advanced to and paid laid out and expended
for said Defendants by said Plaintiff at
said Defendants request; and for money before
that time had and received by said
Defendants to and for the use of the said
Plaintiff; and also in like sum for goods
wares and Merchandise before that time
sold and delivered by said Plaintiff
to said Defendants at like special
instance and request; and also in
like sum for the labor care and diligence
of said Plaintiff before that time done
and performed by said Plaintiff for
said Defendants and at the like special
instances and request of said Defendants and
also in like sum then and there found
due and owing said Plaintiff on an
account stated between them and being
so indebted said Defendants in consideration
thereof then and then undertook and pro-
-mised to pay said Plaintiff said last
mentioned sum of money when thereunto
afterwards requested.

Yet the said Defendants not regarding
their said promises and undertakings but
contriving &c, although after requested so to
do have not paid said Plaintiff either of
said sums of money above mentioned or any
part thereof but so to do have hitherto
wholly neglected and refused and still
doth neglect and refuse to the the damage
of said Plaintiff of Fifteen Hundred
dollars and therefore he brings this suit &c
Anson Sperry
Plffs. Atty.

Copy of Instrument and account filed on

\$170.00

Memphis Feby. 5th. 1854

One year after date we promise to pay to the order of M. Vail Seven hundred & Twenty dollars at two per ct. after due value received

(Signed) "J. S. Safford"

The note declared on within & of which the above is a copy is the plaintiffs sole & only cause of action

J. S. Safford

To Micah Vail Dr.

To money lent and advanced	\$ 800.00
To money expended and paid out for.	\$ 800.00
To money received for use of.	\$ 800.00
To Goods, Wares and Merchandies	\$ 800.00
To labor & services	\$ 800.00
To balances on account stated	\$ 800.00

(Endorsed) Filed this 4th day of March 1858
G. S. Kelson Clerk.

And thereafter to wit on the 5th day of March aforesaid a summons was issued from the Clerk's office aforesaid which said summons is in the words & figures following to wit:

State of Missouri }
McHenry County }
Op. The People of the State
of Missouri, to the Sheriff
of said County greeting
You are hereby commanded to summon
Franklin & Norman S. Safford if to be
found in your County to answer the

Declaration of Micah Vail in action
of assumpsit damage claimed Fifteen
Hundred Dollars; which said declaration
was filed in the Office of the Clerk of
the Circuit Court of McHenry County on the
4th day of March A.D. 1858. Now
unless the said Defendant shall within
twenty days from the date hereof plead
to or otherwise answer said declaration according
to Law Judgement will be entered against
him by default.

Witness George T. Kasson Clerk
of the McHenry County
Circuit Court and the Seal
thereof at Woodstock in
said County this 5th day
of March A.D. 1858

(Enclosed) Geo. T. Kasson Clerk

Served by reading to the within named
Franklin Safford & Norman J. Safford & by delivering
a copy of the declaration with each of them
the 10th day of March A.D. 1858

John Eddy Shf.
By V. I. Smith Dpty

Feb 2 sos. 1.00. 2 copy s. 1.00. 24 mlt 1.20. Rtn 10.
\$ 3.31

Filed March 15. 1858

Geo. T. Kasson Clerk.

And thereafter to wit on the twentieth day of
March A.D. 1858 the Defendants by Leon
& Rogers their Attorneys and file in the Clerk's
Office aforesaid their Pleas in this Cause
which are in the words and figures following
that is to say.

McHenry County Circuit Court Vacated

before & April Term A. D. 1858
 State of Illinois }
 McHenry County } Sp.

Michael Vail }
 vs }
 Franklin Safford & }
 Norman S. Safford }
 And the said Defendants by Leon & Rogers their attorneys come and defend the wrong & injury whereof. and say that they did not undertake and promise in manner and form as the said Defendants state above thereof complained against them and of this they put themselves upon the Country By Leon & Rogers their Attys.

And for a further plea on this behalf the said Defendants by Leon & Rogers their Attorneys come and defend the wrong and injury whereof. and say Acted Now (as to two hundred and twenty dollars part and parcel of said promissory note in said declaration mentioned) because they say that heretofore to wit; before the making of said promissory note in said declaration mentioned viz. on or about the 5th day of February A. D. 1856 to wit at Muncie in said County in consideration that the said Plaintiff would loan and advance and give day of payment of five hundred dollars to one Henry N. Stevens for and during the term of one year from that date he the said Henry N. Stevens then and there agreed to and with the said Plaintiff that in consideration of said loan and forbearance and giving day of payment of said five hundred dollars

so to be loaned to him as aforesaid to
make execute and deliver to the said Plaintiff
his certain promissory note, in writing, for six
hundred dollars payable to said Plaintiff
in one year from the date thereof, with Franklin
Safford one of the Defendants herein to sign
the same as security, and the Defendants
aver that in pursuance of such corrupt
and usurious agreement so made as
aforesaid the said ^{Plaintiff} did at the time and
place aforesaid loan and advance to the
said Henry H. Stevens said sum of five
hundred dollars and did forbear and
give day of payment of the same for
the term of one year thereafter And in
consideration thereof the said Henry H.
Stevens then and there made executed
and delivered to said Plaintiff his certain
promissory note in writing, for six hundred
dollars payable to said Plaintiff one
year from the date thereof with Franklin
Safford (one of the defendants herein) as a
signer and security on and for the same
which promissory note so made executed and
delivered as aforesaid was then and there
accepted and received by the Plaintiff in
consideration of said loan of five hundred
dollars so made and forborne as aforesaid
and for no other and different consideration
whatever, And the defendants further
aver that after the making and delivery
of the aforesaid promissory note and
after the day on which the money therein
mentioned became due and payable to wit
on the 5th day of February A.D. 1854 at
Albany in said county in consideration
that the Plaintiff would give further day
of payment of said note of six hundred
dollars to the said Henry H. Stevens

and the said Franklin Safford for and during
the term of one year thereafter it was
corruptly and usuriously and against the
form of the Statute in such case made
and provided agreed by and between the
said Plaintiff and the said Henry H. Steven,
& Franklin Safford that the said Plaintiff
should and would extend the time of the
payment of said note for one year
thereafter and in consideration thereof
the said defendants should make out
execute and deliver to the said Plaintiff
their certain promissory note in writing payable
to said Plaintiff in one year from the date
thereof for the sum of Seven Hundred and
twenty dollars And the defendants aver
that in pursuance of the aforesaid corrupt
and usurious agreement, the said Plaintiff
did then and there extend the time and give
day of payment of said Six hundred Dollars
for one year from the date thereof and for
and in consideration of such extension of
and giving day of payment as aforesaid
the said defendants then and there made
execute and delivered to the said Plaintiff
said note in said declaration mentioned
and for no other or different consideration
whatsoever And the defendants aver that
said note in said declaration mentioned
was then and there accepted and received
by the Plaintiff for the aforesaid consideration
and none other. And of this they are
ready to verify, wherefore they pray they
may be allowed said sum of Two hundred
& twenty dollars including and usurious
interest so agreed to be paid as aforesaid
together with whatever interest may be
due by the terms of said note in said

declaration mentioned

Court & Rogers Sft. Atty.

State of Illinois }
McHenry County } W. Franklin Safford

One of the Defendants
in the above cause being duly sworn doth
depose and say that he verily believes
the defendants have a defence upon the
merits to a part of the Plaintiff's cause
of action to wit in the amount of Two
Hundred and twenty dollars & the interest on
said promissory note mentioned that their
defence is set forth on their Special Plea
filed herein. And that he knows the contents
of said plea and the facts therein stated
are true and correct.

Subscribed & sworn to Signed W. Safford
before me this 15 day
of March 1858
Elden Jewett J.P.

(Ordered) Filed March 20. '58
Geo. H. Hapson Clerk.

And thereafter to wit on Thursday the 22^d. day
of April AD 1858 being one of the days
of the April Term of said Court for the
year last aforesaid the further proceedings
in the above entitled cause were had to wit

Michael Vail
or
Franklin Safford } Affumpsit
Norman S. Safford

And
now comes the
Defendant by leave his attorney
And by leave of the Court withdrawing
the plea of the general issue heretofore

by him filed herein.

And thereafter to wit on the 29th. day of April in the year last aforesaid being another of the days of said April Term of said Court aforesaid, the following proceedings were had to wit:

Michl Vail

^{vs}
Franklin Safford
Norman S. Safford

Assumpsit

And now Comes the Plaintiff by Sperry his Attorney and files his demurrer to the Special plea of the defendants herein in which the Defendants by Coon join^{ed}. And thereupon the Defendants by Coon their Attorney enter their motion for a discontinuance of this suit. and the Plaintiff enters also his cross motion for a judgement against the said Defendants by default.

And thereafter to wit on the .th. day of May in the year last aforesaid being also one of the days of the April Term of Court last aforesaid the following further proceedings were had in the above entitled cause to wit

Michl Vail

^{vs}
Franklin Safford
Norman S. Safford

Assumpsit

And the Court being fully advised upon the cross motion formally entered herein by the Plaintiff for judgement by default against the Defendant sustains the same but doth

further order and adjudge that the Defendants have and recover of the Plaintiff their costs and charges about said cross motion so allowed as aforesaid expended and that they have execution therefor. And the Court being fully advised upon the Demurrer of the Plaintiff to the Special plea of the Defendants herein sustains the same. It is therefore ordered and considered that the Plaintiff have and recover of the Defendants his costs and charges about his Demurrer expended and that he have execution therefor. It is therefore ordered that the Plaintiff have judgment for his damages and the proofs being submitted to the Court and the Court being fully advised thereon assesses the Plaintiffs damages at the sum of seven hundred and thirty eight dollars. It is therefore ordered and considered that the Plaintiff have and recover of the Defendants the sum of seven hundred and thirty eight dollars his damages so assessed as also his costs and charges herein expended and that he have execution therefor to which rulings of the Court the Defendants by counsel then and there except.

State of Illinois }
McHenry County } g. McHenry County Circuit
Court April Term ad 1858

Micah Vail

or
Franklin Safford &
Norman S. Safford

Be it remembered
that on this twenty second
day of April ad 1858, said day being
one of the days of said Term the defendant
by leave of the Court heretofore obtained

withdrew the general issue heretofore filed
in this Cause. Afterwards to wit on the 29th
day of April said day being one of
the days of said Term the Plaintiff filed
his demurrer in said Cause to the Defendants
plea which demurrer was in the words
and figures following to wit:

Micah Vail

^{vs}
H. & T. S. Safford

And now comes the said
Plaintiff by Sherry &
Kulbut, his attys. and
as to the plea by the said Defendants specially
above pleaded says that the matters and
things in said plea pleaded, are not
sufficient in Law to bar and preclude
the said Plaintiff as to any part of his
said action and that the said Plaintiff
is not by the Law of the land bound to
answer further thereto: and this he is ready to
verify &c. wherefore he prays Judgement of
the said Plea &c

Sherry & Kulbut
Plffs. Attys.

Apr. 24. 1858

And the said Defendant says that said Plea
is sufficient in law

Levon & Rogers
Attys for Defs.

in which demurred the Defendants joined

Whereupon the defendants by their counsel
moved a discontinuance of this suit, and
the Plaintiff, afterwards on the same day
entered his cross motion for judgement by
default - Afterwards to wit. on the 5th
day of May said day being one of
the days of said Term, the Court being.

fully advised allowed said cross motion
 at the Plaintiff's Costs of said motion to which
 ruling by the Court the defendants by their
 Counsel then and there excepted - Afterward
 to wit on the same day the Court being
 fully advised upon the demurrer heretofore
 filed in this cause sustained the same
 & rendered Judgement for Plaintiff upon the
 demurrer & damages assessed by the
 Court upon the state in evidence at Seven
 hundred and thirty eight dollars to which
 finding by the Court & sustaining the
 demurrer & entering Judgement upon the same
 and assessment of damages against
 the defendants by their Counsel then and
 there excepted and now pray that this Bill
 of exceptions may be signed and sealed
 by the Court and make a part of the Record
 of this cause which is done
 Signed Isaac G. Wilson Clerk

State of Illinois }
 McHenry County } J. H. T. Kasson
 Clerk of the Circuit
 Court in and for said County in the State aforesaid
 do hereby certify that the above and foregoing
 is a true and complete copy of the Record
 of this Court in a Cause wherein Micah
 Vail is Plaintiff and Franklin Jafford
 and Norman Jafford ^{Defendants} as appears
 by a diligent examination of the same
 Witness my hand & seal
 of said Court at Woodstock
 this 19th day of July A.D. 1858
 J. H. T. Kasson Clerk



Let a supersedeas issue in this cause, bond
in the sum of Eight hundred dollars with
Henry Knowles & Anson P Rogers sureties
Aug 27 1858,

J D Horton
Ch Just

Mitch Vail

by

F. Safford

N. S. Safford.

Copy Record -

102
Franklin Safford et al

Mich Vail

Transcript of Record
& asst. of Envs

Filed August 30th 1858
S. Deland
clerk

W.

Micah Vail
 ads
 Franklin Safford
 Norman S Safford

} Supreme Court
 } April term 1859
 } Error to M. H. H.

By leave of Court the defendant in Error submits the following suggestions

1. The Court below ruled properly in sustaining the cross motion for judgment. This rule of practice has already been established by this Court in Warren vs. Nexsen 3^d Scam. 38-41

2. The assessment of damages by the Court without the intervention of the Clerk or jury was regular and in accordance with the best regulating practice in 13 judicial Circuit.

Scates Statute Page 637

Session Laws 1857 page 29

The declaration contains ^{even} counts to the amount of \$800 besides a special count on note \$720. The defendants

of said \$600 note for one year from that date & that defendants

below by withdrawing plea of Gen.
issue was left in default to
the whole amount claimed in
the declaration except \$220.

So that even if the Special Plea
as to the \$220 had been good the
plaintiff was entitled to his assess-
ment of damages and judgment
thereon to the amount of the decla-
ration not answered by the plea
which was much more than he
did recover

3 But the plea was bad and the
Demurrer properly sustained

The issue set up by the plea
was a supposed agreement made
by one Henry H Stephens with the plain-
tiff below to pay \$600 in one year
for the use of \$500 and that Stephens
gave his note with security for
\$600. And after the year expe-
red this debt is assumed by the
defendants below and they give
their note for \$720 payable in
a year and Stephens was of

can be cleared from his promise
The Saffords having assumed
to perform his promise and also
a new one of their own which
they also set up as usurious

It would certainly be a great hard
ship on Abail who had trusted
to Stephens' integrity to perform
his promise by the payment of the
first note and cleared that prom-
ise on its being assumed by the
Saffords if they were now to be
allowed to avail themselves of
any legal objection that Stephens
might have made but which he
probably from notions of honor
and honesty would not have
made, It would be but morals
and I think equally but law
that would allow them to do so
They are not merely his sureties but
have assumed the payment in his
stead of what he considered an honest
debt which it is to be presumed he
intended to pay honestly and would
have paid without seeking to avoid
himself of any such defense as there

of said \$600 note for one year
from that date & that defendants

below by withdrawing A. L.
plaintiffs are urging
as to the first issue set up in
the plea there was no priority between
the parties to the suit. And the
plea being "as to \$220" and the
facts stated in the plea not
sustaining that entirely the
plea is bad on demurrer
It will be seen also that the first
assumps contract is alleged to have
been made previous to the act of 1857
operating all forfeitures &c.

The abstract furnished by the
Plaintiffs does not set out the
plea properly as pleaded.

The court is therefore requested
to read the plea itself

This court has decided that
"a plea of usury being in the
nature of a penal action much
strictness is required in pleading
it"

Hamwick et al vs Hodgson
9 Scam 338

Respectfully submitted

L S Clench
Att'y for Def't

1
Dickey's answer to the above

Supreme Court of Illinois
Safford &
vs

M. Vail

} Envs to M. Henry -

The only ~~question~~ ^{subject} I desire to
discuss is the error as we allege
in sustaining the demurrer to
the special plea of Safford,
Defendant in error, com-
plains of our Statute ⁱⁿ the ab-
stract of this plea - we therefore
here state it more at large

It begins on page 4 of the
record

Franklin Safford &
Norman Safford the defendants
below - pleaded as to § 220 -
that on 5th Feb 1856 - plaintiff lent
to one Stevens \$500 for one year
under an agreement that for that con-
sideration he would give his note
for \$600 payable to Vail at one year
from date - with Franklin Safford
(one of the defendants below) as
security of Stevens - & Stevens
& Franklin Safford as his security
gave the \$600 note -

After the maturity of the 1st
note, it was agreed by Vail with
Stevens & Franklin Safford that
Vail would extend the payment
of said \$600 note for one year
from that date & that defendants

(the two Saffords) would give
to plaintiff their note at one year
for the sum of \$720 - & in pur-
suance of said agreement the note
in declaration ~~He~~ was given
& Claim that by reason of the
~~unlawful~~ usury - the defts
claim a deduction of \$220
being simply the amount of
said usury -

To avoid this the attorney
for Nail insists - That the
Saffords can not complain
of the usury in the 1st Note - because
they are not parties - & that Stevens
alone can set up that defence

It is the law - that a security
can make any defence which
his principal might make -

I insist that these parties are
parties & may set up the defence

If Franklin Safford had been
sued upon the \$600 - he could
have objected to the usury therein
~~at the~~ whether Stevens consented
that he should do so or not -

~~He~~ that being the basis of the
note insist - Franklin Safford
can certainly set up this defence

Norman S. Safford is merely
the security of Franklin Safford
& may therefore make the same
defense - It is erroneously
affirmed by Mr Church that Stevens

was discharged from his promise
for \$600 - the plea does not say
so & the facts stated in the plea
would still leave Stevens liable
to be sued upon the \$600 - & if
he failed to set up anything - being
made to pay it - All his fancy
work about the Morals on this
feature of the case are mythical
& would not affect the law
if real

D. Lyle Driskill
for pltffs in error

Supreme Court
April Term 1857

Franklin Safford
Norman S Safford
vs

Mecah Nail

Gifts buy Court
~~Anthony~~

Filed April 22. 1857
L. Leland
Clerk

L. S. Church