

No. 13431

# Supreme Court of Illinois

Lockridge

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vs.

Nuckolls

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Supreme Court---Second Grand Division.

JANUARY TERM, 1861.

## ABSTRACT.

J. M. LOCKRIDGE, Appellant,  
*vs.*  
 JOHN NUCKOLLS, Appellee. } Appeal from Sangamon.

This was an action of assumpsit on a promissory note, commenced by Nuckolls *vs.* Lockridge in the Circuit Court of Sangamon County. The *præcipe* was filed at the August Term of said Court, A. D. 1860; and for some cause continued to the October Term of said Court; and at this said Term the said appellee recovered judgment against the appellant for the sum of \$183.43; and from which said judgment appellant prayed an appeal.

The facts of the case are as follows:

6 The appellant made his note payable to one James Nuckolls, for \$152.63, and  
delivered it to him—dated October 6th, 1858; and that said note came into the  
hands—somehow, by fraud or larceny—of one John Nuckles. It appears from  
10 the back of said note, that said James Nuckolls assigned it to one Charles Nuckolls;  
11 and that from the back of said note it appears to be assigned, by said Charles,  
to John Nuckolls, who instituted this suit, on this said note, given by Lockridge  
to James Nuckolls.

8 The appellant appeared and filed the general issue and notice. The notice is in the words and figures following, to-wit:

“ The plaintiff’ will take notice that on the trial of this cause the said defendant will undertake to prove that the note sued on in this case was wrongfully obtained by fraud or otherwise, from the estate of James Nuckolls, deceased, or from him during his last illness by———Nuckolls; and that said note is part of the assets of said estate, and that the note does not belong to the said Plaintiff, nor to his assignors, but belongs to the said defendant, as administrator of the estate of said James Nuckolls; and that one Jno. Nuckolls is co-administrator of said estate.”

This was all the pleadings in the case: *i. e.* the general issue, and said notice.

10 The appellee introduced the note in evidence under his declaration, read the first  
11 and second assignments down to himself, and here the appellee rested his case.

11 The defendant then produced several witnesses, who were sworn in said cause, and in said issues; and by whom appellant wished and could prove the following facts, namely:—That Charles D. Nuckolls, either by larceny or fraud, obtained the aforesaid note, probably with the first assignment thereon, as it now stands and is, from the payee, James Nuckolls, just immediately before said James Nuckolls' death, or just after that event; and that the note aforesaid was and is a part of the estate of said James Nuckolls, deceased; but all which said witnesses and ev-



idence were rejected by the Court, as said by the Court on account of the issues and the state of the pleadings.

- 11 The defendant further offered to prove by said witnesses that one Jefferson Nuckolls took the said note, by larceny or fraud, from said James Nuckolls immediately before the death of the said James, or just after; and that the first endorser, Charles D. Nuckolls, had full and complete knowledge of said larceny or fraud—bought it with that knowledge; and further the defendant wished and  
11 attempted to prove that at the time when said Charles Nuckolls sold and assigned said note to John Nuckolls, the plaintiff—the said John, the said plaintiff, had full  
11 and complete knowledge of all the foregoing facts; but all of which the Court rejected, as said by it, on account of the state of the pleadings; *i. e.*, that the aforesaid facts could not be proved under the general issue and said notice, nor either  
11 of them. And to all which rulings and decisions of the Court the said defendant then and there excepted, &c.

An appeal was prayed, granted, and bond filed according to the agreement of the parties and the order of the Court.

The question for the Court to decide is this :

Where a note is stolen, taken by larceny or fraud, shall the defendant make an affidavit that the note was not endorsed—*assigned*, where he may probably have reason to believe that all the endorsements, assignments, are genuine. Shall the defendant forego a righteous defense, or *perjure himself in order to get the right to plead?*"

To arrive at a just conclusion let us ask ourselves—

- 1st. What was the common law?
- 2nd. What did our Legislature attempt to remedy?

#### POINTS AND AUTHORITIES FOR APPELLANT.

What was the old common law on this subject?

What is the statute, and what hardships did the statute remedy?

See Revised Statutes, page 421, § 59.

What under the common law could be pleaded under the general issue?

1 Chitty 474—79. 20 Illinois, 148. 8 Porter, 142.

Stolen property generally. 2 Kent, 324—5.

Stolen notes—particularly. 3 Kent, 79. Chitty on Bills, 254—7.

Maker must not pay—pays at his peril. Story on promissory notes, page 470.

**W. H. HERNDON,**

*For Appellant.*

23 Dec - 335 or 340

Revised Statutes page 384 - see 4

2 Chitty's Pleas -



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Lockridge

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Stue Kolls

Abstract & Brief

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L. Leland

clerk

13431

Filed Jan 5: 67

W. A. Cheney  
clerk