


No. 14309

# Supreme Court of Illinois

Marine Bank of Chicago

vs.

Rushmore et al

71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 166

143.9

1862

Preced

# SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

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APRIL TERM, A. D. 1862.

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THE MARINE BANK OF CHICAGO, Appellants, }  
vs. }  
THOMAS L. RUSHMORE & OTHERS, Appellees. }

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## BRIEF AND POINTS OF APPELLEES.

The printed abstract of the Record furnished by the Appellants is incorrect, among other things, in the following particulars: it states under the head of "Defendants instructions," (p. 10, 11 and 12 of Abstract,) that the instructions numbered 1st, 2nd, 3rd, 4th, 5th, 6th, were asked by the Defendant and *refused*, while the Record shows, and the fact was, that only the instructions 1st, 2nd and 3rd, were refused, and those numbered 4th, 5th and 6th, were given by the Court. (See Record, page 27)

It also incorrectly states, (p. 4 of Abstract,) in setting forth the stipulation on the trial, that the Defendant collected the certificates in currency. The Record shows, and the fact was, that the words "in currency," were not in the stipulation. (See pages 16 and 17 of Record)

The word "depreciated" in appellant's Abstract, p. 8, should read "differed." (See Record, page 23.)

The Italics and quotations marks in the testimony of the witness Dox, as given in the Abstract, are incorrect and are not in the Record.

Record, p. 14

~~THE FACTS OF THE CASE ARE THAT~~ On the 3d of <sup>May</sup> ~~June~~, 1861, the Appellees, a firm in New York, sent by mail to the Marine Bank of Chicago, (the Appellant,) five Certificates of Deposit of F. G. Adams, Banker, amounting in the aggregate to \$945.21. The Certificates were all of the same date, and in the following form, only varying in amount.

“\$200.

BANKING OFFICE OF F. GRANGER ADAMS,  
Chicago, April 19th, 1861.

“S. W Earle has deposited in this office the sum of Two Hundred Dollars Illinois currency to the credit of himself, and subject to his order on return of this Certificate, payable in like funds.

“F. GRANGER ADAMS.”

The letter enclosing these Certificates was dated May 3d 1861, and requested the Bank to hold the amount of the Certificates when collected, till June 1st, and then remit by draft on New York, less the current rate of Exchange at that time. This letter and the Certificates were received by the Bank, and the Certificates were collected by the Bank on the 6th of May as was admitted on the trial, (see stipulation, p. 16 and 17,) and as is shown, by the following letter.

“CHICAGO MARINE AND FIRE INSURANCE CO., }  
Chicago, Illinois, May 6th, 1861. } ”

17

“Messrs. Rushmore, Cone &amp; Co., New York :

DEAR SIRS:--We are in receipt of your favor of the 3d inst. with enclosures as stated to your credit, \$945.21, remarks noted I enclose as stated below Exchange, 10 per cent. nom rate.

Yours respectfully,

H. B. DOX, Sec'y.

THOMPSON.”

It was admitted that this letter was in fact the letter of the Bank, the Appellant, and that H. B. Dox was its Cashier, and that whatever liability there was for this collection was that of the Bank. (See stipulations on pp. 16 and 17 of Record)

After this letter of May 6th, there was no communication between the parties till the 30th of the same month, (the break down of all the Illinois Banks took place on the 18th of the same month, see Dox's testimony, p. 21 of Record.) On the 30<sup>th</sup> of May, the Appellees telegraphed and wrote to the Bank to remit when Exchange should be 1 or 2 per cent., which they expected would be in a few days. On the 1st of June the Bank replied to this letter, stating that the Appellees were "mistaken with regard to the rates of Exchange," and stating that it could not be had less than "60 cents on the dollar." (See letter p. 19 of Record.)

Shortly afterwards, on the 14th of June, the appellees presented their Check to the Bank for \$945 21, the amount of the collection and the amount to their credit in the Bank as acknowledged by the Bank in the above letter of May 6th, (see Record page 17,) and demanded payment. The Bank refused to pay the check in specie or bank notes then current, but offered notes of Illinois Banks not then current, but greatly depreciated, (see Record pp 17 and 18,) which the Appellees refused to accept, and brought suit and claimed to recover \$945,21 with interest, from the 14th of June, the date of the demand, which would have amounted to \$973,56. The verdict of the Jury was for \$875,62, from which it would seem that the Jury deducted from the amount of the collection something over 10 per cent., and added interest on the remaining sum from the time of the demand.

### I

These Certificates were for "\$945 21 Illinois currency," and they were "payable in like funds" at any time the Certificates should be returned. "Currency" is the general term for the money medium, or that which circulates as and for money, in trade and business transactions. The term unqualified and unexplained, means the standard currency of the country. "Illinois currency" means the currency of Illinois. The Certificates being for currency or current funds, and being payable in "like funds," called for current money or current bank notes or par funds, and if they had been held until now would of course command such funds. There is therefore no foundation for any suggestion by the Appellant to the effect that if we had held the Certificates until we made the

demand on the Bank, we could only have got Bank notes of Illinois Banks greatly depreciated, and therefore we should not ask more of the Appellant.

✓ *Moore vs. Morris*, 20 Ill. 257.

✓ *Trowbridge vs. Seaman*, 21 Ill. 101.

✓ *Swift vs. Whitney*, 20 Ill. 144.

✓ *Judah vs. Haines*, 19 Johns 144.

✓ *Keith vs. Jones*, 9 Johns 120.

The witness Dox, the Appellant's Cashier, defines the term "currency"—current bank notes, bankable funds. (Record pp. 23 and 24)

The witness Dox does not testify to any definition of the phrase "Illinois currency," or to any local signification which these terms had, but only testifies to what at certain times Illinois currency "was composed and made up of." (Record p. 20)

Whether it be material or not, the fact is, that there is no evidence showing whether any money or bank bills were handled when this collection was made. If in the daily account between the Appellant and Adams there was a balance in favor of Adams of the amount of these Certificates, then the collection was made by cancelling that balance, (see Dox testimony, pp. 20 and 21 of Record) But the witness did not know and the Record does not show what the state of the account was between the Appellant and Adams at the time of the collection, or what, if any bills were received from Adams on the collection. (See Record pp. 21 and 22.)

When the Appellees made their demand on the 14th of June, the Appellant offered to pay "Illinois Bank notes, mostly of those Banks which on the Railroad List of Illinois Banks were rated at 60, 70 and 80 cents on the dollar, and which were not then current bank notes."

1. Not being current bank notes we were not bound to receive them, if we were bound to receive any bank notes.

2. There is no evidence that any of the bank notes offered us were the same or the same kind as those received by the bank on collecting the Certificates.

3. There is no Railroad List in evidence, and there is no evidence of the contents of any such list, and the notes may have been of the very lowest grade and most depreciated.

"Paper as for coin"

Suppose Ill. notes  
had advanced in  
value after the certificates  
were collected?

4. There is no evidence that the bank received any bank notes in making the collection.

5. If the bank did receive bank notes in making the collection, the evidence shows that instead of holding them, or the same kind for us, the bank assorted out what it regarded as the best. The witness Dox, the Cashier, says "We had an assorting Clerk who assorted out the best of the money and kept it as a reserved fund; with the remainder we paid checks and balances and claims on the bank." (See Record, p. 23.)

6. At the time we made our demand there were several par Illinois banks even, as the witness Dox testifies, the Appellant among the number. (See Record, p. 23)

## II

The Record does not show that the Bill of Exceptions contains all the evidence given in the case, and the presumption of law is, that there was evidence to justify and sustain the verdict.

## III.

The Appellant, a bank, being chargeable with the receipt of current funds on the collection of the Certificates, and having on collecting the same, given us credit for "\$945,21," the amount thereof, (see bank letter of May 6th, p. 17 of Record,) and having used the funds collected, is liable for the above amount.

*Corbit vs. The Bank of Smyrna, 2 Harrington 235.* *not here*

✓ *President and Bank of Kentucky vs. Wister, 2 Peters 318.*

✓ *Bank of Mo. vs. Benoist, 10 Mo. 519.*

✓ *Edwards vs. Morris, 1 and 2 Ohio 241.* *bank not considered*

✓ *Bank of W. S. vs. Waggoner, 9 Peters 378.*

We are bound to presume that the Appellant received specie for the notes they received on the certificates, or might have done so on presentation of the same.

✓ *Phillips vs. Blake, 1 Metcalf 156.*

*The Record states:  
Here "The testimony here  
Closes"*

## IV.

As to the claim by the Appellant that it was the Agent of the Appellees.

1st. When a bank makes a collection for a customer and holds the proceeds, which pass into the general funds of the Bank, the relation of debtor and creditor arises, and not that of principal and agent, and all risk as to the funds is that of the bank

- Waters of debtors*
- ✓ *Story on Bailments*, §. 88.
  - Edwards on Bailments*, p. 66.
  - Commercial Bank of Albany vs. Hughes*, 17 Wend 100.
  - ✓ *Smedes vs. Bank of Utica*, 20 John. 379-80.
  - ✓ *Chapman vs. White*, 2 Seldon 417.
  - ✓ *Munn vs. Burch*, 25 Ill. 35.
  - ✓ *Matter of Franklin Bank*, 1 Paige 249.
  - ✓ *U. S. Bank vs. Bank of Ga.*, 10 Wheaton 342.
  - Corbit vs. Bank of Smyrna*, 2 Harrington 235.
  - Wray vs. Tuskegee Ins. Co.*, 34 Ala. 58.
  - In matter of Stafford*, 11 Barb. 354.

2d. Granting merely for the sake of argument that the Bank may be regarded as agent. If an agent mingles the funds of his principal with his own or uses them, he becomes a debtor of his principal.

- In matter of Stafford*, 11 Barb. 354.
- Wren vs. Kirton*, 11 Vesey Jr. 382.
- ✓ *Case vs. Abeel*, 1 Paige 402.

3d. If the Bank supposed that it held particular bills or a particular kind of funds at the risk of the Appellees, they residing in New York, and ignorant of the money market here as Appellants own testimony shows, (see Record p. 19.) The Bank was in default from May 6th to June 1st, in not notifying the Appellees that "the condition of the currency was downward." (See Dox testimony, Record p. 21.)

4th. There was nothing like a special deposit in this case, and the Bank did not so regard it. The witness Dox says a special

*kept on the one hand and carried  
for the note of bank on the other*

*Story on Agency  
Sec 228 of note. Sec  
229 et seq.*

*8 Ohio St. R. 465-487*

deposit was put apart entirely at depositors risk. (See Record p. 21.)

Corbit vs. the Bank of Smyrna, 2 Har. 335.

Canal Bank of Albany vs. Hughes, 17 Wend. 94.

Foster vs. Essex Bank, 17 Mass. 479, 505-6-7.

In matter of Franklin Bank, 1 Paige 249-252.

5th. That the Bank was directed to hold the amount collected till June 1st, does not in any way affect the case, unless favorably for the Appellees.

1. That was for the advantage of the Appellant.

2. The calculation or supposition that money collected or deposited will not be called for immediately, is the basis and inducement of banking business to a great extent.

Smeedes vs. The Bank of Utica, 20 Johns. 379-80.

Same case in Error, 3 Cow. 662, 683-4.

#### V.

The common counts for money had and received and account stated were appropriate and sufficient.

Bank of Mo. vs. Benoist, 10 Mo. 519.

Pickard vs. Banks, 13 East. 20.

Heald vs. Bennett, 1 Doug. Mich. 513.

Welsh vs. Frost, 1 Manning 30.

Ehrensberger vs. Anderson, 3 Ex. 147.

Corbet vs. Bank of Smyrna, 2 Har. 235.

Bank of Kentucky vs. Wister, 2 Peters 318.

Bank of U. S. vs. Bank of Ga., 10 Wheat. 333.

Fairbanks vs. Blackington, 9 Pick. 93.

Floyd vs. Day, 3 Mass. 403.

Hemmenway vs. Bradford, 14 Mass. 121.

Vt State Bank vs. Stoddard, Brayt. W. 24.

Andrew vs. Robinson, 3 Campbell 198.

New Hope Del. Bridge vs. Perry, 11 Ill. 467.

Ainslee vs. Wilson, 7 Cow. 668.

Harrington vs. McMorris, 1 Eng. C. L. 123.

#### VI.

As to the "Plaintiff's Instructions" given.

These instructions which were quite different and much altered from those asked, if they are erroneous, contain no error which the Appellant can take advantage of, as they must have operated in favor of the Appellant.

*And upon referring to the record it will be seen that there is not such language used as imports that the defendants excepted to the giving of them - nor is there a sufficient exception preserved as to the refusal of the first three of defendants instructions (there is, see page 27 of record)*

*Gordon V. Camp  
4 Fla. 422*

## VII.

As to "Defendant's Instructions," refused.

*The first instruction* asked was erroneous, because—1st. The tender would not be "in discharge of the contract," and the tender could be of no avail without being kept good by bringing the funds tendered into Court

Conwell vs. Pumphrey, 9 Ind. 136.

De Wolf vs. Long, 2 Gil. 679.

Edward vs. Morris, 1 and 2 Ohio 241.

2d. It was also erroneous because there was no evidence in the cause to base it upon, and the funds collected, whatever they were, the evidence shows were not held, but went into the general funds of the bank and were used by the bank. The Appellees had credit only for the amount.

3d. The instruction is against the whole law of the relation between banker and customer, which is that of debtor and creditor and not that of principal and agent.

See authorities under point IV *Ante*.

4th. At most they were the agents in the act of collecting only, not in holding their own money for their own use, although Appellees had a credit for the amount with them.

*The second instruction* was erroneous because the Plaintiffs were entitled to recover under the money counts, if Illinois bank notes were received as money or treated as such.

See authorities cited under point V *Ante*.

*The third instruction* was erroneous, because—1st. It was calculated to mislead the Jury; grammatically, the words "their risk," related to the Defendant, and if so regarded, the instruction would be erroneous.

2d. It was also erroneous, because even if Plaintiffs authorized them to convert the same to their own use, of which there is no evidence, then Defendant would certainly be liable for the value at the time of conversion.

3d. The instructions numbered 4th, 5th and 6th, which were given, contain the same substance.

There is nothing in the Record which entitles the Appellant to a reversal of the judgment. The verdict was for a much less sum than the evidence would have justified.

PORTER & STEELE

Attorneys for Appellees.

Joseph E. Gray  
Of Counsel

Supreme Court,

The Marrio Baum  
of Chicago  
Appellant

vs  
Thomas L. Rushman  
Respondent  
Appellee

Appellee Respondent

Filed April 23<sup>rd</sup> 1940

L. Leland  
Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plens, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Second day of December in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the United States of America the Eighty Sixth

Present, The Honorable Abraham Wilson Chief Justice of the Superior Court of Chicago. }

Wm H Higgins  
and Grant Goodrich } Judges.

Charles H. Allen Prosecuting Attorney.

Anthony C. Kepling Sheriff of Cook County.

Attest, Howard B. Carter Clerk.

Be It Remembered, That heretofore to wit on the twenty ninth day of June in the year of Our Lord One thousand Eight Hundred and Sixty One the said Court and under the seal of said Court the People of Illinois in and to which said Court the Sheriff of Cook County had returned the words and figures following to wit,

State of Illinois  
County of Cook SS

The People of the State of Illinois to the Sheriff of said County greeting  
We command you that you summon The Marine Bank of Chicago if it shall be found in your County personally

to be and appear before the Superior Court of Chicago of  
 said Cook County On the first day of the next Term thereof  
 to be holden at the Court House in Chicago in said Cook  
 County on the first Monday of July next to ensue, unto  
 Thomas H. Jackson, John W. Cook, Read W. G. Graw,  
 William W. Harding, James W. Tupper, William H. Mason  
 & Henry Corbin as a plea of trespass on the case upon  
 promises to the damage of the said plaintiffs as is  
 said in the sum of Seventeen hundred Dollars,

And have you then and there this writ both as return  
 made thereon in what manner you shall have executed the same

Witness Myself Walter Kimball Clerk of our said  
 Court and the seal thereof at Chicago  
 given and this 29<sup>th</sup> day of June 1864  
 Walter Kimball Clerk

And has returned me the following indorsement  
 Served this writ on the within named Bank of Chicago  
 by reading and delivering a copy thereof to J. H. Stewart  
 the President of said Bank & H. B. Boy Cashier this  
 29<sup>th</sup> day of June 1864,

Done  
 Anthony C. Stepien Sheriff  
 by John A. Nelson Deputy

Merica 100  
 2 copy 100  
 Mile 20  
 1 return 20  
 \$2,30 - Paid by plff's atty.

And afterwards to wit on the second day of July  
 of the year of our Lord Eighteen hundred and sixty one  
 said plaintiffs by their attorney filed in the office  
 of the Clerk of said Court this certain declaration

Which is written words & figures following to wit,

Superior Court of Chicago

After July Term A.D. 1864

State of Illinois County of Cook ss

Thomas L. Huston

John W. Stone Benjamin G. Davis, William A. Harding,  
James W. Simpson William A. Huson George Corbin Plaintiff  
vs  
The said who at the dates & times hereinafter mentioned  
were & still are partners doing business under the name  
style & firm of Rushmore Cone Co & who bring this action  
against such partners by their State & Grant their Attorney  
Complain. of the Marine Bank of Chicago a Corporation  
under the laws of the State of Illinois Defendant in this  
suit who was summoned re of a plea of trespass on the  
Case upon promises To wit: Whereas the said  
Defendant on the 10th day of June A.D. 1864 at  
Chicago in the County of Cook aforesaid was  
indicted to the said plaintiffs in the sum of fifteen  
hundred dollars lawful money of the United States of  
America for money before that time lent and advanced  
by the said plaintiffs to the said Defendant at the  
special instance and request of the said Defendant  
and in the like sum for other money by the said  
Defendant before that time had received to the  
use of the said plaintiffs, and being so indebted  
the said Defendant in consideration thereof afterwards  
did on the same day & year & at the place aforesaid  
undertake & then & there faithfully promised the said  
plaintiffs well & truly to pay unto the said plaintiffs  
the several sums of money in this Count mentioned when  
the said Defendant should be thereunto afterwards  
requested. And whereas also the said

defendant afterwards to wit on the said day & year <sup>4</sup>  
 at the place aforesaid accounted together with the said  
 plaintiffs of & concerning divers other sums of money  
 before that time due & owing from the said defendant  
 to the said plaintiffs & then & there being in arrears  
 & unpaid, and upon such accounting the said defendant  
 then & there was found to be in arrears & indebted to the said  
 plaintiffs in the further sum of fifteen hundred dollars  
 of like lawful money as aforesaid & being so found in  
 arrears & indebted to the said plaintiffs the said  
 defendant in consideration thereof afterwards to wit  
 on the same day & year & at the place aforesaid cotted  
 at the County of Cook aforesaid undertook & then & there  
 faithfully promised the said plaintiffs well & truly  
 to pay unto the said plaintiffs the said sum of money  
 cash mentioned, when the said defendant should be  
 thereunto afterwards requested.

Nevertheless the said defendant (although often  
 requested so to do) hath not yet paid the several sums  
 of money above mentioned, or any or either of them or any  
 part thereof to the said plaintiffs the said defendant  
 hath hitherto altogether refused & still doth refuse  
 to do the damage of the said plaintiffs of fifteen hundred  
 dollars & therefore the said plaintiffs bring suit re-  
 spected thereto in and  
 Attorney for plaintiffs

Copy of account sent on \*

To Cash of Court of Claims of Ill. v. 945-21  
 To Cash of Collection by said Bank for Ill. 945-21  
 To Cash of Court of Claims of Ill. v. 945-21  
 To Cash of Court of Claims of Ill. v. 945-21  
 To Cash of Court of Claims of Ill. v. 945-21  
 To Cash of Court of Claims of Ill. v. 945-21

And afterwards to wit on the second day of July being  
 one of the days of the July term of the said Superior  
 Court of Chicago in the year of our Lord One thousand eight  
 hundred and sixty one the following proceedings to wit  
 other proceedings were made and entered of record in said  
 Court in the words and figures following to wit,

James Alushman  
 John A. Coon, Readler & Deane  
 William H. Harding, James W. Thompson  
 William Johnson and George Cortin  
 of Accountant  
 The Marine Bank of Chicago

On motion of James W. Thompson  
 the said defendants attorneys it is ordered that the date  
 to plead herein be and is hereby extended ten days  
 from this day,



French and Ashwell who being duly sworn tried and sworn to try the issues joined as aforesaid after hearing evidence arguments of Counsel and instructions of the Court retired to consider of their verdict and after hour of adjournment having arrived it is ordered upon agreement of the parties that when the jury shall have agreed upon a verdict they shall reduce the same to writing sign and seal the same, and afterwards separate and meet the Court tomorrow morning.

And afterwards to wit on the eleven<sup>th</sup> day of November in the year last aforesaid said day which being of the Term of the said Court last aforesaid the following among other proceedings were had and entered of record in said Court in the under and figures following to wit.

Howard K. Muesbauer  
Edward Conroy, Auditor of the State  
William H. Harding, Sheriff of the County  
William Johnson and George Cortin

of Springfield  
The Marine Bank of Chicago

That day again come said plaintiffs by Arthur Stiles & Son their Attorney and the said defendant by M. Cary Fuller & Thomas Hynes its Attorneys also come and the jury sworn and sworn in yesterday for the trial of said Cause also come and submit their verdict, and say that the jury find issues for the said plaintiffs and award their damages herein to the sum of eight hundred and seventy five dollars and sixty two cents.

And thereupon the said plaintiffs submit their motion herein for a new trial in said Cause.

And afterwards to wit on the twelfth day of December  
in the year aforesaid said day being still of the December  
Term of said Court the following among other proceedings were  
had and entered of record in said Court in the words and  
figures following to wit

Thomas Buckman  
John W. Coon, Auditor & Deput  
William W. Harding, James W. Simpson  
William Johnson and George Cortin  
of Applicant  
The Mercantile Bank of Chicago

This day again came said Plaintiff  
by Portet & Stubs their attorney and submitted their motion  
submitted herein on yesterday for a new trial in said cause  
and thereupon came said Defendant by M. C. Hall's  
attorney and submits its motion herein for a new trial in said cause

And afterwards to wit on the twenty sixth day of December  
in the year aforesaid said day being still of the December  
Term of said Court the following proceedings among other  
proceedings were had and entered of record in said Court  
in the words and figures following to wit,

Thomas Buckman  
John W. Coon, Auditor & Deput  
William W. Harding, James W. Simpson  
William Johnson and George Cortin  
of Applicant  
The Mercantile Bank of Chicago

This day again came said  
Plaintiff by Portet & Stubs their attorney and  
the said Defendant by M. C. Hall's attorney  
also came and their cause being on now to be heard

Upon the motion of said Defendant heretofore submitted  
herein at the present Term of the Court for a new trial  
in said Cause and Counsel being heard, and the  
Court being fully advised in the premises overruled  
the defendants said motion for a new trial, to which  
ruling of the Court said Defendant excepts and  
thereupon enters exceptions herein to the ruling of the  
Court in overruling its said motion.  
Wherefore said Plaintiffs ought to have judgement  
entered upon the verdict of the jury for their damages  
appeal.

9875-62  
Therefore it is considered that the said Plaintiffs  
do have and receive of and from the said Defendant  
their damages of eight hundred and Seventy five  
dollars and sixty two cents, in form of money found  
and assessed by the jury together with their costs  
and charges in this behalf expended thereupon  
therefor.

And thereupon the said Defendant having entered  
exceptions pray an appeal herein to the Supreme  
Court of this State from the judgement of the Court  
which is allowed upon filing bond in the sum of  
fifteen hundred dollars, with security to be  
approved by a Judge of this Court within twenty days  
and with bill of exceptions to be filed in thirty days  
from this date.

And afterwards to wit on the tenth day of January  
in the year of our Lord, One thousand eight hundred  
and sixty two was filed in the Office of the Clerk  
of said Court, the Defendants appeal bond which  
bond is in the words and figures following to wit.

All well Men by their Parents, That are the Mariner

Bank of Chicago (principal) and J Young Secured  
and Martin G. Loomis (sureties) of the County of Cook  
and State of Illinois and held and firmly bound unto  
Thomas A. Buckman, John W. Cone, Beallston G. D. Gray  
William A. Harding, James W. Simpson, William Johnson and  
Gerrit Cortin of the City of New York and State of New York  
with the sum of Seventeen Hundred fifty One Dollar  
and twenty four cents lawful money of the United States  
for the payment of which well and truly to be made  
we bind ourselves our heirs executors and administrators  
jointly severally and firmly by these presents,  
Witness our hands and seals this eighth day of  
January A.D. 1862,

The Condition of the above obligation is such that whereas  
the said Thomas A. Buckman, John W. Cone, Beallston G. D. Gray  
William A. Harding, James W. Simpson, William Johnson and  
Gerrit Cortin did with the Superior Court of Chicago and  
for the said County of Cook and State of Illinois, and of the  
December Term thereof A.D. 1861 receive a judgment against  
the above bounden the Marine Bank of Chicago for the  
sum of Eight hundred seventy five dollars and sixty  
two cents, besides costs of suit, from which said judge-  
ment of the said Superior Court of Chicago the said  
the Marine Bank of Chicago has prayed for and obtained  
an appeal to the Supreme Court of said State of Illinois.  
Now therefore if the said the Marine Bank of Chicago  
shall duly prosecute its said appeal with effect  
and moreover pay the amount of the judgment costs  
interest and damages rendered and to be rendered against it, in case  
the said judgment shall be affirmed in said Supreme Court, then the  
above obligation to be void otherwise to remain in full force and virtue.

In Witness Whereof the said Marine  
Bank of Chicago by its President and Cashier  
has hereunto set its Corporate Seal and the

Said J. Young Scammon and Hattie Loomis  
have hereto set their hands and seals this  
day and year above written.

  
Seal

J. Young Scammon  
President

Hamilton B. Day  
Clerk

J. Young Scammon  
H. Loomis

Approved  
Wm. H. Higgins  
Judge

And afterwards to wit on the twenty first  
 day of January AD Eighteen Hundred and Eighty two  
 was filed in the Office of the Clerk of said Court  
 the Defendants Bill of Exceptions in the Words and  
 figures following to wit:

The Superior Court of Chicago  
 December Term 1861

Thomas L. Rushmore of

of  
 The Marine Bank of Chicago

Be it remembered that  
 at the trial of the above entitled cause in the said  
 Superior Court of Chicago, on one of the days of the said  
 December Term of said Court, to wit on the 10<sup>th</sup> day of December  
 AD 1861 the said Plaintiff to sustain the issue in the above  
 entitled cause introduced in evidence to the jury a letter  
 from said Plaintiff to the Defendant dated the 3<sup>rd</sup> day  
 of May AD 1861 enclosing certain Certificates of Deposit  
 for collection which said letter is in the words and figures  
 following to wit: - The words in brackets in said  
 letter being printed in said letter & the rest thereof in writing

(Rushmore Const Co)  
 (12 & 14 Hancock St)

(New York) May 3<sup>rd</sup> 1861

A. B. My Equin

Cashier of the Marine Bank of  
 Chicago Illinois

(Dear Sir)

124

(The Enclosure for Collection) Five Certificates of Deposit of  
F. Granger Adams Banker Albany in the Aggregate of \$950<sup>00</sup>  
(for) \$200, \$200, \$200, \$195<sup>00</sup>, \$155<sup>00</sup> Each by S. W. Earle & Co. his  
order pay to Cash (date) Chicago April 19<sup>th</sup> 1864 his office  
payable (without) (Current exchange on New York) in  
Illinois Currency on return of the Certificates  
(When paid please) hold to Summit and then (remitt by  
draft on this City) less the current rate at that time  
(and charges)

(Yours Respectfully)  
(Rushmore Bond & Co.)  
(Per) Wm B. Harding

At 15<sup>th</sup> interval of 30 days from  
May 2<sup>nd</sup> Exchange can be procured  
on NY at 3% you can use your  
discretion and remit to us at bank  
at any higher rate,  
Rushmore Bond & Co

And the plaintiff then read in evidence to the  
jury the five following Certificates of Deposit upon  
F. Granger Adams of Chicago, together with the documents  
thereon, the same being the certificates which were enclosed  
in said letter of May 3<sup>rd</sup> 1864 which are in the words  
figures following that is to say

"Banking Office of F. Granger Adams"  
Chicago April 19 1864

\$200

"I, W. Earle has deposited in this office the sum  
of two hundred dollars Illinois Currency to the  
credit of himself and subject to his order or the order  
of the Certificate payable in like funds

"113226

F. Hanger Adams  
per W. P. Tallman"

Endorsed, "J. W. Earle  
Cashier of  
W. B. Doy & Co. Cashier  
Nashua Bank Co."

"Banking Office of F. Hanger Adams"  
Chicago April 19 1864

"\$200

"J. W. Earle has deposited in this office the sum  
of two hundred dollars Illinois Currency to the credit  
of himself and subject to his order on return of this  
Certificate payable in like funds

"No 3233

F. Hanger Adams  
per W. P. Tallman

Endorsed "J. W. Earle  
Cashier of  
W. B. Doy & Co. Cashier  
Nashua Bank Co"

"Banking Office of F. Hanger Adams"  
Chicago April 19 1864

"\$200

"J. W. Earle has deposited in this office the sum  
of two hundred dollars Illinois Currency to the credit  
of himself and subject to his order on return of this  
Certificate payable in like funds

"No 3234

F. Hanger Adams  
per W. P. Tallman

Endorsed "J. W. Earle  
Cashier of W. B. Doy & Co. Cashier  
Nashua Bank Co"

"Banking Office of J. M. Mayer & Adams"  
 Chicago, April 19 1864  
 195 21  
 "J. W. Earle has deposited within this Office the sum of One hundred & twenty five Dollars Illinois Currency to the Credit of himself and subject to his order on return of the Certificate payable in like funds do 32 32"

J. M. Mayer & Adams  
 Fullman

Ordered "J. W. Earle"  
 "Pay to the order of  
 W. B. Roy Esq Cash  
 "Washington Bond Co"

"Banking Office of J. M. Mayer & Adams"  
 Chicago, April 19 1864  
 195 21  
 "J. W. Earle has deposited within this Office the sum of One hundred & fifty Dollars Illinois Currency to the Credit of himself and subject to his order on return of the Certificate payable in like funds do 32 29"

J. M. Mayer & Adams  
 per J. P. Fullman

Ordered "J. W. Earle"  
 "Pay to the order of  
 W. B. Roy Esq Cash  
 "Washington Bond Co"

The Defendants Counsel admitted the following facts & stipulated with the trial that they should be taken as proved to wit, that the Defendant received the said letter of May 3<sup>rd</sup> from the Plaintiff together with the five Certificates of Deposit enclosed & that the Defendant collected said Certificates & that the

day of May 1861 and that W B Roy was Cashier  
of Defendant at the times aforesaid,  
The Plaintiff's then introduced in evidence the  
following letter,

Chicago Marine & Fire Insurance Company  
Chicago Illinois May 6<sup>th</sup> 1861  
Super Customers Bond Co  
NY

Dear Sirs  
We have in receipt of  
your favor of the 3<sup>rd</sup> inst with enclosure as stated  
by your Credit of \$945<sup>21</sup> remittance notes  
I follow as stated below,

Yours Respectfully  
W B Roy Secy  
Thompson

Exchange 10% Now rate,

The Defendants Counsel then admitted the fact  
& stipulated that the said letter of May 6<sup>th</sup> 1861 should  
be taken as the letter of the Defendant & not of the  
Insurance Co as it purports & that whatever liability  
exists as account of said collection was of the  
Defendant & not of said Insurance Co,

The Plaintiff's then offered to prove the following  
facts which Defendants by their Counsel admitted  
& stipulated should be taken as proved, that on the  
14<sup>th</sup> day of June 1861 the Plaintiff's by their duly  
Authorized Agent presented to the Defendant their  
written demand or check for \$945<sup>21</sup> less as the amount  
collected as said Certificate & demanded payment thereof  
that the Defendant thereupon offered to pay the said

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amount in Illinois Bank Notes Mostly of those Banks  
Which on the Standard List of Illinois Banks were  
rated at 66-70 & 80 cents in the dollar & which were  
not then current bank notes; that plaintiff thereupon  
declined said offer of defendant & offered to accept  
either specie or Bank notes then current in the community  
That the defendant refused to pay in such funds  
or otherwise than as previously offered as aforesaid

Here the Plaintiff rests their case

### Defense

The defendant then introduced in evidence the  
letter written by Plaintiff to defendant dated May  
30<sup>th</sup> 1864, which was read to the Jury and is in  
the words & figures following to wit:

New York May 30<sup>th</sup> 1864

W B Roy Esq

Cashier

Mann's Bank of Chicago

Chicago Ill

Sir

Thinking that Exchange will be down to  
old rates namely 1% in a very few days we at  
S W Earles request telegraphed you this morning not to  
remit the collection of Adams Certificates of deposit  
sent you May 3<sup>rd</sup> The time specified was 4 days  
& we think that in a very few days you will be able  
to remit at about 1 or 2% when you can do so please  
send us right off Let us know what current  
rates are now

Yours truly

Hubbard Con Ho

The Defendant then introduced and read in evidence  
a letter from Defendant to Plaintiff dated June 1 1864  
which letter is in the words & figures following to wit,

Marine Bank of Chicago  
Chicago Ill June 1<sup>st</sup> 1864

My Dear Sir  
Messrs Knapp & Co  
New York

Dear Sir

Your favor of the  
30<sup>th</sup> ultimo is received and instructions noted  
You are much mistaken with regard to the value of  
Exchange It cannot be had to day better than  
60¢ for the dollar the business community  
refuse to receive Marine Bank Notes such the  
Certificates referred to nor payable in specie as  
for the enclosed list and many demand coin  
as all about due

Yours truly  
M B Knapp

The Defendant also introduced and read in  
evidence a despatch from Plaintiff to Defendant dated  
May 30<sup>th</sup> 1864 which despatch in the words & figures  
following to wit,

Copy  
Telegraph  
New York May 30<sup>th</sup> 1864

M B Knapp  
Cashier of Marine Bank  
Chicago Illinois  
Do not permit the collection of Certificates sent May

Husband Case No

No 12 &amp; 14 Married &amp; C

The Defendants then called Hamilton & Co of witnesses for said Defendants who being duly qualified & sworn testified as follows, I have been engaged in Banking in this City & State during the last seven years, a few months of that time I was engaged at Milwaukee in Wisconsin I have been acting as Cashier of the Marine Bank & Secretary of the Chicago First Marine Insurance Company, I am now Cashier of Marine Bank Defendant in this case, I have seen the Certificates before the Court now shown me, The letter of May 6<sup>th</sup> written by Defendant to Plffs was written by Mr Thompson Clerk of Defendant, at the time these Certificates were collected, Illinois Currency was the issue of the Banks of the State of Illinois, There had been nine of the Banks discredited in Nov 1860, and thirty two in March 1861, with these exceptions the Illinois Currency in April & May and until the 17<sup>th</sup> day of May 1861 all the Banks were discredited, was composed and made up of Illinois Bank notes issued by the Banks of the State, the Certificates in question were collected through Exchange between the Defendant and others, The practice was to pay any balance on Exchange in Illinois Currency by Exchange we mean that the checks held by each Bank against the others were presented every day & the balance if any was the checks held & presented by each against the other were adjusted & paid in this Currency, all the balances were settled every day in this way, I don't know which way the

balance was on the day these checks or certificates were presented. On the 6<sup>th</sup> of May when we received or collected the amount of these certificates Exchange on New York nominally was 10 percent premium in currency, but there was none to be had at this date. The price of gold in currency was at a premium of some 15 percent or 10 to 15 percent. Condition of the currency was downward, it continued downward to the 18<sup>th</sup> of May when the whole currency of the state broke down & pretty much was rejected. The currency had made up in April of the same bills or bank notes that it had in May 1861. On the 19<sup>th</sup> of April 1861, the whole body or bulk of this currency was 10 to 15 percent below par or specie.

On the 14<sup>th</sup> of June the average rate of the currency was 60 cents on 1<sup>st</sup> that is talking the whole Bankers of the state together including gold & had the average market value was not more than 60 cents on a dollar - the brokers were buying at that rate.

It was customary to keep all the funds together those received or deposit or collected on life of others as well as their own unless a special deposit was received or taken when it was put apart entirely at the depositor's risk. We kept one common fund it was customary with the banks, specie, gold or Eastern funds was credited to a depositor as such as the books & drawn for specially in like funds; that is the check called for specie or gold or Eastern funds; there was a difference between such funds & Illinois Currency, this Illinois Currency was received before the 18<sup>th</sup> of May in payment of all debts & received in business transactions generally as money. Property could not be purchased for the same price in Illinois Currency as in coin. All money deposited

22  
Unless specially marked is deposited as gold. Silver  
or Eastern red currency & metal in our common fund  
or more kept together, the value of this currency  
materially decreased from the 6<sup>th</sup> of May to the 18<sup>th</sup>  
of May as indicated by Exchange on New York  
On 6<sup>th</sup> May Exchange nominally worth 10 percent  
Coin was always worth more than Exchange from 7<sup>th</sup>  
to 1/2 percent. The Bills of the Marine Bank  
was always worth their face in specie, there was only  
\$16,000 of the Circulation outstanding; There was  
of Illinois Banks after 18<sup>th</sup> May whose Circulation was  
considered nominally at par some \$60,000; The  
Whole Bank issue or notes issued by Banks in the  
State amounted to six & half millions, excluding  
in my estimate the 32 Banks discredited on 30<sup>th</sup>  
of March 1861. & nine discredited on 30<sup>th</sup> of November  
1861, including in my estimate \$60,000 of Bills supposed  
to be good. I meant to say that the average market  
value of all the Circulation of this State of the 18<sup>th</sup>  
May '61 was some 60 percent, - as the amount  
which could only be realized upon it in specie or  
converting to Coin; I take the whole mass in  
Circulation together when I say that on the 14<sup>th</sup>  
of June 1861 it would not bring more than 60 for the 100

Each and every part of the testimony of this  
Witness has objected to in season & received subject  
to objection by Plffs Counsel.

### Cross Examination

I don't know which bills were received from the  
or the Certificates; I speak of the Custom at the  
time of balancing Exchanges with Currency; I don't

Know the state of our account with Adams, nor on  
 which side the balance was at the time the Certificates  
 were collected. On the 6<sup>th</sup> of May 1864 there were  
 about 74 Banks I think in receipt or not discredited  
 at that time; Illinois Banks the notes of which were  
 circulating medium, this was so till the 18<sup>th</sup> of May  
 from 18<sup>th</sup> of May till 14<sup>th</sup> of June, some of them were  
 nominally at par though they were not at par  
 here with us. The Bank of America Bank of Northern  
 Ills & Land Co Bank were nominally at par but not  
 at par in Chicago. The issues of different Banks before  
 in price from 18<sup>th</sup> May to 14<sup>th</sup> June 1864, they ranged  
 in value from par down to 5 percent, The Marine  
 Bank issues were always at par with us, on the 14<sup>th</sup>  
 June there were three bad Banks; when the news  
 discredited were discredited in Nov 1863 we did not  
 after they were discredited and then in business or in  
 paying debts; this was also so when the thirty two  
 were discredited in the Spring, after they were discredited  
 we did not pay Customers or depositors with them  
 our receipts were placed all in a common fund and  
 assorted, we had an assorting Clerk who assorted  
 out the best of the money kept it as a reserve fund  
 with the residue we paid checks and balances & claims  
 on the Bank, It was not the practice a year ago  
 last fall to assort out the currency, we commenced  
 assorting in the winter of '63 & in assorting we got  
 some that was afterwards discredited in the Spring  
 the bills of Banks, of other States were held by us at a  
 premium until a year ago Wisconsin & Illinois  
 Bills were treated under criminally as currency;  
 but the Wisconsin Bills were not regarded as currency  
 after the first of July last, the term "currency"  
 regarded same as "current bank notes" "bankable

"funds" They are convertible terms, The Marine Bank owned the Marine Bank but another Bank The Insurance Company had an interest in two other Banks which were assigned to them as collateral security for payment of said debt. Now the Bank & we could get nothing else, as party owned the Company & finding they could get nothing else they took an assignment of his interest in their two Banks, The Marine Bank and the Chicago M & F Insurance Company had always taken Currency in payment of their own debts, The Bank tried to carry the Currency through; The Currency received early in May had used in our business after being sent to I have stated, Exchange has fluctuated for years back in this Community, It commenced in 1857 1858 it was 10 & 15 per cent, Exchange on New York & other cities varies Exchange on other cities is governed by New York rates; Exchange on New Orleans is sometimes at a premium & sometimes at a discount, Normal rate of Exchange means the quoted rate.

Stock Examination

Resumed,

There was no time between the 6<sup>th</sup> of May or 3<sup>d</sup> of May & the 14<sup>th</sup> of June when Exchange on New York could have been purchased, with our Currency at 3 per cent, Illinois Currency & coin or specie were <sup>then</sup> within my knowledge convertible terms that has <sup>been</sup> always a difference. When making my estimate of the average market value of the Bank bills in circulation on the 14<sup>th</sup> of June of Illinois Banks I took the Auditor's Report as my guide.

for the whole of the issues outstanding of those Banks that had not been deposited before the 17<sup>th</sup> of May.

The foregoing & all the testimony of the witnesses was duly & seasonably objected to by Plaintiffs & received subject to said objection.

*Re Cross Examination*

The present Currency is composed of Eastern & Ohio Canada Indiana & other Bank notes.

The Testimony here closed

The following instructions were by the Court given to the Jury of said Plaintiff, defendants by their Counsel then & there accepted & says that their exceptions to be signed & made part of the record, in this cause

*Plff's Instructions*

The Court instruct the Jury that if they believe from the evidence that the Plaintiffs sent the Certificates of Deposit given in evidence to the defendant for collection, which were collected by the defendant & there was no express or implied agreement as to the relation which should exist between the parties that no agency was created as to the funds collected, except to collect the Certificates in the funds in which they were payable and to hold the same subject to demand of the Plaintiffs.

If the Jury believe from the evidence that the Marine Bank received the proceeds of the Certificates of Deposit sent by Plaintiffs & credited the Plaintiff with the same the relation of Debtor & Creditor is created between the defendant & the Plaintiffs so far as to

Requires the payment to Plaintiffs of their own funds in which the Certificates were payable on the demand of the Plaintiffs.

The Defendant then asked the Court to instruct the Jury as follows to wit,

Instructions for Defendant

1<sup>st</sup> If the jury believe from the evidence that defendant acted as agents of the Plaintiffs and acted for them as Bankers and according to the usual & ordinary Customs of Bankers collected under instructions from Plffs the amount in Controversy in this Case in what was understood by all parties to be a depreciated Currency and that said defendant without any want of ordinary & usual diligence in like cases held the funds collected at the request of said Plaintiffs & then Defendants are only responsible for the same kind of funds collected and a tender of such funds at the time of demand was a good tender or discharge of the Contract and Plaintiffs cannot recover.

Refused

2<sup>nd</sup> The Court is requested to instruct the jury that Plffs cannot recover under the Money Counts if the evidence only shows the authorized receipt by defendant of Ills Bank notes.

Refused

3<sup>rd</sup> If the Jury believe from the evidence in this Case that Plaintiffs authorized Defendants to take the amount of their demand in depreciated or non-convertible Currency or Ills Bank notes at their risk and that defendant held said Currency according to the usual Customs of Bankers &

Refused

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then the Defendant is only liable for the value  
of the Currency, when at the time the same  
was demanded with interest.

Which said Instructions the Court then & there  
refused to give & the Defendants by their Counsel  
then & there excepted.

The Defendants also asked the Court to instruct  
the Jury as follows to wit which were given:

4 If the Jury believe from the evidence that  
according to the agreement and understandings  
between the parties in this case the Defendant  
acted according to the instructions of the  
Plaintiffs in collecting the demand & payments  
in depreciated Illinois Currency greatly below  
the par value of coin or specie, and afterwards  
held such Currency at the request or according  
to the instructions of Plaintiffs then the risk of  
such depreciation was assumed by the Plaintiffs  
as principals & they can only recover the real  
value in coin or money of such Currency at the  
time of demand made in June 1861.

5 If the Jury believe from the evidence that  
Defendant acted as agent for the Plaintiffs  
& as such collected the amount claimed in  
this suit in Illinois Currency or Bank Notes  
according to the request or instructions of Plaintiffs  
and then held the same funds according to  
such instructions and that said funds became  
depreciated to value below coin or specie then the  
law is that Plaintiffs can only recover the value  
of said funds at the time Plaintiffs demanded  
them on the 14<sup>th</sup> of June 1861.

6 If the Jury believe from the evidence that Defendant

6  
 Collected the Amount claimed in this case at the  
 agents of the plaintiffs and according to the instru-  
 tions of said plaintiffs collected said claim in  
 Illinois Currency which afterwards became depreciated  
 in value below that of coin or specie and the value  
 said funds were held, at the request of said plaintiffs  
 in that case plaintiffs and only omitted to receive  
 the value of said funds at the time of the demand  
 made on the 14<sup>th</sup> of June 1861,

And thereupon the Jury having retired to consider  
 of their verdict returned into Court the following  
 verdict viz,

That the Jury find for the plaintiff and award  
 the damages at Eight hundred seventy Five  
 675/100 Dollars,

1875-62

Nathaniel Finch	Norman James Wright
Robert McAlam	John Richardson
Nathaniel Schwartz	L. B. Walker
George A. Stegman	L. P. Harte
John Lehto	J. M. Ferguson
William Sargent	J. N. Hester

And thereupon plaintiffs counsel entered a  
 Motion for a new trial

And afterwards upon the twelfth day of December  
 being one of the days of said December 1861  
 said Plaintiff by his counsel moved to withdraw  
 his motion for a new trial & did this & then before  
 of the Court, withdrew said Motion,

And thereupon the defendants by their counsel  
 entered a Motion for a new trial herein & filed their

Motion with the reasons thereof,

State of Illinois  
Cook County

Superior Court of Chicago  
Oft 20 December Term 1864

Manuel Beal of Chicago

vs

Motion for new trial

Thos L. Rushmore of

And now comes the said

Defendant & prays the Court for a new trial with the  
above causes Because

- 1 The verdict was against the law & the evidence
- 2 Because the Court gave improper instructions to the Jury
- 3 Because the Court refused proper instructions to the jury & for other causes,

Stammon M. Cady, Fuller  
Deft's Atty,

And thereupon the Court overruled said Motion for  
a new trial & which ruling and decision of the Court  
in overruling said Motion Defendant by its Counsel  
excepted & pray that this their Exception may  
be entered of record signed & sealed &c

And was such as the several matters aforesaid  
did not appear of record in said cause the said  
Defendants by their Counsel did then and there  
propound and singular to said exceptions the  
Matters above contained to the Judge who tried said  
cause and requested him to sign them the same  
which is accordingly done, and the same are made  
a matter of record in the above related cause

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Witness whereof the Hon Grant Goodrich  
Clerk of the Judges of said Court before whom the  
same writ had been presented affixed his hand  
& seal this 21<sup>st</sup> day of January 1862  
Grant Goodrich Seal

State of Illinois  
Cook County

I Thomas B Carter Clerk  
of the Superior Court of Chicago and said  
County do hereby certify that the within and  
foregoing is a true full and complete Transcript  
of all the pleadings on file in my office and of all  
orders and judgements entered of record in said  
Court, in the case wherein Cook and Cowles were  
Plaintiffs and the Marine Bank of Chicago were  
Defendants.

My testimony whereof I Thomas B  
Carter Clerk of said Court have  
presented my hand and affixed  
the Seal of said Court at Chicago  
this 21<sup>st</sup> day of February 1862  
Thomas B Carter Clerk

The Union Bank

April Term 1862

vs  
Thomas Rushmore

In the Supreme Court

And now comes the plaintiff

by Fuller Mc Cagg & Thomas

his attorneys and say that in the Record for proceedings  
of the Court below there is manifest error in this  
to wit;

1<sup>st</sup> Court below erred in overrul-  
ing <sup>motion</sup> for a new trial.

2<sup>nd</sup> The Court erred in admitting im-  
proper testimony to go to the jury  
under the counts contained in  
the declarations.

3<sup>rd</sup> The Court erred in giving im-  
proper instructions to the jury

4<sup>th</sup> The Court erred in refusing the  
instructions to the jury asked for  
by said defendants.

5<sup>th</sup> The verdict is against the law and  
the evidence, and against the instr-  
uctions given in the case. by the  
Court.

Fuller, Mc Cagg and Thomas  
Counsel for Plaintiffs in  
Appeal

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State of Illinois  
Cook County of

to the Superior Court  
of Chicago

vs. L. Rushmore et al

of

Marion Bank of Chicago

April 12, 1862

Richard  
Clerk

In the Supreme Court of the State of Illinois  
Midland Division.

April Term A.D. 1862.

The Marine Bank of Chicago

Appellants

v.

Thomas S. Rushmore & others

Appellees

And Memorandum of Proceedings, to wit, at  
the April Term of the Supreme Court A.D.  
1862, the said Thomas S. Rushmore, John  
Cove, Rudolph G. DeGard, William A. Harding  
James A. Simpson, William Johnson & George  
Corbin by Post & Steele their attorneys came here into  
Court and say that there is no error in the record  
& proceedings aforesaid or in giving the judgment  
aforesaid and pray that the said Supreme Court  
of Indication before the Justices thereof said  
here may proceed to examine as well the record  
& proceedings aforesaid as the matters aforesaid  
above assigned for error & that the judgment  
aforesaid may be in all things affirmed &c.

Prouty & Co.,

Attys for Appellees

The Court  
of Appeals

<sup>vs</sup>  
Thomas S. Richardson  
Petitioner  
—  
James W. Brown,  
—  
Respondent

Filed April 23. 1882  
L. Leland  
Clerk

# SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

THE MARINE BANK OF CHICAGO,

*Appellants,*

vs.

THOMAS L. RUSHMORE *et al.*,

*Appellees.*

*Appeal  
from Superior  
Court of Chicago.*

RECORD  
PAGE.

This was an action of Assumpsit, commenced in the Superior Court of Chicago, to the July Term thereof, A. D. 1861, by appellees against the appellants, for \$1,500 damages.

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The declaration was in usual form, with money counts, for money had and received, money lent, money paid, money due upon an account stated, etc., to which was attached a copy of the account sued upon, viz.:

MARINE BANK OF CHICAGO,

To SAID PLAINTIFFS, DR.

Amount of Credit in favor of plaintiffs, in said Bank,	- - -	\$945.21
Amount of Collection by said Bank for plaintiffs,	- - -	945.21
Money lent and advanced by plaintiffs,	- - -	945.21
Money had and received for plaintiffs,	- - -	945.21
Amount due on account stated,	- - -	945.21
Interest on said sums,	- - -	100.00

5

To this declaration defendants filed the plea of the general issue; upon which, issue was joined by plaintiffs.

The trial of said cause took place before Judge G. Goodrich, and a jury, on the 10th day of December, A. D. 1861, being one of the days of the December Term of said Court, 1861.

6 And on the 11th day of December, A. D. 1861, the jury in said cause rendered the following verdict: "We, the jury, find the issues for the plaintiffs, and assess their damages herein to the sum of eight hundred and seventy-five dollars and sixty-two cents."

7 "And thereupon the said plaintiffs submit their motion herein for a new trial in said cause."

8 And afterwards, on the 12th day of December, A. D. 1861, the plaintiffs again came and withdrew their motion, submitted herein, for a new trial; whereupon said defendants, by their attorneys, submitted their motion for a new trial in said cause.

7 And afterwards, on the 26th day of December, A. D. 1861, being one of the days of said Term, said cause came on to be heard upon said motion for a new trial, and counsel being heard, and the court being fully advised in the premises, overruled said motion for a new trial; to which ruling of the court in overruling said motion, defendants, by their counsel, excepted, and thereupon judgment was entered upon the verdict.

And thereupon said defendants prayed an appeal to the Supreme Court, which was allowed upon defendants filing a bond in the sum of \$1,500, with security, within twenty days, and also had leave to file a bill of exceptions in thirty days from the date of said order.

10 On the 10th of January, 1862, defendants filed an appeal bond in due form of law, and on the 21st of January, 1862, filed, according to said order of court herein, the bill of exceptions of said defendants.

13 From the bill of exceptions in the record, it appears that on the trial of said cause, the said plaintiffs, to sustain the issues, introduced in evidence to the jury, a letter from said plaintiffs to defendants, dated 3rd day of May, 1861, inclosing certain certificates of deposit for collection, in the words and figures following, to wit:

The words in brackets in said letter, being printed in said letter, and the rest thereof, in writing:

[RUSHMORE, CONE & Co.,]  
[12 AND 14 WARREN STREET,  
[NEW YORK,] May 3rd, 1861.

H. B. DOX, Esq.,  
Cashier of the Marine Bank of  
Chicago, Illinois.

[DEAR SIR:]

14 [We enclose] for collection, five certificates of deposit of F. Granger Adams, amt'g in the aggregate to \$945<sup>00</sup>, [for] \$200, \$200, \$200, \$195<sup>00</sup>, \$150, end'd by S. W. Earle, and to his order pay'l, each [dated] Chicago, Ap'l 19th, at his office, payable [without] current exchange on New York, in Illinois currency, on return of the certificate. [When paid, please] hold to June 1st, and then [remit by draft on this city,] less the current rate at that time, and oblige,

\$202 Story apud  
4 Deom 525

[Yours Respectfully,]

[RUSHMORE, CONE & CO.,]  
[Per] Wm. A. HARDING.

P. S.—If, in the interval of 30 days from May 2nd, Exchange can be procured on N. Y. at 3 per cent., you can use your discretion and remit to us, but not at any higher rate.  
RUSHMORE, CONE & CO.

The plaintiff then read in evidence five certificates of deposit, which were enclosed in said letter, of which the following are copies, with the endorsements:

15 \$200. BANKING OFFICE OF F. GRANGER ADAMS,  
Chicago, April 19, 1861.  
S. W. Earle has deposited in this office the sum of two hundred dollars, Illinois currency, to the credit of himself, and subject to his order, on return of this certificate, payable in like funds.  
No. 3226.

F. GRANGER ADAMS.  
Endorsed—"S. W. Earle. Pay to order of H. B. Dox, Esq., Cashier.  
RUSHMORE, CONE & CO."

\$200. BANKING OFFICE OF F. GRANGER ADAMS,  
Chicago, April 19, 1861.  
S. W. Earle has deposited in this office the sum of two hundred dollars, Illinois currency, to the credit of himself, and subject to his order, on return of this certificate, payable in like funds.  
No. 3233.

F. GRANGER ADAMS.  
Per T. P. TALLMAN.  
Endorsed—"S. W. Earle. Pay to the order of H. B. Dox, Esq., Cash.  
RUSHMORE, CONE & CO.

16 \$200. BANKING OFFICE OF F. GRANGER ADAMS,  
Chicago, April 19, 1861.  
S. W. Earle has deposited in this office the sum of two hundred dollars, Illinois currency, to the credit of himself, and subject to his order, on return of this certificate, payable in like funds.  
No. 3234.

F. GRANGER ADAMS.  
Per T. P. TALLMAN.  
Endorsed—"S. W. Earle. Pay to the order of H. B. Dox, Esq., Cash.  
RUSHMORE, CONE & CO.

BANKING OFFICE OF F. GRANGER ADAMS,  
*Chicago, April 19, 1861.*

\$195.21.

S. W. Earle has deposited in this office the sum of one hundred and ninety-five 21-100 dollars, Illinois currency, to the credit of himself, and subject to his order, on return of this certificate, payable in like funds.

F. GRANGER ADAMS.

No. 3234.

TALLMAN.

Endorsed—S. W. Earle. Pay to the order of H. B. Dox, Esq., Cash.

RUSHMORE, CONE & CO.

BANKING OFFICE OF F. GRANGER ADAMS,  
*Chicago, April 19, 1861.*

\$150.

S. W. Earle has deposited in this office the sum of one hundred and fifty dollars, Illinois currency, to the credit of himself, and subject to his order, on return of this certificate, payable in like funds.

F. GRANGER ADAMS.

No. 3229.

Per T. P. TALLMAN.

Endorsed—S. W. Earle. Pay to the order of H. B. Dox, Esq., Cash.

RUSHMORE, CONE & CO.

- 17 It was stipulated by defendants' counsel, that it should be taken as proved that the defendants received said letter, of May 3rd, 1861, together with said certificates of deposit enclosed, from the plaintiffs; that the defendants collected said certificates, on the 6th of May, in currency; and that H. B. Dox was cashier of the defendants, at the time aforesaid.

The plaintiffs then introduced in evidence the following letter, from defendants to plaintiffs:

CHICAGO MARINE AND FIRE INSURANCE CO.  
*Chicago, Illinois, May 6th, 1861.*

MESSRS. RUSHMORE, CONE & Co.,  
New York.

*Dear Sirs:*

17

We are in receipt of your favor of the 3rd inst., with enclosures as stated, to your credit, \$945.21: remarks noted. I enclose as stated below.

Yours Respectfully,

H. B. DOX, SECRETARY.  
*Thompson.*

Exchange 10 per cent., nominal rate.

It was understood that the above letter should go in without objection on the part of the defendants, the same as if written by defendants, and in their name, it being so intended originally, but by mistake written upon a letter blank of the C. M. & F. Insurance Company.

The plaintiffs then offered to prove the following facts, which

defendants by their counsel admitted should be taken as proved, viz.:

- 17 & 18 "That on the 14th day of June, 1861, the plaintiffs, by their duly authorized agent, presented to defendants their written demand or check for \$945.21, as the amount collected on said certificates, and demanded payment thereof; that the defendants thereupon offered to pay the said amount in Illinois bank notes, mostly of those banks, which, on the Railroad List of Illinois banks were noted at 60, 70 and 80 cents on the dollar, and which were not then current bank notes; that plaintiffs thereupon declined said offer of defendants, and offered to accept either specie or bank notes then current in the community; that the defendants refused to pay in such funds, or otherwise than as previously offered as aforesaid."

Here the plaintiffs rested their case.

- 18 The defense then introduced in evidence, a letter written by plaintiffs to defendants, dated May 30th, 1861, which was read, as follows:

19

NEW YORK, May 30th, 1861.

H. B. DOX, Esq., Cashier,  
*Marine Bank Chicago,*  
*Chicago, Illinois.*

DEAR SIR:

Thinking that Exchange will be down to old rates, namely, 1 per cent., in a very few days, we, at S. W. Earle's request, telegraphed you this morning not to remit the collection of Adams' Certificates of Deposit, sent you May 3rd. The time specified was 1st June, and we think that in a very few days you will be able to remit at about 1 or 2 per cent. When you can do so, please send us sight draft. Let us know what current rates are now.

Yours Truly,

RUSHMORE, CONE & CO.

- 19 Also the following reply to the above, sent by defendants to plaintiffs, was admitted and read:

MARINE BANK OF CHICAGO,  
*Chicago, Ill., June 1st, 1861.*

MESSRS. RUSHMORE, CONE & Co.,  
NEW YORK.

Dear Sir:

Your favor of the 30th ultimo is received, and instructions noted. You are much mistaken with regard to the rates of exchange. It cannot be had

to day better than 60 cents on the dollar; the business community refuse to receive Illinois bank notes, such as the certificates referred to were payable in, except as per the enclosed list, and many demand coin on all amounts due.

Yours Truly,

H. B. DOX.

In connection with the above, defendants also read the telegraphic despatch of plaintiffs to defendants, dated May 30, 1861, which is in the words and figures following, to wit:

[Copy of Telegraph.]

NEW YORK, May 30, 1861.

H. B. Dox,  
Cashier Marine Bank,  
Chicago, Illinois.

19     Dont remit the collection of certificates sent May third; will write.  
RUSHMORE CONE & CO.,  
No. 12 & 14 WARREN ST.

The defendants then called *Hamilton B. Dox*, a witness, who testified:

20     I have been engaged in banking in this city and State during the last seven years, except a few months of that time in Milwaukee, Wisconsin. I have been acting as cashier of the Marine Bank, and secretary of the Chicago Marine & Fire Insurance Company. I am now cashier of the Marine Bank. I have seen the certificates before the court, now shown me. The letter of May 6th, written by defendants to plaintiffs, was written by Mr. Thompson, clerk of defendants. At the time these certificates were collected, "Illinois currency" was the issues of the banks of the State of Illinois. There had been nine of the banks discredited in November, 1860, and thirty-two in March, 1861. With these exceptions the Illinois currency in April and May, and until the 17th day of May, 1861, when all the banks were discredited, was composed and made up of Illinois bank notes, issued by the banks of this State. The certificates in question were collected through the exchanges between defendants and F. G. Adams. The practice was to pay any balance on exchange in Illinois currency. By exchanges we mean that the checks held by each bank against the others, were presented every day, and the balances, if any, over the checks held and presented by each against the other, were adjusted and paid in this currency. All the balances were settled every day in this way. I don't know which way

the balance was on the day these certificates were presented.

On the 6th of May, when we received and collected the amount of these certificates, exchange on New York was nominally 10 per cent. premium in currency, but there was none to be had at this rate. The price of gold in currency was at a premium of some 15 per cent., or 10 to 15 per cent. The condition of the currency was downward. It continued downward to the 18th of May, when the whole currency of the State broke down, and pretty much all was rejected.

The currency was made up in April of the same bills or bank notes that it was in May, 1861. On the 19th of April, 1861, the whole body or bulk of this currency was 10 to 15 per cent. below par or specie.

- 21 On the 14th of June, the average rate of the currency was 60 cents on 100,—that is, taking the whole bank issues of the State together, including good and bad, the average market value was not more than 60 cents on a dollar. The brokers were buying it at that rate.

It was customary to keep all the funds together, those received on deposit or collected on account of others, as well as their own, unless a special deposit was received or taken, when it was put apart entirely at depositor's risk. We kept one common fund as was customary with the banks. *Specie, gold* or *Eastern funds*, were credited to a depositor as such on the books, and drawn against specially *in like funds*; that is, the check called for specie, or gold, or Eastern funds. There was a difference between *such funds* and "*Illinois currency*." This Illinois currency was received before the 18th day of May in payment of all debts, and received in business transactions generally as money.

Property could not be purchased for the same price in Illinois currency as in coin. All moneys deposited, unless specially marked or deposited as gold, silver, or Eastern, was "currency," and went in one common fund or mass, and was kept together. The value of this currency materially decreased from the 6th of May to the 18th of May, as indicated by exchange on New York.

- 22 On 6th of May, exchange nominally worth 10 per cent.; coin was always worth more than exchange—from 1-4 to 1-2 per cent. The bills of the Marine Bank always were worth their face in specie; there was only \$16,000 of the circulation

outstanding. There were of Illinois banks, after 18th of May, whose circulation was considered as nominally at par, some \$60,000. The whole bank issues, or notes issued by banks in the State, amounted to six and one-half millions, excluding in my estimate the 32 banks discredited in March, 1861, and the 9 banks thrown out in November previously, 1860. Including in my estimate \$60,000 of bills supposed to be good, I meant to say that the average market value of all the circulation of this State on the 18th May, 1861, was some 60 per cent., as the amount which could only be realized upon it in specie, or converting it to coin. I take the whole mass in circulation together, when I say that on the 14th of June, 1861, it would not bring more than 60 cents on the 100.

- 22 Each and every part of the above testimony was objected to by plaintiffs' counsel.

#### CROSS-EXAMINATION.

- 22 I don't know what bills were received from Adams on the certificates. I spoke of the custom of balancing exchanges with currency. I don't know the state of our account with Adams, nor on which side the balance was at the time the certificates were collected. On the 6th of May, 1861, there were about 74 banks, I think, in repute, and not discredited at that time—Illinois banks, the notes of which were circulating medium.
- 23 This was so till the 18th day of May. From 18th of May till 14th of June, some of them were *nominally* at par, though they never were so here with us. The Bank of America, Bank of Northern Illinois, and Kane County Bank, were nominally par, but not par in Chicago. The issues of the different banks depreciated in price from 18th of May to the 14th of June, 1861. They ranged in value from par down to 50 per cent. The Marine Bank issues were always at par with us, and on the 14th of June there were three par banks. When the nine discredited were discredited in November, 1860, we did not, after they were discredited, use them in business, or in paying debts; this was also so when the thirty-two were discredited in the spring. After they were discredited, we did not pay customers or depositors with them. Our receipts were placed

all in a common fund and assorted. We had an assorting clerk, who assorted out the best of the money, and kept it as a reserved fund. With the residue we paid checks, and balances, and claims on the bank. It was not the practice, a year ago last fall, to assort out the currency. We commenced assorting in the winter of 1860 and '61. In assorting we got some that was afterwards discredited in the spring. The bills of banks of other States, were held by us at a premium, until a year ago. Wisconsin and Illinois bills were treated indiscriminately as "currency," but the Wisconsin bills were not regarded as "currency" after the 1st of April last. The term "currency" was regarded the same as current bank notes—bankable funds. They are convertible terms. The Marine Bank owned the Marine Bank, but no other bank. The Insurance Company had an interest in two other banks, which were assigned to them as collateral security for the payment of some debts due the bank. We could get nothing else. A party owed the Company, and finding they could get nothing else, they took an assignment of his on these two banks. The Marine Bank and The Chicago M. & F. Ins. Co. *have always taken "currency"* in payment of their own debts. The bank tried to carry the currency through. The currency received early in May, was used in our business after being assorted, as I have stated. Exchange has fluctuated for years back in this community. It commenced in 1857. In 1857 it was 10 and 15 per cent. Exchange on New York and other cities varies. Exchange on other cities is governed by New York rates. Exchange on New Orleans is sometimes at a premium, and sometimes at a discount. Nominal rate of exchange means the quoted rate.

*Direct Examination resumed.*

24

*H. B. Dox.*—There was no time between the 6th of May, or the 3rd of May and the 14th of June, when exchange on New York could have been purchased with our "currency" at 3 per cent.

"Illinois currency," and "coin" or "specie," were never, within my knowledge, convertible terms. There has always been a difference. When making my estimate of the average market value of the bank bills in circulation on the 14th of June, of Illinois banks, I took the "Auditor's Report" as my guide, for

the whole of the issues outstanding, of those banks that had not been discredited before the 17th of May.

*Re-Cross-Examined.*

The present currency is composed of Eastern, Ohio, Canada, Indiana, and other bank notes.

25

*Testimony closed.*

Plaintiffs' instructions were then given to the jury by the court, to which defendants excepted, as follows, viz. :

“The court instructs the jury, that if they believe, from the evidence, that the plaintiffs sent the certificates of deposit, given in evidence, to the defendants for collection, which were collected by the defendants, and there was no express or implied agreement as to the relation which should exist between the parties—that no agency was created as to the funds collected, except to collect the certificates in the funds in which they were payable, and to hold the same subject to demand of the plaintiffs.

If the jury believe, from the evidence, that the Marine Bank received the proceeds of the certificates of deposit sent by plaintiffs, and credited the plaintiffs with the same, the relation of debtor and creditor is created between the defendants and the plaintiffs, so far as to require the payment to plaintiffs of the same funds in which the certificates were payable, on the demand of the plaintiffs.

DEFENDANTS' INSTRUCTIONS.

26 The court was then asked to give the following instructions, which he declined and refused to give on the part of said defendants, and counsel then and there excepted to such refusal.

1st. If the jury believe, from the evidence, that defendants acted as agents of the plaintiffs, and acted for them as bankers according to the ordinary and usual custom of bankers, and collected under instructions from plaintiffs the amount in controversy in this case, in what was understood by all parties to be a depreciated currency, and that said defendants, without any want of ordinary and usual diligence, in like cases, held

the funds collected at the request of plaintiffs, then defendants are only responsible for the same kinds of funds collected, and a tender of said funds at the time of demand, was a good tender in discharge of the contract, and plaintiffs cannot recover.

2nd. The court is requested to instruct the jury, that plaintiffs cannot recover under the money counts, if the evidence only shows the authorized receipt by defendants of Illinois bank notes.

3rd. If the jury believe, from the evidence in this case, that plaintiffs authorized defendants to take the amount of their demand in depreciated or non-convertible currency, or Illinois bank notes, at their risk, and that defendants held said currency according to the usual custom of bankers, then the defendants are only liable for the value of the currency, when or at the time the same was demanded, with interest.

27 4th. If the jury believe, from the evidence, that according to the agreement and understanding between the parties in this case, the defendants acted according to the instructions of the plaintiffs, in collecting the demand in question in depreciated Illinois currency, greatly below the par value of coin or specie, and held such currency afterwards at the request of, or according to the instructions of plaintiffs, then the risk of depreciation was assumed by the plaintiffs as principals, and they can only recover the *real value* in coin or money of such currency, at the time of demand made in June, 1861.

5th. If the jury believe, from the evidence, that defendants acted as agents for plaintiffs, and as such collected the amount claimed in this suit in Illinois currency, according to the request or instructions of said plaintiffs, and then held the same funds according to such instructions, and that said funds became depreciated in value below coin or specie, then the law is, that plaintiffs can only recover the value of such funds at the time of plaintiffs' demand on the 14th of June, 1861.

28 6th. If the jury believe, from the evidence, that defendants collected the amount claimed in this case, as the agents of the plaintiffs, and according to the instructions of said plain-

tiffs, collected said claim in Illinois currency, which afterwards became depreciated in value below that of coin or specie, and that the said funds were held at the request of said plaintiffs; in that case, plaintiffs are entitled only to the value of said funds at the time of the demand made on the 14th of June, 1861.

ERRORS ASSIGNED.

1st. Court below erred in overruling the motion of defendants for a new trial.

2nd. The Court erred in admitting improper testimony to go to the jury, under the counts contained in the declaration.

3rd. The Court erred in giving improper instructions to the jury.

4th. The Court erred in refusing the instructions to the jury asked for by said defendants.

5th. The verdict is against the law and the evidence, and against the instructions given in the case.

FULLER, McCAGG, AND THOMAS HOYNE,

*Counsel for Plaintiffs in Appeal.*

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Marine Bank of  
Chicago

vs

Thomas L. Rushmore

Abstract

Filed April 22 1862

Lorenzo Leeland  
Clerk

M. B.  
v.  
R.