No. 14263

Supreme Court of Illinois

Stockham et al

vs.

Munson

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 32

Stockton
vs
Munson

1862

SUPREME COURT OF ILLINOIS,

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APRIL TERM, 1861, AT OTTAWA.

ENOCH STOCKHAM AND JOSEPH STOCKHAM *vs.* WILLIAM MUNSON. } *Error to DeKalb.*

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11 sustained. Thereupon defendants asked leave to amend their second plea, which was denied, and defendants excepted. The general issue was tried by the court—jury waived.

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2d. Courts will not enforce that part of a contract which is in violation of any statute or any rule of common law. Section 3 of the statute of 1845, which governs this case, *prohibits* the receiving of any greater interest than six per cent. (See *Nichols* vs. *Stewart*, 21 Ill. 106.)

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ABSTRACT AND POINTS.

Filed Apr. 29 1862

L. Leland
Clerk

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It is claimed again, that our statute of 1845, which we admit also governs the case at bar, forbids the receiving of any greater interest than six per cent., and that Courts will not enforce that part of a contract which is in violation of any statute or rule of the common law, and the case of *Nichols* vs. *Stewart*, 21 Ills. 106, is cited to maintain this point.

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Filed May 13. 1842
L Leland
Clk

G. A. & B.

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It is claimed again, that our statute of 1845, which we admit also governs the case at bar, forbids the receiving of any greater interest than six per cent., and that Courts will not enforce that part of a contract which is in violation of any statute or rule of the common law, and the case of *Nichols* vs. *Stewart*, 21 Ills. 106, is cited to maintain this point.

This case is not in point. In that case, the plea of usury professed to answer the whole count, while it only answered so much of it as claimed to recover more than the legal rate of interest, and this Court held the plea bad, on the ground that no penalty was attached to a usurious transaction by our statute, which is unlike the English usury laws, which forfeit the whole amount of the contract tainted with the usury; that by our statute the contract was merely modified *so that, if the defendant shall insist* upon it, no matter what the terms of the contract may be, he shall only be bound to pay the principal sum and legal interest."

But we ask, how shall he "*insist upon it?*" Plainly by no other means than as the statute itself provides, and as this Court has on many occasions decided, *by a special plea of usury.*

The statute of 1845, which both sides hold to govern this case, (the act of 1849 only changing the former act in reference to the rate of in-

II.

It is insisted further, by the other side, that usury appearing by the plaintiff's own declaration and note offered in evidence under the general issue, it was not necessary for the defendant to plead the statute of usury, and two cases are relied upon to sustain this position.

In the first, *Dysart* v. *Logan*, 2 J. J. Marshall Rep. 428, the Court held, " that which appears, need not be pleaded or averred. The Court was as much bound to notice the usury, as if it had been averred by the most formal plea," the declaration showing that the note described was for a greater rate of interest than that allowed by the statute of Kentucky. This judgment was rendered upon default of a plea.

In the second case cited, *Matlock* v. *Mallory*, 19 Ala. 694, the Court held that, " where the contract on its face shows that more than the legal rate of interest is reserved for forbearance, the declaration is demurrable," and quotes the case in 2 J. J. Marshall, 428, as authority. This was raised upon a demurrer to the declaration, and the demurrer was sustained in the Court below, and affirmed in the Supreme Court.

The one other case cited by the other side, *Phinney* v. *Baldwin*, 16 Ills. 108, we will not discuss, for it is clearly not in point.

III.

It is claimed again, that our statute of 1845, which we admit also governs the case at bar, forbids the receiving of any greater interest than six per cent., and that Courts will not enforce that part of a contract which is in violation of any statute or rule of the common law, and the case of *Nichols* vs. *Stewart*, 21 Ills. 106, is cited to maintain this point.

This case is not in point. In that case, the plea of usury professed to answer the whole count, while it only answered so much of it as claimed to recover more than the legal rate of interest, and this Court held the plea bad, on the ground that no penalty was attached to a usurious transaction by our statute, which is unlike the English usury laws, which forfeit the whole amount of the contract tainted with the usury; that by our statute the contract was merely modified *so that, if the defendant shall insist* upon it, no matter what the terms of the contract may be, he shall only be bound to pay the principal sum and legal interest."

But we ask, how shall he "*insist upon it?*" Plainly by no other means than as the statute itself provides, and as this Court has on many occasions decided, *by a special plea of usury.*

The statute of 1845, which both sides hold to govern this case, (the act of 1849 only changing the former act in reference to the rate of in-

terest,) provides, "*in the trial of any action wherein it shall appear by the pleadings, that the fact of usury shall be put in issue*, it shall be lawful for the debtor," &c. See law of 1845.

Scates' Statutes, page 599, § 7.

Who can claim else, in the face of this section, than that usury must be specially plead?

Usury can only be set up by a direct, special plea of the statute, or it is waived.

Partlow *v.* Williams *et al.* 19 Ills. 133.
Nichols *v.* Stewart *et al.* 21 Ills. 107.
Smith *et al. v.* Whitaker *et al.* 23 Ills. 368.
Hadden *v.* Innes *et al.* 24 Ills. 381.
Murray *v.* Crocker, 1 Scam. 212.
Hancock *v.* Hodgson, 3 Scam. 333.

No error can be held in the case at bar, unless all these authorities are overruled, and this Court shall decide that usury can be insisted on either upon demurrer or under the general issue, and that where the note declared upon shows on its face that a greater than a legal rate of interest is reserved, or that the note declared upon shows on its face that it was given more than 16 years before suit brought, then, in the one case, upon the general issue alone, or upon default, usury will be regarded by the Court of its own motion; or, in the other case, that, upon a like state of pleadings, the statute of limitations will be regarded by the Court.

We submit that this case ought to be affirmed.

GRAY, AVERY & BUSHNELL,
Attorneys for Defendant in Error.

163

No. 32.

Stockham et al.
vs.
Munson.

Points & Argument
for Deft. in Error.

Filed May 13. 1862
S. Leland
Cl

G. A. & R.

State of Illinois }
Lasalle County }

John S. Sterrett (who is offered as security on a supersedeus bond — in a case in the Supreme Court — of Enoch Stockhum & Joseph Stockhum against William Munson) — being duly sworn says that he believes he is pecuniarily worth at least eight thousand dollars over & above his debts & legal liabilities — and that his debts & legal liabilities do not exceed five hundred dollars — that he is a permanent resident of the State of Illinois — has resided here about twenty four years & now resides in the town of Somonauk in the county of De Kalb — in Illinois —

J. S. Sterrett

Subscribed & Sworn before me this 23d day of May 1860

L. Leland Clerk
by J. B. Rice Deputy

~~387~~ 32 163

Stockham et al
vs
Munson

Affidavits as to sufficiency of security offered on supersedeas bond

Filed May 23, 1860
L. Leland
Clerk

John S. Sturtt
Buck

Know all men by these presents - that we Enoch Stockham, & Joseph Stockham as principals and John S. Sterrett as security are held and firmly bound unto William Munson in the penal sum of ~~nine hundred~~ Six hundred dollars - for the payment of which to the said William Munson - his heirs - executors ~~and~~ administrators - we jointly & severally bind ourselves - our heirs executors and administrators - firmly by these presents - Signed and sealed by us this 24th day of May - A. D. 1860 -

The condition of this bond is such that whereas the said William Munson lately recovered in the Circuit Court of De Kalb County - against the said Enoch Stockham & Joseph Stockham for the sum of four hundred and forty dollars ($440.) besides Costs - and whereas - the said Enoch Stockham & Joseph Stockham have with a view of reversing said judgment - sued out a writ of error from the Supreme Court of the State of Illinois - and the same is about to be made a Supersedeas - Now therefore if the said Enoch Stockham and Joseph Stockham shall prosecute said writ

of error with effect, ~~xxxx~~ or shall well and truly shall pay said Judgment in said Circuit Court and whatever judgment may be rendered against them in the Supreme Court – then this obligation shall be void otherwise shall remain in full force and effect –

Attest:
George Stockham witness to signing by Enoch Stockham
T. L. Hickey witness as to Execution by Joseph Stockham & John S. Sterrett

Enoch Stockham (Seal)
Joseph Stockham (Seal)
J. S. Sterrett (Seal)

Filed May 26. 1860.
T. Leland
Clk.

T. L. Leland Clk
Same Superseden to Jas. Walker & Sent to Sup. Ct. Beverly Clark of Cir. Court of Spencer Co. Ky.

Supreme Court
E. Stockham et al
vs
Wm. Munson
Supersedeas bond

Supreme Court, April Term, 1860.

Stockham et al.
vs.
Munson.

Error to DeKalb.
Motion for supersedeas.

Additional suggestions in support of the motion.

"That which appears need not be pleaded or averred." 2 J. J. Marshall's Ky. Reps., 4[illegible]. This is a case directly in point. The syllabus is as follows: "If bond declared on shew on its face that more than 6 per cent. interest is reserved, altho' deft. make default, judgment should only be rendered for principal and 6 per cent. interest. So that which appears need not be pleaded."

The authority of this case is recognized in the case of Matlock vs. Mallory, 19 Ill., 694, where it is held that when the contract declared on is usurious on its face, the declaration is demurrable.

If the objection ~~is good~~ would have been good on demurrer, it is good in arrest or in error.

The contract in this case was made before the act of 1857; and therefore the

which applies to it is the Interest Act of 1845, section 3 of which expressly prohibits the accepting or receiving of any greater interest than 6 per cent. (This act is changed by that of 1849 only in regard to the rate of interest — 10 per cent.)

Dickey & Wallace,
for the motion.

---

163 Sept. Term 32
Stockham et al.
vs.
Brunson.

Suggestions and authorities in support of motion for supersedeas.

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

To the Sheriff of ~~De Kalb~~ La Salle County, 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 De Kalb County, before the Judge thereof, between William Munson

plaintiff, and Enoch Stockham and Joseph Stockham

defendants, it is said that manifest error hath intervened, to the injury of the said Enoch Stockham and Joseph Stockham

as we are informed by their complaint ~~ant~~ 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 William Munson

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

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 24th day of February in the year of our Lord One Thousand Eight Hundred and Sixty-two

L. Leland

Clerk of the Supreme Court.

163 LaSalle 32

Enoch Stockham
v.
Joseph Stockham
No. 32. vs.
William Munson

SCIRE FACIAS.

Served by reading this writ to William Munson this 3d day of March 1862

Serv & ret 60
28 miles 100
160

E. L. Waterman Sheriff

FILED April 22 A. D. 1862

L. Leland Clerk.

Ret
Munson
Mar 3 1862
Waterman

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

ENOCH STOCKHAM AND JOSEPH STOCKHAM *vs.* WILLIAM MUNSON. } *Error to DeKalb.*

ABSTRACT OF THE RECORD.

PAGE OF REC.

2 Assumpsit by Munson against the Stockhams. The declaration, filed Feb'y. 28, 1859, contains one count on a promissory note dated October 13, 1856, payable "on or before one year from the date thereof, with interest at the rate of thirty-six per cent. per annum."

5 March 24, 1859, defendants pleaded, 1st, *non-assumpsit;* 2d, usury, as a full defence.

8 September 26, 1859, plaintiff joined issue on the first plea; and at February Term, 1860, a demurrer to the second plea was
1 sustained. Thereupon defendants asked leave to amend their second plea, which was denied, and defendants excepted. The general issue was tried by the court—jury waived.

12 The bill of exceptions taken at the trial shows, that the plaintiff read in evidence a note as follows:

200. On or before one year from this date we or either of us promise to pay to William Munson or bearer the sum of two hundred dollars, the interest to be thirty-six per cent. per annum, Victor, October 13th 1856, for money loaned in coin.

ENOCH STOCKHAM.
JOSEPH STOCKHAM.

This was all the evidence in the case.

The court found for plaintiff, and assessed his damages at $440, "being the amount of the note and interest herein," (page

PAGE OF REC. 11); to which finding defendants then and there excepted. There was a motion for a new trial overruled, and defendants
11 excepted; and judgment was given against defendants for $440 and costs.

POINTS MADE BY PLAINTIFF IN ERROR.

1st. In this case, the usury appearing by the plaintiff's own pleading and evidence, it was not necessary for the defendant to plead the Statute. "That which appears need not be pleaded or averred."

Dysart vs. *Logan*, 2 J. J. Marshall's Ky. R. 428.
Mattock vs. *Mallory*, 19 Ala. 694.
(*Phinney* vs. *Baldwin*, 16 Illinois, 108.)

"*Cessante ratione legis, cessat ipsa lex.*" The reason for the rule requiring usury to be pleaded is, that the plaintiff may be apprised of the defense; but when the usury appears by the plaintiff's declaration and proof, the reason for the rule fails.

2d. Courts will not enforce that part of a contract which is in violation of any statute or any rule of common law. Section 3 of the statute of 1845, which governs this case, *prohibits* the receiving of any greater interest than six per cent. (See *Nichols* vs. *Stewart*, 21 Ill. 106.)

3d. The parties having reserved interest at an unlawful rate, it is the same as if they had not fixed upon any rate at all, and in such case the law fixes the rate of interest at six per cent.

32 163

87

SUPREME COURT OF ILLINOIS.

APRIL TERM, 1861.

ENOCH STOCKHAM AND
JOSEPH STOCKHAM
vs.
WILLIAM MUNSON.

ABSTRACT AND POINTS.

Filed Apr. 29 - 1861
L. Leland
Clerk

Ready

No. 2

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

To the Clerk of the Circuit Court for the County of DeKalb 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 DeKalb County, before the Judge thereof, between William Munson

plaintiff, and Enoch Stockham and Joseph Stockham

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Stockhams as we are informed by their complainant ——— and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 26th day of May in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Delano
Clerk of the Supreme Court.

163 87 52

William Munson

No. vs.

Enoch Stockham
& Joseph Stockham

WRIT OF ERROR.

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

L. Leland
Clerk.

FILED May 26. A. D. 1860.

L. Leland
Clerk.

Supreme Court, April Term, 1860.

Stockham et al., } Error to DeKalb.
vs. } 381.
Munson. }

Motion for Supersedeas.

In support of the motion in the above case, we would respectfully call the attention of the court to the case of Phinney vs. Baldwin, 16 Ill., 108. There, as in this case, the usurious interest was apparent upon the face of the note, and upon the declaration, and there was no plea of usury. The court sustained and enforced the contract, but solely upon the ground that it was proved that by the law of the state (California) where the note was made, ~~the note~~ an agreement to pay such interest was valid; leaving, as we think, a strong inference that had this state of facts not been shown, the contract would not have been enforced as to that part which in this state would have been unlawful.

As to contracts illegal as being against the rules of the common law, or the express provisions or general policy

of any particular statute, see Wheeler vs. Russell, 17 Mass., 257, and the cases there collected and reviewed; also, Mansell vs. Temple, 3 Gil., 96.

In Nichols vs Stewart, 21 Ill., 106, the court seems to say that our statute modifies the contract, so that the defendant shall be bound to pay only the principal sum, with legal interest; and one of the grounds of reversal was, that "the judgment was wrong in not giving the plaintiff the damages to which he was entitled by the statute.

Dickey & Wallace,
for the motion

Filed May 11. 1860
L. Leland
Clerk

Suggestions in support of motion for supersedeas.

Stockhamer et al,
vs.
Munson.

32 ill 463

United States of America
State of Illinois De Kalb County ss

Pleas before the Honorable Isaac G. Wilson Judge of the Thirteenth Judicial Circuit in the State of Illinois, at the September Term of the De Kalb County Circuit Court begun and held at the Court House in Sycamore in said County on the Fourth Monday the same being the 26th day of September in the Year of our Lord One Thousand Eight Hundred and Fifty nine and of the Independence of the United States the Eighty Fourth.

Present the Hon. Isaac G. Wilson, Judge
" Henry Safford, Sheriff.
" (Sept 27) E. S. Joslyn States Att'y
Attest J. A. H. Bevenidge Clerk.

Court opened by Proclamation.

Be it remembered thereon the 28th day of February A. D. 1859 previous to said Term of said Court, William Munson, by Mayo Kellum & Nebeker his attorneys, filed in the office of the Clerk of said Court his certain Declaration and Precipe for Summons, which said Declaration and Precipe are in words and figures following to wit:

(Declaration)

State of Illinois
County of DeKalb ss. In Vacation after the February term of the DeKalb County Circuit Court AD 1859.

William Munson plaintiff by Mayo Kellum & Webster his attorney complains of Enoch Stockham and Joseph Stockham defendants in a plea of Assumpsit For that whereas the said defendants on the thirteenth day of October in the year of our Lord one thousand eight hundred and fifty six at Victor in the County of DeKalb aforesaid made their certain promissory note in writing bearing date the day and year last aforesaid, and then and there delivered the same to the Plaintiff and thereby promised to pay to the said plaintiff or bearer the sum of Two Hundred dollars on or before one year from the date thereof with interest at the rate of Thirty six per cent per annum it being for money loaned in coin and the said defendants then and there in consideration of the premises, promised to pay the amount of the said note to the said Plaintiff according to the tenor and effect thereof.

Yet the said Defendants have disregarded their said promise, and they have not paid the said moneys or any part thereof to the damage of the Plaintiff of Five Hundred

Dollars and therefore he brings suit &c"

Mayo Kellum & Webster

Plaintiffs Attorneys "

"Copy of Note Declared on

$200.00 On or before one year from this date we or either of us promise to pay to William Munson or bearer the sum of two Hundred Dollars the interest to be thirty Six per cent per Annum - Victor October 13 1856 for money loaned in coin

(Signed) Enoch Stockham

Joseph Stockham"

(Precipe)

William Munson
vs
Enoch Stockham &
Joseph Stockham

In Vacation after the February Term of the De Kalb County Circuit Court A.D. 1859

Assumpsit

Damages $500.00

The clk will issue summons and make copy of Declaration as above

Mayo Kellum & Webster

Attys for Plff "

(Alias Summons)

State of Illinois
De Kalb County } The People of the State of Illinois
to the Sheriff of said County Greeting:

"You are hereby commanded, as heretofore commanded to summon Enoch Stockham & Joseph Stockham if they are to be found in your County to answer the Declaration of William Munson in an action of Assumpsit damages claimed Five hundred dollars, which said declaration was filed in the office of the Clerk of the Circuit Court of DeKalb County on the 28th day of February AD 1859.

Now, unless the said Defendant shall, within twenty days from the date hereof, plead to or otherwise answer said Declaration, judgment will be entered against him by default.

Witness James H. Beveridge Clerk of our said Court, and the Seal thereof at Sycamore, in said County this 4th day of March A.D. 1859.

J. H. Beveridge Clerk
By J. E. Kellogg Deputy Clk"

On which is endorsed as follows, to wit.

"Filed Feby 6 1860 J. H. Beveridge Clk"

"duly served by reading to Enoch Stockham & Joseph Stockham & at the same time leaving copy of declaration with each of them this 9th day of March 1859

Fees 50 miles 2,50 Service 1,00 Copy 1,00 return 10 = 4,60

Henry Sabbard Sheriff
by A Hanbanks Deputy

(Defts Pleas)

State of Illinois } In Vacation after the Feb-
De Kalb County } ruary Term of the De Kalb
Enoch Stockhams & } County Circuit Court A.D.
Joseph Stockham } 1859.
ads } Pleas.
William Munson }

And the said defendants by S. B. Stinson their Attorney come and defend the wrong and injury when &c and say that they did not undertake and promise in manner and form as the said Plaintiff hath above thereof complained against them, and of this they put themselves upon the Country &c.

And for a further Plea in this behalf the said defendants say actio non because they say that before the making of the said promissory note in the said declaration mentioned, to wit: on the thirteenth day of October A.D. 1856 it was corruptly usuriously and against the form of the Statute in such case made and provided agreed by and between William Munson payee in the note mentioned in said declaration Plaintiff in this suit and these defendants, that the said William Munson Pltff should lend and advance unto the said defendants the sum of two hundred dollars, and that

the said William Munroe should forbear and give day of payment thereof to the said defendants until the thirteenth day of October AD 1857 and that the said defendants for the loan and forbearance thereof as aforesaid for the time aforesaid should give and pay to the said Plaintiff on the said 13 day of October A.D. 1857, more than the legal rate of interest, to wit: the sum of Seventy two Dollars, that is to say the sum of Thirty Six per cent per Annum and in pursuance and in part performance of the said corrupt and usurious agreement the said Plaintiff did then and there lend and advance the said sum of two hundred Dollars to the said defendants and the said defendants in further performance of the said usurious agreement to secure the payment of the said sum of two hundred dollars so lent and advanced to them as well as the sum of Seventy two Dollars so corruptly & usuriously agreed to be paid & received did then & there make executed & deliver to the said Plaintiff the said promissory note in the said declaration mentioned for the sum of two hundred dollars with interest at Thirty six per cent per Annum as appears by the said declaration and copy note indorsed thereon.

And the said defendants further

say that the said sum of seventy two dollars or thirty six per cent per annum so agreed to be paid by the said defendants to the said Plaintiff for such loan as aforesaid and so secured as aforesaid exceeds the rate of $10.- for the loan and forbearance of $100 for one year contrary to the form of the statute in such case made & provided.

By reason whereof and by force of the statute the said Plaintiff has forfeited the whole of said interest so contracted to be received —

Wherefore they pray judgment, if the said Plaintiff ought to have or maintain his aforesaid action against them - as to the said interest so claimed in the Plaintiffs said declaration to wit, the sum of $175 —

S. B. Stinson
Defts Atty

State of Illinois
County of DeKalb } ss: Enoch Stockham and Joseph Stockham defendants in the within entitled cause, being by me duly sworn depose and each of them deposes that the within pleas and the matters therein contained, are true & that they verily believe they have a good defence on the merits as to a part of the Pltffs demand to wit the sum of $175 —

7

Subscribed & sworn to before me this 18th day of March AD 1859 } Enoch Stockham, Joseph Stockham

S. B. Stinson
Not Pub."

L. S.

On which is endorsed as follows.
"Filed March 24th 1859
Jas H Beveridge Clk"

(Demurrer to Plea)

William Munson vs Enoch Stockham & Joseph Stockham } In Vacation after the February Term of the De Kalb County Circuit Court A.D. 1859

And the said plaintiff as to the plea of the said defendant by him first above pleaded, and whereof he hath put himself upon the country doth the like.

Mayo Kellum & Webster
Plffs Attys

And the said plaintiff, as to the said plea of the said defendants by them secondly above pleaded saith that the same and the matters therein contained, the manner and form as the same are above pleaded, and set forth are insufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against the said defendants, and that he the said plaintiff is not bound

by law to answer the same, And this he is ready to verify, wherefore by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment, and his damages, by reason of the not performing of the said several promises and undertakings in the said declaration mentioned to be adjudged to him &c

Mayo Kellum and Webster
Plfs Attys."

On which is endorsed as follows
"Filed Sept 26. 1859
J A Beveridge clk"

(Demurrer)

William Munson
vs
Enoch Stockham &
Joseph Stockham
} De Kalb County Circuit Court February Term 1860

And the said plaintiff as to the said plea of the said defendants by them secondly above pleaded, saith that the same and the matters and things therein contained in manner & form as the same are above pleaded & set forth are not sufficient in law &c

Mayo Kellum & Webster
Attys for Plff

And for special cause of demurrer the said plaintiff shows to the Court —

1st The said plea commences in bar of the whole of the plaintiffs declaration and concludes in bar of only a part of same.

2nd The said plea is in other respects informal and insufficient."

On which is endorsed as follows,

"Filed Feb 14/60 Ja H Beveridge Clk"

And be it further remembered that on the 14th day of February A.D. 1860, the same being one of the days of the ~~September~~ February Term for the Year A.D. 1860, of said Court, the following among other proceeding in said Court, was had and entered of Record as follows,

William Munson
vs
Enoch Stockham & Joseph Stockham } Asst Transfd for Vac. Docket.

This day came the plaintiff by Mazo Kellum & Webster his Attorneys, and the defendants also come by S. B. Stinson their Attorney and this cause came on to be heard on the demurrer to the Special plea, in which the defendant joins: After hearing argument of counsel, the Court being now fully advised

1st The said plea commences in bar of the whole of the plaintiffs declaration and concludes in bar of only a part of same.

2nd The said plea is in other respects informal and insufficient."

On which is endorsed as follows,

"Filed Feb 14/60 Ja H Beveridge Clk"

And be it further remembered that on the 14th day of February A.D. 1860, the same being one of the days of the ~~September~~ February Term for the Year A.D. 1860, of said Court, the following among other proceeding in said Court, was had and entered of Record as follows,

William Munson
vs
Enoch Stockham & Joseph Stockham } Asst Transfd for Vac. Docket.

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Orders that said demurrer be sustained and here upon the defendants ask leave of the Court to amend their said plea which is denied to which ruling of the Court the defendants except which is allowed and here noted of record: It is therefore considered by the Court that the plaintiff have and recover of the defendants his costs of demurrer sustained and that he have execution therefor: And thereupon the parties waive a Jury and submit this cause to the Court for trial: After hearing the proofs and allegations of the parties and the remarks of Counsel, the Court being fully advised finds the the issue for the plaintiff and assesses his damages at the sum of Four hundred and forty dollars being the amount of the note and interest herein, And now come the defendants and move the Court for a new trial in this cause which is denied, to which ruling of the Court the defendants except which is allowed and here noted of record: It is therefore considered by the Court that the plaintiff have and recover of the defendants Four hundred and forty dollars his damages in form as aforesaid assessed together with his costs herein expended and that he have execution therefor."

11.

(Bill of Exceptions)

State of Illinois } ss. De Kalb County Circuit
De Kalb County } Court Feby Term A.D. 1860

William Munson
vs
Enoch Slockham
et al.

Be it remembered that on the trial of the above cause before the Honorable Isaac G Wilson Judge of said Court without a Jury (a Jury having been waived by the parties) on this 14th day of February A.D. 1860 said day being one of the days of said Term The following described note was all the evidence given on the part of the plaintiff or in said cause, which note is in the words and figures following, that is to say

" 200 On or before one year from this date we
" or either of us promise to pay to William Munson
" or bearer the sum of two hundred dollars, the
" interest to be thirty six per cent per Annum.
" Victor October 13th 1856 for money loaned
" in coin" (Signed)

"Enoch Slockham"
"Joseph Slockham"

The Court found the issue for the plaintiff and rendered judgment in his favor against

the defendants for the sum of Four Hundred and forty Dollars Damages, to which finding & judgment the defendant by his counsel then and there excepted, and thereupon the defendants by their counsel entered their motion for a new trial, which was overruled by the Court to which ruling by the Court the Defendant by his counsel then and there excepted and now prays that this his Bill of Exceptions may be signed and sealed by the Court and made a part of the Records in this cause which is done" (Signed) "Isaac G. Wilson (Seal)"

On which is endorsed as follows

"Filed Feb 18 1860

Jas. H. Beveridge Clk"

State of Illinois
De Kalb County } I. Jas. H. Beveridge Clerk of the Circuit Court in said County and State do hereby certify that the above & foregoing Transcript contains true copies of the Declaration, Precipe, Alias Summons, Defts Pleas, Pltffs Demurrers to Pleas, together with a true copy of the Record & proceedings had in the above & foregoing entitled cause, as the same appear of record & on file now remaining in my office - Witness my hand & the Seal of said Court at Sycamore in said County & State this 1st day of May A.D. 1860

Jas. H. Beveridge Clerk
By J. C. Kellogg Deputy Clk

381

Enoch Stockham
Ext.

vs

William Munson

Record Lens 20

Filed May 7. 1860
L. Leland
Clk.

$5. to Leland –
from Joseph Stockham
Sonoquant Station
C. & N. W. R.
Also Fees on Trans.
4.00

State of Illinois, Third Grand Division.

In the Supreme Court, April Term, 1860.

Enoch Stockham and Joseph Stockham, } Error
vs. } to
William Munson. } DeKalb.

Afterwards, at the said term of the court aforesaid, come the said plaintiffs in error, by Dickey & Wallace their attorneys, and say, that in the record and process aforesaid it is manifestly erred, to wit:

1st. The court below erred in refusing to allow the defendants below to amend their second plea.

2nd. The court below erred in allowing interest upon the amount of the said note at an unlawful and usurious rate, and in finding for the plaintiff below damages to the amount of the principal sum and such unlawful interest together.

3rd. The court below erred in allowing interest upon the said principal sum at an unlawful and usurious rate for the time since the said note became due.

4th. The court below erred in finding excessive damages for the plaintiff below, and in giving judgment upon the said finding.

5th. The court below erred in overruling the

motion of defendants below for a new trial.

Dickey & Wallace,
for plaintiffs in error.

And now comes said defendant William Murson by Gray Avery & Bushnell his attys and for joinder in error says that there is no manifest error in said record

April 9th 1862. Gray Avery & Bushnell

163 32

Enoch Stockham &
Joseph Stockham,
vs.
William Brunson.

Transcript
&
Assignment of errors.

Filed Aug 7. 1860
L. Leland
Clk.

Joinder filed Sept. 9. 1862.
L. Leland
Clk.