

No. 14398

Supreme Court of Illinois

Zepps

vs.

Bank of Northern Illinois

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 241 •

Jepp
75

Barnes
1862
Wells

14038

1852
Refused

1
United States of America 3 ps.
State of Illinois Saline County 3

Plead before the Honorable George
Manierre Judge of the Seventh Judicial Circuit, of the
State of Illinois. At a Circuit Court for the County of Saline
in said Circuit began and held at Hannegaw, in said
County on the Twenty Third day of September, in the year
of our Lord One Thousand Eight Hundred, and Sixty
One and of the Independence of the United States the
Eighty Sixth. Present the Honorable George Manierre
Judge aforesaid. Carlos Haven State Attorney, and
Lehabod Simmons Sheriff
Attest J. M. Smudde Clerk.

Samuel Zapp

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vs

Assumpsit

The Court of Northern Illinois

Be it remembered that heretofore to wit on the Thirtieth day
of August, A.D. 1861 the same day being one of the days in
of the Circuit Court in and for the County of Saline and State of Illinois
vacation, between the June and September terms of said Court
for the year last aforesaid, a Praecipe was filed in the Office
of the Clerk of said Court, ^{in the above entitled case} which said Praecipe is in the
words and figures following to wit.

The Circuit Court for the County of Saline

Samuel Zapp

vs

Assumpsit

The Court of Northern Illinois

Will the Clerk please issue a summons
on the part of the above named plaintiff and against the
above named Defendant, in an action of assumpsit, damages
\$500. + oblige.

H. S. Searls
Atty for Pft

" day of August. A.D. 1861 he presented the said Certificate
 " of Deposit so endorsed to the said defendant. at its Banking
 " House in Nauvoo in said County at the business counter of
 " said defendant. during the usual business hours of that day
 " for doing Banking business at the said Bank of Northern Illinois
 " and then and there demanded of said Bank, the payment of
 " said Certificate of Deposit in currency according to the
 " terms tenor and effect of said Certificate & then & there
 " offered to return this certificate to said Bank upon payment
 " thereof to the plaintiff, at which said last mentioned
 " time & place said defendant, wholly refused, to pay said
 " certificate of deposit by means whereof and by force
 " of the Statute in such case made and provided the
 " said Defendant became liable to pay said Plaintiff said
 " sum of money mentioned in said Certificate of Deposit and
 " being so liable in consideration ^{thereof} then and there undertook
 " & promised to pay the same to said plaintiff according to the
 " tenor ^{and} effect, true intent & meaning of the said Certificate of
 " Deposit, and of the endorsement aforesaid to wit at the place
 " aforesaid. yet the defendant although often requested &c
 " hath not yet paid said sum of money or any part thereof
 " to the plaintiff but so to do hath hitherto wholly refused
 " & still does refuse to the damages of the Plaintiff of Two
 " Hundred Dollars and therefore he brings suit &c.

O. S. Searls

Atty for Plffs

" To the above named defendant, you are hereby notified
 " that the following is a copy of the said Certificate of Deposit
 " upon which the plaintiff will rely for recovery in this case
 " to wit.

" \$384.

Cash of Northern Illinois
 Nauvoo April 15th 1861

" Joshua Lewis has deposited in this Bank Three Hundred Eighty Four
 " Dollars payable to the order of himself in currency on return of this certificate
 " No. 6927
 " Endorsed: Pay Samuel Bepp or order, Joshua Lewis
 " L. Bickford Cashier

And that afterwards to wit on Twenty Fifth day of September A.D. 1861 the same being one of the days of the regular September Term of said Court for the year last aforesaid proceedings were had in said Court in the above entitled cause which are entered of record in the words and figures following to wit.

" Samuel Zepf
" et al. vs
" The Bank of Northern Illinois

Assumpsit.

" Now come said parties the said
" Plaintiff by Searls his Attorney and the said defendant
" by Frazer its Attorney and thereupon on motion of said
" defendant it is ordered that the rule to plead herein be and
" the same is hereby extended until Friday morning next.

And that afterwards to wit on the Twenty Eighth day of September A.D. 1861 the same being one of the days of the regular September Term of said Court for the year last aforesaid a Plea was filed in the office of the clerks of said Court in the above entitled cause which is in the words and figures following to wit.

" State of Illinois }
" Lake County } vs Lake County Circuit Court, of September
" Lake County } Term A.D. 1861,

" Samuel Zepf
" vs
" The Bank of Northern Illinois

" The Defendant by its Attorneys
" comes and defends the wrong and injury when & and for
" a plea says that it did not undertake and promise in manner
" and form as the Plaintiff has above therop complained against
" it, and of this it puts itself upon the Country &c. - And the
" Plaintiff doth the like, by W. S. Searls his Atty.
" And for a further Plea in this behalf the Defendant says
" Actis non because it says that the said instrument in
" writing and the said supposed promise were made wholly
" and solely in consideration of a certain deposit of depreciated

- " Office nor in relation to any suit prosecuted by or against
 " the defendant. And this the defendant is ready to verify, wherefore
 " it prays Judgment, &c.
4. " And for further ^{plea} & fourth plea in this behalf the defendant
 " says Actio non because it says it has at all times been
 " ready and willing to pay to the Plaintiff the Equivalent
 " and value of said sum of Three Hundred & Eighty Four
 " Dollars of currency that is to say, the sum of Two Hundred
 " and Sixty Eight Dollars and Eighty cents in current & lawful
 " Gold coin of the United States the same being the full and fair
 " value of said amount of currency and heretofore to wit on
 " the 27th day of August A.D. 1861 at the County of Lake aforesaid
 " offered to pay and tendered to the Plaintiff said last mentioned
 " sum in lawful money of the United States to receive which
 " of the defendant the Plaintiff then and there wholly refused
 " and this the defendant is ready to verify, wherefore it prays
 " Judgment.
5. " And for further & fifth Plea in this behalf the defendant
 " says Actio non because it says that the sole and only considera-
 " tion for the said instrument of writing and said
 " supposed promise and undertaking was a certain deposit
 " of Bank Bills made with the defendant as a Bank of Deposits
 " doing a Banking business at Haneyan in said State, by the
 " said Lewis. And the defendant avers that said deposits so
 " made as aforesaid, of Bank Bills consisted in part of circulating
 " Bank notes of Banks not of the State of Illinois aforesaid
 " and not located and doing business in said State of
 " Illinois and not countersigned in the said office of the
 " Auditor of Public Accounts of the State of Illinois aforesaid
 " and not Specie paying Banks and this it is ready to verify
 " wherefore it prays Judgment &c.
6. " And for a further & sixth plea in this behalf the
 " Defendant says Actio non because it says that the
 " sole and only consideration for the said instrument of
 " writing and said supposed promise and undertaking was a
 " certain Deposit of Bank notes or bills made by the said
 " Lewis with the defendant as a Bank of Deposits at its

" office and place of business in Naukegan in said County
 " and State of Illinois that constituting a part of said
 " Deposit were Bank bills of denominations of less than
 " Five Dollars of Banks created by express authority of Laws
 " of the State of Wisconsin and this the defendant is ready
 " to verify. wherefore it prays Judgment &c.

" Upton and Frazer & Clarke

" Attorneys for Defendant

" And that afterwards to wit on the Second day of October
 " A.D. 1861, the same being one of the days of the regular September
 " Term of said Court for the year last aforesaid, a Demurrer to
 " 3^d Plea was filed in the office of the Clerk of said Court,
 " in the above entitled cause, which said Demurrer is in the
 " words and figures following to wit

" The Circuit Court for the County of Sauk of the September
 " Samuel Zepf Term. A.D. 1861
 " vs

" The Bank of Northern Illinois

" And the said Plaintiff as to the
 " said Plea of the said Defendant by it Thirdly answered
 " saith that the same and the matters therein contained in
 " manner and form as the same are above pleaded and set
 " forth, are not sufficient in law to bar or preclude him the
 " said Plaintiff from having or maintaining his aforesaid action
 " thereof against the said Defendant, and that he the said
 " Plaintiff is not bound by law to answer the same. And
 " this he the said Plaintiff is ready to verify, wherefore
 " by reason of the insufficiency of the said Plea, in this
 " behalf the said Plaintiff prays judgment and his
 " damages by the reason of his not performing of the said
 " several promises and undertakings in the said declaration
 " mentioned to be adjudged to him, &c.

" and the defendant joins
 " in demurrer

" W. S. Searles

" Atty for Pft

" Upton & Frazer attys

And that afterwards to wit on the Second day of October A.D. 1861 the same being one of the days of the regular September Term of said Court for the year last aforesaid, a Demurrer to 2^d, 4th, 5th & 6th Pleas was filed in the office of the clerk of said Court in the above entitled cause, which said Demurrer is in the words and figures following to wit,

" The Circuit Court for the County of Salt of
 " Samuel Zapp September Term A.D. 1861
 " vs
 " The Bank of Northern Illinois

" And the said Plaintiff as to the
 " said Pleas of the said defendant, by it secondly, fourthly
 " fifthly and sixthly above pleaded saith that the same
 " and the matter therein contained in manner and form
 " as the same are above pleaded and set forth, are not
 " sufficient in law to bar or preclude him the said Plaintiff
 " from having or maintaining his aforesaid action thereof against
 " the said defendant, and that he the said plaintiff is not bound
 " by law to answer the same, and this he the said plaintiff is
 " ready to verify wherefore by reason of the insufficiency of
 " the said pleas in this behalf the said Plaintiff prays
 " Judgment, and his damages by reason of the not performing
 " of the said several promises & undertakings in the said
 " declaration, mentioned to be adjudged to him.

" And the Defendant joins in demurrer, N. S. Sears
 " (Wpton & Frazer Atty's. Atty for Plffs.)

And that afterwards to wit on the Third day of October A.D. 1861, The same being one of the days of the regular September Term of said Court for the year last aforesaid, a Seventh Plea was filed in the office of the clerk of said Court in the above entitled cause, which said plea is in the words and figures following to wit,

" Samuel Zapp In Salt County Circuit Court
 " vs of September Term A.D. 1861.
 " The Bank of Northern Illinois

" And for further & Seventh Plea, in this behalf

by leave of the Court first had and obtained the defendant
 says Act in law, because it says ^{that} it was organized and created
 solely as a corporation with Banking powers with a Capital of
 Fifty Thousand Dollars under the laws of the State of Illinois
 to wit on the Eighth day of November A.D. 1852 and not
 otherwise or thereafter and thereupon commenced at Nauvoo
 in said State of Illinois to transact a banking business
 and exercise banking powers by issuing circulating bank
 notes, duly registered and countersigned in the office of the
 Auditor of Public accounts of said State, having transferred
 and deposited with said Auditor Public Stocks of the State of
 Missouri to secure the payment and redemption of said circulating
 notes pursuant to law also by discounting notes bills and other
 evidences of debt, receiving deposits and doing such other
 acts, and things as it might lawfully do, as such Banking
 Corporation, the number of said association having
 previously made and filed and caused to be recorded
 in the office of the Recorder of said said County, and
 a copy thereof filed in the office of the Auditor and
 Secretary of State, a certificate by them duly executed
 under their hands and seals and acknowledged by
 them, setting forth the name of said association the
 place of its doing business the amount of its Capital
 Stock, the number of shares into which the same was
 divided the names and residences of its share holders
 and the number of shares held by each respectively and
 the time at which said association should commence
 to wit the 1st day of November A.D. 1852, and when it
 should terminate. And the defendant says, that
 that afterwards to wit on the 28th day of September A.D.
 1859 it filed in writing in the office of the Auditor
 of Public accounts of said State, its written certificate
 of its desire and intention to withdraw its said circulating
 notes from circulation and thereupon the defendant, commenced
 surrendering to the said Auditor of cancellation its circulating
 notes, to wit on the 24th day of October, 1859, the sum of

" One Thousand Three Hundred, and one dollars and
 " divers other sums at divers times thereafter prior to the
 " first day of April A.D. 1861, and from time to time,
 " received from said Auditor like amounts of the Public
 " Stocks as aforesaid transferred and deposited with
 " said Auditor And the Defendant avers that the said
 " instrument of writing and the said supposed promise
 " were made long after the said 23^d day of September
 " A.D. 1859, and after the said first day of April A.D. 1861
 " solely in consideration of a certain deposit of Bank
 " notes, not of the defendant, made by said Joshua Lewis,
 " with the defendant, after said last numbered day to wit
 " on the 10th day of April A.D. 1861, and the defendant avers
 " that neither said instrument of writing or said
 " supposed promise, or said Deposit was made or
 " done in winding up the concerns of the Defendant, nor in
 " collecting debts due to it nor in paying debts due from
 " it or contracted by it prior to said 23^d day of September
 " A.D. 1859, nor in relation to any suit prosecuting by or
 " against the defendant, and this the defendant is ready
 " to verify, wherefore it prays Judgment &c.

Dipton and Frazer Clerks.

And that afterward to wit on the third day of October A.D. 1861
 the same being one of the days of the regular September Term of
 said court for the year last aforesaid, a Plea to 1st Plea
 and Plea to 2nd Plea was filed in the office of the Clerk
 of said court in the above entitled cause which is in
 the words and figures following to wit,

" The Circuit Court for the County of Cook of the September
 " Samuel Zepf Term A.D. 1861

" The Bank of Northern Illinois

" And the said Plaintiff as to the
 " Plea of the said Defendant by it first above pleaded
 " and whereof it hath put itself upon the country doth this
 " like

H. S. Searls

Atty for Plff

" And the said Plaintiff as to the said Plea of the said
 " Defendant by it secondly above pleaded, saith that the
 " said Plaintiff by reason of anything by the said Defendant
 " in that plea alleged ought not to be barred from having
 " and maintaining his aforesaid action thereof against
 " the said Defendant, because he saith that the said
 " instrument of writing in the said Plaintiff's declaration
 " & in said Plea mentioned & said promises therein, mention-
 " ed were not made wholly and solely in consideration
 " of a certain deposit of depreciated Bank notes of various
 " Banks of issue of the State of Illinois and Wisconsin made
 " with the defendant, by said Lewis & which the Defendant
 " then & there, promised to pay, to the order of said Lewis
 " in currency, whenever requested, to do so, by the Plaintiff
 " And said Defendant has not at all times been ready
 " & willing to pay said Certificate of Deposit in said Plea
 " mentioned in currency or in any manner, & has not offered
 " to pay the same to the Plaintiff in currency, and this the
 " said Plaintiff prays may be inquired of by the country &c.
 " And the defendant doth W. S. Searles
 " the line Upton & Frazer Dist attys Atty for Plt.

And that afterwards to wit on the Third day of October,
 A.D. 1861 the same being one of the days of the regular September
 Terms of said Court for the year last aforesaid, a replication
 to the 5th Plea was filed in the office of the Clerk of said Court
 in the above entitled cause which is in the words and figures following to wit:

" The Circuit Court of the County of State of
 " Samuel Bepp the September Term A.D. 1861
 " vs
 " The Bank of Northern Illinois

" And the said Plaintiff as to the said
 " Plea of the said Defendant by it Fifthly above pleaded
 " saith that the said Plaintiff by reason of anything
 " by the said Defendant in that Plea alleged, ought not
 " to be barred from having and maintaining his aforesaid

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" action thereof against the said defendant because
 " he saith that the sole & only consideration for the said
 " instrument of writing and said promises & undertakings
 " was not a certain deposit of Bank bills made with the
 " defendant, as a Bank of deposit doing a Banking business
 " at Nauvoo in said State. By the said Lewis and said
 " Deposit in said Plea mentioned did not consist in
 " part of circulating Bank notes of Banks not of the State
 " of Illinois and not located & doing business in said
 " State of Illinois and not countersigned in the office
 " the Auditor of Public accounts of the State of Illinois
 " and not Specie paying Banks and this the said Plaintiff
 " prays may be inquired of by the Country, & the defend doth the
 " like.

" N. S. Sears, Atty for P^l

And that afterwards to wit on the Third day of October
 A. D. 1861 The said being one of the days of the regular September
 Term of said Court for the year last aforesaid a Replication
 to the 6th Plea was filed in the office of the Clerk of said Court
 which said Replication is in the words and figures following to wit
 " The Circuit Court for the County of Sand of the
 " Samuel Zepp September Term P. D. 1861
 " vs
 " The Bank of Northern Illinois

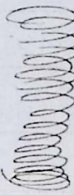
And the said Plaintiff as to
 " the said Plea of the said Defendant by it shortly above
 " pleaded, saith that the said Plaintiff by reason of
 " anything by the said defendant in that Plea alleged, ought
 " not to be barred from having & maintaining his aforesaid
 " action thereof against the said defendant because he
 " saith that the sole & only consideration for the said instrument
 " of writing and said promises & undertakings was not a certain
 " deposit of Bank notes or Bills made by the said Lewis with
 " the defendant, as a Bank of Deposit at its office and place
 " of business in Nauvoo & State, & that no part of said deposit
 " was Bank bills of denominations of less than Five Dollars of
 " Banks created by express authority of Laws of the State of

" Misconceived and this the said Plaintiff prays, may
 " be inquired of by the Country &c.
 " And the defendant doth the like }
 " Apton & Frazer, Depts Atty } W. S. Searle
 " } Atty for Plff

And that afterwards to wit on the Fourth day of October
 A.D. 1861 the same being one of the days of the regular September
 Term of said Court for the year last aforesaid, as Demurrer to
 the 7th plea was filed in the office of the Clerk of said Court
 in the above entitled cause, which said Demurrer is in the
 words and figures following to wit,

" The Circuit Court for the County of Lake of the
 " September Term A.D. 1861

" Samuel Zepf.



" The Cause of Northern Illinois

" And the said Plaintiff as to the
 " said Plea, of the said Defendants by it severally above
 " pleaded, saith that the same and the matters therein
 " contained in manner and form as the same are above
 " pleaded and set forth, are not sufficient in law to bar
 " or preclude him the said Plaintiff from having or
 " maintaining his aforesaid action thereof against the
 " said defendants and that he the said Plaintiff is not
 " bound by law to answer the same And this he the said
 " Plaintiff is ready to verify wherefore by reason of the
 " insufficiency of the said Plea in this behalf the said
 " Plaintiff prays Judgment and his Damages by reason of
 " the not performing of the said several promises &
 " undertakings in the said declaration mentioned to be adjudged
 " to him &c

W. S. Searle

Atty for Plff

" and the defendant joins in demurrer
 " Apton & Frazer Atty.

And that afterwards to wit on the Fifth day of October A.D. 1861 The same day being one of the days of the regular September Term of said Court for the year last aforesaid proceedings were had in said Court in the above entitled cause which are entered of record in the words and figures following to wit

" Samuel Zepf
" vs
"est. The Bank of Northern Illinois Assumpsit

" Now come said parties, the said
" Plaintiff by Searls his Attorney, and the said Defendant by
" Smeizer its Attorney, and issue being joined upon the said
" Plaintiff demurrer to the third fourth and seventh Pleas of
" the said defendant herein and after arguments of counsel
" the court being fully advised in the premises it is ordered
" that the said Demurrer be and the same is hereby sustained
" at the costs of the said Defendant to which decision of the
" Court the said Defendant excepts and states that he will
" stand by his said third fourth and Seventh Pleas thereupon
" it is so ordered that the said Plaintiff have and recover
" of said defendant his costs and charges in and about his said
" demurrer expended and that he have execution therefor.

And that afterwards to wit on the Fifth day of October A.D. 1861 the same being one of the days of the regular September Term of said Court for the year last aforesaid. Proceedings were had in said Court in the above entitled cause which are entered of record in the words and figures following to wit.

" Samuel Zepf
" vs
"est. The Bank of Northern Illinois Assumpsit

" Now come said parties by their respective
" Attorneys, and issue being joined herein this cause by agreement
" of parties is submitted to the Court for trial without the intervention
" of a jury and the Court having heard the evidence and
" arguments of counsel and being fully advised in the premises

\$380.00

" finds the issue for the Plaintiff and assessed his damages
 " at the sum of Three Hundred and Eighty Dollars and
 " thereupon the said defendant enters his motion for a new
 " trial, and the court being fully advised as to the said motion
 " overrules the same to which decision of the court the said
 " defendant excepts. It is therefore ordered that the said
 " Plaintiff have and recover of the said Defendant the
 " said sum of Three Hundred and Eighty Dollars for his
 " damages so as aforesaid assessed together with his
 " costs and charges by him in this behalf expended and
 " that he have execution therefor. And thereupon the said
 " Defendant prays an appeal herein to the Supreme Court
 " of the State of Illinois which is granted on condition that
 " the said defendant enter into bond executed according
 " to law in the penal sum of Seven Hundred and Sixty
 " Dollars with sureties by agreement of parties to be approved
 " by the clerk of this court, with notice thereof to said
 " Plaintiff and file the same with said clerk in
 " Thirty days from this date, and it is further ordered
 " that said Defendant have Thirty ^{days} in which to file his
 " bill of exceptions herein.

And that afterwards to wit on the Fourth day of November
 A.D. 1861 the same day being one of the days on vacation
 of the Circuit Court of Said County Illinois between the September
 and February Terms of said Court for the year last aforesaid a
 bill of Exceptions was filed in the office of the Clerk of said Court
 in the above entitled cause which said bill is in the words and
 figures following to wit.

State of Illinois } Lake County Circuit Court. of September
 County of Lake } Term, 1861

Samuel Zepf

v

Assumpsit

The Bank of Northern Illinois

Be it remembered that on the trial of
 said cause at said term of said court, the plaintiff to maintain
 the issue on his part, introduced the following evidence

Francis C. Clarke sworn testifies thus I have seen this
 certificate of deposits before I presented it at the counter of
 the Bank (defendant) on the 27th day of August last, for payment
 at the plaintiffs request, with instructions to receive currency
 The clerk in charge stated to me that they would pay
 70 cents on the dollar in coin upon it refused to pay currency
 at the time making the offer stated. C. F. Pickford was
 Cashier at the date of the certificate & his signature thereto is
 genuine (Defendant here admitted the genuineness of the
 signature on the back of the certificate)

Witness cross examined says - When the clerk offered 70
 cents on the dollar in coin I turned away from the counter
 and left the office I did not give him an opportunity to
 pay the amount, I was not authorized to receive the amount which
 he offered, and if he had offered that amount in coin, I should not have
 accepted it I know that at the time they kept in the Bank coin
 enough to settle matters which the Bank compromised,

(Plaintiff here admitted that the Bank had on hand
 the amount offered to witness on the day certificate was presented)
 The certificate was then received in evidence and acted upon
 by the Judge as in evidence though a formal tender was not
 made of it nor was any objection made by the defendant to its
 being so acted upon the ground that a formal tender had been omitted by
 the Plaintiff.

\$387 Bank of Northern Illinois

(Certificate of Deposits)

Payable April 10th 1861

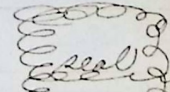
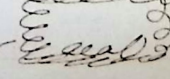
Isaac Seris has deposited in this Bank Three Hundred & Eighty

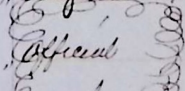
"Five # Dollars payable to the order of himself in currency on
"return of this certificate
"No 6927 C. D. Dickford Cashier"

"And the defendant to maintain the issue on its part,
"introduced the following evidence. The Plaintiff admitted
"in open Court ^{that} the defendant was organized as a Banking
"corporation in 1852 under the general Banking Law of this
"State. A paper in the words & figures following was
"offered in evidence to the admission of which the plaintiff
"then and objected 1st That the Officers of the Bank had
"no power to make it 2. That the certified copy was
"not evidence, 3. That it was not relevant and the
"objections was sustained and the evidence excluded, to
"which decision the defendant then there excepted

Banks of Northern Illinois

"Certificate of intention to go into liquidation
"The David S. Smith President and Charles D. Dickford
"Cashier of the Bank of Northern Illinois located at Naukegan
"Illinois do hereby certify that it is the desire and intention
"of said Bank to withdraw its notes from circulation in accordance
"with the provisions of an Act entitled "An Act to amend an act to
"establish a general system of Banking and an act supplementary
"thereto approved July 10. 1855.

"Done by order of the Stockholders of said
"Bank This 21st day of September 1859,
"Witness our hands and seals D. S. Smith Pres. 
"C. D. Dickford Cashier 

"Filed September 23, 1859 Jesse R. Dubois Auditor
"I hereby certify that the foregoing is a full and correct copy of the
"original now on file in my office Given under my hand and
"Official  official seal at my office at Springfield Illinois the
"26th day of Sept. 1861

Jesse R. Dubois Auditor R.D.

"Charles D. Dickford sworn testified thus I am not a
"stockholder in the Bank - have not been for 5 or 6 years

am in no way shape interested in its assets, &
 have been Cashier of the Bank since 1856,
 what was the average market value of the currency in
 Nauvoo on the 10th of April 1861, measured by a Specie Standard
 (objected to by Piff and answer taken subject Chertie.) The
 market value of currency in Nauvoo on the 10th of April
 was 90 to 92 cents on the dollar, that is the difference between
 currency & coin then was 8 to 10 per cent. What was the
 market value of currency in Nauvoo at the date
 of plaintiff's demand, as measured by a Specie Standard
 of value (this was objected to by Piff, & answer received subject Chertie)
 The average market value of the different grades of the
 same currency on the 27th of August, was 65 cents on
 the dollar I mean Illinois currency bills of Illinois Banks
 currency ~~was~~ on the 10th of April 1861 was not treated
 in general business as the equivalent of coin. It was at a discount
 of 8 to 10 per cent. The Bank (defendant) and all Banks at the
 West, were at that time and before in the habit when deposits
 were made in coin of so specifying it, I mean by currency
 what passed at that time in business transactions as current
 Bank notes on the 10th of April no Illinois bills were treated as the
 equivalent of specie, they were all at a discount here of 8 to 10 per
 cent. The first distinction in the value of Illinois Bank bills in
 the market, was made by the adoption of what was called the
 Rail Road list (The parties agreed in open court that this was
 between the 13th & 16th of May and that the bills then became
 the subject of barter & sale)
Witness Up to that time these bills were treated as
 currency in the ordinary course of business - were received
 as money in the payment of debts & taken by the merchants
 goods & by farmers for.
 for grain After about May 16, they ceased to circulate as
 currency. In August 1861 no Illinois bills passed at par except Northern
 Illinois, a man told me he had taken one of its bills at par, it had
 out about \$8000, to \$10,000 then. The bills of Alton, Galena,
 Kane County & McLean County were I think worth about 90
 cents. In making the average of 65 cents I take all the
 bills in the following list

	No 1	value	75 cents
"	Alton Bank		City Bank of Ottawa
"	Bank of Galena		Kane County Bank
"	" " Bloomington		McLean County Bank
"	" " Northern Illinois		
	No 2	value	75 cents
"	Bank of America		Mechanics Bank
"	" " Sparta		Ohio River "
"	Cumberland County Bank		Pittsfield "
"	E J Southam Co "		Reapers "
"	Highland "		Union "
"	Illinois River "		
	No 3	value	70 cents
"	American Bank		Wahaiwe Bank
"	Bank of Indemnity		Merchants "
"	Illinois State Security Bank		Marshall County "
"	Illinois Central "		United States Stock "
"	International "		
	No 4	value	60 cents
"	Bank of Commerce		Gultra Bank
"	" " Illinois		Olympic "
"	" " Jackson County		Patriotic "
"	Paul County Bank		Parrot "
"	Columbian "		State Stock "
"	Bagle "		
	No 5	value	50 cents
"	Bank of Elgin		Franklin Bank
"	" " Federal Union		Wankatae "
"	" " Genesee		Sarraganutt "
"	" " Metropolis		Shamuse "
"	Bull's Head Bank		Tonlin "
"	Central "		Warren County "
"	Edgar County Bank		Western Bank Illinois
"	Lake Michigan "		Wheat Growers Bank

No 6		value	45 cents
"	Agricultural Bank		Commercial Bank Palestine
"	Alexand	"	Corn Planter Bank
"	Bank of Albion		Douglas Bank
"	" " Alton		Farms Bank St. Canton
"	" " Ashland		Farmers Bank Illinois
"	" " Benton		Garden State Bank
"	" " Brooklyn		Hampden Bank
"	" " Carmi		Humboldt " "
"	" " Maysville		Kaskaskia " "
"	" " Pike County		Safayette " "
"	" " Republic		Mississippi River " "
"	" " Southern Illinois		Praine State " "
"	Canal Bank		Plumans " "
"	Commercial Bank N. Pa		Reeds " "
"	Corn Exchange		Southern Bank of Illinois
"	Continental		

No 7		value	40 cents
"	American Exchange Bank		Grand Prairie Bank
"	Bank of Aurora		Jersey County " "
"	" " Chester		Lancaster " "
"	" " Commonwealth		Merchants & Traders " "
"	" " Quincy		Morgan County " "
"	" " Raleigh		New Market " "
"	Belvidere Bank		National " "
"	Citizens		Rail Road " "
"	Farmers & Traders		Rock Island " "
"	Frontier		State Bank of Illinois
"	Grayville		Union County Bank

" The Bank (defendant) commenced retiring its circulation
 " within a few days after the certificate of its intention was filed
 " with the Auditor which was done September 23rd 1859, and retired
 " as follows Sept 24, 1859, \$304, October 24th \$997, November
 " 14 - 1200, November 22 \$639, December 21, \$1500, January
 " 5, 1860 \$2450, January 26 \$700, very few bills of Bloomington
 " were in circulation in August 1861, I don't know that there was

"Each clause of the
evidence enclosed under
these lines may refer to
Co. G, K, H, & received
subject thereto"

"much distinction between Bank bills + gold in the
purchase + sale of goods + wheat on the 10th of April 1861
I believe that wheat buyers in April + May were paying
here in currency as much for wheat as was being
paid in Buffalo + New York I speak more particularly
of Buffalo that is one of the markets to which wheat is
shipped from the west + my impression is that the usual
difference in the market price there and here is 20 to 25 cents per
bushel

"I should think there was at that time a distinction
between gold + bank bills when taken for debts. I should
have received gold in that way at a difference of 6 to
8 per cent.

"Cross examined. In April currency here consisted chiefly
of the Bills of Illinois Banks before April 1st their circulation
was \$9,000,000 to \$12,000,000. but on that day a number
of Banks were thrown out, + they ceased to circulate. On the
10th. of April the circulation was about \$6,000,000. There were
17 Illinois Banks thrown out as early as January 1. 1861 + they
then ceased to circulate as currency and on the first of April
some 30 more were thrown out, as before stated. + they then
became concurrent. The bills deposited for which certificate
was given
didn't include any of New. state what the usage of the
defendant as to the payment of depositors for deposits made in
currency on the 10th of April 1861. + whether such usage was
with all or only some of its customers (objected to by Piff + answer
taken subject thereto.) The usage of the Bank (defendant)
was to pay depositors of currency in currency bills current in
business transactions, this had been its usage from its organization
with all its customers. Cross examined he testified. I have
been banking in Illinois since Spring of 1853 as Cashier or
President. We took no Illinois Bank bills after May 20
By currency I mean Bank bills current at time of payment
in general business if previous to May 16th plaintiff had
demanded payment I should have paid him in any Bank
bills then current. Illinois Bank bills constituted the
principal part of the Bankable currency of this State

when this deposit was made and none of them were
 treated as the equivalent of specie, they were 8 to 10 percent
 discount, there was but little Ohio, Iowa or Eastern
 bills in circulation, the circulation had been thus composed
 perhaps earlier than November, 1860. There was not much
 specie in circulation there was some fluctuation from time to
 time in the value of Illinois currency as compared with
 specie varying from 2 to 10 per cent for gold or New York
 Exchange. The business of the country was carried on in
 the kind of currency composed as stated, on the 27th of
 August; Illinois Bank bills had completely disappeared
 from circulation and was replaced by Ohio Indiana Iowa
 New York & New England. This change took place in May
 These bills were at a discount of one per cent in August
 The usage of the Bank in relation to deposits with it was
 this, they were credited as so much money and used by the
 Bank in its business - The bills of each depositor were not laid
 aside & kept as special deposits.

Direct resumed: The term 'currency' was used as designating
 such Bank bills as were received by the Bank on deposit and
 paid out by it & used in general business - that currency
 was composed of Illinois Bank bills principally & in part of
 Wisconsin bills. At the time of this deposit, Ohio & Indiana
 bills were at a premium here as compared with Illinois &
 Wisconsin bills & there was little in circulation nor of Eastern or
 Iowa either at that time gold was called at a premium &
 Illinois currency was called par. Illinois Bank bills were rated
 as the standard of par & gold as compared with that was at
 a premium. Gold was not treated as par & the currency
 rated at a discount as I understand it. There was a change
 in that respect before the 27th of August last, and after
 that change gold was rated as the standard. It was a
 sudden change and occurred on the 21st of May & still
 continues. After that day gold was called par. Which before
 had been rated at a premium. In May before the 21st there
 was a large depreciation of Illinois Bank bills as compared
 with gold. Between the 16th & 20th of May gold was at a

" premium of 20 per cent. this was previous to gold becoming
 " the standard. It could not have been bought of me
 " for 30 per cent. & I presume it could not have been bought
 " elsewhere for any less Illinois bills had ceased to circulate
 " as currency after May 16th

" Plaintiff rebutting evidence

" Charles A. State sworn, testified thus In August
 " the bills of Bank of Northern Illinois and ten other Illinois
 " Banks were worth 95 to 97 cents on the dollar in coin I
 " think they were not passing as current funds they were
 " ~~not passing as current funds~~ They were taken in trade
 " at 95 cents & in some instances ^{The parties here agreed that the} at par. Bills of the banks
 " of the State of Illinois (with the exception of those named) were of
 " no greater value in August, when payment was demanded than in
 " the months of May & June preceding when they same ceased to circulate
 " as money. ~~The parties here agreed that the foregoing was all~~

" The evidence introduced in the trial of said cause; and
 " the Court having found for the Plaintiff and assessed his
 " damages at Three Hundred & Eighty Dollars the defendant
 " thereupon then and there moved for a new trial and filed its
 " written motion in that behalf in the words & figures following to wit:

" Samuel Bepp

" In the said County Circuit Court of

" September Term 1861

" vs
 " The Bank of Northern Illinois Assumpsit

" The Defendant moves for a new trial in this
 " cause for the following reasons viz.

- " 1 The finding of the court is contrary to law and the evidence
- " 2 The damages assessed by the court are excessive

" Upton & Frazer Attys.

" which motion the ^{court} then and there overruled to which opinion
 " of the court in overruling said motion the defendant at that time
 " excepted, and the defendant prays that this its bill of
 " Exceptions may be sealed by the court which is done

George Hanierre

Judge 7th Juds Cir.

Illinois

State of Illinois
Lake County

I Joseph M. Finesdell Clerk of
The Circuit Court in and for said County in the State
aforesaid do hereby certify that the foregoing Transcript
is a true copy of the records and the files in the above
entitled cause as will appear from the records in this
Office.

In Testimony whereof I have
hereunto set my hand and affixed the
seal of said County at Hankyau
This day of April A.D. 1862,
J. M. Finesdell
Clerk

J. M. Finesdell Clerk,
True Transcript & cert.
\$9.50

Supreme Court of Illinois
I had Grand decision

Bank of Northern Illinois }
vs } Error to Lake
Samuel J. P. }
} Error to Lake

The plaintiff in error says
that there is manifest error in the judgment
& proceedings of said Lake County Circuit Court in
this to wit:

- 1 Said court erred in refusing to receive in evidence said certificate of withdrawal of said Bank to withdraw its bills from circulation
- 2 Said court erred in sustaining said demurrer to said third plea
- 3 Said court erred in sustaining said demurrer to said fourth plea
- 4 Said court erred in sustaining said demurrer to said seventh plea
- 5 Said court erred in overruling said motion for a new trial

Draper Clarke & Hpton attys
left in error

State of Illinois

Supreme Court vs New Comes
the above &

petition named appellee of M. S. Sears his attorney used says that there is no error in the foregoing Record as assigned by the appeal court above and that the judgment of said Circuit Court ought not to be set aside or disturbed in the least for reason of any error above of said appellant assignee.

Dated April }
23rd 1862 }

M. S. Sears
Att. for
appellee



139 241
Bank of Northern
Illinois

Samuel Giff

Record

Filed April 23. 1862
L. L. Linn