

8591

No. _____

Supreme Court of Illinois

Harvey B. Lucas

vs.

Daniel R. Spencer et al

71641  7

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

HARVEY B. LUCAS, *Plaintiff in Error,*

vs.

DANIEL R. SPENCER, WILLIAM M. LOGAN, EDMUND C. DEW, ALEXANDER P. SHIPLEY, and SALEM GOODNER, Sheriff of Washington County, Illinois, *Defendants in Error.*

ERROR TO WASHINGTON.

ABSTRACT OF PLAINTIFFS CASE.

The plaintiff in error, who was complainant in the Court below, filed his bill in the Circuit Court of Washington County against defendants in error, 2] who were defendants in the Court below, alleging that at the September term, A. D. 1860, of the Washington Circuit Court, defendant, Daniel R. Spencer, recovered three judgments, by default, against plaintiff and others, to wit. one judgment for \$276 77 and costs, against plaintiff and defendant, William M. Logan, and one other judgment against plaintiff and defendants, Edmund C. Dew and Alexander P. Shipley for \$1222,75 cents and costs of suit, and one judgment against plaintiff alone, for \$115,33 cents. Said judgments were all rendered on promissory notes, as follows:

3] First, for \$235, 25 cents, dated February 25th, 1858, payable one day after date; second for \$1000, payable twelve months after date; the third for \$102 52, payable one day after date. Since the making of the \$1000 note, plaintiff has paid defendant Spencer, \$675; and that the said note was executed in consideration of only \$925, instead of \$1000; that plaintiff is justly entitled to a credit of \$675, and the other two notes referred to were executed for interest on the \$1000 note, at a greater rate than ten per cent.

4] per annum. That there is now only due defendant Spencer, \$175, or thereabouts, balance on the \$1000 note, he having forfeited all claim to interest. Plaintiff charges that defendant has by law of the land not only forfeited all claim to interest on the \$1,000 note, for money loaned, but three times the interest so illegally taken and received; charges further defendant Spencer has not only forfeited all claim to recover on the other two notes, but three times their amount, together with all interest claimed on them.—

5] Charges that the judgments aforesaid are illegal, unjust and unequitable, there not being one cent due said defendant, Spencer, after deducting

the credits for the cash paid and the forfeitures aforesaid claimed by plaintiff but that plaintiff has a right to recover of defendant, Spencer, a judgment for \$1,000 at least. Plaintiff further charges that his co-defendants in said judgment are in no way interested in this suit, being only securities of plaintiff on said notes, and are made defendants nominally, because defendant, Spencer, has caused executions to be issued on said judgments. That injunction was prayed against defendants.

11] Defendant, Spencer, then filed a motion in writing to dismiss the plaintiffs bill for want of equity on the face, which was allowed by the Court and the bill dismissed; and the plaintiff brings this cause into this Court by writ of error, alleging that the Court below erred in dismissing said bill.

R. S. NELSON,

For Plaintiff in Error.

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BRIEF

*Of Points and References Relied on by the Plaintiff in Error.*

- 1<sup>st</sup> - *Writ may be set up even by  
surety - 22 and 26 - 4 - 327*
- 2 - *a judgment on a covenant  
may be opened. Fleming Et. Al  
vs. Peck Et. Al. Et. 475-*
- 3 - *Statute attaches us privately  
Nichols vs Stewart, 21<sup>st</sup> Ill 100*
- 4 - *Bill may be filed, See  
Revised Statutes 1845 Title  
Interest page 294-*

*R. S. Nelson for  
Plff in Error*

47 - 26  
Incos

vs  
Spencer & Co

District

47

*[Faint handwritten notes and signatures, including a signature that appears to be "A. Schuster" and the date "Filed Nov - 14 - 1866"]*

On Points and References relied on by the Plaintiff in Error.

BRIEF.

H. S. NELSON,

For Plaintiff in Error.

writ of error, alleging that the Court below erred in dismissing said bill, and the bill dismissed; and the plaintiff prays this cause into the Court by plaintiff's bill for want of equity on the face, which was moved by the Court.

[1] Defendant, Spencer, then filed a motion in writing to dismiss the bill was prayed against defendant's.

Spencer, has caused executions to be issued on said judgments. That judgment on said notes, and are made defendant nominally, because defendant's judgment are in no way interested in this suit, being only securities of plaintiff for \$1,000 at least. Plaintiff further charges that his co-defendants in said bill that plaintiff has a right to recover of defendant, Spencer, a judgment the credits for the cash paid and the foreclosures aforesaid claimed by plaintiff.

Lucas

vs  
Spencer

}

Error to Washington

There is equity in the Bill as it asks that is only a small amount of principal unpaid - we are entitled to receive back the interest as it is over 10 percent tho not to the principal - there is a distinct allegation that all the interest is paid & that we have equity there can be no doubt tho, <sup>have</sup> entitled to 3 times

The statute as it arises in Bill - Lucas gave no Cognovit & yet receipt was given in such a Case - How was there any voluntary payment but a default -

In the Case referred where a Cognovit was given the Court says in such Cases, Chancery is usually the forum resorted to in such Cases

W. Nelson for  
puff in error

47-26

Lucas

2,

Spencer

argument  
in brief

1861

1658

In the Supreme Court, State of Illinois.

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HARVEY B. LUCAS, *Plaintiff in Error,*

vs.

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ERROR TO WASHINGTON.

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the credits for the cash paid and the forfeitures aforesaid claimed by plaintiff but that plaintiff has a right to recover of defendant, Spencer, a judgment for \$1,000 at least. Plaintiff further charges that his co-defendants in said judgment are in no way interested in this suit, being only securities of plaintiff on said notes, and are made defendants nominally, because defendant, Spencer, has caused executions to be issued on said judgments. That injunction was prayed against defendants.

11] Defendant, Spencer, then filed a motion in writing to dismiss the plaintiffs bill for want of equity on the face, which was allowed by the Court and the bill dismissed; and the plaintiff brings this cause into this Court by writ of error, alleging that the Court below erred in dismissing said bill.

R. S. NELSON,

For Plaintiff in Error.

BRIEF

Of Points and References Relied on by the Plaintiff in Error.

- 1<sup>st</sup> - Wrong may be set up even by writ 22<sup>nd</sup> Ill p 327
- 2 - a judgment in a cognovit may be opened - Fleming Et. al. vs Juntas Et. al. Ill. - 475.
- 3 - Statute attaches no penalty Nichols vs Stewart 21<sup>st</sup> Ill 106
- 4 - Bill may be filed - See Revised Statute 1845 title Interest page 294 -

R. S. Nelson for  
Plff in Error

21 Ill. 106.

decides nothing against us, it is in our favor.

22 Ill 475

This mo was made I infer at the time when first was rendered, - Also application was made to open the bill at law, if this cause decides any point, it is assumed that the mo was at a subsequent term it proves that Comptt has a perfect defence at law.



*Lucas*

*vs*

*Spencer Et al*

*Contract*

*47*

*Office*

*Filed Nov. 14 - 1861 -*

*N. Johnston CM*

*Handwritten notes on the right margin, including names and dates.*

*Of Force and Reference Made on in the Plaintiff in Error.*

**BRIEF**

*For Plaintiff in Error*  
**H. S. ZEPHON**

*write of error, alleging that the Court below erred in dismissing said bill, and the bill dismissed; and the plaintiff brings this cause into this Court by bringing out in want of equity on the facts, which are alleged by the Court.*

*III Defendant Spencer then filed a motion in writing to quash the return was prayed against defendants. Spencer, has caused executions to be issued on said judgments. That judgment on said notes, and are made defendants nominally, because defendant's judgment are in no way interested in this suit, being only securities of plaintiff for \$1,000 at least. Plaintiff further charges that his co-defendants in suit put that plaintiff has a right to recover of defendant Spencer, a judgment the credits for the cash paid and the forfeitures accrued claimed by plaintiff.*