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New Jersey Supreme Court.

*of Errors & Appeals  
March*

Of the Term of February, in the year of  
our Lord one thousand eight hundred  
and fifty-seven.

CHARLES F. DURANT,  
Plaintiff in Error,  
*vs.*

IN ERROR.

JACOB J. BANTA and  
DAVID NORTHUM,  
Defendants in Error.

*Assignment of Error.*

And thereupon afterwards, to wit, on the fourth Tuesday of February, in the year of our Lord one thousand eight hundred and fifty-seven, before the ~~Justices~~ <sup>*Justices*</sup> of the ~~Supreme Court of Judicature~~ <sup>*Supreme Court*</sup> of the State of New Jersey, comes the said Charles F. Durant by Jacob Weart his attorney, and says, that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the judgment aforesaid, there is manifest error in this, to wit, that on the trial of this cause before the said Circuit Court of the county of Hudson, the said court charged the jury, "that if a note valid between the maker and payee, be sold by the payee at a greater rate of discount than six per cent. per annum, and the payee transfers it by a general endorsement, and the endorsee looks to his immediate endorser for ultimate indemnity, provided the maker fails to pay, it is not a sale, but the loan of money on the same, and therefore usurious;" whereas, by the law of the land, such a transfer of a valid business note, by the payee to his endorsee, at a greater rate of discount than six per cent. per annum, is not the loan of money on the same, but a sale of the note, and therefore not usurious; and the said Circuit

*Appeals*

*Errors and*

Court ought to have so charged the jury ; therefore in that there is manifest error.

And also there is error in this, to wit, that upon the trial of the said cause before the said Circuit Court of the county of Hudson, the said court charged the jury in the words following, that is to say: "If the parties to this transaction were ignorant of the real nature of the endorsement, and intended to convey this note by a special restricted endorsement, instead of a general one, this fact could be proved ; but the conclusive proof that the plaintiff did not intend to take such special endorsement, and look alone to the maker for the payment of the same, he has had the note protested, and comes into court and asks to have the service of the notice of the protest admitted; and not only brings his suit against the maker, but the payee, from whom he derives title. This is conclusive evidence, that it is not a sale of the note, but the loaning or advancing of money on the same, which makes it usurious and void ."—whereas, by the law of the land, it ought to have been left to the jury to find whether the note was made for the mere purpose of raising money on, or whether the transaction was *bona fide*—and that the transaction was not the mere loaning of money on the note, but a sale, and therefore not usurious ; and the said Circuit Court ought to have so charged the jury ; therefore in that there is manifest error.

And also there is error in this, to wit, that upon the trial of the said cause before the said Circuit Court of the county of Hudson, the said court charged the jury, "That it was no answer to the action, that the plaintiff is entitled to recover, because the transaction occurred in New York. The parties reside in New Jersey, and they could not pass over into New York and enter into a negotiation, to avoid our statute of usury :"—whereas, by the law of the land, the law of the place where the transaction occurred settled the rights of the parties, and the said Circuit Court ought to have so charged the jury ; therefore in that there is manifest error.

And also there is error in this, to wit, that upon the trial of the said cause before the Circuit Court of the county of Hudson, the said court charged the jury as follows, that is to say : "And as there is no disputed question of fact involved in this case for you to pass upon, you must find a verdict for the defendant :"—whereas, by the law of the land, it should have been submitted to the jury to find

whether the note was a mere accommodation note or a valid business note ; and if a valid business note between the maker and payee, that the plaintiff, under the state of fact proved, was entitled to recover both of the maker and payee in this cause ; and the said Circuit Court ought to have so charged the jury ; therefore in that there is manifest error.

There is also error in this : For that it appears by the record and proceedings aforesaid, that the judgment aforesaid, in form aforesaid given, was given for the said Jacob J. Banta and David Northum, defendants below, against the said Charles F. Durant, the plaintiff below ; whereas, by the law of the land, judgment should and ought to have been given for the said plaintiff below, against the said defendants below.

And therefore the said plaintiff in error, who was also the plaintiff below, prays that the judgment aforesaid, for the errors aforesaid and others, as well in the bill of exceptions as in the record and proceedings aforesaid, may be reversed, annulled and held for nothing, and that he may be restored to all things which he hath lost on account of the same.

JACOB WEART,  
*Att'y of Pltff.*

NEW JERSEY, to wit :

Charles F. Durant puts in his place Jacob Weart, his attorney, to prosecute this writ of error against Jacob J. Banta and David Northum, in a plea of trespass on the case upon promises.

New Jersey ~~Supreme~~ Court. *of Error and Appeals*  
*March*  
 Of the Term of ~~February~~, eighteen  
 hundred and fifty-seven.

JACOB J. BANTA and DAVID NORTHUM, <i>ads.</i> CHARLES F. DURANT.	}	IN ERROR.
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And therefore the said Jacob J. Banta and David Northum, by  
 George M. Robeson <sup>their</sup> ~~his~~ attorney, come and say, that there is no  
 error, either in the record and proceedings aforesaid, or in the ren-  
 dition of the judgment aforesaid, and pray that the <sup>justices</sup> ~~judges~~ of the <sup>bant</sup> ~~Supreme Court~~ here, may proceed to the execution as well of the  
 record and proceedings aforesaid, as of the matters aforesaid for  
 error assigned; and that the judgment aforesaid, in manner aforesaid  
 given, may be in all things affirmed.

GEO. M. ROBESON,  
*Att'y of Defs.*

NEW JERSEY, to wit :

Jacob J. Banta and David Northum put in their place, George  
 M. Robeson, their attorney, at the suit of Charles F. Durant in  
 error.

## Hudson County Circuit Court.

CHARLES F. DURANT

vs.

JACOB J. BANTA and DAVID  
NORTHUM.

Jan'y Term, 1857.

IN CASE.

Be it remembered, that on this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and fifty-seven, at a Circuit Court held at the city of Hudson, in and for the said county of Hudson, before his Honor E. B. Dayton Ogden, Esquire, Judge of the said court, the above stated cause came on to be tried upon the pleadings and issue joined thereon, (pro ut the said pleadings and issue.) At which said day, before the said Judge, came as well the said Charles F. Durant as the said Jacob J. Banta and David Northum, by their respective attorneys aforesaid, and the jurors likewise came, and were sworn to try the said issues joined.

And thereupon the said Charles F. Durant, the plaintiff, to maintain the issue joined on his part, called—

JAMES FLEMMING, Jr., a witness, who being duly sworn, deposed and said—I have seen Jacob J. Banta write frequently; (note being shown witness, he says) this appears to be his signature; from my knowledge of his handwriting I should judge this to be his handwriting. I have seen him write his name. I saw him sign a receipt in our office a few days ago.

Note offered in evidence (copy)—

\$375.<sup>00</sup>/<sub>100</sub>.

Jersey City, February 23d, 1856.

Ninety days after date, I promise to pay to the order of D. Northum, three hundred seventy-five <sup>00</sup>/<sub>100</sub> dollars, at Hudson County Bank, value received, without defalcation or discount.

Signed, J. J. BANTA.

Endorsed, D. NORTHUM,

Jersey City.

And protest annexed thereto.

C. F. DURANT.

JOHN C. MORGAN, a witness called by the plaintiff, being duly sworn, said, that he had seen this promissory note before. When I first saw it, it was in the hands of Mr. Northum; it was not endorsed by him. Northum handed the note to me, to see if I could sell it. I am a note broker. I brought it back to him for his endorsement, and Northum went into a room on Wall street to endorse it, and brought it back endorsed.

*Cross-examined.*—I sold the note to Mr. Charles F. Durant, at two or three per cent. a month. It was drawn at ninety days. So much per centage was deducted. The consideration they said was a valid consideration.

*Re-Ex. in chief.*—Before the note was done, I saw Mr. Banta, to see if it was a valid business note. Mr. Banta said it was given for a valuable consideration, and would be paid when it becomes due. Mr. Northum represented that it was *bona fide*—that it was a business note.

This negotiation and transaction occurred in New York city. Mr. Banta and Mr. Durant reside in Jersey City. Mr. Northum resides here now; but I cannot say where he resided at the time, but I think in New Jersey.

Protest, and due service of notice of protest on Mr. Northum, admitted by the counsel of the defendant David Northum.

The parties here rested.

The Court charged the jury as follows :

A sale of a note is one thing, and a loan of money on it is another. If a note is sold at a rate of discount greater than six per cent. per annum, it is not usury; but if money is loaned and advanced upon it at a greater rate than six per cent. per annum, it is usury, and the endorsee of the payee cannot maintain an action either against the person from whom he purchased, or any prior endorser or maker.

In the case of Freeman ads. of Britton, in our own Supreme Court, it was held that if a note valid between the maker and payee, be sold by the payee at a greater rate of discount than six per cent. per annum, and the payee transfers it by a general endorsement, and the endorsee looks to his immediate endorser for ultimate indemnity,

provided the maker fails to pay; it is not a sale, but the loan of money on the same, and therefore usurious.

If the parties to this transaction were ignorant of the real nature of the endorsement, and intended to convey this note by a special restricted endorsement, instead of a general one, this fact could be proved. But the conclusive proof that the plaintiff did not intend to take such special endorsement, and look alone to the maker for the payment of the same—he has had the note protested, and comes into court and asks to have the service of the notice of the protest admitted; and not only brings his suit against the maker, but the payee, from whom he derives title. This is conclusive evidence that it is not a sale of the note, but the loaning or advancing of money on the same, which makes it usurious and void.

It was no answer in this action that the plaintiff is entitled to recover, because the transaction occurred in New York. The parties reside in New Jersey—and they could not pass over into New York and enter into a negotiation to avoid our statute of usury. And as there is no disputed question of fact involved in this case for you to pass upon, you must find a verdict for the defendants.

The plaintiff, by his counsel, excepted to all that part of the charge of the court which ruled—

That if the payee of a bona fide business note sell it at a greater rate of discount than six per cent. per annum, and transfers it to the purchaser by a general endorsement, it is a loan of money, and therefore usurious; and the purchaser cannot recover of his immediate endorser, or any prior person upon the note.

Also to that part of the charge which ruled, that if the endorser or payee is held for the ultimate payment of the money, and if the transaction is followed up by notice of protest on him, and an action against him to recover the money, it is evidence, not of a sale, but of a loan of money on the note, and therefore usurious.

And also to all that part of the charge, that there was no disputed question of fact involved in the case for the jury to pass upon, they must find for the defendant.

And also to all that part of the charge that rule, that because the parties reside in New Jersey, they cannot evade our usury laws by

going over in New York, and there entering into a transaction which would not be usurious under their law, but usurious under ours.

And the <sup>Plaintiff</sup> ~~defendant~~, by his counsel, prayed that this, his bill of exceptions, might be sealed, and it is sealed accordingly.

*E.* B. DAYTON OGDEN, [L. s.]

*Judge.*