

New Jersey Court of Errors and Appeals.

New Jersey, ss.—The State of New Jersey to the Judges of the Circuit Court in and for the county of Somerset, greeting: Because in the record and proceedings, and also in the giving of judgment in a certain plaint, which was before our Circuit Court between Israel Fisher, plaintiff, and John V. D. Hoagland, defendant, in a plea of trespass on the case, manifest error hath intervened to the great damage of the said John V. D. Hoagland, as is said, and as by his complaint we are informed: we being willing that the error, if any there be, should in due manner be corrected, and full 10 and speedy justice be done between the parties aforesaid, do command you, that if judgment be therein given, then the record and proceedings aforesaid, with all things touching and concerning the same, as fully as the same remain before you, you distinctly and openly send with this writ to our Justices of our Supreme Court at Trenton, on the second Tuesday of March next, that the record and proceedings aforesaid being inspected, we may further do in that behalf, for correcting the same errors, what of right and according to the constitution and laws of this state ought to be done. 20

Witness Henry W. Green, Chancellor, at Trenton, this third day of March, A. D. eighteen hundred and sixty-five.

W. S. JOHNSON, *Cl'k.*

FRED. S. WILSON, *Att'y.*

The answer of the Justices of the Supreme Court within mentioned, the record and proceedings within mentioned, with all things touching the same, as fully as the same remain before us, we certify and send to the Court of Errors and Appeals, as within we are commanded.

M. BEASLEY, *Ch. Justice.* 30

New Jersey Supreme Court.

ISRAEL FISHER

vs.

JOHN V. D. HOAGLAND.

} *In Case—On postea, &c.*

} A. V. Van Fleet, *Att'y.*

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And yet of the twenty-sixth day of July, A. D. eighteen hundred and sixty-four.

Witness,      MERCER BEASLEY, Esq., *Chief Justice.*  
CHAS. P. SMITH, *Clk.*

## Bill of Complaint.

Hunterdon county, ss.—John V. D. Hoagland, the defendant in this suit, was summoned to answer unto Israel Fisher, the plaintiff in this suit, of a plea of trespass on the case, &c. And thereupon the said plaintiff, by A. V. Van Fleet,  
10 his attorney, complains—

For that whereas the said defendant heretofore, *viz.* on the tenth day of March, in the year of our Lord one thousand eight hundred and sixty-four, at Flemington, in the county of Hunterdon aforesaid, and within the jurisdiction of this court, made his certain promissory note, bearing date the day and year last aforesaid, and thereby then and there, one day after date thereof, promised to pay to the said plaintiffs, or order, three hundred and fifty dollars, without defalcation or discount, for value received, and then and there delivered  
20 the said note to the said plaintiff; by means whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said note; and being so liable, he, the said defendant, in consideration thereof, afterwards, *viz.* on the day and year aforesaid, at Flemington aforesaid, undertook and then and there faithfully promised the said plaintiff to pay to him the said sum

of money in the said promissory note specified, according to the tenor and effect of the said note.

And whereas, also, the said defendant afterwards, *viz.* on the tenth day of March, in the year of our Lord one thousand eight hundred and sixty-four, at Flemington, in the county and within the jurisdiction aforesaid, was indebted to the said plaintiff in the further sum of five hundred dollars, for money by the said plaintiff before that time lent and advanced to, and paid, laid out, and expended for the said defendant, at his special instance and request; and also 10  
in the further sum of five hundred dollars, for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and also in the further sum of five hundred dollars, for so much money before that time, and then due and payable from the said defendant to the said plaintiff, for interest upon and for the forbearance of divers large sums of money before then due and owing from the said defendant to the said plaintiff; and by him forborne to the said defendant for divers long spaces of time before then elapsed, at his like request; and being so in- 20  
debted, he, the said defendant, in consideration thereof, afterwards, *viz.* on the same day and year last aforesaid, at Flemington aforesaid, undertook and then and there faithfully promised the said plaintiff to pay to him the said several sums of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless, the said defendant, not regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtly to deceive, defraud, and injure the said plaintiff in this behalf, has not as yet 30  
paid the said several sums of money, or any or either of them, or any part thereof, to the said plaintiff, although often requested so to do, but to pay the same, or any part thereof, he has hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff of five hundred dollars, and therefore he brings his suit, &c.

And the said defendant, by Ferd. S. Wilson, his attorney, comes and defends the wrong and injury when, &c., and saith that he did not undertake or promise in manner and 40

form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, &c.

And the plaintiff doth the like.

Therefore let a jury thereupon come before the Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Bridgewater, in and for the county of Somerset, on the eighteenth day of February, A. D. eighteen hundred and sixty-five, by whom, &c., and the same day is given to the  
10 parties aforesaid there, &c.

And now, to wit, the first day of March, in the year last aforesaid, before the Supreme Court aforesaid, at Trenton, comes the said plaintiff, by his attorney aforesaid, and the Justice before whom, &c., sends here his record had before him in the words and figures following, to wit:

“And afterwards, to wit, on the sixteenth day of February, in the year of our Lord one thousand eight hundred and sixty-five, at a Circuit Court held at Bridgewater, in the county of Somerset, before the Honorable Daniel Haines,  
20 one of the Justices of the Supreme Court of Judicature of the State of New Jersey, according to the form of statute in such case made and provided, come as well the within named Israel Fisher as the within named John V. D. Hoagland, by their respective attorneys within mentioned, and the jurors of the jury, whereof mention is within made, being summoned, also come; who to speak the truth of the matters within contained, being chosen, tried, and sworn, say, upon their oath, that the said John V. D. Hoagland did undertake and promise in manner and form as the said Israel  
30 Fisher hath within complained against him, and they assess the damages of the said Israel Fisher, by reason of the not performing the promises and undertakings within mentioned, over and above his costs and charges by him about his suit in this behalf expended, to the sum of three hundred and seventy dollars and twelve cents.”

Therefore it is considered that the said Israel Fisher do recover against the said John V. D. Hoagland his said damages, by the jurors, in form aforesaid assessed, to three hundred and seventy dollars and twelve cents, and also fifty dol-

lars and fourteen cents for his costs and charges in this behalf, by the court now here adjudged of increase to the said plaintiff, and with his assent, which said damages, costs, and charges, in the whole, amount to four hundred and twenty dollars and twenty-six cents.

Judgment signed this first day of March, A. D. eighteen hundred and sixty-five (1865).

M. BEASLEY, *Ch. Justice.*

I, Charles P. Smith, clerk of the Supreme Court of the State of New Jersey, do hereby certify that the foregoing is <sup>10</sup> a true transcript of the record of judgment in the above cause, as the same remains in my office.

In testimony whereof, I have hereto set my hand and the seal of said court, at Trenton, this tenth day of March, A. D. 1865.

CHAS. P. SMITH, *Clk.*

## New Jersey Supreme Court.

SOMERSET CIRCUIT.

Israel Fisher,

*vs.*

John V. D. Hoagland.

} *In case.*

## Bill of Exceptions.

This cause coming on to be heard, on this seventeenth day of February, eighteen hundred and sixty-five, before the Honorable Daniel Haines, one of the Justices of the Supreme Court assigned to hold said court, a jury being empannelled and sworn, the plaintiff offered the following testimony in support of the issue joined in the pleadings in said cause.

*John V. Veghte*, being duly sworn, and shown a paper purporting to be a promissory note, says—I am acquainted with the handwriting of John V. D. Hoagland, the defendant; I have seen him write; the signature to this note I believe to be the handwriting of the defendant.

The note offered is as follows :

(“2 cent stamp.”) “One day after date I promise to pay to Israel Fisher or order three hundred and fifty dollars in full, without defalcation or discount, value received.

“J. V. D. HOAGLAND.

Dated March 10th, 1864.”

The plaintiff having rested his case, whereupon the defendant, by his counsel, offered to prove by sundry witnesses the following facts in defence to said action :

That there was a vendue, at which defendant was clerk; at the close of the sale there was \$350 in hand, which defendant gave to plaintiff, and plaintiff requested defendant to take it; he refused, but upon being urged, agreed to take it and keep it until called for by plaintiff, as a mere deposit, and not as a loan.

2. That he signed said note supposing it not to be binding as a note, but considering it a mere memorandum, it not

being stamped, and not intended to be, and was not for a long time after—no mention being made of a stamp.

3. He gave the money to his clerk, ordered him to lay it in the safe, and give it to plaintiff when called for by him.

4. That the clerk did so—wrapped the money in a paper with the amount marked on the outside, together with plaintiff's name, and placed it in the safe; the money was in the safe until the safe was broken open, at which time it was, with money and mortgages of defendant there deposited, taken away by some person or persons who forced the safe. 10

That the defendant will prove that said plaintiff had said he did not consider it a loan, and he thought his friends and neighbors would make it up to him.

The defendant proposes to show divers facts and circumstances, in his treatment of the money received and in the conduct of the plaintiff, to show that this was no loan—that it was all the time the plaintiff's money, and was so when stolen.

That when the defendant consented to take the money of the plaintiff, he told Van Nuys, the other clerk at this ven- 20 due, to draw a due-bill or some writing to show he had the money, for life was uncertain; that Van Nuys said he did not know how to draw a due-bill, or made some remark to that effect, and drew the note in controversy, and handed it to the defendant; that defendant examined it, signed it, and handed it to the plaintiff.

All of which evidence the court overruled as incompetent and inadmissible. To which ruling the counsel for said defendant excepted, and prayed that a bill of exceptions may be sealed, and it is hereby sealed accordingly. 30

DAN'L HAINES. [SEAL.]

## Court of Errors and Appeals of New Jersey.

MARCH TERM, 1865.

John V. D. Hoagland,

*vs.*

Israel Fisher.

} *In error from Supreme Court.*

## Assignment of Errors.

Afterwards, that is to say, at the term of March, in the year of our Lord one thousand eight hundred and sixty-five, before the Judges of the Court of Errors and Appeals of the State of New Jersey, came the said plaintiff in error, by Ferdinand S. Wilson, his attorney, and says, that on the record and proceedings aforesaid, in giving the judgment aforesaid, there is manifest error in this, to wit:

1. Because the justice of the court below holding the Somerset Circuit Court, at which the issue joined in the court below was tried, after the plaintiff had offered his evidence to the court and jury, and after the defendant, by his attorney, had opened to the court the defence by him to be made to said suit, and the testimony by him to be offered in support of such defence, overruled the said defence and testimony offered in support of the same, and refused to allow the defendant's witnesses to prove said defence.

And the said John V. D. Hoagland prays that the judgment aforesaid, for the errors aforesaid and for other errors in the said record and proceedings, may be reversed, annulled, and altogether holden for nought, and that he may be restored to all things which he hath lost by occasion of said judgment, &c.

FRED. S. WILSON,  
*Att'y of plaintiff in error.*