Lloyd Vs. Scott

Lloyd Vs. Scott

SooperKanoon Citation : sooperkanoon.com/79269

Court : US Supreme Court

Decided On : 1830

Appeal No. : 29 U.S. 205

Appellant : Lloyd

Respondent : Scott

Judgement :

Lloyd v. Scott - 29 U.S. 205 (1830)
U.S. Supreme Court Lloyd v. Scott, 29 U.S. 4 Pet. 205 205 (1830)

Lloyd v. Scott

29 U.S. (4 Pet.) 205

SYLLABUS

S. being seized in fee of four brick tenements and lots of ground in Alexandria, in consideration of $5,000, granted to M. an annuity or yearly rent charge of $500, to be issuing out of and charged upon the houses and ground, and covenanted that the same should be paid to M., his heirs and assigns forever thereafter, with the right to distrain in case of nonpayment of the same. In the deed granting the rent charge, M. the grantee, covenanted, that at any time after five years, on the

payment of $5,000 with all arrears of rent, he, M., would release the said rent charge, and the same should cease. S. covenanted to keep the buildings in repair and that he would have them fully insured against fire and assign the policy of insurance for the protection of M., the money from the insurance to be applied to the rebuilding or repairing the houses if destroyed or injured by fire. Afterwards, S. by deed of bargain and sale,, conveyed to L., the plaintiff in error, the houses and lots of ground subject to the payment of the rent to M., who since the same conveyance has been seized of the same. The rent being unpaid, M. levied a distress for the same, and L. brought replevin, and the defense to the claim for rent set up to the avowry was that the transaction was usurious, and the deed granting the rent charge was, by the laws of Virginia, absolutely void.

The statute of Virginia of 1793 provides that no person shall take, directly or indirectly, more than six percent per annum on loans of money or for forbearance for one year, and it declares that all bonds and other instruments for a greater amount of interest shall be utterly void.

The requisites to form an usurious transaction are 1. a loan either express or implied; 2. an understanding that the money lent shall or may be returned; 3. that a greater rate of interest than is allowed by the statute shall be paid. The intent with which the act is done is an important ingredient to constitute this offense.

An ignorance of the law will not protect a party from the penalties of usury where it is committed, but where there was no intention to evade the law and the facts which amount to usury, whether they appear upon the face of the contract or by other proof, can be shown to have been the result of mistake or accident, no penalty attaches.

The act of usury has long since lost that deep moral stain which was formerly attached to it, and is now generally considered only as an illegal or immoral act, because it is prohibited by law.

If the court was in this case limited by the pleas to the words of the contract, and it purported to be a purchase of an annuity, and no evidence was adduced giving a

different character to the transaction; the argument that though the annuity may produce a higher rate of interest than six percent upon the consideration paid for it, as it was a purchase, it was legal, would be unanswerable. An annuity may be purchased like a tract of land or other property, and the

inequality of price will not of itself make the contract usurious. If the inadequacy of consideration be great in any purchase, it may lead to suspicion, and connected with other circumstances, may induce a court of chancery to relieve against the contract.

In this case, $5,000 was paid for a ground rent of $500 per annum. This circumstance, although ten percent be received on the money paid, does not make the contract unlawful. If it were a *bona fide* purchase of an annuity, there is an end of the question, and the condition which gives the option to the vendor to repurchase the rent by paying the $5,000 after the lapse of five years would not invalidate the contract. The right to repurchase, as also the inadequacy of price, would be circumstances for the consideration of a jury.

The purchase of an annuity or any other device used to cover an usurious transaction will be unavailing. If the contract be infected with usury, it cannot be enforced.

If a party agree to pay a specific sum exceeding the lawful interest provided he do not pay the principal by a day certain, it is not usury. By a punctual payment of the principal, he may avoid the payment of the sum stated, which is considered as a penalty. Where a loan is made to be returned at a fixed day with more than the legal rate of interest, depending on a casualty which hazards both principal and interest, the contract is not usurious, but where the interest only is hazarded, it is usury.

All the material facts to constitute usury are found in the second plea. It states a corrupt agreement to loan the money at a higher rate of interest than the law allows. That the money was advanced and the contract executed in pursuance of

such agreement. That on the return of the principal with the full payment of the rent after the lapse of five years, the annuity was to be released. The amount agreed to be paid above the legal interest for the forbearance is not expressly averred, but the facts are so stated in the plea as to show the amount with certainty. $500, under cover of the annuity, was to be paid annually for the forbearance of the $5,000, making an annual interest of ten percent. Do not these facts, uncontradicted as they are, amount to usury? Is it not evident from this statement of the case that the annuity was created as a means for paying the interest until the principal should be returned, and as a disguise for the transaction? Such is the legitimate inference which arises from the facts stated in the plea.

The principle seems to be settled that usurious securities are not only void as between the original parties, but the illegality of their inception affects them even in the hands of third persons who are entire strangers to the transactions. A stranger must "take heed to his assurance at his peril," and cannot insist on his ignorance of the corrupt contract in support of his claim to recover upon a security which originated in usury.

In the case of *D'Wolfe v. Johnson,* 10 Wheat. 367, the first mortgage being executed in Rhode Island in 1815 was not usurious by the laws of that state, and the second mortgage, executed in Kentucky in 1817, being a new contract, was not tainted with usury. The question, therefore, whether the purchaser of an equity of redemption can show usury in the mortgage to defeat a foreclosure was not involved in that case.

The law of Virginia having declared that a contract infected by usury is void, and by the deed from S. to M. a right to enter on the premises and distrain for the

rent is claimed under a deed which, upon the admissions in the pleadings, is usurious, the premises upon which the distress was made, being held by L. under a conveyance from S., L. may set up the defense of usury in the deed against the

summary remedy asserted by M. under the deed.

This was an action of replevin brought by the plaintiff to replevy certain goods and chattels which the defendant, as bailiff of William S. Moore, had taken upon a distress for rent claimed by the said Moore to be due upon certain houses and lots in Alexandria owned and held by the plaintiff. The sum for which distress was made is $500. The declaration is in the usual form, and the damages claimed $1,000.

The defendant filed his cognizance, in which he acknowledges the taking of the goods, &c.;, in the declaration mentioned, and states that a certain Jonathan Scholfield was seized in fee of four brick tenements and a lot of ground in the Town of Alexandria, and being so seized, he by his indenture, dated 11 June, 1814, of which deed profert is made, in consideration of $5,000, by the said William S. Moore paid to him the said Jonathan Scholfield, he granted, bargained and sold to him, the said William S. Moore one certain annuity or yearly rent of $500, to be issuing out of and charged upon the said four brick tenements and lot of ground, to be paid to the said William S. Moore, his heirs and assigns, by equal half-yearly payments of $250 each, on 10 December and on 10 June in each year forever thereafter, to have and to hold the said annuity or rent charged and payable as aforesaid to the said William S. Moore his heirs and assigns to his and their only proper use forever. It also states that the said Jonathan Scholfield, for himself, his heirs and assigns, did by the said indenture, among other things, covenant with the said William S. Moore his heirs and assigns, that he, the said

Scholfield, his heirs and assigns, would well and truly pay and satisfy to him, the said Moore his heirs and assigns, the said annual rent of $500 by equal half-yearly payments forever, and if the rent should not be paid as it became due, that on every default it should be lawful for the said Moore, his heirs and assigns, to make distress for it. That the said William S. Moore was seized of the said rent on the 11 December, 1814, and has since remained seized thereof.

The cognizance further states that on 29 October, 1816, the said Jonathan Scholfield, by his deed of bargain and sale, conveyed to the said John Lloyd the plaintiff, forever certain tenements and lots of ground in the said Town of Alexandria, whereof the said four brick tenements and lot of ground before mentioned, on which the said distress was made, was parcel, subject, by the terms of the said deeds, to the payment of the said annuity or rent of $500 to the said William S. Moore his heirs and assigns. That the said John Lloyd has been ever since seized and possessed of the same, and that on 10 June, 1824; $250, a part of the said rent was due, and on 10 December, 1824, $250, the balance of the said annual rent, was due and unpaid to the said William S. Moore for which said sum of $500 the said defendant, as bailiff aforesaid, levied a distress. It concludes by praying judgment for $1,000, being double the rent in arrear and distrained for.

By the deed from Scholfield to Moore he, Moore for himself and his heirs and assigns, covenants with Scholfield, his heirs and assigns, that if he, the said Scholfield, his heirs or assigns,

"shall at any time after the expiration of five years from the date of the deed, pay to the said Moore his heirs or assigns, the sum of $5,000, together with all arrears of rent and a ratable dividend of the rent for the time which shall have elapsed between the half year day then next preceding and the day on which such payment shall be made, he, the said Moore his heirs and assigns, will execute and deliver any deeds or instruments which may

be necessary for releasing and extinguishing the rent or annuity hereby created, which, on such payments being made, shall forever after cease to be payable."

By the same deed, Jonathan Scholfield covenants that he was then in his own right seized in fee simple of the premises charged as aforesaid, free from any condition or encumbrance other than which is specified and provided for in a deed from him, Scholfield, to Robert I. Taylor, dated the day before the date of the deed to Moore.

The said Scholfield further covenants for himself, his heirs and assigns, that he

"will forever hereafter keep the buildings which now are or hereafter may be erected on the premises charged fully insured against fire in some incorporated insurance office, and will assign the policies of insurance to such trustee as the said Moore his heirs or assigns may appoint, to the intent that if any damage or destruction from fire shall happen, the moneys received on such policies may be applied to rebuilding or repairing the buildings destroyed or damaged."

There is also a covenant on the part of Scholfield for a further conveyance to carry into effect the intention of the parties, and also a warranty on his part to warrant and defend the said annuity or rent to the said Moore, his heirs or assigns, against any defalcations or deductions for or on account of him the said Scholfield, his heirs or assigns.

To this cognizance the plaintiff, after praying oyer of the indenture from Scholfield to Moore demurred specially and assigned the following causes:

1. Because the deed of indenture from Jonathan Scholfield and Eleanor his wife to William S. Moore in the said cognizance mentioned shows upon the face of it a corrupt and usurious contract between Jonathan Scholfield and William S. Moore altogether void in law and entirely incompetent to justify the taking of the said goods and chattels in the plaintiff's declaration mentioned.

2. Because the essential parts of the indenture are not set forth in the cognizance.

3. Because the indenture is variant and different from that alleged in the cognizance.

4. Because the whole cognizance is void and insufficient in law to justify the taking of the goods and chattels in the declaration mentioned.

At the same time, the plaintiff filed four pleas, in each of which pleas he craves oyer of the deed of indenture in the cognizance mentioned, which was granted to him.

The first plea states that before the making of the indenture -- that is to say on 11 June, 1814, it was corruptly agreed between Scholfield and Moore that he, Moore should "advance" to Scholfield the sum of $5,000, and in consideration thereof that Scholfield and his wife should grant, by a deed of indenture, duly executed and delivered to Moore his heirs and assigns forever, a certain annuity or yearly rent of $500, to be issuing out of and charged upon a lot of ground and four brick tenements and appurtenances thereon, which lot is particularly described in the said plea and stated to be in the Town of Alexandria, which annuity or rent of $500 was to be paid to Moore his heirs and assigns by equal half-yearly payments of $250 on 10 December and on 10 June forever thereafter. It was further corruptly agreed that he, Scholfield, in and by the deed, should bind himself, his heirs, executors, administrators and assigns to Moore his heirs and assigns, that Scholfield would well and truly pay to him, Moore his heirs and assigns, the said rent or annuity of $500, by equal half-yearly payments, on 10 June and 10 December in each year forever thereafter as it became due. It further states, if the same should not be paid as it became due, the right of distress for it is reserved to Moore his heirs and assigns. The plea also states if sufficient property could not be found on the premises to make the said rent or annuity after the expiration of thirty days from the time the same became due, it should be lawful for Moore to enter on the premises and to remove Scholfield, his heirs and assigns, and for him, Moore his heirs or assigns, to possess and hold the same as his or their property.

The plea further states that it was corruptly agreed between

Page 29 U. S. 211

Scholfield and Moore that he, Scholfield, should further covenant in the said indenture that he, Scholfield, was seized at the time of making the deed in his own right in fee simple in the premises, free from any condition or encumbrance other

than such as was specified in a deed from him to Robert I. Taylor, and that he would thereafter keep the buildings fully insured in some incorporated insurance office and assign the policies to such trustee as Moore his heirs or assigns should appoint, and that he would make any other deed for a further assurance of the title to the premises, and that he would warrant and defend the title of Moore to the rent or annuity. It is also stated in said plea that Moore did further corruptly agree that he would, in the indenture, covenant for himself, his heirs or assigns, with Scholfield, his heirs and assigns, that if he, Scholfield, his heirs or assigns, should at any time thereafter, at the expiration of five years from the date of the indenture, pay to Moore his heirs or assigns, the sum of $5,000, together with all arrears of rent and a ratable dividend of the rent for the time which should have elapsed between the half year's day then next preceding, and the day on which such payment should be made, he, Moore his heirs and assigns, would execute and deliver any deeds or instruments which might be necessary for releasing and extinguishing the rent or annuity.

The plea then avers that on 11 June, 1814, in pursuance and in prosecution of this corrupt agreement, William S. Moore did advance to Jonathan Scholfield, the sum of $5,000, and that Scholfield and his wife and William S. Moore did make, seal, and duly deliver to each other respectively the said deed as their act and deed, which was duly acknowledged and recorded, that the deed was made in consideration of money advanced upon and for usury, and that there has been reserved and taken above the rate of six dollars in the hundred, for the forbearance of the sum of $5,000, so advanced as aforesaid, for the term of one year. The plea concludes with a verification, and prays judgment for damages for the unjust taking and detention of the goods, &c.;

The second plea is in all respects like the first except it states that the agreement was that Moore should "lend" to Scholfield $5,000. It then states that the parties agreed a deed should be made containing all the covenants set forth in the first plea. It then avers that in pursuance and in prosecution of this corrupt agreement,

Moore did advance to Scholfield the sum of $5,000 and that Scholfield and wife and Moore made and executed the deed aforesaid in pursuance of this corrupt agreement, which was duly acknowledged and admitted to record. And that the deed was made in consideration of "money lent upon and for usury," and that by it there has been reserved and taken above the rate of six dollars in the hundred for the forbearance of the sum of $5,000 so lent as aforesaid for the term of one year. This plea concludes as the first does.

The third plea is more general than the first and second. It states that before the making of the indenture -- that is to say on 11 June, 1814, it was corruptly agreed between Scholfield and Moore that he, Moore should "advance" to him, Scholfield, the sum of $5,000, upon the terms and conditions and in consideration of the covenants and agreements in the indenture mentioned and contained, and that in pursuance of this corrupt agreement and in the prosecution and fulfillment of the same, Moore did advance to Scholfield the sum of $5,000, and they, Scholfield and Moore, did make, seal, and duly deliver the deed to each party respectively as their act and deed. And that the deed was in consideration of money advanced upon and for usury, and that by the indenture there has been taken and reserved above the rate of six dollars in one hundred, for the forbearance of the sum of $5,000, so advanced as aforesaid for the term of one year. This plea concludes as the first does.

The fourth plea is like the third except it is stated that the agreement was to "lend" $5,000 upon the same terms stated in the third plea. It then avers that in pursuance and in execution of the corrupt agreement in the indenture mentioned, Moore did "lend" to Scholfield the

sum of $5,000, that the deed was duly executed by the parties and recorded, that it was made in consideration of money lent upon and for usury, and that by the said deed there has been reserved and taken above the rate of six dollars in the hundred for the forbearance of the sum of $5,000 so lent as aforesaid for the term of one year. This plea concludes as the others do.

To each of these pleas the defendant demurred specially and assigned for causes:

1. That the said pleas do not set forth with any reasonable certainty the pretended contract which is alleged to have been usurious, and do not show an usurious contract.

2. That they do not state the time for which the said pretended loan was made.

3. That they do not state the amount of interest reserved or intended to be reserved on the said pretended contract.

4. That they do not set forth any loan or forbearance of any debt.

5. That they neither admit nor deny the sale and conveyance of the premises charged with the said annuity or rent to have been made by Jonathan Scholfield to the plaintiff.

Upon the demurrer to the cognizance and on the demurrer to the pleas, the circuit court rendered judgment for the defendant for $1,000, the double rent claimed in the cognizance, and costs.

The plaintiff sued out this writ of error, and before this Court assigned for error,

1. That the deed which forms a part of the cognizance is on its face usurious.

2. That the pleas set forth, with sufficient certainty, a spurious contract.

Page 29 U. S. 221

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

This is an action of replevin brought to replevy certain goods and chattels which the defendant, as bailiff of William S. Moore had taken upon a distress for rent claimed to be due upon certain houses and lots in Alexandria owned and possessed by the plaintiff. The sum for which the distress was made is $500.

The declaration is in the usual form, and the damages are laid at $1,000. The defendant filed his cognizance in which he acknowledges the taking of the goods specified in the declaration and states that a certain Jonathan Scholfield, being seized in fee of four brick tenements and a lot of ground in the Town of Alexandria, by his indenture, dated 11 June, 1814, in consideration of $5,000, granted, bargained, and sold to William S. Moore one certain annuity or yearly rent of $500, to be issuing out of and charged upon the said houses and ground, and paid to the said Moore his heirs and assigns, by equal half-yearly payments of $250, on 10 December and on 10 June in each year forever thereafter, to have and to hold the said annuity or rent charged and payable as aforesaid to the said William S. Moore, his heirs and assigns, forever. It also states that the said Scholfield, for himself and his heirs and assigns, did, by the said indenture, among other things,

covenant well and truly to pay to the said Moore his heirs and assigns, the said annual rent of $500 by equal half-yearly payments forever. And if the rent should not be paid as it become due, it should be lawful for the said Moore his heirs and assigns to make distress for it. That Moore was seized of the rent on 11 December, 1814, and has since remained seized thereof.

The cognizance further states that on 29 October, 1816, the said Jonathan Scholfield, by his deed of bargain and sale, conveyed to Lloyd, the plaintiff, forever certain tenements and lots of ground in the Town of Alexandria whereof the said four brick tenements and lot of ground were parcel and subject to the rent charge stated. That Lloyd has been seized ever since and possessed of the same, and that on 10 June 1824, $250, a part of the rent, was due, and on 10 December following, $250, the balance of the annual rent, was due and unpaid, for which sums the defendant, as bailiff, levied a distress.

The cognizance is concluded by praying a judgment for $1,000, being double the amount of the rent in arrear.

Moore covenants in the deed that if Scholfield, his heirs or assigns,

"shall at any time after the expiration of five years from the date of the deed pay to the said Moore his heirs or assigns the sum of $5,000, together with all arrears of rent and a ratable dividend of the rent for the time which shall have elapsed between the half-year day then next preceding and the day on which such payment shall be made, he, the said Moore his heirs and assigns, will execute and deliver any deeds or instruments which may be necessary for releasing and extinguishing the rent or annuity hereby created, which, on such payment's being made, shall forever after cease to be payable."

Scholfield covenanted for himself, his heirs and assigns, that he would keep the buildings in repair, have them fully insured against fire, and would assign the policies of insurance to such trustee as Moore his heirs or assigns, might appoint, that the money may be applied to the rebuilding of

Page 29 U. S. 223

the houses destroyed by fire or repairing any damage which they might suffer.

To this cognizance the plaintiff filed a special demurrer, which in the argument he abandoned, and relies upon the special pleas of usury. To each of the four pleas the defendant demurs specially and assigns for causes of demurrer,

1. That the said pleas do not set forth with any reasonable certainty the pretended contract which is alleged to have been usurious, and do not show an usurious contract.

2. That they do not state the time the said pretended loan was made.

3. That they do not state the amount of interest reserved or intended to be reserved, on the said pretended contract.

4. That they do not set forth any loan or forbearance of any debt.

5. That they neither admit nor deny the sale and conveyance of the premises charged with the annuity or rent to have been made by Scholfield to the plaintiff below.

Upon these demurrers the circuit court rendered judgment for $1,000, the double rent claimed in the cognizance.

The plaintiff here prays a reversal of this judgment.

1. Because the deed which forms a part of the cognizance on its face shows an usurious contract.

2. Because the pleas set forth with sufficient certainty an usurious contract.

The statute of Virginia against usury was passed in 1793, and provides that no person shall take, directly or indirectly, more than six dollars for the forbearance of one hundred dollars per annum, and it declares that all bonds and other instruments for a greater amount of interest shall be utterly void.

In support of the demurrer it is argued that the pleas are defective as they do not contain any allegation of facts which amount to usury, and that the decision must turn on the construction of the contract between Scholfield and Moore. And it is contended that although usury appears upon the face of a deed, yet advantage can only be taken of it by plea. That the obligee may explain the contract by

Page 29 U. S. 224

showing a mistake in the scrivener or a miscalculation of the parties.

In Comyn on Usury 201 it is laid down that in an action on a specialty, though it appear on the face of the declaration that the bond, &c.;, is usurious, still no advantage can be taken of this unless the statute be specially pleaded. 3 Salk. 291; 5 Coke 119; Chitty on Contracts 240; 1 Sid. 285; 1 Saund. 295a. The decision of this point is not necessarily involved in the case.

The requisites to form an usurious transaction are three:

1. A loan either express or implied.

2. An understanding that the money lent shall or may be returned.

3. That a greater rate of interest than is allowed by the statute shall be paid.

The intent with which the act is done is an important ingredient to constitute this offense. An ignorance of the law will not protect a party from the penalties of usury where it is committed, but where there was no intention to evade the law and the facts which amount to usury, whether they appear upon the face of the contract or by other proof, can be shown to have been the result of mistake or accident, no penalty attaches.

At an early period in the history of English jurisprudence, usury, or as it was then called, the loaning of money at interest, was deemed a very high offense. But since the days of Henry VIII, the taking of interest has been sanctioned by statute.

In this country, some of the states have no laws against taking any amount of interest, which may be fixed by the contract.

The act of usury has long since lost that deep moral stain which was formerly attached to it, and is now generally considered only as an illegal or immoral act because it is prohibited by law. Assuming the position that the pleas contain no averments which extend beyond the terms of the contract, the counsel in support of the demurrers have contended that no fair construction of the deed will authorize the inference that it was given on an usurious consideration.

Page 29 U. S. 225

It was the purchase of an annuity, it is contended, and though the annuity may produce a higher rate of interest than six percent upon the consideration paid for it, yet this does not taint the transaction with usury.

If the Court were limited by the pleas to the words of the contract, and it purported to be a purchase of an annuity, and no evidence were adduced giving a different character to the transaction, this argument would be unanswerable. An annuity may be purchased like a tract of land or other property, and the inequality of price will not, of itself, make the contract usurious. If the inadequacy of consideration be great in any purchase, it may lead to suspicion, and, connected with other

circumstances, may induce a court of chancery to relieve against the contract.

In the case under consideration, $5,000 was paid for a ground rent of $500 per annum. This circumstance, although ten percent be received on the money paid, does not make the contract unlawful. If it were a *bona fide* purchase of an annuity, there is an end to the question, and the condition which gives the option to the vendor to repurchase the rent by paying the $5,000 after the lapse of five years would not invalidate the contract. 1 Brown's Ch. 7, 93. The right to repurchase, as also the inadequacy of price, would be circumstances for the consideration of a jury.

The case reported in 2 Coke 252 is strongly relied on by the counsel for the defendant. In that case, an action of debt was brought upon an obligation of three hundred pounds, conditioned for the payment of twenty pounds per annum during the lives of the plaintiff's wife and son. The defendant pleaded the statute of usury and that he applied to the defendant to borrow of him one hundred and twenty pounds at the lawful rate of interest, but that he corruptly offered to deliver one hundred and twenty pounds to him if he would be obliged to pay twenty pounds per annum.

The court considered this as an absolute contract for the payment of twenty pounds per annum during two lives, and no agreement being made for the return of the principal, it was not considered usury. But, they stated, if there had

been any provision for the repayment of the principal, although not expressed in the bond, the contract would have been usurious.

This is a leading case, and the principle on which it rests has not been controverted by modern decisions.

Scholfield, it appears, was under no obligation to repurchase the annuity, but he had the option of doing so after the lapse of five years, which is a strong circumstance to show the nature of the transaction.

The purchase of an annuity or any other device used to cover an usurious transaction will be unavailing. If the contract be infected with usury, it cannot be enforced.

Where an annuity is raised with the design of covering a loan, the lender will not be exempted by it from the penalties of usury. 3 Bos. & Pul. 159. On this point there is no contradiction in the authorities.

If a party agree to pay a specific sum exceeding the lawful interest, provided he do not pay the principal by a day certain, it is not usury. By a punctual payment of the principal he may avoid the payment of the sum stated, which is considered as a penalty.

Where a loan is made to be returned at a fixed day with more than the legal rate of interest, depending upon a casualty which hazards both principal and interest, the contract is not usurious; but where the interest only is hazarded, it is usury.

Does the decision in this case, as has been contended, depend upon a construction of the contract? Are there no averments in the pleas which place before the Court material facts to constitute usury that do not appear on the face of the deed?

If the Court were limited to a mere construction of the contract, it would have no difficulty in deciding that the case was not strictly embraced by the statute.

In the second plea, the plaintiff below prays oyer of the deed of indenture, and among other statements alleges

"that it was corruptly agreed between the said Scholfield and the said Moore that the said Moore should lend to him the sum of $5,000, and in consideration thereof that he should

Page 29 U. S. 227

execute the said deed,"

&c.; And in another part of the same plea it is stated,

"that the said Moore did corruptly agree that he would in the said indenture covenant, &c.;, that if the said Scholfield, his heirs and assigns, should, at any time after the expiration of five years from the date of said indenture, pay to the said Moore his heirs and assigns, the sum of $5,000, together with all arrears of rent, he, the said Moore would release to him the said annuity."

And it is further alleged "that the said Moore, in pursuance and in prosecution of the said corrupt agreement, did advance to the said Scholfield the said sum of $5,000." And again

"That the said deed of indenture was made in consideration of money lent upon and for usury, and that by the said indenture there has been reserved and taken above the rate of six dollars per annum in the hundred for the forbearance of the said sum of $5,000 so lent as aforesaid."

The fourth plea contains substantially the allegations as to the lending &c.; that are found in the second plea.

The facts stated in the pleas are admitted by the demurrers, and the question of usury arises on these facts, connected as they are with the contract.

Although the second and fourth pleas may not contain every proper averment with technical accuracy, yet they are substantially good. All the material facts to constitute usury are found in the second plea.

It states a corrupt agreement to loan the money at a higher rate of interest than the law allows. That the money was advanced and the contract executed in pursuance of such agreement. That on the return of the principal with a full payment of the rent after the lapse of five years, the annuity was to be released. The amount agreed to be paid above the legal interest for the forbearance is not expressly averred, but the facts are so stated in the plea as to show the amount with certainty. $500, under cover of the annuity, were to be paid annually for the forbearance of the $5,000, making an annual interest of ten percent. Do not these

facts, uncontradicted

as they are, amount to usury? Is it not evident from this statement of the case that the annuity was created as a means for paying the interest until the principal should be returned, and as a disguise to the transaction? Such is the legitimate inference which arises from the facts stated in the plea.

At this point in the case, an important question is raised whether Lloyd, the plaintiff in the replevin, being the assignee of Scholfield, can set up this plea of usury in his defense. It is strongly contended that he cannot. He purchased this property, it is alleged, subject to the annuity, and paid for it a proportionally less consideration. That, knowing of the charge before he made the purchase, it would be unjust for him now to evade the payment. And the inquiry is made whether Lloyd could plead usury in this contract if the annuity had been purchased by Scholfield. He would be estopped from doing so, it is urged, by the obligations of his own contract, as he is now estopped from resisting the claim of Moore.

As to the injustice of the defense, it may be remarked that the objection would apply with still greater force against Scholfield if he were to attempt by a similar defense to evade the payment of the annuity. He received the money after assenting to the contract, but he is at liberty to evade the payment of the annuity by the plea of usury. Is the position correctly taken that no person can avail himself of this plea but a party to the original contract?

The principle seems to be settled that usurious securities are not only void as between the original parties, but the illegality of their inception affects them even in the hands of third persons who are entire strangers to the transaction. Comyn on Usury 169. A stranger must "take heed to his assurance, at his peril," and cannot insist on his ignorance of the contract in support of his claim to recover upon a security which originated in usury.

In the case of *Lowe v. Waller,* Douglass 735, the plaintiff was the endorser of a bill originally made upon an usurious contract; though he had received it for a

valuable

consideration and was entirely ignorant of its vice, the Court of King's Bench, after great consideration, determined that the words of the statute were too strong and that, after what had been held in a case on the statute against gaming, the plaintiff could not recover.

If a bill of exchange be drawn in consequence of an usurious agreement for discounting it, although the drawer to whose order it was payable was not privy to this agreement, still it is void in the hands of a *bona fide* endorser. 2 Camp. 599. In Holt's N.P. 256, Lord Ellenborough lays down the law that a *bona fide* holder cannot recover upon a bill founded in usury; so neither can he recover upon a note where the payee's endorsement through which he must claim has been made by an usurious agreement. But if the first endorsement be valid, a subsequent usurious endorsement will not affect him, because such intermediate endorsement is not necessary to his title to sue the original parties to the note.

If a note be usurious in its inception, and it pass into the hands of a *bona fide* holder who has no notice of the usury, and the drawer give to the holder a bond for the amount of the note, the bond would not be affected by the usury. 8 Term 390.

In the case of *Jackson v. Henry,* reported in 10 Johnson 185, a plea of usury was set up to invalidate the title of a purchaser at a sale of mortgaged premises. This sale, under the statute of New York, is equivalent to a foreclosure by a decree in chancery, and the court decided that the title of the purchaser was not affected by usury in the debt for which the mortgage was given. The statute of New York declares all bonds, bills, contracts and assurances, infected with usury "utterly void." And so says the court on the adjudged cases when the suit at law is between the original parties or upon the very instrument infected.

The case of *D'Wolf v. Johnson,* reported in 23 U. S. 10 Wheat. 367, is relied on by the counsel for the defendant, as a decision in point.

In that case, it will be observed that the first mortgage,

Page 29 U. S. 230

being executed in Rhode Island in 1815, was not usurious by the laws of that state, and the second one, executed in Kentucky, in 1817, being a new contract, was not tainted with usury. The question, therefore, whether the purchaser of an equity of redemption can show usury in the mortgage to defeat a foreclosure was not involved in that case.

The Virginia statute makes void every usurious contract, and the second plea contains allegations which, uncontradicted, show that the contract between Moore and Scholfield was usurious in its origin.

This contract, thus declared to be void, is sought to be enforced against Lloyd, the purchaser of the property charged with the annuity. Between Scholfield and Lloyd there is a privity, and if the contract for the annuity be infected with usury, is it not void as against Lloyd?

In this contract, a summary remedy is given to enter on the premises and levy, by distress and sale of the goods and chattels there found, for the rent in arrear, and if the distress should be insufficient to satisfy the rent, and it should remain unpaid for thirty days, Moore is authorized to enter upon the premises and to expel Scholfield, his heirs and assigns, and hold the estate. Lloyd, as the assignee of Scholfield, comes within the terms of the contract, and is liable, being in possession of the premises, to have his property distrained for the rent, and if it be not paid, himself expelled from the possession. Under such circumstances, may he not avail himself of the plea of usury and show that the contract which so materially affects his rights is invalid? Moore seeks his remedy under this contract, and if it be usurious and consequently void, can it be enforced?

If usury may be shown in the inception of a bill to defeat a recovery by an endorsee who paid for it a valuable consideration without notice of the usury, may not the same defense be set up where, in a case like the present, the party to the usurious contract claims, by virtue of its provisions, a summary mode of redress?

The Court entertains no doubt on this subject. It thinks a case of usury is made out by the facts stated in the second plea, and that Lloyd may avail himself of such a defense.

Page 29 U. S. 231

The judgment of the circuit court must be reversed, and the cause remanded with instructions to overrule the demurrers to the second and fourth pleas and permit the defendant to plead.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Alexandria and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said circuit court with instructions to overrule the demurrers to the second and forth pleas and to permit the defendant to plead and for such further proceedings as to law and justice may appertain.