

14644

No. _____

Supreme Court of Illinois

Manny

vs.

Stockton

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 179 2

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

Handwritten signature

Shackles

dy

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Winnebago Court for the County of Winnebago 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 Winnebago County, before the Judge thereof, between Frederick H. Manny & Jesse Blum — for the use of Frederick H. Manny —

Complaintiffs and Charles L. Stockton

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

as we are informed by them —
complaints — 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
19th day of April
in the Year of Our Lord One Thousand Eight Hun-
dred and Sixty-four

L. Deland
Clerk of the Supreme Court.
5 p. B. New York



179 2

G. H. Mooney

No. 179

vs.

Charles S. Stockton

WRIT OF ERROR.

FILED April 19, A. D. 186 4

S. Soland Clerk.

In the Supreme Court.

FREDERICK H. MANNY,
JESSE BLINN,

For the use of
FREDERICK H. MANNY, Appellant,
Vs.
CHARLES L. STOCKTON, Appellee.

Appeal from the Circuit Court of Winnebago County.

ABSTRACT OF RECORD.

RECORD Pages 7 & 8

NARR. Pages 7, 8 & 9

Assumpsit for money paid and advanced to the defendant.

Narr. filed June 5th, 1863, claiming that plaintiffs on the 30th of December, 1859, made their note for fifteen hundred dollars payable to the defendant in three years from date, with interest at the rate of ten per cent. per annum.

That on or about the 24th of April, 1860, the plaintiffs paid to the defendant the sum of \$108 76-100 to be applied in payment on said note.

And on the 21st of December, 1860, the plaintiffs paid on said note the sum of \$225 00.

And on the same date \$50 00.

And on the 7th day of January, 1862, the sum of \$100 00.

And on the third of January, 1860, the sum of one hundred dollars.

That after the making of said payments and before the note became due, and without the said payments having been endorsed on said note, assigned said note to one Seth Marshall, and that said Marshall became the owner and holder of said note without notice of said payments having been made; and that in consequence thereof the said plaintiffs were compelled to and did pay to said Marshall said note, none of said payments being by him allowed thereon.

Page 10

Plea of general issue, with notice of defence under the same, filed Oct. 7, 1863.

Page 10

Replication filed Oct. 7th, 1863.

Notice under general issue filed Oct 7, 1863; in substance that the defendant would shew in evidence on the trial that whatever payments were made on the said note were made as interest voluntarily paid by the plaintiffs to the defendant, at the rate of fifteen per cent. per annum, and endorsed and allowed as interest on the note.

Page 12

September Term, October 13, 1863, Cause submitted to the Court for trial, and issue found for the defendant. Whereupon the plaintiff moved the Court for a new trial; which motion, upon hearing the argument of counsel, was overruled by the Court; which motion is set out in the bill of exceptions. The plaintiff thereupon prayed an appeal to the Supreme Court, which appeal was allowed, upon the plaintiff entering into bonds in the sum of \$200, with L. F. Warner as security.

Bond for appeal filed Nov. 10, 1863.

BILL OF EXCEPTIONS.

Page

Martin Rockwell, a witness sworn on the part of the plaintiff, says that he knows all the parties; and is here shewn the following note, marked A:

"\$1500. Rockford, 30 December, 1859. Three years after date we promise to pay to Charles L. Stockton or order, fifteen hundred dollars value received, with interest at ten per cent. per annum, payable annually.

"MANNY & BLINN.

"per STOCKTON."

On which note is the following endorsements: "Received interest on the within note in full to December 30, 1860."

Also, "Rec'd, Painsville, January 10th, 1862, interest on the within note in full up to June 10, 1861.

Page 16

Witness, after being shewn the note, testifies: I have seen the note. I saw it in December of 1861 or January of 1862, or during that winter, at F. H. Manny's office, Rockford. C. L. Stockton had the note there; at that time there was but one endorsement on the back of the note, and that was the one that shews received interest up to Dec. 30, 1860; the other endorsement now on the back was not there. I both took the note and saw it.

There was a proposition at that time to take up this note and give some other bills receivable which we held against Mrs. Manny.

The first time defendant called at the office he claimed the interest had not been fully paid on the note. He said the payments made on the note corresponded with the books of Manny with the exception of the charge of \$108 76-100, and said that that was paid and endorsed on a note previously given by Manny, Blinn & Co. to him, but then held by Colburt Huntington.

That two hundred and twenty five dollars, and one hundred dollars, was the only payments that he had received on the note.

That the \$225 payment was made promptly when due.

That the hundred dollars was received by him by mail a short time before he came here in January, 1862. That the reason he had not endorsed the hundred dollars was, he was coming here in a few days and expected to get the whole interest due. He also stated that he had a verbal understanding at the time that he was to have fifteen per cent. interest on the money in the note, instead of ten as called for in the note.

16 Page

The note was paid to Mr. H. W. Taylor a short time after the note became due, he representing himself as the attorney in the collection of the same for Seth Marshall, of Ohio. We delayed the payment of the same a short time to ascertain whether Mr. Marshall was the real owner of said note.— After ascertaining the same, the note was paid in full, deducting the indorsements as they now appear on the note. I was then acting as financial agent for Manny.

Witness also states that at the conversation referred to by me with the defendant, he stated that the two payments made on the note was made as interest at fifteen per cent., as was agreed upon.

Page 17

Witness is here shown a note, mark B: "\$1500. Rockford, Ill., April 11, 1859. Three years after date we promise to pay to the order of Charles L. Stockton fifteen hundred dollars, with interest at ten per cent. per annum, payable annually, value received.

"MANNY BLINN & CO.

"Per H. STOCKTON, Gen. Agt.

"Due 11 & 14 April, '62."

Page 17

On the back of which is the following indorsements: "Rec'd on the within five hundred and nine-
"teen 32-100 dollars, Dec. 30, 1859."

Also, "Rec'd on the within note twenty-eight 33-100 dollars, April 31, 1863, (\$28 33-100.) Paid
"Aug. 19, 1863."

Page 17

Witness says: I have seen the said note B. Defendant proposed to give up note marked A and take a note of Mary Manny in place of it, computing interest at ten per cent., and allow payments of \$225 00 and \$100 00; and the only thing that stood in the way was that the payment of \$108 76-100 was not endorsed. The arrangement was finally concluded on the basis that we should write to Mr. Huntington, the holder of the note B, and ascertain if the \$108 76-100 was endorsed on that note, and get a copy of it, and if the endorsement of \$108 76-100 was not upon that note, that it ought to be upon the note A, and Mr. Stockton was to remain until we could hear from Huntington.

Witness further says: We did write, as I before stated, and got from Mr. Huntington what purported to be a copy of the note B, but there was no endorsement of the amount of \$108 76-100, and the agreement was not carried out.

H. W. Taylor sworn, says: I am an attorney at law. "He was here shown note A referred to." And he says: I presume—I have no doubt—but that I collected the money of F. H. Manny upon this note. The note I received Dec. 30, 1862, from H. P. Stockton, to collect for Seth Marshall, of Painsville, Ohio. The back of the note was then as it is now. I collected the amount appearing to be due upon it as it now appears, for Seth Marshall. I had corresponded with Seth Marshall in regard to the matter. I think I wrote him that Mr. Manny pretended to have a claim for usury against the note.

The plaintiff then offered and proposed to prove that the witness had, while acting as attorney in the collection of said note A, requested said Marshall to state whether at the time of the purchase of the said note A, he had any knowledge of any payments further than appeared upon the note, or whether any usury had been paid thereon. And whether he, witness, did not send to and receive from said Marshall a writing signed and sworn to by said Marshall, which he, witness, delivered up to Manny with the note A when paid.

Page 18

Which writing is as follows:

"State of Ohio, Lake County, ss. Seth Marshall, of said county, being first duly sworn on his oath, says
"that he is the owner and holder of a certain promissory note signed by Manny & Blinn, date Dec.
"30, 1859, and payable three years after date to Charles L. Stockton or order, in the sum of fifteen
"hundred dollars, with interest at ten per cent. per annum, payable annually, and also of a certain
"mortgage given by Jesse Blinn and wife to secure the same, recorded in Book 31 of Mortgages, on
"page 19, in the recorder's office of Winnebago county, state of Illinois; that the said note and mortgage
"were duly assigned to this affiant for a valuable consideration before the same became due and payable.
"On which, at the time the same were assigned to this affiant, was endorsed interest as paid to De-
"cember 30th, 1860, and also interest as paid to June 10th, 1861. And this affiant further says that
"at the time he received said note and mortgage he had no knowledge of any equitable defence against
"the same, or that usury had been paid upon the same, but he purchased the same bona fide, for a val-
"uable consideration, with the assurance that the said papers were all right, and would be paid at or near

*the money is shown
copy -*

"maturity. And this affiant purchased the note and mortgage expecting that the same would be paid at or near maturity.

S. MARSHALL.

"Subscribed and sworn to before me this

"14th day of January, A. D. 1863.

"I. T. DOOLITTLE, Justice of the Peace. [Seal.]"

Page 19

To the proving of which defendant objected on the ground that statements of Marshall would not be evidence in the cause against defendant. And the Court sustained the objection; to which the plaintiff excepted; which exception is allowed by the Court.

Page 19

H. P. Stockton was then sworn on the part of the plaintiff, and says: "I am a brother of defendant. Am acquainted with his handwriting. Have seen him write; and his signature on the back of note A, I have no doubt of its being his. I do not recollect of giving the note A to Mr. Taylor for collection for Marshall, but presume I did, for a few weeks before it fell due he wrote to me in regard to whether I thought it would be paid. He is an old acquaintance of mine, and he might have sent me the note at that time."

Page 20

H. P. Stockton being then cross-examined, says in substance: I was general agent for Manny, Blinn & Co., also Manny & Blinn, and F. H. Manny. That Manny & Blinn succeeded, Manny, Blinn & Co., and F. H. Manny succeeded Manny & Blinn. That he was general financial agent for each of said firms until the fall of 1862. That I made the note marked B for the firm of Manny, Blinn & Co., for money loaned. My brother held the same until fall of that year. When I went east to raise money for Manny & Blinn I suggested to my brother that he give me the first note, as that was secured by mortgage, as I might raise money on it, and when I returned home I would send him another note and mortgage for the same amount. He consented to do so, and we computed the interest on the first note from April 11 to Dec. 30, 1859, in amount the sum of \$108 76-100, at ten per cent. He then turned over the note to me. This was all of that transaction. I was to send him another of date December the 30th, 1859. On my return I made the note marked A and dated it back to that date. It was all done with the knowledge and concurrence of Manny & Blinn.

At the making it was agreed by all of them to pay interest at the rate of fifteen per cent.

The \$108 76-100 was interest on the first note from April 11th to the time when interest was paid on the first note and date of second note, Dec. 30. The reason I did not pay the \$108 76-100 at the time was that I was to send it on my return home; which I did.

On my receiving the note and mortgage marked B, I made the indorsement of \$519 32-100 as now appears. No money was paid the defendant or any one else at the time. I was intending to reduce the note so as to make the note and mortgage security to Colburt Huntington for \$1000 00 and interest at fifteen per cent. when the note should become due.

The \$108 76-100 was paid to defendant as interest on the first note from April 11th to Dec. 30th, date of second note.

I sent my brother the \$225 00 in the latter part of Dec., 1860; and also in January, 1862, \$100 00.

The \$225 00 was sent by me to pay interest on the note A for one year at fifteen per cent., and the \$100 00 was sent by me to apply on that as interest at fifteen per cent. I cannot state whether when I sent the money I said anything about applying the money as interest at fifteen per cent.

That the endorsement of \$519 32-100 was intended to reduce the said note so that the same be security to said Huntington for \$1000 00 and interest at fifteen per cent., and that it was so unless I made some mistake.

Page 21

The Court, after hearing the evidence and argument of counsel, ~~decided~~ ^{decided} that the plaintiffs were not entitled to recover, as they had shown no cause of action.

The plaintiff then moved the court for a new trial; and assigned as reason,

- 1st. That the judgment was contrary to the law;
- 2d. That the judgment of the Court was contrary to the evidence.
- 3d. That the judgment of the Court was contrary to the law and the evidence. ^{payment}
- 4th. That the Court should have allowed the money paid on the note A as a ~~judgment~~ ^{payment} of principal and interest at ten per cent. and not as a payment of interest at fifteen per cent.
- 5th. That the Court refused to hear the testimony of H. W. Taylor whether he did not send to and receive from one Marshall a paper signed and sworn to by said Marshall, which he (Taylor) delivered up to said Manny with the note A when the note was paid by said Manny to said Taylor.

That the Court after hearing of said motion for a new trial, overrules the same, and enters judgment against the said plaintiff for no cause of action and the costs of suit; To the overruling of which motion and the rendition of said judgment, the said plaintiffs except, which is allowed by the Court.— Thereupon the said plaintiffs pray an appeal to the Supreme Court, which is allowed by the Court.

And a bill of exceptions is signed and sealed by the Court.

Handwritten note:
 Nature of Marshall
 under note not evidence

ERRORS ASSIGNED.

1st. That the Court erred in refusing to hear the testimony of H. W. Taylor, by whom the plaintiffs proposed to prove that he had, while acting as attorney for Seth Marshall in the collection of said note, sent to and received from said Marshall a writing signed and sworn to by said Marshall, and delivered up to said Manny when the said note was paid by said Manny, a copy of which is set forth on page 18 of the Record.

2d. That the Court erred in overruling the motion of the plaintiff for a new trial, and in entering judgment against the plaintiff.

3d. That the Court erred in not finding for the plaintiff the balance of the \$225 00 and the \$100 00 paid on said note A, after paying interest on said note A at ten per cent. up to June 10th, 1861.

4th. That the Court gave judgment of no cause of action, and costs against the plaintiffs; whereas the judgment of the Court should have been for the plaintiffs.

L. F. WALNER, Attorney for Appellant.

[Handwritten notes and signatures in the left margin, including "L. F. Walner" and various initials.]

[Handwritten notes and signatures in the right margin, including "L. F. Walner" and various initials.]

49
 Supreme Court
 Frederick W. Murray
 Jesse B. Blair
 vs. ^{per use of} Frederick W. Murray
 Charles B. Shuckton
 Abstract

Filed April 19, 1864
 J. Selman M

T. E. WATKINS, Attorney for Appellant

the judgment of the Court should have been for the plaintiffs.

4th. That the Court gave judgment of no cause of action, and costs against the plaintiffs; whereas

being on said note A, after paying interest on said note A at ten per cent. up to June 10th, 1861.

3d. That the Court erred in not finding for the plaintiffs the balance of the \$322.00 and the \$100.00 judgment against the plaintiff.

2d. That the Court erred in overruling the motion of the plaintiff for a new trial, and in entering of the record.

1st. That said Murray when the said note was paid by said Murray, a copy of which is set forth on page 18 sent to and received from said Marshall a writing signed and sworn to by said Marshall, and delivered proposed to prove that he had, while acting as attorney for Seth Marshall in the collection of said note, let. That the Court erred in refusing to hear the testimony of H. W. Taylor, by whom the plaintiffs

ERRORS ASSIGNED.

United States of America
State of Illinois Winnebago County

Pleas before the Hon Benj R. Sheldon Judge of the Fourteenth Judicial Circuit of the State of Illinois began & held at the Court House in Rockford this 18th June 1863.

Hon Benj R. Sheldon Judge
State's Attorney
Hiram J. Shwartz Sheriff

Attest O. F. Kemper
Clerk.

Pracipes:

Frederick H. Manny }
Plaintiff for the use }
of Frederick H. Manny } State of Illinois
Charles L. Stockton } Winnebago County,
} Cir Court June Term
} 1863.

In Attachment.

The Clerk of said Court will issue an Attachment in the above cause returnable at the next term of said Court in trespass on the Case or promises:

Damages \$250⁰⁰
L. J. Wama

Atty for Plff

Entered & filed Mar 14. 1863

O. F. Kemper Clerk

Affidavit:

State of Illinois S. S. Frederick H. Manny being
 Winnebago County & by me first duly sworn deposes and
 says that Charles L. Stockton is indebted to the said said
 Manny and one Jesse Blinn for the use of the said Manny
 in the sum of about two hundred and fifty dollars for
 money paid upon a note of the said Manny Blinn given
 to the said Stockton and not endorsed upon said note. And
 the said note afterwards - and before the same became due
 being assigned by the said Stockton without the endorsement
 therein of the said Amount therein and no notice to the
 purchaser of the same of the fact of such payment by means
 whereof the said note was required to be paid by the said
 Manny Blinn. And that the said Stockton is a non
 resident of the State of Illinois so that process cannot be
 served upon him:

Subscribed & sworn to
 before me this 14th
 March 1863.

F. H. Manny.

At Penneyer Clerk

Enclosed

"Filed Mar 14 1863.

At Penneyer Clerk"

Bond:

Know all men by these presents. That we Frederick
 H. Manny & Jesse Blinn & L. J. Warner are held and
 jointly bound unto Charles L. Stockton in the penal sum
 of five hundred Dollars and Cents lawful money of the
 United States for the payment of which said sum, well &
 truly to be made, we bind ourselves our heirs, executors and

3

administrators, jointly and severally, by these presents:

Sealed with our seals and dated this fourteenth day of March A.D. 1863:

The Condition of the above obligation is such, that whereas the above bounden Frederick H. Manny & Jesse Blinn for the use of Frederick H. Manny has on the day of the date hereof, prayed an Attachment out of the Circuit Court of Wernimago County, at the suit of Frederick H. Manny & Jesse Blinn for the use of Frederick H. Manny, against the estate of the above named Charles L. Stockton for the sum of two hundred fifty Dollars and Cents, and the same being about to be served out of said Court, returnable on the Thursday Monday of June A.D. 1863, to the term of the said Court then to be holden; Now if the said Frederick H. Manny & Jesse Blinn for the use of Frederick H. Manny shall prosecute their said suit with effect, or in case of failure therein shall well and truly pay and satisfy the said Charles L. Stockton all such Costs in said suit, and such damages as shall be awarded against the said Frederick H. Manny & Jesse Blinn their heirs, executors or administrators in any suit or suits which may hereafter be brought for wrongfully serving out the said Attachment, then the above Obligation to be void; otherwise to remain in full force and effect.

Signed, sealed and delivered

in presence of

F. H. Manny

(Seal)

Jesse Blinn

(Seal)

L. J. Warner

(Seal)

(Seal)

Endorsed

"Filed and approved by me this 14th day of March A.D. 1863: C. F. Penney Clerk"

Writ of Attachment

State of Illinois

Winnebago County ³ ss. The People of the State of Illinois to the Sheriff of said County - Greeting:

Whereas J. H. Manny of the County of Winnebago and State of Illinois has complained in oath to Oliver A. Penoyer, Clerk of the Circuit Court of said Winnebago County, that Charles S. Stockton is indebted to the said Manny & one Jesse Blinn for the use of the said Manny in the sum of about two thousand and fifty dollars for money paid upon a note of the said Manny & Blinn given to the said Stockton and not endorsed upon said note, and the said note afterwards and before the same became due being assigned by the said Stockton without the endorsement therein of the said amount thereof and no notice to the purchaser of the same of the fact of such payment by means whereof the said note was required to be paid by the said Manny & Blinn and that the said Stockton is a non-resident of the State of Illinois

and the said Frederick H. Manny & Jesse Blinn for the use of Frederick H. Manny having given bond and security according to the act in such cases made and provided,

We therefore command you that you attach so much of the estate, real or personal, of the said Charles S. Stockton to be found in your County as shall be of value sufficient to satisfy the said debt and costs according to the said Complaint, and such estate so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereupon, according to law at a Circuit Court to be holden at the Court House in the City of Rockford, within and for the County of Winnebago aforesaid, on the 3rd Monday of June A.D. 1863 or as to Compel the said Defendant to appear and answer the Complaint of the said plaintiffs when and where you shall make known to the said

5

Court how you have executed this writ. And how you have
and then this writ.

Witness Oliver A. Penney, Clerk of said Court, and the
seal thereof, at his Office in the City of Rockford, in said
Winnebago County, this 14th day of March A.D. 1863.
(L.S.) Oliver A. Penney, Clerk

Endorsed

"By virtue of the within writ I have attached
the following real estate to wit: The south $\frac{3}{4}$ of Lot (9)
Block (10) in Church and Robertsons Addition to the city
of Rockford west of Rock Road. Recorded in Book 39 of
Deeds page 416. this 14th day of March A.D. 1863.
Heram J. Sawyer Sheriff."

Notice.

Attachment notice.

State of Illinois

Winnebago County Circuit Court - Term Term 1863.

Frederick M. Manning

Jesse Blinn for the

use of Frederick M.

Manning.

Charles L. Stockton

Notice is hereby given to Charles
L. Stockton the defendant in
the above entitled Cause that
a writ of attachment was issued
out of the Circuit Court of the said County of Winnebago by
the Clerk of said Court on the fourteenth day of March A.D.
1863 in favor of Frederick M. Manning and Jesse Blinn for
the use of Frederick M. Manning and against the estate of
Jesse Blinn the said Charles L. Stockton and for the sum of
two hundred and fifty Dollars, which said writ has been
returned by the Sheriff of said Winnebago County executed

by laying the same upon the south 3rd of lot nine in block
ten (ten) in Church & Robertson's Addition to the City of Rockford
west of Rock River: that the said suit is pending in the said
Winnipeg County Circuit Court, and unless you the said Charles
L. Stockton shall appear on the third Monday of June next
at the Court House in the City of Rockford, in said County of
Winnipeg, that being the return day specified in said writ, and
there and there defend, judgment will be entered and the es-
tate attached sold.

Rockford, June 14. 1863.

W. Penneyer Clerk 45 v. 4

L. H. Warner Att'y for Plff.

(5 & W & R O)

Advertising fee, \$5.00.

J. Davis J. Dickson one of the Publishers and Proprietors of
the "Rock River Democrat" a weekly public newspaper, published
in Rockford, Winnipeg Co. Illinois, do hereby Certify that the
Announced advertisement has been published four weeks suc-
cessively in said paper, commencing on the 15th day of June
1863 and ending on the 26th day of May 1863 which are
the dates of the first and last papers containing said adver-
tisement: Given under my hand, this 30th day of September
1863

J. Davis J. Dickson

Advertising fees \$5.00.

Enclosed

"Paid Sep 30 1863"

W. Penneyer Clerk

True

Indorsed H. Manning. Jesse Blain

foras of Indorsed H. Manning

Charles L. Stockton

7
State of Illinois Winnebago County Circuit Court
Term Term A.D. 1863.

Frederick H. Manny and Jesse Blinn plaintiffs herein
who sue for the use Frederick H. Manny Complainant of Charles
L. Stockton the Defendant herein who has been duly attached
in this suit, For that the said plaintiff on or about the thirteenth
day of December A.D. 1859 made and executed and
delivered to the said Defendant their Certain note by style
of Manny & Blinn in writing for the sum of One thousand
two hundred Dollars of Date December the thirteenth A.D.
1859 payable to the said Defendant in three years from date
with interest Annually at the rate of ten per cent. and
that on or about the twenty fourth day of June A.D. 1860 the
said plaintiff paid to the said Defendant on the twenty fourth
day of June 1860 the sum of One hundred and eight dol-
lars and seventy six Cents which was received by the said de-
fendant to be applied as payment on said note to wit at said
Winnebago County. And on the twenty first day of December
A.D. 1860 the said plaintiff paid to the said Defendant on the
said note the sum of two hundred and twenty five dollars and
on the date last aforesaid the further sum of fifty dollars; and
on the seventh day of January A.D. 1862 the further sum of
One hundred dollars and on or about the third day of Jan-
uary 1860 the sum of One hundred dollars all which said
several sums of money were made as payments upon the a-
foresaid note and before the same became due and payable
according to its terms. And the said plaintiff further say
that after the making of the said payment as aforesaid &
before the said note became due and payable by its terms
the said Defendant without indorsing the said payments
or made on the said note aforesaid as received by him
as aforesaid or otherwise and without any notice of
the payment the same to one Seth Marshall endorsed

8
and assigned the said note to one Seth Marshall by
which endorsement the said Marshall became the owner and
holder of said note without any notice of the aforesaid pay-
ment or either of them being made upon the said note. and
the said plaintiff thereby became liable to and did pay to the
said holder of said note so to him assigned when the same
fell due the full amount of the principal and interest due
upon said note notwithstanding payment which had been
made as aforesaid by means whereof the said Defendant
thru and thru to wit at said Winnebago County became
liable to pay to the said plaintiff the said several sums
of money before mentioned as paid upon the said note
before maturity and not thereto endorsed at the time of
the transfer and in Consideration thereof thru and thru
undertook and faithfully promised the said plaintiff to
pay to them the said monies on request.

And for that also the said Defendant afterwards to
wit on the third day of January A.D. 1862 at said
Winnebago County was indebted to the said plaintiff in
the sum of six hundred dollars for money before that
time paid and advanced to the defendant by the plain-
tiff at his request and in the sum of two hundred
and fifty dollars for money thru and thru due upon
an account stated between them and the said defendant
in Consideration of the premises and of being so liable as
aforesaid thru and thru undertook and faithfully prom-
ised the said plaintiff to pay to them the said several
sums of money on request yet the said Defendant has
never paid the same nor any part thereof though often
requested and demanded all which is to the damage
of the plaintiff in the sum of two hundred and fifty
dollars and therefore he brings suit &c.

L. J. Warner Atty for Plff

9

The Defendant will take notice that the following is a
Copy of the Account sued upon:

The Defendant To
Plaintiff Dr.

1860 To		
January 11.	Money paid & advance	100.
April 7	" " "	108.76
Dec 21. 1860	" " "	225.00
" "	" " "	50.00
July 7. 1862		100.00
" "	Money due on account Stata	250.00

Enclosed

"Filed Jan 5. 1863.

O'Kenny Clerk"

And afterwards to wit on the 15. day of June 1863.
it being one of the days of the June Term of said Court
the following entry was made as appears of Court record
to wit.

Fredrick H. Manny

Jess Blum for the

use of Fredrick H. Manny

Attachment:

Charles L. Stockton

This day Come the Plaintiff
by Warrin their Attorney And on
his motion leave is granted

to amend declaration herein ^{also in question of Plaintiff} It is ordered that this cause
be continued at Plaintiff Cost of Term: It is therefore C
Ordered And ordered by the Court that the Defendant have
and receive of the Plaintiff his Cts and charges herein at
this Term expended & that he have execution therefor:

Pleas

Winnipeg Circuit Court
September Term 1863.

Charles L. Stockton

Ad.
Frederick H. Mann
Jury Pluri

And now Comes the defend-
ant Charles L. Stockton by
Brown & Taylor his Attorneys. And says he did not promise
in manner of form as the said Plaintiff has above things
complained against him & of this he puts himself upon the
Country &c

Brown & Taylor Attys for Plff

And as to the plea wherein the Defendant puts himself
upon the Country for trial doth the like,

L. P. Warner

Attys for Plff

The said Plaintiff will please to take notice that
the said Defendant will insert and shew in evidence
on the trial of said Cause, that whatever payments were
made on the said note were made as interest volun-
tarily paid by the said Plaintiff to the Defendant at
And after the rate of fifteen per Cent per Annum and
were indorsed and allowed on the said note as in-
terest on the same

Brown & Taylor

Attys for Def

Endorsed "Filed Oct 7 1863"

At Penney's Clerk

Note & Affidavit

\$1500-

#29.3

Rockford 30th December 1859.

Three years after date we promise to pay to Charles S. Stockton or order Fifteen Hundred Dollars (value received) with interest at ten per Cent per Annum payable annually

Manny & Blinn

per Stockton

Endorsed "Received Interest on the within note in full to Decem^r 30th 1860."

"Received Minnville Jan^y 10th 1862 interest on the within note in full up to Jan^y 10th 1861.

Chas S Stockton

State of Ohio

Lake County Ill. I Seth Marshall of said County being first duly sworn on his oath says that he is the owner & holder of a certain promissory note signed by Manny & Blinn, dated 30th December 1859 and payable three years after date to Charles S. Stockton or order in the sum of fifteen hundred dollars with interest at ten per Cent per Annum, payable annually. And also of a certain mortgage given by Jesse Blinn & wife to secure the same recorded in Book 31 of Mortgages on page 19 in the Recorder's Office of Winnebago County State of Illinois, that the said note & mortgage were duly assigned to this affiant for a valuable consideration before the same became due & payable, on which at the time the same were assigned to this affiant was endorsed interest as paid to December 30 1860 & also interest as paid to Jan^y 10th 1861 and this affiant further says that at the time he received the said note and mortgage he had no knowledge of any equitable defence against the same or that money had been paid upon the same, but he purchased the

same bona fide, for a valuable consideration with the assurance that the said papers were all right, and would be paid at or near maturity. And this affiant purchased the said note and mortgage expecting that the same would be paid at or near maturity.

Subscribed & Sworn

S. Marshall

to be sworn this 11th

day of January A.D. 1863

J. I. Doolittle Justice Peace.

Indorsed

Filed Oct 13th 1863

O. A. Hunsinger Clerk

And afterwards to wit on the 13th Oct 1863 at being one of the days of the September Term of Court the following entry was made as

appears of Court Records to wit:

Judgment:

Fredrick H. Manny

versus Blinn for the use of Oct 13, 1863

of Fredrick H. Manny

Attachment:

Charles S. Stockton

This day come the Plaintiff by Manny his Attorney and the said Defendant by Brown & Taylor his Attorney at Arms and issue being joined this Cause is submitted to the Court for trial without the intervention of a jury, and the Court having heard the evidence and argument of Counsel find the issue for the Defendant. Thereupon the Plaintiff moves the Court for a new trial herein. And the Court having considered the said motions overrules the same. To which decision of the Court the Plaintiff excepts. It is therefore considered and ordered by the Court that the Defendant have and receive of the Plaintiff his Costs & Charges herein expended & that he have execution therefor. Thereupon the Plaintiff pray an appeal to the Supreme

13

Court which is allowed on Plaintiff filing their appeal bond to Defendant in the sum of Two hundred dollars with Symon I. Warner as surety, with Clerk of this Court within 30 days.

Motion New Trial.

J. H. Manny &
Jesse Blinn for use of
J. H. Manny } Sept Term 1868.

Charles L. Stockton } The Plaintiff moves the Court
for a new trial in the above
Cause for following reasons:

- I That the judgment of the Court is against the law.
- II That the judgment of the Court is contrary to the evidence and should have been for the Plaintiff.
- III That the Court erred in permitting improper evidence to be given and in not permitting the Plaintiff to give testimony offered upon the trial.
- IV That the judgment of the Court is contrary to the Law and the evidence and should have been for the Plaintiff.

S. I. Warner Atty for Plff

Appeal Bond

Know all men by these presents that we Frederick H. Manny & Jesse Blinn for the use of Frederick H. Manny as principal and Symon I. Warner as security of the County of Winnebago and State of Illinois are held and firmly bound unto Charles L. Stockton in the

sum of Two hundred dollars lawful money of the United States the payment of which well and truly to be made we bind ourselves our and each of our heirs executors administrators and assigns jointly & severally firmly by these presents: Witness our hands and seals this 10th day of November A.D. 1863.

The Condition of the above obligation is such that whereas the said Charles L. Stockton did at the September Term of the Winnetago County Circuit Court in the State of Illinois recover in said Court a judgment against Frederick H. Manny Jesse Blinn for the use of Frederick H. Manny from which said judgment the above bounden Frederick H. Manny Jesse Blinn for the use of Frederick H. Manny has prayed an appeal to the Supreme Court of the State of Illinois: Now if the said Frederick H. Manny Jesse Blinn for the use of Frederick H. Manny shall prosecute their appeal with effect and without delay and shall well and truly pay whatever judgment Court interest & damages as may be awarded against them in case said judgment shall be affirmed then this obligation to be void otherwise to remain in full force and effect:

In presence of

F. H. Manny (Seal)

Jesse Blinn (Seal)

L. J. Warner (Seal)

Enclosed

"Filed Nov 10. 1863"

Attest my Clerk

Bill of Exceptions:

F. H. Manny, Jesse Blinn

for use of F. H. Manny

Charles L. Stockton

State of Illinois Winnetago

County Circuit Court

September Term 1863.

15

Be it remembered that now at this day it being one of the day of the September term of said Court 1868 the above Cause came on to be tried and was by agreement of parties submitted to the Court for trial without the intervention of a jury.

Martin Rockwell a witness sworn and examined on the part of the plaintiff says. I am acquainted with the parties have known them all seven or eight years and the defendant longer. Witness is here shown a note marked A.

" \$1,500. Rockford 30th December 1859.

Three years After date we promise to pay to Charles L. Stockton or order Fifteen Hundred Dollars Value received with interest at ten per Cent per Annum payable annually
Doe Paid Manny or Blinn
\$12.9.3 for Stockton

Endorsed: Received Interest on the within note in full to Decem 30th 1860.

"Red Painsville Jan'y 10th 1862 interest on the within note in full up to Decem 10th 1861." Charles L. Stockton.

Witness testifies and says I have seen this note I first saw it in December of 1861 or January of 1862 or during that winter at J. H. Manny's Office Rockford. C. L. Stockton had the note there, at that time there was but one endorsement on the back of the note. that was the one that shows received interest up to Dec 30th 1860 the other endorsement now on the back was not there. I both took the note and saw it.

There was a proposition at that time to take up this note and give some other bills receivable which we held against Mrs Manny. The first time Drift called at the Office he claimed the interest had not been fully paid on the note. He said the payments actually

18
made on the note corresponded with the books of Manny with the exception of the charge of \$108²⁶ and said that that was paid and enclosed on note previously given by Manny Blinn & Co to him but then held by Collet Sturtevant, that two hundred and twenty five dollars and one hundred was the only payments that he had ~~received~~ ^{received} on the note that the \$225. payment was made promptly when due, that the hundred dollars was received by him by mail a short time before he came here in January 1862 That the reason that he had not endorsed the hundred dollars was that he was coming here in a few days and expected to get the whole of the interest due:

He also stated at the same time that he had a verbal understanding that he was to have fifteen per cent interest on the money in note instead of ten as called for in the note;

The note was paid to Mr. H. W. Taylor a short time after the note fell due he represented himself as acting in the Collection of the same as the Attorney of Seth Marshall of Ohio we delayed the payment of the same a short time to ascertain whether Mr Marshall was the real owner of the same: After ascertaining the same the note was paid in full deducting the endorsements as they now appear on the note. I was then acting as financial agent and otherwise for Manny:

Now examined:

Witness stated at the time of the conversation referred to by me with Defendant he did state that that the two payments made on the note was made ^{as} interest at fifteen per cent, as was agreed upon. a note is here shown witness marked "B"

\$1300

Rockford Ills April 11. 1859

Three years after date we promise to pay to the order

17 of Charles S. Stockton Fifteen Hundred Dollars
with interest at ten per cent per Annum payable Annually
Value received:

No 33. New "p4 11/62

Manny Blinn & Co

for H. P. Stockton Genl. Agt.

Rec on the within note five hundred & nineteen $\frac{32}{100}$ Dollars
Decemr 30th 1859

Rec on the within note twenty eight $\frac{32}{100}$ Dollars Apr
31st 1860 \$28.33

Paid Aug 11th /63

Ind'd Oct 13. 1863

A. Penneyer Clerk.

Witness says I have seen the note: Defendant pro-
posed to give up note marked it and take a note from
Manny in place of it. Computing interest at ten per cent
and allow payments of \$225. and \$100. the only thing
that stood in the way was that the payment of \$108⁷⁶
was not endorsed the arrangement was finally concluded on
the basis that we should write to Mr. Huntington the holder
of the note B and ascertain if the \$108⁷⁶ was endorsed
upon it and get a copy of it. And if the endorsement of
\$108⁷⁶ was not upon that note that it ought to be upon that
note viz. note A. and Mr. Stockton was to remain until
we could hear from Huntington:

Direct resumed. Witness says we did write as I be-
fore stated and got from Mr. Huntington what purport-
ed to be a copy of note B. but there was no endorsement of
the amount of \$108⁷⁶ And the agreement was not car-
ried out.

H. W. Bayler now says that I am an atty at
law. & he shows note. I refer to T says. I presume
I have no doubt but that I collected the money
of J. H. Manny upon this note. the note I received the

30th 1862. from H. P. Stockton to collect for Seth Marshall of Parisville Ohio, the back of the note was then as it now is. I collected the amount appearing to be due upon it and it now appears for Seth Marshall. I had conversation with said Marshall in regard to the matter, I think I wrote to him that Manny pretended to have a claim for usury against the note:

The plaintiff then proposed to prove that the witness had while acting as attorney for said Marshall requested him to state whether he Marshall at the time he purchased the note had any knowledge of any payments further than appeared upon the note or of any usury having been paid thereon: And also whether he did not send and receive from said Marshall a writing signed and sworn to by said Marshall which he delivered up to Manny with the note &c. where said

" State of Ohio
Lake County, I. J. B. Seth Marshall of said County being first duly sworn on his oath says that he is the owner & holder of a certain promissory note signed by Manny & Blinn dated 30th December 1859. And payable three years after date to Charles L. Stockton or order in the sum of fifteen hundred dollars with interest at two per cent per annum payable annually. And also of a certain mortgage given by Jesse Blinn & wife to secure the same recorded in Book 31 of Mortgages on page 19 in the Recorder's Office of Winnebago County State of Illinois that the said note & mortgage were duly assigned to this affiant for a valuable consideration before the same became due & payable on which at the time the same were assigned to this affiant was endorsed interest as paid to December 30th 1860 & also interest as paid to June 10/61 And this affiant further says that at the

time he received the said note and mortgage he had no knowledge of any equitable defence against the same or that any had been paid upon the same. but he purchased the same bona fide for a valuable consideration with the assurance that the said papers were all right and would be paid at or near maturity: and this affiant purchased the said note and mortgage expecting that the said same would be paid at or near maturity.

Subscribed & sworn to

S. Marshall

before me this 14th day of
January A.D. 1863

J. I. Doolittle Justice Peace
Ordained "Filed Oct 13 1863"
C. Pennington Clerk

19

To the finding of which Deft objected on the ground that statements of Marshall would not be evidence in this cause against Defendant and the Court sustained the same to which the plaintiff except which is allowed by the Court.

H. P. Stockton. sworn on the part of the plaintiff says I am a Brother of Deft am acquainted with his hand writing have seen him write and his signature on the back of note A. I have no doubt of it being his. I do not recollect of giving the note A. to Mr Taylor for collection for Mr Marshall but sometime I did for a few weeks before it fell due he wrote to me in regard to whether I thought it would be paid he is an old acquaintance of mine. He might have sent me the note at that time:

Cross examined.

21

I was general agent for the firm of Manny Blum and Co and Manny & Blum and also for J. H. Manny

that Manny & Blinn succeeded Manny Blinn & Co and
 J. H. Manny succeed to Manny & Blinn. That I was General
 financial agent for each one of the firms untill the fall of
 1862. I made the note marked B. for the firm of Manny
 Blinn & Co it was for money loaned, my Brother had the
 same untill the fall of that year, when I went east for
 the purpose of raising money for Manny & Blinn. I suggested
 to my brother that he give me the first note as the same
 was secured by mortgage as I might raise money on it
 And when I returned home I would send him another
 note & mortgage for the same amount, he consented to do
 so and we computed the interest on the first note from
 April 11th to December 30th 1859 in amount the sum one
 hundred and eight dollars and seventy six Cents at
 ten per Cent, he then turned over the note and mort-
 gage to me, which was all that was of that transac-
 tion. I was to send him another of date December the
 30th 1859, after my return I made the note marked A
 and dated the same back to that date it was all with
 the knowledge and concurrence of Manny & Blinn, at the ma-
 king of the note it was agreed by all of them to pay inter-
 est at the rate of fifteen per Cent: The \$108.76 was the
 interest on the first note from April 11th the time when interest
 was paid on first note and Dec 30th the date of second note
 the reason that I did not pay the \$108.76 at that time
 was that I agreed to send it to him when I arrived home
 which I did. On my receiving the note & mortgage marked
 B. I made the endorsement of five hundred and nine-
 teen dollars & $\frac{52}{100}$ as it now appears. No money was paid
 the defendant or any one else at the time of the said en-
 dorsement. It was intended to reduce the note so as to make
 the note and mortgage security to Colburn Huntington for
 \$1000. & interest at 15 per Cent when the note should become

due - The \$10876 was paid to Diff as interest on the first note from Apr 11. The time to which interest had been paid on the first note to Dec 30th the date of second note

I sent my Brother the two hundred & twenty five dollars in latter part of Dec 1860 and also in Jan 1862. One hundred Dollars.

21

The \$225 was sent by me to pay interest on the note A. for one year at fifteen per cent, and the hundred Dollars was sent by me to apply on that as interest at fifteen per cent. I cannot state whether when I sent the money I said any thing about applying the ^{money} as interest at fifteen per cent.

The first endorsement on the second note of \$519 ⁵²/₁₀₀ was made up as follows. I computed the extra five per cent on the thousand Dollars which I had agreed to pay Huntington and added it to the thousand dollars. I then computed the amount due on the note from the time interest had been paid, and took the difference between these two amounts, and then added something to that difference to prevent paying interest on the extra five per cent, and then endorsed the amount so obtained on the note. my intention was to make the note security to Huntington for \$1000 and interest at 15 per cent and it was so unless I made some mistake.

21

The foregoing being all the evidence in said case the Court then after hearing argument of Counsel decided that the plaintiffs were not entitled to recover, as they had shown no cause of action whereupon the plaintiff moved the Court for a new trial & assigned as reasons therefor. 1st That the judgment was Contrary to the law. 2nd That the judgment of the Court was Contrary to the evidence. 3rd That the judgment of Court was Contrary to the law & evidence. 4th That the Court should have

allowed the money paid on note (A) as a payment of principal & interest at 10 per Cent and not as payment of interest at 15 per Cent.

5th That the Court refused to hear the testimony of H. W. Taylor as to whether he did not send to & receive from One Marshall a paper signed and sworn to by said Marshall which he Taylor delivered up to said Manning with the note (A) when the note (A) was paid by said said Manning to said Taylor.

12

The Court after hearing argument of Counsel for new trial overrules said motion and enters judgment against said plaintiff for no Cause of action & the costs of suit herein: to the annulling of which motion and the rendition of said judgment by said Court the said plaintiff excepts, which exception is allowed by the Court. And thereupon the plaintiff prays the Court for an appeal to the Supreme Court which appeal is allowed by Court upon the plaintiff entering into bonds in the sum of \$200 (two Hundred Dollars) with S. J. Warner as security for the prosecution of said appeal to effect, within 30 days from the rendering of the Court.

And the above foregoing be signed & sealed by the Court as a part of the records of said Case and as a bill of exceptions in said Cause and made a part of records in said Cause which is accordingly done by the Court.

Agreed on by Counsel

Benj. R. Sheldon (Seal)

Ordered

"Filed Oct 14. 1863

Clk. Remondor Clerk"

In the Supreme court of
the State of Illinois -
Third Grand Division of
April Term A.D. 1864 -

Frederick H Manny
vs
Charles H Stockett

Error to this -
in the court

And the said Plaintiffs in error -
by L. F. Warner their Attorney
come and say that in the
judgment and proceedings
aforesaid there is manifest &
material error appearing of
record in this

ERRORS ASSIGNED.

1st. That the Court erred in refusing to hear the testimony of H. W. Taylor, by whom the plaintiffs proposed to prove that he had, while acting as attorney for Seth Marshall in the collection of said note, sent to and received from said Marshall a writing signed and sworn to by said Marshall, and delivered up to said Manny when the said note was paid by said Manny, a copy of which is set forth on page 18 of the Record.

2d. That the Court erred in overruling the motion of the plaintiff for a new trial, and in entering judgment against the plaintiff.

3d. That the Court erred in not finding for the plaintiff the balance of the \$225 00 and the \$100 00 paid on said note A, after paying interest on said note A at ten per cent. up to June 10th, 1861.

4th. That the Court gave judgment of no cause of action, and costs against the plaintiffs; whereas the judgment of the Court should have been for the plaintiffs.

-L. F. WARNER, Attorney for Appellant.

Wherefore he prays that the
judgment of the Court above be
reversed & he restored to

L. F. Warner

Att'y in

Frederick H Manning }
 Jesse Blinn }
 for use of }
 Frederick H Manning Appellant }
 Charles L Stockton }
 Appellee }

Appeal from The Circuit
 Court of Tennessee County

Now at this day comes the said
 Charles L Stockton by Brown & Tugler
 their attorneys herein. And joins
 in Errors to the Errors assigned of
 the Appellant herein, and says
 that the judgment entered in said
 Cause was correct & put themselves
 upon the Court

Brown & Tugler
 Attorneys Appellee

Frederick H Manning & Jesse Blinn
 for use of
 Frederick H Manning

State of Illinois
 Supreme Court

April Term 1864

It is agreed by the attorneys for the

Respectively parties to the above suit
that the same be submitted to the
Court on written arguments to
be filed in said Cause during the
term of said Court, And the
Appellee admits service of copy of
Abstract upon them

L. J. Barner Attorney
for Appellant
Brown & Co
attys for Appellee

Supreme Court
Fredericks & Gruning
Jesse Blair
for use of
Fredericks & Gruning
3 L. J. Barner
Charles L. Dutton

For use of Barner &
Appellations to submit
on written arguments

Winnebago County p. 5
I, Oliver A. Penney, Clerk
Of the Circuit Court & E. Office Recorder of said County,
do hereby Certify that the foregoing is a full & complete
transcript from the files & court records in my office in
foregoing entitled Cause where in Frederick H. Manning
et al are plaintiffs and Charles S. Stockton is de
fendant. duly compared & certified by me.

Witness my hand & Official Seal at Rockford this
29 day of March A.D. 1864

Oliver A. Penney Clerk



179

Person Count

Frederick & Manny &

John Klein

per use of

Frederick & Manny

Children & Stock

Record

Filed April 17 1864
L. Leland
Clerk

In the Supreme Court.

FREDERICK H. MANNY,
JESSE BLINN,
For the use of
FREDERICK H. MANNY, Appellant,
Vs.
CHARLES L. STOCKTON, Appellee.

} Appeal from the Circuit Court of Winnebago County.

ABSTRACT OF RECORD.

RECORD Pages 7 & 8
NARR. Pages 7, 8 & 9

Assumpsit for money paid and advanced to the defendant.

Narr. filed June 5th, 1863, claiming that plaintiffs on the 30th of December, 1859, made their note for fifteen hundred dollars payable to the defendant in three years from date, with interest at the rate of ten per cent. per annum.

That on or about the 24th of April, 1860, the plaintiffs paid to the defendant the sum of \$108 76-100 to be applied in payment on said note.

And on the 21st of December, 1860, the plaintiffs paid on said note the sum of \$225 00.

And on the same date \$50 00.

And on the 7th day of January, 1862, the sum of \$100 00.

And on the third of January, 1860, the sum of one hundred dollars.

That after the making of said payments and before the note became due, and without the said payments having been endorsed on said note, assigned said note to one Seth Marshall, and that said Marshall became the owner and holder of said note without notice of said payments having been made; and that in consequence thereof the said plaintiffs were compelled to and did pay to said Marshall said note, none of said payments being by him allowed thereon.

Plea of general issue, with notice of defence under the same, filed Oct. 7, 1863.

Replication filed Oct. 7th, 1863.

Notice under general issue filed Oct 7, 1863; in substance that the defendant would shew in evidence on the trial that whatever payments were made on the said note were made as interest voluntarily paid by the plaintiffs to the defendant, at the rate of fifteen per cent. per annum, and endorsed and allowed as interest on the note.

September Term, October 13, 1863, Cause submitted to the Court for trial, and issue found for the defendant. Whereupon the plaintiff moved the Court for a new trial; which motion, upon hearing the argument of counsel, was overruled by the Court; which motion is set out in the bill of exceptions. The plaintiff thereupon prayed an appeal to the Supreme Court, which appeal was allowed, upon the plaintiff entering into bonds in the sum of \$200, with L. F. Warner as security.

Bond for appeal filed Nov. 10, 1863.

BILL OF EXCEPTIONS.

Martin Rockwell, a witness sworn on the part of the plaintiff, says that he knows all the parties; and is here shewn the following note, marked A:

"\$1500. Rockford, 30 December, 1859. Three years after date we promise to pay to Charles L. Stockton or order, fifteen hundred dollars value received, with interest at ten per cent. per annum, payable annually.

" MANNY & BLINN.

" per STOCKTON."

On which note is the following endorsements: "Received interest on the within note in full to December 30, 1860."

Also, "Rec'd, Painsville, January 10th, 1862, interest on the within note in full up to June 10, 1861. CHARLES L. STOCKTON."

Witness, after being shewn the note, testifies: I have seen the note. I saw it in December of 1861 or January of 1862, or during that winter, at F. H. Manny's office, Rockford. C. L. Stockton had the note there; at that time there was but one endorsement on the back of the note, and that was the one that shews received interest up to Dec. 30, 1860; the other endorsement now on the back was not there. I both took the note and saw it.

There was a proposition at that time to take up this note and give some other bills receivable which we held against Mrs. Manny.

The first time defendant called at the office he claimed the interest had not been fully paid on the note. He said the payments made on the note corresponded with the books of Manny with the exception of the charge of \$108 76-100, and said that that that was paid and endorsed on a note previously given by Manny, Blinn & Co. to him, but then held by Colburt Huntington.

That two hundred and twenty five dollars, and one hundred dollars, was the only payments that he had received on the note.

That the \$225 payment was made promptly when due.

That the hundred dollars was received by him by mail a short time before he came here in January, 1862. That the reason he had not endorsed the hundred dollars was, he was coming here in a few days and expected to get the whole interest due. He also stated that he had a verbal understanding at the time that he was to have fifteen per cent. interest on the money in the note, instead of ten as called for in the note.

16 Page

The note was paid to Mr. H. W. Taylor a short time after the note became due, he representing himself as the attorney in the collection of the same for Seth Marshall, of Ohio. We delayed the payment of the same a short time to ascertain whether Mr. Marshall was the real owner of said note.— After ascertaining the same, the note was paid in full, deducting the indorsements as they now appear on the note. I was then acting as financial agent for Manny.

Witness also states that at the conversation referred to by me with the defendant, he stated that the two payments made on the note was made as interest at fifteen per cent., as was agreed upon.

Page 17

Witness is here shown a note, mark B: "\$1500. Rockford, Ill., April 11, 1859. Three years after date we promise to pay to the order of Charles L. Stockton fifteen hundred dollars, with interest at ten per cent. per annum, payable annually, value received.

"MANNY BLINN & CO.

"Per H. STOCKTON, Gen. Agt.

"Due 11 & 14 April, '62."

Page 17

On the back of which is the following indorsements: "Rec'd on the within five hundred and ninety-three 32-100 dollars, Dec. 30, 1859."

Also, "Rec'd on the within note twenty-eight 33-100 dollars, April 31, 1863, (\$28 33-100.) Paid Aug. 19, 1863."

Page 17

Witness says: I have seen the said note B. Defendant proposed to give up note marked A and take a note of Mary Manny in place of it, computing interest at ten per cent., and allow payments of \$225 00 and \$100 00; and the only thing that stood in the way was that the payment of \$108 76-100 was not endorsed. The arrangement was finally concluded on the basis that we should write to Mr. Huntington, the holder of the note B, and ascertain if the \$108 76-100 was endorsed on that note, and get a copy of it, and if the endorsement of \$108 76-100 was not upon that note, that it ought to be upon the note A, and Mr. Stockton was to remain until we could hear from Huntington.

Page 17

Witness further says: We did write, as I before stated, and got from Mr. Huntington what purported to be a copy of the note B, but there was no endorsement of the amount of \$108 76-100, and the agreement was not carried out.

Pages 17 & 18

H. W. Taylor sworn, says: I am an attorney at law. "He was here shown note A referred to." And he says: I presume—I have no doubt—but that I collected the money of F. H. Manny upon this note. The note I received Dec. 30, 1862, from H. P. Stockton, to collect for Seth Marshall, of Painesville, Ohio. The back of the note was then as it is now. I collected the amount appearing to be due upon it as it now appears, for Seth Marshall. I had corresponded with Seth Marshall in regard to the matter. I think I wrote him that Mr. Manny pretended to have a claim for usury against the note.

The plaintiff then offered and proposed to prove that the witness had while acting as attorney in the collection of said note A, requested said Marshall to state whether at the time of the purchase of the said note A, he had any knowledge of any payments further than appeared upon the note, or whether any usury had been paid thereon. And whether he, witness, did not send to and receive from said Marshall a writing signed and sworn to by said Marshall, which he, witness, delivered up to Manny with the note A when paid.

Page 18

Which writing is as follows:

"State of Ohio, Lake County, ss. Seth Marshall, of said county, being first duly sworn on his oath, says that he is the owner and holder of a certain promissory note signed by Manny & Blinn, date Dec. 30, 1859, and payable three years after date to Charles L. Stockton or order, in the sum of fifteen hundred dollars, with interest at ten per cent. per annum, payable annually, and also of a certain mortgage given by Jesse Blinn and wife to secure the same, recorded in Book 31 of Mortgages, on page 19, in the recorder's office of Winnebago county, state of Illinois; that the said note and mortgage were duly assigned to this affiant for a valuable consideration before the same became due and payable. On which, at the time the same were assigned to this affiant, was endorsed interest as paid to December 30th, 1860, and also interest as paid to June 10th, 1861. And this affiant further says that at the time he received said note and mortgage he had no knowledge of any equitable defence against the same, or that usury had been paid upon the same, but he purchased the same bona fide, for a valuable consideration, with the assurance that the said papers were all right, and would be paid at or near

"maturity. And this affiant purchased the note and mortgage expecting that the same would be paid at or near maturity. S. MARSHALL.

"Subscribed and sworn to before me this

"14th day of January, A. D. 1863.

"I. T. DOOLITTLE, Justice of the Peace. [Seal.]"

Page 19

To the proving of which defendant objected on the ground that statements of Marshall would not be evidence in the cause against defendant. And the Court sustained the objection; to which the plaintiff excepted; which exception is allowed by the Court.

Page 19

H. P. Stockton was then sworn on the part of the plaintiff, and says: "I am a brother of defendant. Am acquainted with his handwriting. Have seen him write; and his signature on the back of note A, I have no doubt of its being his. I do not recollect of giving the note A to Mr. Taylor for collection for Marshall, but presume I did, for a few weeks before it fell due he wrote to me in regard to whether I thought it would be paid. He is an old acquaintance of mine, and he might have sent me the note at that time."

Page 20

H. P. Stockton being then cross-examined, says in substance: I was general agent for Manny, Blinn & Co., also Manny & Blinn, and F. H. Manny. That Manny & Blinn succeeded, Manny, Blinn & Co., and F. H. Manny succeeded Manny & Blinn. That he was general financial agent for each of said firms until the fall of 1862. That I made the note marked B for the firm of Manny, Blinn & Co., for money loaned. My brother held the same until fall of that year. When I went east to raise money for Manny & Blinn I suggested to my brother that he give me the first note, as that was secured by mortgage, as I might raise money on it, and when I returned home I would send him another note and mortgage for the same amount. He consented to do so, and we computed the interest on the first note from April 11 to Dec. 30, 1859, in amount the sum of \$108 76-100, at ten per cent. He then turned over the note to me. This was all of that transaction. I was to send him another of date December the 30th, 1859. On my return I made the note marked A and dated it back to that date. It was all done with the knowledge and concurrence of Manny & Blinn.

At the making it was agreed by all of them to pay interest at the rate of fifteen per cent.

The \$108 76-100 was interest on the first note from April 11th to the time when interest was paid on the first note and date of second note, Dec. 30. The reason I did not pay the \$108 76-100 at the time was that I was to send it on my return home; which I did.

On my receiving the note and mortgage marked B, I made the indorsement of \$519 32-100 as now appears. No money was paid the defendant or any one else at the time. I was intending to reduce the note so as to make the note and mortgage security to Colburt Huntington for \$1000 00 and interest at fifteen per cent. when the note should become due.

The \$108 76-100 was paid to defendant as interest on the first note from April 11th to Dec. 30th, date of second note.

I sent my brother the \$225 00 in the latter part of Dec., 1860; and also in January, 1862, \$100 00.

The \$225 00 was sent by me to pay interest on the note A for one year at fifteen per cent., and the \$100 00 was sent by me to apply on that as interest at fifteen per cent. I cannot state whether when I sent the money I said anything about applying the money as interest at fifteen per cent.

That the endorsement of \$519 32-100 was intended to reduce the said note so that the same be security to said Huntington for \$1000 00 and interest at fifteen per cent., and that it was so unless I made some mistake.

Page 21

The Court, after hearing the evidence and argument of counsel, ~~decided~~ ^{decided} that the plaintiffs were not entitled to recover, as they had shown no cause of action.

The plaintiff then moved the court for a new trial; and assigned as reason,

1st. That the judgment was contrary to the law;

2d. That the judgment of the Court was contrary to the evidence.

3d. That the judgment of the Court was contrary to the law and the evidence. ^{judgment}

4th. That the Court should have allowed the money paid on the note A as a judgment of principal and interest at ten per cent. and not as a payment of interest at fifteen per cent.

5th. That the Court refused to hear the testimony of H. W. Taylor whether he did not send to and receive from one Marshall a paper signed and sworn to by said Marshall, which he (Taylor) delivered up to said Manny with the note A when the note was paid by said Manny to said Taylor.

That the Court after hearing of said motion for a new trial, overrules the same, and enters judgment against the said plaintiff for no cause of action and the costs of suit; To the overruling of which motion and the rendition of said judgment, the said plaintiffs except, which is allowed by the Court.— Thereupon the said plaintiffs pray an appeal to the Supreme Court, which is allowed by the Court.

And a bill of exceptions is signed and sealed by the Court.

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[Faint handwritten signatures or initials]

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~~Frederick H Mummy~~
Jesse Blinn

for use of
Frederick H Mummy
Charles L Hockett
Abstract

Filed April 19, 1864
J. Leland CM

BRIEF AND POINTS,
IN THE
SUPREME COURT.

FREDERICK H. MANNY,
JESSE BLINN,
FOR USE OF
FREDERICK H. MANNY,
vs.
CHARLES L. STOCKTON.

*Appeal from Circuit Court
of
Winnebago County, Illinois.*

The Appellant, by L. F. WARNER, his Attorney, claims first: In both brief and argument, that the judgment of the Circuit Court should be reversed in the above cause.

For reasons, that the suit is brought to recover money paid as usury, without any opportunity to defend the usury paid.

That, Dec. 30, 1859, the Appellants made their note for fifteen hundred dollars, payable in three years after date, with interest at ten per cent.

That, Dec. 21st, 1860, the Appellants paid \$225 00.

That in January, 1862, \$100 was paid on the said note, as interest to June 10, 1861.

That neither of said payments were endorsed upon the note.

That before the said note became due the Appellee assigned said note to one Seth Marshall, who had no knowledge of the payment of \$325 00, or any other payments, further than that payment of interest thereon to December 30th, 1860.

And payment of interest to June 10th, 1861, in full, which was endorsed thereon.

That said Marshall was the legal owner and holder of said note before maturity, and as such did and had a right to collect what appeared to be due thereon, deducting interest at ten per cent up to June 10th, 1861, as endorsed

That the interest due upon said note to June 10th, 1861, was \$215 66. That the amount paid was \$325, leaving balance on which Circuit Court should have rendered judgment of at least \$109 34, as money paid upon said note and not by the Appellee endorsed thereon and rendered judgment for that amount.

That the Court should have permitted H. W. Taylor to have testified in the matter of his correspondence with said Seth Marshall in regard to the matter, on pages 2d and 3d of Abstract, and pages 17 and 18 of Record.

That on page 2d of Abstract and 17 of Record, Stockton agreed that Manny should write to Seth Huntington, holder of note B, as to whether the \$108 76 was endorsed upon that note, and agreed to take interest on said note at ten per cent. The only question remaining was whether the \$108 76 was to be allowed upon said note A.

The Appellant therefore claims that Seth Marshall was the legal owner of said note before maturity, without notice of any defense to the same on the part of Appellee.

The Appellee having paid thereon the sum of one hundred and eight dollars and thirty-four cents, (\$108 34) which ought and should have been endorsed thereon, but which was not, and which he has a right to recover back.

That the same was not what in law is to be regarded as a voluntary payment of usurious interest which a party cannot recover back, but a payment upon said note, which after payment was assigned without being endorsed thereon to Seth Marshall.

The Appellant therefore claims that the law is that the same should be repaid to him in amount at least the sum of \$108 34 for which amount the Court below should have rendered judgment in favor of the Appellant.

That the balance paid on note A, after allowing interest up to June 10th, 1861, was not a voluntary payment, but such as by law the Appellants were bound to pay. And being compelled to pay the same, can and have a right to recover such amount from the Appellee as they were required to pay more than if the endorsements had been made on said note A, as in fact there were, viz:

\$225 Dec. 30, 1860.

\$100 Jan. 10, 1862.

Whereas the endorsements were as interest up to June 10, 1861.

The Appellants therefore claim that the said judgment be reversed, and cause remanded for a new trial. The said Circuit Court having refused such new trial.

L. F. WARNER, Att'y for Appellant.

