

Now admitting that the evidence did not show a title in the Wadleighs to the whole close, still, if it proved that the place where the boards lay was the land of the Wadleighs, it agreed, so far as it went, with the allegations legally essential to sustain the defence, and what was alleged, and not proved, was not essential to the defence, nor did it limit or describe that which was essential, and it was sufficient to sustain the defence. If the Wadleighs owned the land where the boards lay, the defendants had a right to remove them, whether the Wadleighs owned the rest of the close or not. It therefore seems to us that the direction which was given to the jury was the only correct direction which could have been given under the circumstances.

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*Judgment on the verdict.*

### J. C. PLUMER *versus* SAMUEL DRAKE.

In assumpsit upon a note by the endorsee, against the maker, the defendant pleaded usury, averred that the endorsee was in full life and offered to verify his plea by his own oath. It was held that the plea was sufficient under the statute.

It is a good answer to such a plea that the endorser is dead, and this may be verified by the oath of the plaintiff.

ASSUMPSIT upon a promissory note brought by the endorsee against the maker.

The defendant alleged in his plea that the payee of the note was still in full life, and that by a corrupt agreement made between the defendant and the payee, there was unlawfully and corruptly reserved in the note \$50,25 more than lawful interest; and he offered to verify his plea by his oath.

*Osgood*, for the plaintiff, objected, that the averment

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of the life of the payee could not be proved by the oath of the defendant. 6 Mass. Rep. 193.

*Mason, and Lawrence, for the defendant.*

*By the court.* It is perhaps to be regretted, that a plea of usury to be supported by the oath of the party was ever admitted in this state, in a suit brought by the endorsee of a note. But such a practice has been too long established to be changed by the court. And while this practice continues, it will follow, of course, that the averment of the life of the payee, which is essential to a good plea in such a case, may be proved by the oath of the party.

It is, however, a good replication to such a plea, that the payee is dead, and such a replication may be verified by the oath of the plaintiff.

#### BRACKETT WEEKS *versus* DANIEL PEARSON.

A plaintiff recovered a judgment in this state. He then brought an action of debt upon that judgment in the state of New-York, and had judgment there. After this he brought an action of debt upon the first judgment here, to which the defendant pleaded in bar the judgment rendered in New-York—it was held that the plea was no answer to the action.

DEBT upon a judgment rendered in the court of common pleas in this county, January term, 1815.

The defendant pleaded in bar, that at a certain justice court held by Thomas Palmer, Justice of the peace, in and for the county of Saratoga, and State of New-York, at his, the said justice's office, in the village of Ballston Spa, in said county of Saratoga, on the 4th September, 1819, the said Brackett Weeks impleaded the said Daniel Pearson, and declared against him the said Daniel on the very same identical judgment in the plaintiff's declaration mentioned, for a cause of action arising within