

13883

No. _____

Supreme Court of Illinois

Smith

vs.

Case.

71641  7

Circuit Court in and for the County of Lake and
State of Illinois

Julius C. Smith

(vs. Sample)

William M. Case

John W. Case

Deft.

In Chancery of the
February Term 1858

State of Illinois)
Lake County)

The following is a copy of the Bill
of Complaint filed in the above entitled case
to wit:

Bill of " Circuit Court in and for the County of Lake and
Complaint " State of Illinois
" State of Illinois)
" Lake County) By the February Term A.D. 1858
" To the Honorable George Manierre Judge of the
" South. Judicial Circuit of the State of Illinois
" Before the Honorable Circuit Court in and for said County
" of Lake and State of Illinois in Chancery sitting,
" complaining sheweth unto your Honor, your Honor
" Julius C. Smith of the County of Lake and State of Illinois
" sheweth that on or about the twenty fifth day of September A.D. 1837
" your Honor was indebted to William M. Case of said County of
" Lake & State of Illinois in the sum of One thousand Dollars and interest
" thereon at the rate of six percent per annum for about the period
" of one year and two months amounting in all to about the sum
" of One thousand and seventy Dollars which indebtedness
" was at that time deemed to be paid by a certain promissory

" note before that time executed by your Orator to said
" William M. Case.
" That on or about the said twenty fifth day of September
" as aforesaid, the said William M. Case pressed the payment
" of said indebtedness upon your Orator and insisted
" upon your Orator's paying the same, but that your
" Orator owing to the financial difficulties which your
" Orator as well as others of the business community were
" laboring under, was unable to pay the same. When the said
" William M. Case offered and proposed to your Orator
" that if your Orator would execute a judgment note
" or note with power of Attorney authorizing some
" Attorney to enter up judgment upon the same
" and would include in the body of said note the
" sum of twenty per cent in addition to the sum then
" really and bona fide due, that he would delay the
" collection of said sum of money for a period of
" ninety days from the date of the note to be made
" and alleging as an inducement to your Orator
" Orator to execute said note that he could dispose of
" said note to one H. P. Smith and thus raise the
" money for his own use upon the same, and your
" Orator charges the fact to be that he did execute said
" note as aforesaid and that there was twenty per cent per
" annum added to and included in the principal
" sum of said judgment note so given by your Orator
" to said William M. Case.
" Your Orator further shews ~~and~~ unto your
" Honor that the said William M. Case agreed

" and promised your Orator as a consideration and in-
" ducement for his signing said note that he would
" delay the collection of said note until the same
" became due by the terms of the same to wit for three
" months from the date thereof.
" Your Orator further sheweth unto your House
" that when the said William M Case presented
" said note he presented to your Orator a judgment note
" commonly called a snap note or note providing that
" judgment might be rendered "after the date" thereof that
" your Orator objected to the signing said note with such
" clause in it and was about to run his pen through the
" clause authorizing the holder to render judgment thereon
" after the date thereof. When the said Case objected thereto
" for the reason as he said that Smith was very particular
" and would not take it if there was a scratch about it
" but avowing that Smith would not enter up judgment
" until the said note became due and further agreeing
" and guaranteeing that if your Orator would sign
" said judgment note that the same should not stand
" your Orator said that no judgment should be rendered on
" the same until the expiration of the said time mentioned
" in said note, and that your Orator relying on the agree-
" ment and guarantee of said Case signed said note
" with said cut throat clause in the same, and your
" Orator charges the fact to be that he should not have
" signed the same if he had not relied upon the promise
" of said Case not to take advantage of the same and
" upon his statement that he could borrow the money

" on the same of the said H P Smith, and the said case
" as a further inducement to your Orator to sign the same
" said that he could ^{get} the money of said H P Smith on said
" note for twenty five percent and he the said case offering
" to lose the other five percent if your Orator would pay
" the said twenty percent.

" Your Orator further sheweth unto your Honor that
" by the terms of said note the same would be due on
" or about the 25th day of December 1857.

" Your Orator further sheweth unto your Honor
" that the said William M Case in violation of his
" express agreement with your Orator that no judg-
" ment should be rendered on said note until the same
" became due, and for the purpose as your Orator charges
" the fact to be, of injuring and defrauding your Orator
" did assign said note to one John W. Cline of the
" City of Chicago in said State and did procure the
" said Cline to cause to be rendered up a judgment
" upon said note in the Circuit Court of the County
" of Cook and the State of Illinois at a term of said
" Court which was begun and held in said County on
" the third Monday of November A D 1857 and which
" said judgment was for the sum of One Thousand One
" Hundred and thirty four Dollars and fifty cents debt
" and the costs thereon and which said judgment was
" rendered as your Orator is informed and believes on the
" 18th day of November A D 1857 which was long before
" said debt became due by its terms.

" Your Orator further sheweth unto your Honor that
" he is informed and believes and therefore charges the fact
" to be that certain executions and writs were issued on
" said judgment by the Clerk of said Circuit Court
" of Cook County on the 14th Day of November A D 1857
" which said executions and writs have been placed
" in the hands of Samuel Mansour Sheriff of Lake
" County for collection but that no levy has been
" made upon the same within the knowledge of your
" Orator, altho your Orator charges the fact to be that
" he is informed that said officer is about to levy upon
" your Orator property to satisfy the same which will
" greatly injure your Orator.

" Your Orator further sheweth unto your Honor
" that he is informed and believes and charges the fact
" to be that the said note and judgment is now the property
" of the said William M Case and that the said note was
" assigned to said Cline for the purpose of enabling said
" Cline to enter up judgment on the same in his Cline's
" name or as a collateral security for some indebtedness
" due from said Case to said Cline or for security for
" moneys loaned by said Case to said Cline and that
" the same was not bona fide and in due course of busi-
" ness assigned by said Case to said Cline but that the
" real and equitable interest in the same still is in the
" said Case, all of which ailing and doings of the said
" confederates are contrary to equity and good conscience
" and tend to the injury and oppression of your
" Orator

" In tender consideration whereof and great much as
" your Orator is remediless in the premises by the strict
" rules of the Common Law to the end whereof that the
" said Williams in law may give true and complete
" answer make upon his Knowledge in formation ^{and}
" belief to all the matters herein charged, upon his corporate
" oath and particularly
" 1st As to what amount your Orator was bonafidely
" indebted to him on and previous to the 23rd day of
" September A D 1857
" 2nd Whether said judgment note was made to
" secure the extension of the payment of said indebtedness
" and for how long time
" 3rd Whether there was not the sum of twenty per cent per
" annum upon the whole sum actually due from your
" Orator to said Case added to the principal sum and
" incorporated as principal in said note and how much
" was so incorporated and added thereto.
" 4th Whether the said Case did not represent that he
" could get the money of the said H. P. Smith on said note
" as an inducement to your Orator to execute the same
" 5th Whether the said Case did not represent
" promise or agree with your Orator that if he would
" sign said note with the provision or clause therein
" that judgment might be rendered thereon after the date
" thereof that no judgment should be rendered on said note
" until the same became due
" 6th Whether the said Case is not now the owner of the
" said note and judgment and whether the same was

not assigned to said Cline for the purpose of enabling
him to enter up judgment on the same as a col-
lateral security and particularly what the arrangement
understanding or agreement is and has been between
said Case and said Cline.

And that the said Cline may on his corporal oath
fully truly and particularly set forth and discover on his
knowledge information and belief the particulars
wherein he holds said note and the particular
agreement between him the said Cline and said Case
in relation thereto and also all other matters herein
charged and set forth so far as the same are within his
knowledge or information.

And that the said William M. Case John W. Cline
and Samuel Munson their Attornies agents and confederates
may be enjoined and restrained from further injuring
your Orator by proceeding to levy said execution upon
your Orators goods and chattels lands and tenements and
from otherwise enforcing the collection of said
judgment until the further order of this Court in
the premises may it please your Honor to grant unto
your Orator the proper writ of Injunction issuing out of
and under the seal of this Court directed to the said William
M. Case John W. Cline and Samuel Munson Sheriff of
Lake County their Attornies, agents and confederates
commanding them and each of them absolutely to
desist and refrain from proceeding further against your
Orator in the said action to enforce the collection of said
judgment and from levying said execution or any other

" execution which may be issued upon said judgment
" or from procuring any other execution to be issued upon
" said judgment until the further order of this Court in
" the premises

" And that the said William M. Case and John W. Blinn
" may be decreed to deduct from said judgment the said
" amount of usurious interest so reserved in said note
" and such damages as your Orator has sustained by reason
" of the non-performance of the said several agreements
" of the said Case with your Orator and that said judg-
" ment may be set aside and declared void, and an
" issue of Law made up between your Orator and said
" Case or said Blinn, so that your Orator can have an oppor-
" tunity of being heard in a Court of Common Law upon
" his several matters of defence to the demands of the said
" Case or Blinn upon said indebtedness upon which
" said note was given, and that your Orator may have
" such further relief and such other relief as the nature
" of his case may require and as shall be agreeable to equity
" and good conscience—may it please your Honor to
" grant unto your Orator the people's writ of summons
" issuing out of and under the seal of said this Court
" directed to the said William M. Case and John W.
" Blinn directing them by a certain day and under a certain
" penalty to be therein mentioned named to hear
" appear before your Honorable Court to stand to and
" abide such order and decree as shall be made in
" the premises. And your Orator bids you pray &c
" C. L. D. (16) Solicitor
" W. S. Fearns, of Counsel
" Julius C. Smith

" State of Illinois }
 " Lake County } On the 21st day of November
 " A.D. 1857 before me personally appeared the above named
 " Julius S. Smith and made oath that he has heard the
 " foregoing Bill of Complaint subscribed by him read
 " and knows the contents thereof and that the same is
 " true of his own knowledge except as to those matters
 " stated to be on his information and belief and as to
 " those matters he believes them to be true
 " Clerk J. S. Rogers Co. J. P. [Signature]

And the following is a copy of the order of the
 Master in Chancery granting an Injunction in this case

" Let an in injunction issue agreeably to the prayer
 " of the foregoing Bill of Complaint upon the filing
 " of the above and foregoing Bill of Complaint
 " together with the Bond of the Complainant in
 " the penal sum of two thousand & three hundred
 " Dollars with Amos S. Waterman Security
 " Wm Rogers 21st
 " November 1857) William A. Bransden
 " Master in Chancery

And the following is a copy of the endorsement of
 the filing of said Bill of Complaint by the Clerk of
 the Court.

" Filed November 21st 1857
 " A. B. [Signature] Clerk

" Circuit Court in and for the County of Lake
" And State of Illinois

Injunction " State of Illinois) In Chancery of the
" Lake County.) February Term 1858

" The people of the State of Illinois to William
" McLean John W. Cline and Samuel Munson Sheriff
" of Lake County your Attornies agents and copartners
" And each of you greeting

" Whereas it has been represented to us in our Court of
" Chancery on the part of Julius C. Smith that he has
" lately exhibited his Bill of Complaint in our said
" Court of Chancery before William A. Boardman Esq
" Master in Chancery for Lake County against you the
" said William McLean John W. Cline and Samuel
" Munson Sheriff of Lake County to be relieved
" Touching the matters therein complained of; in
" which Bill it is stated among other things that you
" the said John W. Cline did on the 18th day of November
" 1857 cause a judgment to be rendered upon your
" favor in the Circuit Court of the County of Cook and
" State of Illinois (being one of the days of the November
" Term of said Court) in accordance with judgment aforesaid
" executed by the said Julius C. Smith to the said William
" McLean and that an execution has been issued upon
" said judgment to which execution has been placed in
" the hands of the said Samuel Munson Sheriff of
" Lake County for collection and that the said Samuel
" Munson is about to levy the same upon the goods
" and Chattels and slave tenements of the said

" Complainant. and that your actings and doings
" are contrary to equity and good conscience.

" And whereas the said Master in Chancery has made
" an order in the following words to wit. " Let our
" " Injunction issue agreeably to the prayer of the
" " for going Bill of Complaint upon the filing of the
" " above and foregoing Bill of Complaint together with
" " the Bond of the Complainant in the penal sum
" " of two thousand & three hundred Dollars with Amos
" " S Waterman security

" " Wauskegan 21st November 1837

" " William A Boardman
" " Master in Chancery

" Therefore in consideration thereof and of the particular mat-
" ters in the said Bill set forth do strictly command you the
" said William Boardman and John H. Cline and each of you from
" further proceeding to enforce the collection of the said judg-
" ment or from taking out any further or other execution on
" the same and you the said Samuel Munson Sheriff of Lake
" County from levying the said executions issued upon said
" judgment upon the goods and chattels lands and ten-
" ements of the said Julius C Smith or from further proceed-
" ing to enforce said executions to collect the same until
" the further order of this Court in the premises

" Witness Augustus B. Cotes Clerk of said
" Circuit Court and the seal of this Court
" This 21st day of November A.D. 1837
" A. B. Cotes Clerk

" Filed January 20th 1838 A. B. Cotes Clerk
" By A. S. Cotes Deputy

The following is a copy of the endorsement of the
Officers Return on the back of said writ

Executed the within injunction by reading and
in the hearing and presence of William McCarr
John W. Chinn Samuel Munson and also and Henry
W. Blodgett Clark W. Minton and Elizabeth Kelly Attorneys
for Plaintiff and also by delivery to each of them
a true copy thereof this 21st Day of November A.D. 1857

Six services	3.00
Six copies	3.00
Six miles travel	00
Return	<u>10</u>
	\$6.10

Samuel Munson
Sheriff

Summons

The following is a copy of the summons issued in the above entitled cause. D. vs. et

" State of Illinois
 " Lake County) The People of the State of Illinois, D. the Sheriff
 " of said County greeting
 " we command you that you summon William McCall
 " and John W. Clark if they shall be found in your
 " County personally to be and appear before the Circuit
 " Court of said County on the first day of the next Term
 " thereof to be holden at the Court House in Warsaw, in
 " said County on the first Monday of February next to answer
 " unto the bill of Complaint of Julius C. Smith exhibited
 " in said Court on the Chancery file thereof against
 " them. And have you them and them this writ with
 " an endorsement thereon of the manner in which you
 " shall have executed the same

" Westminster Augustus B. Tolles Clerk of said
 " Court and the Seal thereof at Warsaw
 " in said County this 21st day of Decem-
 " ber AD 1857.

" ~~(Signature)~~ A. B. Tolles Clerk.
 " And the following is the endorsement of the Clerk
 " on the back of said summons. D. vs. et

" Henry Ann 1858. Julius C. Smith
 " William McCall and
 " John W. Clark
 " Summons in Chancery
 " E. S. Ingalls Solicitor

And the following is a copy of the endorsement of
the officer on the back of said summons to said
" Execute the within writ by reaching to and in the hearing
" of William McCall and also by delivering to him a true
" copy thereof this 11th day November AD 1857.

" 1 Service 50

" 1 Copy 50

" 1 Miles @ 0.5

" 1 Return 10

" 175 P. Munson Sheriff

And the following is a copy of the endorsement of
filed on the back of said summons

" Filed January 2nd 1858

" J B Coker Clerk

" By J L Coker deputy

Bond for Execution And the following is a copy of the Bond filed in this
cause for the issuing the execution to wit,

" I know all men by their persons that one John C Smith
" and others I understand all of the town of Waukegan
" in the County of Lake and State of Illinois are held
" and firmly bound unto William McCall of the said
" town of Waukegan and John W Clin of the city of
" Chicago in said State and Samuel Munson Sheriff of
" Lake County in the sum of twenty three hundred dollars
" to be paid to the said William McCall John W Clin and
" Samuel Munson their executor, ^{administration} assign or successors,
" for which payment well and truly to be made
" we bind ourselves jointly and severally and our

11 respective heirs executors and administrators singly
11 by these presents sealed with our seals and dated the
11 21st day of November 1857
11 Whereas the above bounden Julius C. Smith is about to
11 file his Bill of Complaint in the Circuit Court of the
11 county of Lake and State of Illinois on the Chancery
11 side thereof against the said William Beall John W
11 Cline and James Munson Sheriff of Lake County praying
11 among other things for an injunction to restrain the said
11 William Beall John W Cline from further proceeding in
11 the enforcing and collecting a certain judgment
11 therein mentioned and the Sheriff of Lake County from
11 obeying a certain execution mentioned in said Bill
11 upon the goods and chattels lands and tenements
11 of the said Julius C. Smith until the further order
11 of said Court and whereas William A. Beaman
11 Esq. Master in Chancery for said County has issued
11 an order granting said injunction in the words
11 and figures as follows (to wit) Let an injunction issue
11 agreeable to the prayer of the foregoing Bill of Complaint
11 upon the filing of the above and foregoing Bill of
11 Complaint together with the Bond of the Complainant
11 in the penal sum of Two thousand & three hundred
11 dollars with Amos S. Waterman Security.

11 Witness my hand and seal the 21st day of November 1857. William A. Beaman
11 Master in Chancery.

11 Now therefore the condition of the above obligation is
11 such that if the above bounden Julius C. Smith
11 and Amos S. Waterman their executors Administrators

And the following is a copy of the demurrer filed by
the defendants to the above entitled cause. to wit

Demurrer
1888

" State of Illinois
" Lake County Circuit Court
" In Chancery
" John W. Ellis
" William W. Bass
" Samuel Morrison
" do
" Julius C. Smith

" These defendants respectively by protestation, not
" confessing or acknowledging all or any of the matters
" and things in the said Complainant's Bill to be
" true in such manner and form as the same are therein
" set forth and alleged, do demand thereof and for
" cause of demurrer there that the said Complainant hath
" not in and by his said bill made or stated such a
" case as doth or ought to entitle him to any such discovery
" or relief from or against all or any of these defendants
" as is sought and prayed for in and by said Bill
" of Complaint wherefore these defendants demand the
" judgment of this Honorable Court whether they or
" any of them shall be compelled to make any further
" or other answer to the said Bill or any of the matters
" or things therein contained, and may & he hence
" discontinue with their usual way of their reasonable
" costs in this behalf sustained

~~(Signed)~~ Philip G. Weston & Kelley
Attorneys for Defendants

" Filed December 18th 1888
" (Signed) A. J. Carter Clerk by A. J. Carter Deputy

* Lake County Circuit Court
In Chancery

William M Case

John W Clinch

Samuel Munson

vs

Julius C Smith

The separate answer of
The defendant William
M Case to the Bill of
Complaint of Julius
C Smith Compliment
in the above entitled suit

The said defendant William M Case one of
the Defendants named in the above entitled suit
Separately from the other defendants in this
suit now and at all times hereafter saving and
reserving to himself all manner of benefit and
advantage of exception to the many errors in con-
sistencies and insufficiencies in the Bill of Complaint
of the said Complainant herein contained for answer
thereunto or unto so much or such parts thereof as the
Defendant is advised is material or necessary for
him to make answer unto Separately answering
Says

In answer to the first paragraph in said Bill
of Complaint that on or about the twenty fifth
day of September AD 1857 the said Complainant
was indebted to this defendant in the sum of one
thousand dollars and interest thereon at the rate
of six per cent per annum for about the period

Copy of the
Answer of
~~John W Clinch~~
William M Case

1
of one year and two months amounting in all to
about the sum of One thousand ~~one hundred~~
and seventy dollars which said principal sum
& interest was secured to be paid to this Def-
endant by the promissory Note of Complainant
which note was then over due —
And this defendant further answering said
Bill of Complaint & particularly the second
paragraph thereof says that when the said
before mentioned note of said Complainant
to this defendant became due this Defendant
asked said Complainant to pay the same
Note which was then due; but that said
Complainant as he said was then unable
to pay said note and proposed to this def-
endant to give him the judgment Note in
said Bill mentioned with the power of
Attorney attached giving to this defendant or
to the holder of said Judgment Note authority
to have judgment entered thereon pursuant
to the express terms thereof — the giving of which
said judgment and power of Attorney was the vol-
untary act of and proposed by said Complainant
because of his expressed inability to pay the afore-
said former Note and indebtedness to this def-
endant — that this defendant at the solicitation
of said Complainant consented to take said
judgment Note with the power of Attorney attach-
ed and give up to said Complainant said former

" note which was done at the instance of said
" Complainant and not of this Defendant for
" This defendant wanted the money and not the
" judgment note or any note of said Complainant
" and said Complainant himself proposed & offered
" to execute and deliver to this defendant the said
" judgment note & power of Attorney in the same
" form language & tenor as the same now is
" & for the same amount and thereupon this defen-
" dant accepted said judgment note & power of
" Attorney in lieu ^{of} the aforesaid note due
" from said Complainant to this defendant but
" this defendant upon the best of his knowledge
" information & belief states and answers that there
" was no statement agreement or assurance given
" by him to the said Complainant at the giving of
" said judgment note or at any time that he
" would delay the collection of said judgment
" note or sum of money thereby secured for any
" period or time other than what may be fairly
" understood and implied from the language
" of said power of Attorney attached to said judg-
" ment note - that this Defendant had previously
" had some conversation with H P Smith about
" loaning money of him said Smith but he does
" not recollect saying any thing to the Complainant
" about agreeing to let said H P Smith have said
" note or that no judgment would or should be
" entered upon it until after due or otherwise

" as to the time when judgment should be
" taken upon it in whose soever hands
" it might be.

" And this Defendant further answering said
" Bill of Complaint and particularly the third Paragraph
" thereof says that he did not either promise or agree
" to or with said Complainant as a consideration
" or as an inducement for said Complainant's sign-
" ing said judgment Note that he this defend-
" ant or any one would delay the entering
" up of judgment upon or collection of said

" judgment Note until the same became due or until any
" future time but that in fact this defendant
" being unable to get the money from said Com-
" plainant on said former Note at the special
" instance and request of said Complainant took
" said judgment ^{Note} & power of Attorney with no
" other or different arrangement understanding or
" agreement in relation to what was to be, might
" be or should be, done therewith, than what is fully
" expressed in the said judgment Note & power
" of Attorney; and that this defendant took said
" judgment Note, not for the purpose of deriving
" any advantage therefrom himself other than
" that he might thereupon be able to loan money
" and at the same time accommodate the Complainant
" who was then as he said unable to pay what he
" owed this Defendant as before stated,

" And this defendant further answering said Bill of
" Complaint & particularly the fourth paragraph thereof
" says; that at no time until after the execution &
" delivery of said judgment Note did said Complain-
" ant say any thing to this defendant in relation to the
" clause in the power of Attorney thereto attached
" authorizing judgment to be entered at any time &c
" that after the same Note and power of Attorney were
" executed and delivered said Complainant said
" he did not want to have a judgment entered against
" him thereon, but this Defendant made no agree-
" ment and held out no inducement whatever
" either to procure the signing or delivery of said
" judgment Note or to give any extension of
" time for the payment of said former debt-
" edness, or that he or any assignee of said judgment
" Note would or should not proceed to enter judg-
" ment thereon so as to have security for the
" payment thereof at any time specified in &
" by the terms of said power of Attorney; that
" because this defendant could not get his
" pay of said Complainant upon said former
" indebtedness & for no other reason except the
" earnest solicitation of the Complainant did
" this defendant consent to accept said judgment
" Note & power of Attorney knowing & intending as
" he then did to make the same a lien upon the
" real estate of said Plaintiff unless he this
" Defendant should negotiate the same judgment

3

" Note - That said Complainant could not
" have relied upon any promise of this defendant
" not to enter judgment on said judgment Note
" and power of Attorney for the reason that this
" defendant made no such promise at the giv-
" ing of the same note or at any time & that said
" Complainant signed said Note and delivered
" the same and the power of Attorney aforesaid
" because he could not as he said pay this defend-
" ant, & for no other reason as this defendant
" understood from him & now understands and
" believes - That this defendant does not recollect
" of saying that he could get the money of said
" H P Smith for twenty five per cent, and this
" defendant denies the allegation in said Bill
" of Complaint - that he offered to lose five
" per cent if the Complainant would pay
" twenty per cent. or that this defendant offered
" or agreed to lose any thing or any rate per cent
" whatever for any reason in connection with the
" giving of said judgment Note -

" And this defendant further answering
" said Bill of Complaint & particularly the
" fifth paragraph thereof says that he admits
" that by the terms of said judgment Note the
" same would become due on or about the 23rd
" day of December next but that the power of
" Attorney thereto attached authorized judgment
" to be entered upon said Note for the amount

" thereof at any time in any Court of record & that
" execution upon said judgment might be
" issued immediately and that no writ of error
" or appeal should be brought upon or from such
" judgment and no advantage be taken of any
" irregularity or informality in the entering of
" such judgment or the issuing execution
" thereon, which said power of Attorney was duly
" executed & delivered to this defendant at the
" same time & with said Note; & both said Note
" & power of Attorney were afterwards & before the
" maturity of said note ~~subscribed~~ ^{applied} sold, in-
" dorsed & transferred by this defendant to the
" defendant John W. Cline to be held used
" and applied so far as anything or any moneys
" should be by him collected thereon in pay-
" ment of a certain note then held by said Cline
" assigned to him by Angelica G. Cline against
" this defendant for the sum of fifteen hun-
" dred & fifty dollars with interest at the
" rate of ten per cent per annum being for
" money loaned about the 20th day of May 1857
" due and payable in three months after date, which
" said last mentioned note being due & said Cline
" desirous of having this defendant pay the same, this
" defendant transferred the afore said note & power
" of Attorney against the complainant to be held
" & used by said Cline for the purpose herein-
" before stated & for none other whatsoever - and

" the said note & power of Attorney so transferred by
" this defendant to said Cline on the same day
" & by virtue of which judgment has been
" entered by J in favor of said Cline against said
" Complainant & execution issued which execution
" is & was at the time of filing the Bill of
" Complaint in the hands of the said defendant
" Parrel Munson as Sheriff of said County of
" Lake for collection - but this defendant saith
" that said Cline knew nothing in regards either
" the consideration or execution of said judg-
" ment note, or of the interest thereby secured
" other than by its terms -

" And this defendant further answering said
" Bill of complaint & particularly the sixth
" paragraph thereof says that he has not violated
" any agreement made with said Complainant
" in relation to entering up judgment on said note
" & power of Attorney, nor did this defendant at any
" time agree that no judgment should be entered
" on said note until the same became due;
" & this defendant also denies that he assigned said
" note to ^{John W} Cline for the purpose of either in-
" juring or defrauding said Complainant, or that he
" assigned said note for any other purpose or motive
" than the one above set forth, & this defendant admits
" that said Cline did cause judgment to be entered at
" the place & time & for the amount stated in said com-
" plaint in his favor against said Complainant

and had execution issued thereon & placed in
the Sheriff; Samuel Munson's hands for collection
as before stated but he denies that he proceed saw
Cline to enter up said judgment, & the defendant
admits that Exec Bill were issued in the same
matter and time with said execution & placed in
the hands of said defendant Munson as Sheriff for
collection as set forth in said Bill of Complaint
And that so far as this defendant knows or is
informed said Sheriff is or at the time of filing
the Bill of Complaint herein was about to levy
upon the Complainant's property to satisfy said
execution & fee Bill.

And this defendant further answering said
Bill of Complaint & particularly the seventh
paragraph thereof says that neither said Note
nor said judgment ~~nor said judgment~~ is the
property of this defendant but that the same are
the property of said defendant John W Cline
& he repeats that said Note was assigned to said
Cline as his own & with the view & expectation
that said Cline would collect the same & apply
the proceeds upon the indebtedness of this defend-
ant to him; that said assignment was made
in good faith & in the due & ordinary course of
business, & that the real & equitable interest &
property in & to said Note & judgment are & since
said assignment of said Note & the entering up of
said judgment, have been the sole property of

" said Bill, and this defendant denies all & every
" charge allegation & intimation of combination
" or confederacy in any way or manner or that he
" individually has or has attempted to defraud or
" injure or oppress the Complainant or that he
" with others or alone has done any act or thing in
" the premises contrary either to equity or Good
" Conscience — — —

" And this defendant further answering said Bill
" and particularly the interrogative portion thereof
" says

" 1st That on the 25th day of September A D 1837 the
" Complainant was bona fide indebted to him in
" about the sum of Eleven Hundred Dollars as
" near as this defendant can now recollect — —

" 2^d That as to the second Interrogatory this defend-
" ant saith said judgment note was made be-
" cause this defendant wanted his pay of complainant
" & being unable to get it took the judgment note
" appraisal, because he might be able thereupon to
" enter up judgment at any time & thus have a lien
" on the Real Estate of the Complainant & some
" security for his debt, but that said judgment was
" not made to secure the extension of the time in
" which judgment might be entered nor execution
" issued as its language imports or in fact — —

" 4th And in answer to the fourth interrogatory this
" defendant saith that he thinks he did injure
" the Complainant that upon a judgment note

4th And in answer to the fourth interrogatory this
defendant saith that he thinks he did say to
the Complainant that upon a judgment note

" 3 The Complainant at the date of said judgment note was
indebted to this Defendant in the sum of about \$1072,50
and the interest reserved thereon in said judgment note was
twenty per cent for ninety days or until the maturity
of said judgment note, that the amount of interest
beyond ten per cent amounts to about twenty six dollars
& eighty one cents.

" 4 And in answer to the fourth interrogatory this de-
fendant saith that he thinks he did say to the
Complainant that upon a judgment note he thought
he could get money of H. I. Smith but that the same
was not said by way of inducement to have Complainant
sign said judgment note & formed no part of the consideration
thereof or for the execution thereof.

" 5th In answer to the fifth interrogatory this defendant saith
that at no time did he represent promise or agree with the
Complainant, that for any cause no judgment should
be rendered on said note until the same became due; for
one object in having a judgment note in preference to any
other was that he might enter judgment and have security
for payment at any time he chose unless he should nego-
tiate said note.

" 6th In answer to the sixth interrogatory this defendant saith
that he is not now the owner of said note nor of said
judgment - that said note was assigned to said
Blaine in good faith, to be collected and applied upon the
note held by said Blaine against this Defendant as

" Knows the contents thereof; that the same is true
" of his own knowledge except as to the matters
" therein stated on his information or belief
" & as to those matters he believes it to be true
" Subscribed & sworn to this 18th day of
" December A D 1857 before me
" John L. Turner J P } Wm McCar

And the following is a copy of the jurat to
the amended answer of care

" State of Illinois }
" Lake County }
"

" Wm McCar being duly sworn
" doth that he has read the foregoing answer read
" & has subscribed the same, that the same, the
" contents thereof are true of his knowledge as therein
" stated except as to the matters therein stated
" on his information & belief & as to those matters
" he believes it to be true.

" Subscribed and sworn to before
" me this 8th day of February A D 1858
" John L. Turner J P

" Filed December 18th 1857

" A B Gotes Clerk
" By A L Gotes Deputy

Lake County Circuit Court.
In Chancery

Copy of the answer
 of John W. Blair
 " William M Case
 " John W Blair
 " Samuel Manson
 " Adm
 " Julius C Smith

The separate answer of
 John W Blair one of the Defendants
 to the Bill of Complaint
 of July 1857 & to the Bill of Complaint
 on the above entitled suit

The said Defendant now at all times
 saving and reserving to himself all and all
 manner of ^{advantages & benefit} ~~advantages~~ of
 exception to the many & manifest
 errors insufficiencies & uncertainties
 in the aforesaid Bill of Complaint
 contained for answer thereunto and
 unto so much and such parts thereof
 as this Defendant is advised of his
 counsel is material or necessary ^{for him} to
 make answer unto separately and
 not for any or either of the ^{other} Defendants
 in said Bill of Complaint named
 answering saith that he admits
 as stated in said Bill that the said
 complainant was indebted to
 the said William M Case in the
 summer or fall of 1857 but as to
 the nature or amount of such
 indebtedness this Defendant

Knows nothing and has no
information or belief save and
except the charges and allegations
contained in Complainant said
Bill of Complaint he cannot
therefore admit or deny the same
And this Defendant further answers
said Bill and particularly the ~~second~~^{second}
paragraph thereof says that he
knows nothing & has no information
or belief save and except the allegations
in said Bill contained whether any
sum of money or if so what sum
on the 25th day of September A D 1837
or whether the said William M Case
or any other person was pressing
him (Complainant) for payment.
or whether said Complainant was unable
to pay his ~~indebtedness~~ liabilities or
whether the said Case offered or proposed
to extend said indebtedness in consideration
said Complainant would then or at any other
time execute a Judgment Note or Notes
with a power of Attorney to enter up
a Judgment upon said Note or that said
Case proposed or offered to include in or
out of the ^{part of any} Note the sum of twenty per cent
or any other sum whatever or that was the
consideration of any extension of any

" and perhaps ninety days or any other length
" of time whichever - but this Defendant admits
" and states the fact to be that the said
" Complainant did on or about the twenty
" fifth day of September A^d 1837 make & issue
" and deliver to said William M^r Case his
" certain promissory note commonly called
" a Judgment Note for the payment of the
" sum of about ten hundred ninety nine dollars
" and thirty cents due and payable in ninety
" days from the date thereof and this Defendant
" further admits that in the power of Attorney to
" said note attached the Attorney therein
" mentioned was authorized and empowered
" to enter up or confess a Judgment upon said
" note in favor of the said William M^r Case or
" the legal holder thereof and against the said Com-
" plainant at any time from and after the date thereof
" without any reference to the time when said Note
" became and or was made due and payable
" by the terms thereof - but as to any agreement in
" reference to said Note or the consideration thereof
" this Defendant knows nothing. He is not informed
" save by the Complainant's said Bill

" And this Defendant further answering
" said Bill and particularly the sixth paragraph
" thereof answering saith that he utterly and
" expressly denies the allegations in said paragraph
" so far as the same or any part thereof refer to this

" Defendant having any intent to injure or defraud
" said complainant in any manner or that he
" acted under the direction of said Defendant
" Case in entering up a judgment upon said note
" but this Defendant states & insists the facts
" to be that the said William M Case was
" indebted to this Defendant in about the sum
" of ~~7~~ ^{Five} Hundred & fifty dollars upon
" a promissory note dated on the 20th day of
" May 1857 and due and payable in three
" months after date with interest at the rate of ten
" per cent the same being for money loaned that
" then ~~was~~ due and payable on said note on the
" 1st of October last about the sum of eleven
" Hundred dollars as near as this Defendant can
" compute the same and the same remains
" ~~due~~ ^{and} unpaid that on or about the 1st of October
" 1857 the said Defendant ~~Case~~ being disap-
" pointed in raising money from ~~James~~ ^{James}
" when the same were due time and this Defen-
" dant being desirous of obtaining his money
" due on said note and pressing said Defendant
" Case for the payment thereof the said Case
" offered this Defendant certain notes in payment
" of his said note which this Defendant then
" held against said Defendant Case as before
" set forth but this Defendant declined and
" refused to take any notes in ~~absolute~~
" payment of said indebtedness but the Defendant

" did at or about said time take and receive
" from the said Wm Case the note of the said
" Complainant (the amount and date thereof
" and time of payment being correctly set forth
" in said Complainant's Bill of Complaint)
" and the said note was then ~~and~~ and duly
" endorsed by the said William M Case to this
" Defendant and this Defendant by the terms
" of said ^{transfer and} endorsement then and there became
" the legal and bona fide owner thereof and
" whatever sum or sums of money should be
" obtained thereon by this Defendant (less
" cost ^{and} expenses) is to apply upon the note of
" the said Case which this Defendant now holds
" as aforesaid and this Defendant further
" says that he received said note of said
" Complainant from said Wm Case
" in good faith and for a full and valuable
" consideration and in the usual course of his
" business to obtain payment of his said indebted-
" ness against said Wm Case and that in
" entering up a judgment upon said note
" against said Complainant he acted without
" any connivance and entirely uninfluenced &
" uncontrolled in the least degree by the said
" Case that judgment was entered upon
" said note in good faith on the part of this
" Defendant under the advice of his counsel
" in order to secure the indebtedness therein

The following is a copy of the answer of Samuel Munson one of the Defendants in the above entitled case

Answer of " State of Illinois Lake County Circuit Court
Samuel Munson " in Chancery
" Samuel Munson et al
" ad } The separate answer of the
" Julius C Smith } Defendant Samuel Munson
" to the Bill of Complaint of
" Julius C Smith Complainant in the
" above entitled suit
" The said Defendant Samuel
" Munson for himself, separately answering said
" Bill of Complaint says:
" That he does not know
" nor is he informed save by said Bill in relation
" to the ^{truth or} falsity of all or any of the several matters
" and things set forth in the first second third
" fourth fifth and sixth paragraphs of said
" Bill. Except that as stated in said sixth para-
" graph an Execution & Decree were placed & now are
" in the hands of his deponent as Sheriff of Lake
" County for collection - which Execution & Decree
" purport to have been issued out of the Office of the
" Cook County ^{Circuit} Court on a judgment rendered
" therein on the 18th day of November A D 1857 in
" favor of the said defendant John W. Cline against
" said Complainant Julius C Smith for the
" sum of One Thousand One Hundred and Thirty

" four Dollars & fifty cents, ~~the~~ debt damages
" and Attornies fees and the cost, Thereon and that
" This Defendant at the time of being served with
" the Subpoena herein was about to proceed
" to collect said executions & fee Bill as he was
" therein commanded to do as Sheriff of said
" County of Lake ~~in~~ which he was & is.
" And this defendant further answering says that
" as to any other matter, or things in said Bill alleged
" he knows nothing nor is he informed save by said
" Bill & has no belief in relation to said matters
" but leaves said Complainant to prove the same;
" & this Defendant prays to be hence dismissed with
" his reasonable costs in this behalf incurred.

Samuel Munson

" Blodgett Weston & Kelly
" Solrs for Supt Munson
" State of Illinois
" Lake County

" Samuel Munson being duly sworn deposes
" that he is the Defendant named in & who subscribed the
" foregoing answer that he has heard said answer read and knows
" the contents thereof - that the same is true of his own knowledge
" except as to the matters therein stated as his impression or
" belief as to those matters he believes it to be true.
" Subscribed & sworn to before me this 15th day of Decemr
" 1857. J. S. Williams J. P.

And the following is a copy of the endorsement
of the filing of said answer by the clerk of the
court

" Filed December 18th 1857

" A. S. Lewis Clerk

" By A. S. Lewis Deputy

Replication
to Clinis Ans

u

The following is a copy of the Replication of the
Complainant to the answer of John to Clinis to wit
Circuit Court in and for the County of Lake and State
of Illinois

Jules C Smith

vs
William M Case
John to Clinis &
Samuel Morrison

In Chancery
of the February Term 1888.

Before the Honorable Circuit Court
in and for the County of Lake and State of Illinois
The replication of Jules C Smith Complainant
to the separate answer of John to Clinis one of the
defendants in the above cause

This replicant seeing and regarding to himself now and
at all times hereafter all and all manner of benefit and
advantage of exceptions which may be had or taken to the
manifest insufficiencies of the said answer for
replication thereto says that he will aver maintain
and prove his bill of complaint to be true certain
and sufficient in the law to be answered unto
and that the ^{said} answer of the said defendant is uncertain
vague and insufficient to be replied unto by this
replicant without that any other matter or thing
whatsoever in said answer contained material
or factual in the law to be replied unto meet
not herein and hereby well and sufficiently replied
unto conferred and avoided traversed or denied
is true, all which matters and things this

plaintiff is, and will be ready to over maintain
and prove at this honorable court shall direct and
reasonably pay as in and by his said bill be has
already prayed.

~~(Signed)~~

E. J. Magallon
Sol for Complt

" Filed December 26th 1857

" ~~(Signed)~~ At test Clerk by At. Peter Deputy

And the following is a copy of Exceptions to the answers
of William McCall one of the defendants herein & said
Circuit Court in and for the County of Lake and State
of Illinois

" Julius C. Smith)
" by Complt) of the February Term 1858.
" Du Cheney

" William McCall
" John W. Clark &
" Samuel Munson Deft)
") Exceptions taken by the ^{said} Complain-
") ant to the answers put in by the
") Defendant William McCall to the said
") Complainant's Bill of Complaint

" Pet Exception For that the said Defendant William McCall hath
" not to the best and utmost of his knowledge, remembrance
" information and belief answered and set forth whether
" (as charged in the second paragraph of said bill of complaint)
" "The said William McCall offers and proposes to
" a your Order that if your Order would execute a
" a judgment note or order with power of Attorney
" a authorizing some attorney to enter up judgment
" a upon the same and would include in the body

* 3 Exceptions for that the said William McCashe in manner expressed answered
 " and as for the "Whether there was not the sum of twenty per cent per annum
 " upon the whole sum is actually due from the said to said base added to
 " the principal sum and in respect of his capital in said note and how
 " much was to be repaid and added thereon"

" of said note the sum of twenty per cent in addition
 " to the sum then really and beneficially due that he would
 " delay the collection of said sum of money for a period
 " of ninety days from the date of the note to be made
 " out by him that the said William McCashe hath not in manner
 " aforesaid answered and set forth whether said
 " Complainant did execute said note as aforesaid
 " and that there was twenty per cent per annum
 " added to and included in the principal sum
 " of said judgment note so given *

" 2nd Exception For that the said William McCashe hath not
 " in manner aforesaid answered and ^{particularly} ~~particularly~~
 " set forth as to what amount your Orator was beneficially
 " indebted to him on and previous to the 25th day
 " of September AD 1857

" In all which particulars the answer of the said
 " defendant William McCashe is as the said defendant
 " is advised imperfect insufficient and evasive
 " and the said Complainant therefore excepts thereto
 " and prays that the said defendant William McCashe
 " may put in a further and better answer
 " to the said Bill of Complaint

" (~~Against~~) E. P. Ingalls
 " Attorney of Counsel for Complainant

" Filed Dec 26th 1857.
 " (~~Against~~) J. B. Coker Clerk
 " By J. L. Coker Deputy

The following is a copy of the Affidavit of merits
by the Complainant

Compl'ts " Circuit Court in and for the County of So. Bend
Aff'd against " State of Illinois
" Julius C. Smith
" vs " (Compl't) " In Chancery of the
" William M. Case } February Term 1858
" John W. Oliver & }
" Samuel Munson }
" (Def'ts) }
" State of Illinois }
" So. Bend County } " Julius C. Smith the Compl-
" Complainant in the above entitled suit being duly sworn
" saith that so much of the answer of the said Defendant
" William M. Case as alleges that this Complainant was
" indebted to said Defendant Case at the time of the making
" the judgment note described in said Bill, in the sum of
" One Thousand one hundred and seventy Dollars is untrue
" And this Complainant further saith that all of the
" allegations in said Defendant Case's answer which denies
" the allegations of the Bill as to inducement held out
" to Complainant to induce him to sign a judg-
" ment note with the claim in authorizing judg-
" ment to be rendered on the same at any time
" after the date thereof are untrue, and that said Case
" induced said Oliver to enter up said judgment
" and that he has witnesses to wit one Lewis and one
" J. H. Bates whose testimony he believes he can prove
" by the next term of this Court who will disprove so

* Filed December 26th 1837 A B Cole Clerk
By A L Cole Deputy

" much of said answer as aforesaid and that he had
" no opportunity to procure such testimony since
" the coming in of the answer of said Defendant
" William Mc Case
" Subscribed and sworn to } J C Smith
" before me this 26th day of }
" December A D 1837 }
" C S Byalls (Notary Public)

*
" Afft. of
" Cuthbert

*
" The following is a copy of the affidavit of
" Wm Cuthbert.
" Circuit Court in and for the County of Lake
" and State of Illinois
" Julius C Smith)
" vs)
" William Mc Case) On Chancery of the
" John W. Cline)) February Term 1837
" James Munson)
" State of Illinois)
" Lake County)
" sworn to that he is informed and believes that William Mc Case
" one of the dependants in the above entitled cause is responsible in
" a pecuniary point for a judgment against him for the amount
" of two thousand dollars. That he has some means of
" knowledge of ^{said} Case's affairs and bases his opinion of
" his pecuniary standing on such knowledge
" Subscribed and sworn to)
" before me this 26th day of } Wm Cuthbert
" Dec 1837 C S Byalls (Notary Public)

Notarial
Seal

" Filed December 26th 1837. A B Cole Clerk
" By A L Cole Deputy

The following is a copy of the affidavit of E. M. White

" Circuit Court in and for the County of Lake and

" State of Illinois

" Julius C. Smith)
" vs.) (Compl.)

" William M. Case) In Chancery of the

" John W. Clinch,) Subj. Matter June 1855

" Farnell Munson)
") (Def.)

" State of Illinois)

" Lake County)

" E. M. White being duly

" sworn saith that he is well acquainted with the

" pecuniary circumstances and business affairs of William

" M. Case one of the Defendants in the above entitled

" Cause and that he ~~is~~ believes the said Case to be respon-

" sible for the ~~payment~~ of the sum of Seven Hundred

" Dollars and for a much larger amount, and that a

" judgment for a much larger sum than ~~the~~ five

" hundred or two thousand Dollars could be recovered

" against said Case

" (Subscribed and sworn to) E. M. White

" before me this 26th day

" of December 1857)
" (Signed & sealed before me)

" Dated December 26th 1857

" A. L. Coles Clerk

" By A. L. Coles Deputy

Copy of
White

Notarial
Copy

The following is a copy of the Affidavit of Complaint
and motion to dissolve injunction

Wife of
Compt

" Circuit Court in and for the County of Lake and
" State of Illinois
" Julius C Smith

" vs Compt } In Chancery of the
" William Mc Case } Circuit Court 1837
" John W Cline &
" Samuel Munson

" State of Illinois)
" Lake County) Julius C Smith being duly sworn
" doith that he is the Complainant in the Bill of Complaint
" in the above entitled cause. This affiant further saith
" that he verily believes that so much of the answer as alleges
" that the said note referred to in said Bill was taken
" bona fide and in due course of trade by the said
" John W Cline of said William Mc Case (which said
" allegation he is & is proved by evidence is material
" in his said cause is untrue and that he has not
" to wit one Coombs and one J. H. Coles (who testimony he
" can procure (as he verily believes) by the next Term of Court
" by whom he can procure the same to be untrue and that he has
" had no opportunity since the coming in of the answer of said Cline
" to procure such testimony J C Smith

" He subscribed and sworn to before)
" me this 26th day of December 1837)

Notaric
Clerk

" E S Mcalls Notary Public }

" Filed December 26th 1837. A B Coles Clerk
" By A L Coles Deputy

The following is a copy of the notice of motion
to dissolve injunction

Notice of
Motion

" State of Illinois Lake County Circuit Court
" In Chancery

" John W. Clin
" William M. Cairns
" Samuel Morrison
" Acts
" Julius S. Smith

" Sir Take Notice that we intend
" to move this Honorable Court at the Court House in
" the City of Chicago before the Judge thereof at his
" Chambers on the 30th day of December 1857
" at one o'clock in the afternoon, or as soon thereafter
" as counsel can be heard for an order that the injunc-
" tions issued in this cause be dissolved with costs;
" and for such further or for such other order or relief
" as the Court may think proper to grant, which
" motion will be founded on the Bill of Complaint
" herewith thereto and answer filed in this cause

" December 16th 1857 Blodgett W. Phelps, Kelly
" Esq. & S. H. Suggs Esq. Depts. Solicitors
" Counsel Solicitors

" I shall admit due service of the above notice on me
" Wm. Regan December 17th 1857

" E. S. Suggs Solicitor
" For Complaint

" Filed December 18th 1857

" A. B. Cook Clerk
" J. L. Cook Deputy

And the following is a copy of a stipulation filed
in this cause to wit

Stipulation for " Lake County Circuit Court

hearing " Julius C. Smith

" " William McCall

" John Davis

" Samuel Anderson

In Chancery
in vacation before the Hon
& February 10 of said Court

Stipulation

Whereas the above named complainant has
obtained out of said above named Court upon Bill
filed therein an Injunction against the above named
defendants restraining the collection of a certain judge
ment in said bill set forth & whereas the above named defen-
dants have verbally made & filed their verbal answers to
said Bill & have given notice to said Court to hear said
Bill on said Bill and answer on motion & divide
the said Injunction as by law provided on the 30th day
of December A.D. 1857.

Now therefore it is hereby stipulated & agreed by
and between the parties hereto that if said complain-
ant will forbear to press said motion for a hearing
in vacation as above & let said cause stand until

" That December " The February Term of Lake County Circuit Court as
" 28th 1857 " shall come now is that shall next shall be set
" A B later date " mistrial to said Court at said February Term for

" 1857 A B later date " final hearing & no continuance shall be a plea
" for or other delay interposed by the complainant or to
" said trial of said cause at said February Term
" on appearance of ~~Agent~~ E. W. Wagoner for said
" Dec 28 1857 Plaintiff's Attorney hereby for etc.

Ref. to Case
Answer

And the following is a copy of the Complainant's replication
 to the amended answer of William McCall. Docket
 Circuit Court in and for the county of Lake and State
 of Illinois
 Felix C. Smith
 William McCall
 John W. Clark & Co
 The said Complainant moving
 and requesting &c as to the Answer of the said William Mc
 Call with that he is at all times ready to aver
 maintain and prove the matters set forth in his said
 Bill of Complaint &c.

of the 26th Jan 1858.

~~(Signed)~~ C. S. Ingalls
Sol for Comptt

Filed February 9th 1858.

~~(Signed)~~ A. B. Cotes Clerk
By A. L. Cotes Deputy

The following is a copy of the final Order
or Decree made in the above entitled Cause on
the 11th Day of February 1858 being one of the days
of the February Term of said Court

" ~~#~~ Julius C Smith) ~~February 11th 1858~~

" 46 vs)

" William M. Cassard Bill for Injunction

" John W. Blinn)

" This Cause being brought on for
" hearing upon Bill answers and replication and
" the Court being fully advised thereon on motions
" of Nephew Solicitor for ^{the} said Defendant it is ordered
" adjudged and decreed and This Court by virtue of
" the powers vested in it by the Laws of this State
" doth order adjudge and decree that the Injunction
" in this Cause be dissolved upon the Defendants
" causing a credit to the Complainant to be made on
" the judgment mentioned and described in the Bill
" of Complaint in this Cause for the sum of Twenty
" six Dollars and Ten Cents; and it is further ordered
" adjudged and decreed that the Complainant
" have and recover of the said Defendant his costs expensed
" in this behalf, and thereupon comes the said Com-
" plainant by C. S. Ingalls his Solicitor and accepts
" to the Decision of the Court dissolving said Injunc-
" tion and the order thereon

State of Illinois }
Lake County } ss.

I, Augustus B. Cotes Clerk of the
circuit court in and for the said County of
Lake in the State aforesaid, do hereby certify
the foregoing to be a full complete and correct
copy of all the papers on file in my office
in the case of Julius C. Smith vs Wm. W.
Case ~~vs~~ John W. Cline, ^{and Jarnell Robinson} and also of the
order ^{made and entered of record in said} made and entered of record in said
cause ~~on the~~ in said circuit court, on the
11th day of February A.D. 1838 and of all the
records ^{in said case, in said court} in said case, in said court

The witness whereof I have hereunto set
my hand and affixed the seal of
said court at Waukegan in said
County of Lake this 18th day February
A.D. 1838

A. B. Cotes Clerk
By A. B. Cotes Deputy

record of an

State of Illinois)
Loka County) "I Augustus B. Cotes Clerk
of the Circuit Court in and for the County of Loka
in the State of Illinois do hereby certify that the
foregoing is a full true and complete copy of all
the papers and the ^{of} ~~records~~ ^{order} of said Court in the case
of Julius C. Smith vs William M. Case John
W. Chine and Samuel Munson in Chancery
as appears from the files and records of this office
Witness Augustus B. Cotes Clerk
of said Court and the Seal thereof
This 18th day of February A.D. 1838
~~A. B. Cotes Clerk~~
By ~~A. B. Cotes Deputy~~

State of Illinois)
Supreme Court)
Now comes the said complainant
Julius C. Smith by G. S. Sugars his Solicitor
and prays that the writ of Error allowed in this
case may be made a Supersedeas upon Com-
plainant's filing thereof to be approved by
the Clerk of the Circuit Court of the County of
Loka in such amount as shall be adjudged
sufficient upon inspection of the record in
this case.

G. S. Sugars
Solicitor for complainant

And the said Complainant assigns for error
The following causes to wit.

The Court erred in the order made on the hearing
of This Cause; the order not being in accordance
with the case made in the Bill, nor with the
relief prayed for.

The Court erred in not setting aside the judgment
described in the Bill for the following reasons
1st The answers show that there was usury reserved
in the note upon which the judgment
was rendered

The answers admit that the note upon which
the judgment was rendered was held by Cline
as a collateral or mortgage to secure the debt of
Case to Cline, and Cline had no right to cause
judgment to be entered upon note, but should
have advertised and sold his security (see the note)
The same as in other cases of mortgage.

Because the Defendant Cline caused the judgment
to be entered in the County of Cook whereas the
Complainant Smith the maker of the note
and the Defendant Case the payee of the note both
reside in Lake County, and the debt contract or
cause of action was made in Cook County
and was not specifically made payable in
said Cook County

4th Because the Judgment was rendered on said note before said note became due and the provisions in the power of Attorney authorizing such judgment to be entered up before the note became due and execution to be issued thereon is contrary to the policy of law and the contract set forth in the note and is therefore void, and subject to the contract contained and set forth in the note.

The Court erred in the amount of relief granted as well as the nature of the relief

1st Because if the relief was for using the whole amount of the interest embodied in the note should have been deducted and all the interest on the note from the date of the making of the same. The defendants are only entitled to the principal sum due.

The answers of the defendants show that twenty percent for ninety days equal to eighty percent per annum was included in the body of the note.

The Court erred in the decree itself it being uncertain in its terms, as well as the nature of the relief granted. Because it shows that it was rendered on a final hearing of the case yet is not final, being contingent in its effects and because, although it grants relief it does not set forth and show what particular

relief is granted, so that the parties may know
whether it be in accordance with the case
made or relief sought

E. J. Ongall
Sol for Plff in Error

Smith

Care

Record

1858

79

3883

Smith's record