49/4

July 1846 #46

Copeland + Copeland
vs.
Loan, Benjamin F
Jackson Co.

fraud debt

note obtained through fraud + misrepresentation

fraud

STATE OF MISSOURI----Sct.

The State of Missouri....To the Judge of the Sixth — Judicial Circuit in said State....**GREETING:**

WHEREAS, *In the record and proceedings in a certain cause lately pending in the Circuit Court within and for the County of* Jackson — *in said circuit, wherein* Benjamin F Loan was plaintiff and Anthony M Copeland and William Copeland were —

defendants manifest error, hath intervened, to the great damage of the said defendants *as by* their *complaint, we are informed;*

Now, we being willing that the error, *if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf,* **command you,** *that you send to us certified under your* **seal,** *the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the County of Cole, in said State, on the* first — *Monday in* July — *next, so that our Judges of our Supreme Court on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.*

WITNESS, Hampton L. Boon, *Clerk of our said Supreme Court, at office, in the City of Jefferson, the* eighteenth — *day of* May — *in the year of our Lord, one thousand eight hundred and forty-*six.

H. L. Boon

SEAL OF THE SUPREME COURT OF MISSOURI

State of Missouri }
County of Jackson } ss I Saml D Lucas Clerk of the Circuit Court within and for the County of Jackson in the State of Missouri do hereby Certify that in Obedience to the Commands of the Within Writ that I do hereunto annex a full and Complete Transcript of all the Record and Proceedings in the Case of Benjamin F Lewis against Anthony M Copeland and William Copeland as fully as the Same remains of Record in Said Court.

Testimony Whereof I hereunto Set my hand and affix the Seal of said Court at Office in Independence this 25th Day of May A D 1846

Saml D Lucas Clerk

State of Missouri } ss
County of Jackson } Pleas in the Circuit Court begun and held at the Town of Independence for the County of Jackson in the Seventh Judicial Circuit of the State of Missouri on the Third Monday of March in the Year of our Lord One Thousand Eight Hundred and forty Six before the Honorable John F Ryland Judge of said Circuit,

Be it Remembered that heretofore "to Wit" on the 21st Day of February in the Year of our Lord, Eighteen hundred and forty Six Benjamine F Loan filed in the office of the Clerk of the Circuit Court for the County aforesaid his Petition in Debt against Anthony M Copeland and William Copeland. Which said Petition in Debt is in the Words and figures following to wit "

"The State of Missouri, Jackson County. In the Jackson Circuit Court of March Term AD 1846
To the Jackson Circuit Court, Benjamine F Loan Plaintiff states that he is the legal owner of a note against the defendants Anthony M Copeland and William Copeland to the following effect
$400.— On or before the 25th Day of December 1845 We Promise to Pay to the order of Benjamine F. Loan Four hundred Dollars With interest at the rate of Ten Per Cent Per Annum from date until Paid Value received this 3rd October 1844
A M Copeland
Wm Copeland"

Yet the debt remains unpaid therefore he demands Judgment for his debt and damages for the detention thereof together With Costs
Benjamine F Loan

Copy of Note sued on "Viz" in words and figures as follows "$440. On or before the 25th Day of December 1845 We promise to pay to the order of Benjamin F Loan Four hundred Dollars With interest at the rate of Ten Per Cent per annum from date until paid Value Received this 3rd October 1844

A M Copeland
W M Copeland

And afterwards Viz on the day of the filing of said Petition on said Clerk endorsed thereon an Writ of Summons which said Writ is in the words and figures following Viz The State of Missouri, To the Sheriff of Jackson County Greeting, You are hereby Commanded to Summon Anthony M Copeland and William Copeland if they be found in your County that they be and appear before the Honorable Judge of our Jackson Circuit Court at the Court House in the Town of Independence on the Third Monday in March next it being the 16th Day of said Month. Then and there to answer unto the Complaint of Benjamin F Loan as setforth in the foregoing Petition in Debt and that you have then and there this Writ and that you certify how you execute the same

L.S.

Witness Saml D Lucas Clerk of our said Court With the Seal thereof hereto affixed at office in Independence this 21st Day of February AD 1846

Saml D Lucas Clerk

And afterwards "Viz" on the said Third Monday in March on said Sheriffs Viz Thomas Fletcher Esqr

Sheriff of Jackson County returned said Writ as follows "To wit. I certify that I executed the within Writ by reading the within Petition and Writ in the presents and hearing of the within named defendants Anthony M Copeland and William Copeland on the 21st day of February 1846 ad in Jackson County

Sheriffs fees $2.00 Thomas Pitcher Sheriff

And afterwards to Wit. At a Term of the Circuit Court begun and held at the Court House in the Town of Independence for the County of Jackson in the State of Missouri on the Sixth Monday of March AD 1846. Present the Honorable John F. Ryland Judge of said Court

Be it Remembered that on the Second day of said Term being the 17th Day of said Month. Among other Proceedings the following were had and made "to wit.

"Benjamin F. Loan
vs
Anthony M Copeland and
William Copeland
} Petition in Debt.

Now at this day come the parties aforesaid by their attorneys and said Defendants file Pleas of Fraud. Failure of Consideration Want of Consideration and Nil debet.

And afterwards to wit on third day of said Term being the 18th day of March 1846. Among other the following Proceedings is Were had and made "to wit.

"Benjamin F. Loan
vs
Anthony M Copeland and
William Copeland
} Petition in Debt.

Now at this day

come the parties aforesaid by their attorneys and said Plaintiff files Demurrer to Defendants Pleas of Fraud Failure of Consideration and Want of Consideration

And afterwards to wit on the fifth day of said Term being the 20th day of March 1846 among other the following proceedings were had and made to wit.

"Benjamine F. Coon
vs
Anthony M Copeland and William Copeland } Petition in Debt

Now at this day come the parties aforesaid by their attorneys. and the Demurrer heretofore filed is taken up and argued. and thereupon by leave of Court Plaintiff withdraws said Demurrer and on Motion leave is given defendants to amend their Pleas

And afterwards to wit on the sixth day of said Term being the 21st day of March 1846 among other the following proceedings were had and made "to wit"

"Benjamine F. Coon
vs
Anthony M Copeland and William Copeland } Petition in Debt

Now at this day come the parties aforesaid by their attorneys and said Defendants file their Amended Pleas of Fraud Failure of Consideration Want of Consideration and Nil debet and thereupon said Plaintiff files his Demurrer to said three first Pleas which said Demurrer being argued and the Court being sufficiently advised and fully understanding the law arising therein. It

is considered by the Court that the matters and things contained in the said defendants Pleas of Fraud, failure of consideration and want of consideration in manner and form as the same are above pleaded and setforth in said Pleas are not sufficient in Law to bar or preclude the said Plaintiff from having and maintaining his action aforesaid and that the said Plaintiff is not bound by the Law of the Land to answer the same, whereupon by leave of Court said Defendants withdraw their plea of Nil debit, and say that they will not further deny the action of the Plaintiff aforesaid as he hath above complained. Wherefore said Plaintiff ought to recover against said defendants his Debt and damages on occasion of the premises and it manifestly appearing to the Court here that the debt in Plaintiffs said Petition mentioned is liquidated and reduced to writing the Court doth find that said Defendants are indebted to said Plaintiff in the sum of Four Hundred Dollars the debt in said Petition mentioned and in the sum of Nine Dollars and fifty five cents damages for the detention of the debt aforesaid

Therefore it is considered by the Court here that said Plaintiff recover against said Defendants the debt aforesaid and also the damages aforesaid in manner aforesaid by the Court so found and assessed together with his costs and charges in this behalf laid out

and expended and that he have thereof Execution.

Which said Pleas are in the words and figures following "To wit"

"Anthony M & Wm L Copeland
ads
Benjamin F Louis

Amended Pleas Petition in Debt March Term 1846

The said Defendants by Rees and Heard their attorney say that the said Plaintiff ought not to have a maintain his aforesaid action against them because they say that on the Third day of October A D 1844 at the County of Jackson aforesaid. the said note in the Petition mentioned was obtained from them by the said Plaintiff (and others in collusion with him) by fraud Covin and misrepresentation that is to say by the said Plaintiff and others in collusion with him, falsely and fraudulently representing to the said defendants that the said Plaintiff was then and there possessed by a good and unincumbered fee simple title of a certain Town Lot situated in the old Town of Independence in the County aforesaid which said Town Lot is described as a part of Lot number fifty Eight in the old Town of Independence and bounded as follows viz." Beginning at the North West corner of said Lot No fifty Eight on Rock Street and running East with said Street fifty three feet thence South to Lexington Street thence West with said Street fifty Three feet to the South West corner of said Lot thence North to the beginning" and the defendants aver that the said Plaintiff was not on the day and year aforesaid possessed of a good and unincumbered fee simple title to said lot or to any part thereof nor hath the said Plaintiff acquired any title to said Lot

Since the said third day of October 1844. nor hath he now any right or title to said Lot. And the defendants aver that the Plaintiff Well Knew at the time aforesaid "To Wit. on the Third day of October 1844 at the County aforesaid that he was not possessed of a good and unincumbered fee simple title to said Lot or to any part thereof. And the Defendants aver that they in Confidence of the said Misrepresentations of the said Plaintiff purchased the said Town Lot of him and then and there paid the said Plaintiff one Hundred Dollars in money and Executed to him the said Note in the Petition mentioned and the defendants aver that the said note was given to the Plaintiff by them to secure the payment of the remaining part of the price agreed by them to be paid for said Lot for said Lot and for no other Consideration to Wit at the County aforesaid Wherefore they say that the said note in the said Petition mentioned was and is void in Law all of Which they are ready to verify

Ress & Heard
Attn for Defts.

And for a further plea in this behalf the defendants say actio non for they say that heretofore to Wit on the day and year aforesaid at the County aforesaid the said Plaintiff sold to the Defendants a certain Town lot in the Town of Independence Which said Town lot is described as a part of Lot Number fifty Eight in the old Town of Independence in the County aforesaid and is bounded as follows viz. "Beginning at the North West Corner of said Lot on Rock Street and running East With said Street fifty Three feet thence South to Lexington Street. thence West with said Street fifty Three

feet to the South West corner of said Lot, thence North to the place of beginning. That at the time of selling said Lot by the said Plaintiff to the Defendants he the said Plaintiff represented to the said defendants that he was possessed of said lot by a clear and unincumbered fee simple title to said Lot and that he had good right to sell and convey the said Lot to said Defendants. that confiding in the representations of the said Plaintiff and believing that he had a good fee simple title to said Lot and that the same was unincumbered. they the said defendants did then and there purchase the said Lot of the said Plaintiff and then and there agree to pay said Plaintiff one hundred Dollars in money and to give him the said note in the Petition mentioned for said Lot. And the defendants aver that the said note in the Petition mentioned was given by them to the Plaintiff as a part of the price agreed by them to be paid to him for said lot and for no other consideration. and the defendants aver. that the Plaintiff had not at the time of selling the said lot any right or title to the same or to any part thereof nor has he since acquired any title to it or to any part of it Wherefore they say that the consideration for which the said note was given has totally failed all of which they are ready to verify

Rees & Moore
Attys for Deft.

3 And for a further Plea in this behalf the said Defendants say actio non for they say that on the day and year aforesaid at the County aforesaid the said Plaintiff sold to the Defendants a

Certain Town Lot in the Town of Independence in said County which said Lot is described as a part of Lot Number Fifty Eight in said Town and is described by its boundary as follows viz "Beginning at the North West Corner of said Lot number Fifty Eight on Rock Street and running East with said Street Fifty Three feet thence South to Lexington Street thence West with said Street Fifty Three feet to the South West Corner of said Lot (Fifty Eight) thence North to the Beginning" that at the time of selling said Lot by the Plaintiff to the defendants to wit on the day and year aforesaid at the County aforesaid the Plaintiff represented to the defendants that he was then and there possessed of said Lot by a good and unencumbered fee simple title and that he had good right to sell and convey the same, that confiding in the representations of the said Plaintiff and believing that he had such title to said Lot and such right to sell and convey said Lot they the said defendants did then and there purchase said Lot of said Plaintiff at and for the price of Five Hundred Dollars. One hundred dollars of which was paid to said Plaintiff by said defendants at the time of selling said Lot and the said Note in the said Petition mentioned was then and there given by said defendants to said Plaintiff to secure the balance of the price agreed by them to be paid for said Lot and for no other consideration. And the defendants aver that the said Plaintiff had not at the time of selling said Lot any title to the same or to any part thereof nor has he since that time acquired any title to said Lot or to any part thereof,

But that the fee simple title to said Lot was then and still is in the County of Jackson in the State of Missouri all of which they are ready to verify

Rees & Hemel
Attys for Defts

And for a further Plea in this behalf the defendants say Actio non. for they say that on the day and year aforesaid at the County aforesaid the said Plaintiff sold to the defendants a certain Town lot in the Town of Independence in said County which said lot is described as a part of Lot number fifty Eight in said Town & and its boundary is as follows viz "Beginning at the North West Corner of said Lot No fifty Eight on Rock Street and running East fifty Three feet. thence South to Lexington Street. thence West with said Street fifty Three feet to the South West Corner of said Lot (No fifty Eight) thence North to the begining." That at the time of selling said Lot by the Plaintiff to the Defendants "to wit" on the day and year aforesaid at the County aforesaid the said Plaintiff represented to the defendants that he was then possessed of said Lot by a good and unincumbered fee simple title and that he had good right to sell and convey the same. that confiding in the representations of the said Plaintiff and believing that he had such title to said Lot and such right to sell and convey the same to them they the said defendants did then and there purchase said Lot of said Plaintiff at and for the price of Five Hundred dollars, one Hundred Dollars of which was then paid to said Plaintiff by said defendants. and the said note in the Petition

mentioned was then and there given by said defendants to said Plaintiff to secure the balance of the price agreed to be paid by them for said Lot and for no other consideration. and the defendants aver that the said Plaintiff had not at the time of selling said Lot any title to the same or to any part thereof nor has he since that time acquired any title to said Lot or to any part thereof, but that the County of Jackson then held and still continues to hold the fee simple title to the same. all of which they are ready to verify

Rees & Hemd
Attys for Defts

Which said Demurrer to said Pleas is in the words and figures following "To wit"

"Benjamin F Loan
vs
A M Coplin and
Wm L Coplin
} In the Jackson Circuit Court March Term 1846

And the said Plaintiff by his attorney says that the Pleas of the said defendants are not sufficient in Law

Hicks & Smart
Attys for Plff

State of Missouri
County of Jackson } ss I Saml D Lucas Clerk of the Circuit Court within and for the County aforesaid do hereby certify that the preceding Eleven Pages contain a full and

Perfect Transcript ~~Transcript~~ of all the record and Proceedings in the Case therein named Wherein Benjamine F. Loan as Plaintiff and Anthony M Copeland and William Copeland are defendants, as fully as the same now remains of Record in my office

In testimony Whereof I hereunto set my hand and affix the Seal of said Court at office in Independence this 25th Day of May A.D. 1846

Saml. D. Lucas Clerk

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~~31.~~ ~~17.~~ (16)

Benjamin F Loan

vs J. Transcript

Anthony M Copeland
&
William Copeland

Filed May 30. 1846
H. L. Boon clk

Jackson

Ben J. Loan

Independence Mo. June 1st 1846

Messrs Hicks & Smart Attys. at Law

Gentlemen

We have caused a writ of error to be sent out of the Supreme Court of the State of Missouri in the case of Benjamin F. Loan against ourselves, which was tried in the Jackson Circuit Court at the March term 1846 in which case you appear to be the attorneys of record of said Loan. Said writ of error is made returnable the first Monday in July next.

Respectfully

A. M. & Wm Copeland

Anthony W. Copeland
William Copeland
vs
Benjamin F. Swan

Notice of Inst. of Com

1st June

I certify that I executed the within notice by giving to the within named Robert G Smart & Russel Hicks each a copy of the same on the 1st day of June 1846 in Jackson County Mo

Sheriffs fees $1-00

Thomas Pitcher Sheriff of Jackson County Mo

Copeland & Copeland
vs. } Error from the Jackson
Benjamin F. Loan } Circuit Court.

The defendant in error brought an action by petition in debt on a promissory note executed by the plaintiffs in error: The plaintiffs in error filed 4 special pleas alleging in substance that the note sued on was obtained by fraud & misrepresentation in this, that the said Loan the defendant in error fraudulently represented himself to the plaintiffs in error to be the owner of a lot of ground in the town of Independence which he sold to them for the sum of $500, $100 of which was paid and that the note in suit was given for the balance. That the said defendant was not at the time of sale & is not the owner of the said lot of ground: The two last pleas allege also that the fee simple of the lots is in the County of Jackson: There was a demurrer to these pleas and judgment given on the demurrer for the defendant in error: afterwards the plea of nil debet which had been filed was withdrawn & judgment entered for the defendant in error:

It may be conceded that independently of the late statute, in an action on a promissory note a total failure of consideration might be set up as a defence in order to defeat a recovery. Cook vs. Greenleaf 2 Wheat. 13. Foisbee vs Hoffnagle 11 John 5. O. In both of these cases the consideration of the notes sued on was the conveyance of land, and from the second of them it appears that the fact that

that the plaintiff had no title to the land he had sold was established by the defendants: A person sells another a tract of land & puts him in possession of it & when he asks for his purchase money he is told that he has no title. The law allows this. But if it is allowed, is there any hardship in requiring him who asserts that the vendor has no title to show it by his plea. The purchaser cannot know that the vendor has no title unless he is informed as to the state of it and it seems to be nothing but reasonable that after he has so far confided in the vendor as to buy his land on his representations & enter into possession of it, that if he by his plea objects his want of title he should set forth the facts & circumstances which shew that the vendor has no title. Courts of law in entertaining this defence exercise a power vested in the courts of equity & the practice in them I believe is never to allow an injunction against the recovery of the purchase money on the bare assertion that the vendor has no title to the land conveyed. It must be shown how it is that he has no title: as parties title may be affected in various ways, by frauds & forgeries unknown to the vendor & to enable him to defend it, it should be shown wherein it is defective: There is no injustice in this: a contrary course might work injustice to vendors: The bare assertion in the two last pleas that the fee simple in the lot for which the note sued was given is in the County of Jackson does not obviate the objection that exists to these pleas.

The other judges concurring the judgment is affirmed

M. Scott

cpo 14

Copeland
vs
Loan

Opinion

Affirmed

Filed Sept 18. 1846
H. L Boon clk

Anthony M. Copeland & William Copeland Plaintiffs in Error	In the Supreme Court July Term 1846.
vs	
Benjamin F. Lorn Defendant in Error	On Error from Jackson Circuit Court.

The defendant in Error brought Suit in the Jackson Circuit Court against the plaintiffs in Error on a note executed by them to defendant for $400. The note is as follows:

"$400. On or before the 25th day of December 1845 we promise to pay to the order of Benjamin F. Lorn Four hundred Dollars, with interest at the rate of ten per cent per annum from date until paid, for value received this 3d October 1844.

A. M. Copeland
Wm Copeland"

The plaintiffs in Error plea four Special pleas. The defendant in Error demurred generally to these pleas & judgment was rendered on the demurrer in his favor. On this judgment the plaintiffs in Error sued out their Writ of Error

The 1st plea alleges that the note sued on was obtained by fraud Covin & misrepresentation in this that said Lorn fraudulently represented himself to the Copelands as the owner of a certain lot of ground in the town of Independence which he sold to the Copelands for the sum of $500. $100 of which was paid in Cash & the note in Suit was given for the remainder. That said Lorn had not at the time of said Sale nor had he since any title whatever to said lot.

The second plea avers that the said Lawson representing himself to be the owner of said lot sold the same to said Copelands for $800 for part of which the note was given, and that he had not at the time of said sale, nor has he since acquired any title to said lot & that therefore the consideration for which said note was given utterly failed.

The third ~~plea~~ & fourth pleas same in substance only stating that the title to the lot was & is in the County of Jackson.

Leonard & Baty
for Plaintiffs in Error

Points & authorities

1. The pleas contain a good defence to the action, and the demurrer was therefore improperly sustained. The consideration of a note may be always enquired into in a suit on the note between the original parties.

Mills v. Bannister 8 Cowen 31. Pearson v. Pearson 7. I. R. 26

Schoonmaker v. Roosa. 17. I. R. 303.

Rann v. Hughes 7. Term R. 350. note.

Slade v. Halsted. 7 Cowen 322. See also R. S. 1845. title Practice. 832. Sects 19-20-21.

2. The facts stated in the pleas show a total failure of consideration. A note given for the purchase money of land to which the vendor had no title is without consideration. ~~[illegible]~~

Fisher v. Hoffnagle 11. I. R. 50.

Jones v. Shaver 6. Mo. R. 642.

In the Supreme Court
July Term 1876

Anthony M. Copeland
&
William Copeland
vs
Benjamin F. Loan

Statement of Case
&
Points & Authorities

By Leonard Day
Atty. for Plaintiffs
in Error

Loen
ats
Copeland

Error to Jackson Co. Ct.

This was a suit by Petition in debt upon a note given by the plfs in error to defl. in error. Pfs in error filed several pleas all of which were demurred to except the plea of nil debit - that plea was withdrawn and the demurrers to the other pleas were sustained - The first of the pleas demurred to is a special plea of fraud - and the others are pleas of failure of consideration -

It is insisted for defl in error 1 that the first plea is defective - the fraud set forth not being fraud in procuring the note, but merely fraudulent representations of the consideration of the note -

2. The pleas alleging a failure of consideration are defective in not setting out the contract between the parties for the sale of the land - It should appear whether the contract was reduced to writing - It is submitted that where the vendor has given to the vendee a title bond, or covenanted to make a deed, the vendee must rely upon his covenant, unless he shew by his plea that the vendor is insolvent, or other cause sufficient to warrant this defence

a Court of law has no power to compel the vendee to surrender his covenant and thus place the parties in their original situation by rescinding the contract, and hence will not enable the vendee to avoid the payment of the purchase money & still hold the vendor bound to make a title—

Bruffey vs Brickey 5 M.R. 400—.

Stringfellow

for deft in Error—

Anthony N. Copeland
& William Copeland
vs
Benjamin F. Loan

In the Supreme Court
July Term 1856.

And the said Plaintiffs in Error come & for cause of error ~~assign~~ say that in the record & proceedings aforesaid there is manifest error in this: that it appears from the record aforesaid that judgment was rendered by said Circuit Court ~~in~~ on the said demurrer in favor of the said Plaintiff below, when by the law of the land said judgment should have been rendered in favor of the defendants below.

And in this there is also manifest error the said Circuit Court ~~refused~~ to sustain the demurrer to said plea of said defendants below, when said Court should have overruled said demurrer.

For these and other errors in said record appearing the said Plaintiffs in Error pray that said judgment may be reversed & set aside & for naught held.

Leonard & Bay
Attorneys for Plaintiffs
in Error.

Anthony N. Copeland
& William Copeland
vs
Benjamin F. Lowe

Assignment of
Errors