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No. \_\_\_\_\_

# Supreme Court of Illinois

Reaper Bank.

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vs.

Willard.

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288  
STATE OF ILLINOIS,

7-8  
SUPREME COURT

Third Grand Division.

098278  
No. 278.

This is returned on Report

SUPREME COURT, STATE OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1860.

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**The REAPER'S BANK, Appellants,**

VS.

**ELISHA W. WILLARD et al., Appellees.**

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BRIEF AND POINTS,

BY

WALKER, VAN ARMAN & DEXTER,

COUNSEL FOR APPELLEES.

---

GALLUP & HITCHCOCK,

FOR APPELLANTS.

---

CHICAGO:

JAMESON & MORSE, PRINTERS, 14 LA SALLE STREET.

1860.



STATE OF ILLINOIS.

---

SUPREME COURT.

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THE REAPER'S BANK, }  
vs. } April Term, A. D. 1860, at Ottawa.  
ELISHA W. WILLARD, ET AL. }

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POINTS MADE AND AUTHORITIES CITED BY COUNSEL FOR APPELLEES.

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The record in this case shows that the appellant is a body corporate, duly organised in April, A. D. 1859, under the General Banking Law of the State of Illinois; that its office is at Fairfield, in the County of Wayne and State of Illinois, and that on the 12th and 13th of October, in that year, Augustus H. Burley was its President and acting Teller

That on the 12th of October, 1859, the appellees, Willard and Adsit, were the owners and holders of a package of \$500 in the circulating notes of said Bank, and through their agent, Charles A. Beecher, a Notary Public residing at Fairfield, presented the same at the counter of the Bank, to the President and acting Teller, for redemption, at the same time stating to said President the amount contained in the package.

That said President refused to redeem said circulating notes, except in the following manner, to wit: Immediately after said package was laid upon the counter of the Bank, and the redemption thereof demanded in the legal coin of the United States,



the President took the same and slowly counted, one by one, the notes contained in it, and, after counting the same, took from said package one five dollar note, and laid it down upon the counter of said Bank, and then brought out a bag containing dimes and half dimes of the silver coin of the United States, and slowly proceeded to count out five dollars and placed it on the counter for the said Notary, and took up said five dollar note thus redeemed and laid it upon the counter by itself; and thereupon took another note from said package and laid it upon the counter, and counted out to said Notary, in like manner, in dimes and half dimes, the amount thereof, and placed the same on the counter before said Notary; and in this manner continued to redeem the notes contained in said package, in dimes and half dimes, one by one, until three o'clock P. M., when the President declared the bank closed for the day.

That up to this time the Bank had redeemed one hundred and fifty dollars of the package.

That the Notary received the specie for the bills redeemed, and protested the balance, and notified the Bank that on the next morning they should present another package of \$500 of the notes of the Bank for redemption.

That on the 13th of October, the appellees, Willard and Adsit, by their said agent, presented another package of \$500 at the counter of the Bank, to the acting Teller thereof, for redemption, and that the Bank refused to redeem, except in the same dilatory manner in which it pretended to redeem the notes presented on the day previously. That at 3 o'clock P. M. the President declared the Bank closed, at which time it had redeemed some \$———

The Notary received the specie for the notes redeemed, and protested the balance.

That the protested notes, together with the protests, were filed with the Auditor, and the Auditor thereupon proceeded to give the notices and put the Bank in liquidation.

The Bill prays a perpetual injunction upon the Auditor.

The case was heard below upon bill, answer and stipulation, and the Court refused substantially to make the preliminary injunction granted in the case perpetual, and that the Court erred in doing so, is, substantially, the error assigned.

If the appellant did refuse to redeem its notes on presentation, and that this fact in legal form was before the Auditor, it will be conceded that the decree must stand. But it is claimed that the record does not show that there was such a refusal as to authorise the proceedings instituted by the Auditor, and that if in fact there had been a refusal, there was produced to the Auditor no sufficient and competent evidence of such refusal. And this brings us to inquire:

I. Did the appellant, on presentation at its counter, refuse to redeem the protested notes?

1st. By the stipulation, the facts set forth in the Notary's protest are taken to be true, and he certifies that the Bank did refuse to redeem the notes presented, "*except in following manner,*" and then states minutely what was done. That is, the appellant refused utterly to redeem the notes protested, and would redeem none of the notes presented except in the manner stated by the Notary. The record, therefore, shows that the Bank wholly refused to redeem the protested notes.

2d. It is the duty of the bank to redeem its notes on presentation, and all of its notes. In order that this may be done, it must either keep its money counted or have at all times employees sufficient to count its specie and redeem its notes within a reasonable time.

*Suffolk Bank vs. Lincoln Bank, U. S. Mason I.*

*Hubbard vs. Chenango Bank, 8 Cow. 88.*

*The People vs. Whittemore, 4 Gibbs, Mich. R. 24.*

*Gilbert vs. Nantucket Bank, 2 Am. L. J. 107.*

In the cases of the *Suffolk Bank vs. Lincoln*, and *The People vs. Whittemore*, the circumstances, in all their essential features, were like those in the present case, and in those cases the court held that the conduct of the officers of the bank, in counting out small change and redeeming but small sums in a day,



(although they redeemed many hundred dollars more in a day than did the appellant,) amounted to a refusal to redeem.

3d. If the bank had in this case wholly refused to redeem its notes when presented, it would not be claimed that there was error in the decree, but this Court will not permit a bank to accomplish by artifices, deception and fraud, that which it will not allow it to do directly and openly. But this record cannot be read without coming to the conclusion that this Bank did not intend in good faith to redeem the bills presented, but sought to cover its refusal to redeem by the shallow farce of redeeming in dimes and half dimes, at the rate of one or two hundred dollars per day. The trick is too apparent to bear argument.

4th. The neglect on the part of the Bank to redeem the whole package when presented, and as a package, was a refusal on its part to redeem the protested notes.

*Sess. Laws 1857, 24.*

II. The next inquiry is, had the Auditor competent evidence sufficient before him to authorise the proceedings taken by him to put the appellant Bank in liquidation?

1st. Assuming the amendment of 1857 to be constitutional, (and that it is, so far as the mode of protest is concerned, there can be no doubt,) to authorise his proceedings there should have been produced and filed with the Auditor, both the protested notes and the certificate of the Notary making the protest.

The record shows that both these requirements of the law were complied with. The Auditor, therefore, had before him competent evidence upon which to act.

2d. Was the evidence before the Auditor sufficient?

By the pleadings in the cause as they appear in the record, the same points and circumstances which were before the Auditor, and upon which he conceded there had been a refusal to redeem, were plead before the Court below, and now by appeal are before your Honors.



That this record shows evidence abundantly sufficient to authorise the conclusion that the Bank refused to redeem, we have already shown to your Honors.

We cannot better give our views of the law of this case than by adopting as a part of our argument the opinion of his Honor, John M. Wilson, upon the hearing of this case in the Court below. The following is a copy of that opinion :

REAPER'S BANK vs. WILLARD, ET AL.

This case was heard upon bill, answer and stipulation.

The complainant is a Banking corporation organised under the General Banking Law of this State, passed in 1851.

The defendants, Willard and Adsit, were joint owners of packages of bills amounting to \$500, issued by complainant, and payable at complainant's Bank, and was presented to the Bank in a package, and redemption demanded, on the 12th of October, 1859, by a Notary Public on behalf of said Willard and Adsit.

The President of the Bank received the package when presented, and counted the bills, then separated one bill from the package, took a bag of dimes and half dimes, and deliberately counted out the amount of such bill and handed the amount to the Notary, and so proceeded redeeming in that manner, one bill at a time, for several hours, and until 3 o'clock P. M., and then refused to redeem any more bills of the package on that day, even in that manner; and also refused to redeem in any other manner, although he had thus redeemed only \$150 of the \$500, and thereupon the Notary protested the bills not redeemed, for non-payment.

On that day the Notary informed the President of the Bank that he should present for redemption on the next day another package of the bills of the Bank of the same amount.

On the next day, after 10 o'clock A. M., the Notary presented another package of the bills of the Bank, amounting to \$500, and demanded payment.

The President proceeded to redeem the bills, one by one, in the same manner as on the day previous, until 3 o'clock p. m., when he stated that the Bank had closed, and refused further to redeem in that manner, or in any other mode. Whereupon the Notary protested the bills of the package unredeemed, for non-payment.

The several protested bills were forwarded to the Auditor of State, whereupon he gave notice to the President of the said Bank to pay said note with interest, and fees, as required by the statute, and complainant alleges that he believes the Auditor is about to proceed to sell the stocks pledged by the Bank, and call in the circulation of the Bank, etc.

This statement is, in substance, the case made by the bill. A preliminary injunction was granted, to enable the defendant to bring all the facts before the Court, if there should be any other facts not stated in the bill, necessary to a full investigation of this case, or should any facts stated in the bill be controverted.

Every question involving the rights of bankers and bill-holders under the General Banking Law, is important, involving to some extent, as it does, the interests of corporations who have invested nearly \$10,000,000, and the interests of the business men of this State, who are compelled to use to a great extent the issues of these corporations in the transaction of business.

The intention of the framers of the Constitution, and of the Legislature which passed the act of 1851, is very apparent, which was to obtain a currency easily convertible into money, and secure the bill holder from loss. The subject of banking was considered by the framers of the Constitution as one of great importance and delicacy. Hence they took from the Legislature the power of deciding what the law should be until it had been submitted to the people for their approval or rejection.

The jealousy of the ordinary mode of legislation in relation to this subject, and which induced the Constitutional Convention to require such law to be submitted to the vote of the people, is easily accounted for by reference to the history of former legislation, and its disastrous results, in this and other States. And the fact that a case like the present should be presented to a court, and the strong arm of a court of equity should be invoked



to sustain the assumption of the complainant in this case, as legal rights entitled to protection by injunction, is an example to show that the jealousy of the Constitutional Convention in relation to such corporations was not without reason.

What is the right which the complainant asks the aid of the Court to protect, and which is about to be violated as is alleged? It is simply this: The right to have its agent stand at its bank counter, and when a bill holder presents a number of its bills for redemption, count out dimes and half dimes in the most dilatory manner, day after day, for the redemption of the bills, at the rate of \$150 to \$300 per day; and this Court is asked, in short, to adjudge that a banker, when bills are presented for redemption, may stand at his counter, and under the pretence of complying with the law, adopt any and every device to delay and annoy the bill holder, if he does so under the pretence that he is redeeming.

The mode of redeeming in the present case, as it was called, could have been adopted with no other object than to harass and annoy the bill holder, so as to deter him and others from presenting bills for redemption.

The law, when it imposes an obligation upon an individual or corporation, requires that it should be performed in a reasonable time, and in honesty and good faith. If there was no authority upon the question, we should have no hesitation, upon general principles, in deciding that the facts stated in this case amounts in law to a refusal to redeem.

But several cases of a similar character have occurred, and been the subject of adjudication.

The case of the *Suffolk Bank vs. Lincoln Bank*, 3 Mason 1, is, substantially, like this: Bills of the Lincoln Bank were presented and redemption demanded. The cashier proposed to redeem, and commenced counting out small silver coin, of the denomination of one quarter of a dollar and less, and counted about \$500 before the hour of closing the bank, the amount demanded being \$3,000. Story, Judge, decided that such conduct amounted to a refusal, and that a protest for a refusal to redeem was proper. "There is no pretence to say," the Judge remarked, "that a bank has a right to delay the holder of bills, day after day, while its officers can count out change, so as to



"make up the amount in the smallest pieces of coin, in their own way. Every bank is bound to have its specie counted and weighed, ready for delivery," &c.

*Hubbard vs. Chenango Bank*, 8 Cowen 88.

*Gilbert vs. Nantucket Bank*, 2 Am. L. J. 107.

The case of *The People vs. Dubois*, 18 Ills. 333, does not involve this question. There was in that case nothing to show that small change was offered, or any act done by the Bank for the purpose of vexation and delay, and the only question decided was, that the coinage of the U. S. A., of all denominations, was a legal tender. It by no means follows because the coin tendered was a legal tender, that the Bank had the right, by vexatiously prolonging the payment of a few hundred dollars, to keep a bill holder waiting day after day for his money.

But it is insisted by the complainant that the notes were not properly protested, because the Notary stated in his protest the facts as they transpired at the time they were presented. It is a singular objection for the complainant to urge, because the protest would be sufficient even if all he excepts to were stricken out.

The Notary certifies that he presented the notes, at the request of the owners, at the counter of the Bank, at 10 o'clock A. M., to the President of the Bank, stating the amount of the package, and demanded of the said President the redemption of said notes, and that the said President then and there refused to redeem. He then proceeds to state what the President did, under the pretence of redeeming, as before stated, and concludes his certificate by stating, "whereupon I, the said Notary, at the request of the said Adsit and Willard, did protest, and by these presents do solemnly protest, &c., by reason of the non-redemption of said circulating notes so remaining unredeemed," &c. No rule is better settled than this. A necessary statement or averment well stated is not weakened, or in any manner affected, by the statement of facts not necessary to be stated. The statement of the manner of the refusal, if improper, can only be regarded as surplusage. Though, in my own judgment, there is no objection to stating the facts in this case, so that if protest is improperly made, the party for whose benefit the protest is made may decide whether the protest was properly made or not, and

proceed accordingly. Clearly, it cannot vitiate a protest otherwise properly made.

If the facts stated show that the protest was properly made, a court of equity would not lend its aid to the party protested to prevent the proper officer from doing what he was required by law to do under such protest.

In the present case the Court is asked to enjoin the Auditor from doing what the law requires him to do in the case made by the bill.

It is said that the Auditor is *not* a Judicial officer, and has no right to determine whether the facts show a proper case for protest.

In the first place, no such duty devolves upon the Auditor in this case, as already shown, because the protest is perfect after striking out the special facts stated.

But, were it otherwise, and the Auditor had decided upon the facts stated, and decided that the protest was proper, and decided correctly, and proceeded to act as required by law in such cases, I am at a loss to know upon what ground a court of equity would enjoin him.

Admitting that the protest was proper, there remains no equitable ground of relief, so far as this case shows. There is no averment that the Auditor is proceeding to do, or threatening to do, any act which he is not required by law to do if the protest is properly made, and nothing but what upon refusal a court would compel him to do by mandamus.

WALKER, VAN ARMAN & DEXTER,

*Counsel for Appellees.*



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Beapens Bank

is

Dubois

Appelles Brief

Filed Apr 19. 1860

Edmund  
Clerk



SUPREME COURT, STATE OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1860.

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That on the 12th of October, 1859, the appellees, Willard and Adsit, were the owners and holders of a package of \$500 in the circulating notes of said Bank, and through their agent, Charles A. Beecher, a Notary Public residing at Fairfield, presented the same at the counter of the Bank, to the President and acting Teller, for redemption, at the same time stating to said President the amount contained in the package.

That said President refused to redeem said circulating notes, except in the following manner, to wit: Immediately after said package was laid upon the counter of the Bank, and the redemption thereof demanded in the legal coin of the United States,



the President took the same and slowly counted, one by one, the notes contained in it, and, after counting the same, took from said package one five dollar note, and laid it down upon the counter of said Bank, and then brought out a bag containing dimes and half dimes of the silver coin of the United States, and slowly proceeded to count out five dollars and placed it on the counter for the said Notary, and took up said five dollar note thus redeemed and laid it upon the counter by itself; and thereupon took another note from said package and laid it upon the counter, and counted out to said Notary, in like manner, in dimes and half dimes, the amount thereof, and placed the same on the counter before said Notary; and in this manner continued to redeem the notes contained in said package, in dimes and half dimes, one by one, until three o'clock P. M., when the President declared the bank closed for the day.

That up to this time the Bank had redeemed one hundred and fifty dollars of the package.

That the Notary received the specie for the bills redeemed, and protested the balance, and notified the Bank that on the next morning they should present another package of \$500 of the notes of the Bank for redemption.

That on the 13th of October, the appellees, Willard and Adsit, by their said agent, presented another package of \$500 at the counter of the Bank, to the acting Teller thereof, for redemption, and that the Bank refused to redeem, except in the same dilatory manner in which it pretended to redeem the notes presented on the day previously. That at 3 o'clock P. M. the President declared the Bank closed, at which time it had redeemed some \$——

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2d. It is the duty of the bank to redeem its notes on presentation, and all of its notes. In order that this may be done, it must either keep its money counted or have at all times employees sufficient to count its specie and redeem its notes within a reasonable time.

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(although they redeemed many hundred dollars more in a day than did the appellant,) amounted to a refusal to redeem.

3d. If the bank had in this case wholly refused to redeem its notes when presented, it would not be claimed that there was error in the decree, but this Court will not permit a bank to accomplish by artifices, deception and fraud, that which it will not allow it to do directly and openly. But this record cannot be read without coming to the conclusion that this Bank did not intend in good faith to redeem the bills presented, but sought to cover its refusal to redeem by the shallow farce of redeeming in dimes and half dimes, at the rate of one or two hundred dollars per day. The trick is too apparent to bear argument.

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*Sess. Laws 1857, 24.*

II. The next inquiry is, had the Auditor competent evidence sufficient before him to authorise the proceedings taken by him to put the appellant Bank in liquidation?

1st. Assuming the amendment of 1857 to be constitutional, (and that it is, so far as the mode of protest is concerned, there can be no doubt,) to authorise his proceedings there should have been produced and filed with the Auditor, both the protested notes and the certificate of the Notary making the protest.

The record shows that both these requirements of the law were complied with. The Auditor, therefore, had before him competent evidence upon which to act.

2d. Was the evidence before the Auditor sufficient?

By the pleadings in the cause as they appear in the record, the same points and circumstances which were before the Auditor, and upon which he conceded there had been a refusal to redeem, were plead before the Court below, and now by appeal are before your Honors.



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Reapers Bank

vs

Dubois & Co

Appellous Brief

Filed Apr. 19. 1868

L. Deland

Clerk

1356 ✓

# SUPREME COURT,

## THIRD GRAND DIVISION.

THE REAPER'S BANK,  
vs.  
ELISHA W. WILLARD, } *In Chancery.*  
JAMES M. ADSIT, &  
JESSE K. DUBOIS. }

### ABSTRACT OF THE RECORD.

The Bill alleges,

Page 2. That Augustus H. Burley deposited with the Auditor of State Stocks of the United States to the amount of \$100,000.

That on the 14th day of April, 1859, the said Burley, under his hand and seal, made the certificate required by section 7 of the general Banking Law of the State of Illinois, and that a copy of such certificate is attached to the bill.

3 That said certificate was acknowledged, and was recorded in the office of the Recorder of Wayne County, and that copies thereof were filed in the offices of the Auditor and Secretary of State.

That thereupon, the complainant became a body corporate, and entitled to certain privileges, immunities and franchises secured by said law, and by contract with the State of Illinois.

That the office of the complainant Bank is in Fairfield, in the County of Wayne and State of Illinois.

That Augustus H. Burley is President, and Frederick G. Clapp, Cashier.



3 That the Auditor, in accordance with the provisions of law, registered and countersigned circulating notes to the amount of about \$94,000, payable at the office of complainant, at Fairfield, in the County of Wayne, and delivered the same to complainant to be circulated as money.

That a portion of said notes have been executed and signed by the President and Cashier of the complainant Bank, and have been issued and circulated as money.

3 That on the 12th of October, 1859, the defendants, Adsit & Willard, were the owners and holders of a package of \$500 of the circulating notes of the complainant Bank, and at 10 o'clock in the forenoon of that day, by the hand of Charles A. Beecher, a Notary Public, residing at Fairfield, presented the same at the office of complainant and demanded redemption thereof in the legal coin of the United States.

4 That upon such demand, the complainant tendered to said Adsit & Willard, in redemption thereof, the silver coin of the United States, in dimes and half dimes, and that the defendants, Willard and Adsit, accepted \$150 thereof, and refused to receive payment of the balance.

4 That on the 13th of the same month, the said Adsit and Willard were the owners and holders of another package of five hundred dollars of the circulating notes of said Bank, and at ten o'clock in the forenoon of that day, by the hand of said Notary, presented the same for redemption at the office of the complainant, at said Fairfield, and demanded the redemption thereof in the legal coin of the United States.

4 That upon such demand, the complainant tendered the said defendants, Willard and Adsit, in redemption thereof, the silver coins of the United States in pieces of the denomination of dimes and half dimes, and that Adsit and Willard received \$270 thereof, and refused to receive payment of the balance.

That notwithstanding such tender, Adsit and Willard caused the notes unredeemed by the complainant to be protested by said Notary, and thereupon presented the said protested notes, together with the protests, to the Auditor of State, and filed the same in his office, and delivered copies thereof to the said Burley, and that true copies of said protests are attached to the bill.

5 That the Auditor has notified the complainant to pay the said protested notes, with twelve per cent. interest, with costs and protest fees, and that the said Auditor is about to sell said stocks and put said bank into liquidation.



PROTEST OF NOTES ON THE 12TH OCTOBER, 1859.

STATE OF ILLINOIS, }  
COUNTY OF WAYNE. } ss.

9-11

Be it known, that on this twelfth day of October, in the year of our Lord, one thousand eight hundred and fifty-nine, at ten o'clock in the forenoon, I, Charles A. Beecher, a Notary Public, duly commissioned and sworn, and residing at Fairfield, in the county and state aforesaid, at the request of James M. Adsit, and Elisha W. Willard, the owners and holders thereof, went with a package of five hundred dollars of the circulating bank notes of the Reapers Bank, located in the town of Fairfield, in the county and state aforesaid, of the denominations, numbers, and letters given in the Schedule hereto annexed, and at ten o'clock in the forenoon of said day, demanded at the counter of said Bank, during the usual hours of business, between the hours of ten o'clock in the forenoon, and three o'clock in the afternoon, of A. H. Burley, the President thereof, the redemption of said circulating notes, in the legal coin of the United States, and at the same time stated to said President the amount contained in said package, which the said A. H. Burley, the President, then and there refused to redeem, except in the following manner, that is to say, immediately after said package was laid upon the counter of said bank by me, the said President took the same and slowly counted, one by one, the notes contained in it, and after counting the same, took from said package one five dollar note, and laid it down upon the counter of said bank, and then brought out a bag containing dimes and half dimes of the silver coin of the United States, and slowly proceeded to count out five dollars, and placed it on the counter for me, and took up said five dollar note thus redeemed and laid it by itself upon the counter, and thereupon took another note from said package and laid it upon the counter, and counted out to me in like manner, in dimes and half dimes, the amount thereof, and placed the same on the counter before me, and in this manner continued to redeem the notes of said package, in dimes and half dimes, one by one, till three o'clock in the afternoon, when the said President declared the said Bank closed for the day, at which time the said President had redeemed one hundred and fifty dollars of said package, the specie for which I removed, together with said notes remaining unredeemed from said President, and notified the said President that on the next morning, at ten o'clock, I should present five hundred dollars more of the circulating notes of said Bank, for and in behalf of the said James M. Adsit and Elisha W. Willard, for redemption. Whereupon I, the said Notary, at the request of the said James M. Adsit and Elisha W. Willard, did protest, and by these presents do solemnly protest, as well against the said Bank as all whom it doth or may concern, for exchange, re-exchange, and costs, charges, damages and interest, by reason of the non-redemption of said circulating notes so remaining unredeemed as above stated.



And I, the said Notary, do hereby certify that on the same day and year above written, due notice of the foregoing Protest was left at said bank by me, as follows:

Notice for A. H. Burley, President of said Bank.

" for

" for

And I also certify that I did, on the same day, during the business hours thereof, deliver to A. H. Burley, the President of said Bank, at the office and place of business of said Bank, a copy of such Protest, together with a copy of the schedules thereto annexed.

In testimony whereof, I, the said Notary, have hereunto set my hand and affixed my notarial seal, the day and year above written.



CHARLES A. BEECHER,  
Notary Public.

FEES.—Noting, 25 cts.; protest and record, 50 cts.; notices, 25; seal, 25 cts.; certificates, 25 cts.—\$1.50.

PROTEST OF THE NOTES PRESENTED ON THE 13TH OCTOBER, 1859.

STATE OF ILLINOIS, }  
COUNTY OF WAYNE. } ss.

12-14

Be it known, that on this 13th day of October, in the year of our Lord, one thousand eight hundred and fifty-nine, at ten o'clock in the forenoon, I, Charles A. Beecher, a Notary Public, duly commissioned and sworn, and residing at Fairfield, in the county and state aforesaid, at the request of James M. Adsit, and Elisha W. Willard, the owners and holders thereof, went with a package of five hundred dollars of the circulating bank notes of the Reapers Bank, located in the town of Fairfield, in the county and state aforesaid, of the denominations, numbers, and letters given in the Schedule hereto annexed, and at ten o'clock in the forenoon of said day, demanded at the counter of said Bank, during the usual hours of business, between the hours of ten o'clock in the forenoon, and three o'clock in the afternoon, of A. H. Burley, the President thereof, and at the same time stated to said President the amount contained in said package, the redemption of said circulating notes, in the legal coin of the United States, which the said A. H. Burley, the President, then and there refused to redeem, except in the following manner, that is to say, immediately after said package was laid upon the counter of said bank by me, the said President took the same and slowly



counted, one by one, the notes contained in it, and after counting the same, took from said package one five dollar note, and laid it down upon the counter of said bank, and then brought out a bag containing dimes and half dimes of the silver coin of the United States, and slowly proceeded to count out five dollars, and placed it on the counter for me, and took up said five dollar note thus redeemed and laid it by itself upon the counter, and thereupon took another note from said package and laid it upon the counter, and counted out to me in like manner, in dimes and half dimes, the amount thereof, and placed the same on the counter before me, and in this manner continued to redeem the notes of said package, in dimes and half dimes, one by one, till three o'clock in the afternoon, when the said President declared the said Bank closed for the day, at which time the said President had redeemed two hundred and ninety dollars of said package, the specie for which I received, together with said notes remaining unredeemed from said President.

Whereupon I, the said Notary, at the request of the said James M. Adsit and Elisha W. Willard, did protest, and by these presents do solemnly protest, as well against the said Bank as all whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages and interest, by reason of the non-redemption of said circulating notes so remaining unredeemed as above stated.

And I, the said Notary, do hereby certify that on the same day and year above written, due notice of the foregoing Protest was left at said bank by me, as follows:

Notice for A. H. Burley, President of said Bank.

" for

" for

And I also certify that I did, on the same day and year, during the said business hours thereof, deliver to A. H. Burley, the President of said Bank, at the office and place of business of said Bank, a copy of such Protest, together with a copy of the schedule thereto annexed.

In testimony whereof, I, the said Notary, have hereunto set my hand and affixed my notarial seal, the day and year above written.



CHARLES A. BEECHER,  
Notary Public.

FEES.—Noting, 25 cts.; protest and record, 50 cts.; notices, 25; seal, 25 cts.; certificates, 25 cts.—\$1.50.



ANSWER.

- 19 The defendants filed their answer, which, however, by subsequent order, is made the answer of the defendants Willard and Adsit only, in which they admit

That Augustus H. Burley filed the stocks, executed, acknowledged, and caused to be filed and recorded, the certificate, under the general banking law of the State, at the time and in the manner alleged in the bill.

That the complainant Bank became and was duly incorporated and organised under said general banking law. That Augustus H. Burley is President, and Frederick G. Clapp, Cashier of the complainant Bank.

That the Auditor of State registered, countersigned, and delivered to the complainant, to be circulated as money, the said notes, at the time, in the manner and to the amount alleged in the bill, and that a portion of the same have been signed by the President and Cashier of the complainant Bank, and circulated as money.

- 19 That on the 12th of October, 1857, the defendants, Adsit and Willard, were the owners and holders of a package of \$500 in the circulating notes of said Bank, and that they presented the same for, and demanded redemption thereof, at the office of the complainant Bank, at the time and in the manner alleged in the bill.

- 21 Deny that on the presentation of said notes and demand of redemption thereof in the legal coins of the United States, the complainant tendered in redemption thereof the silver coins of the United States, or any other coin whatever.

- 21 Say that on such presentation and demand, the said Notary stated to the complainant the amount contained in said packages, and the complainant refused to redeem said notes contained in said package, or any of them, except in the following manner, that is to say, immediately after said package was laid upon the counter of said Bank by said Beecher, the Notary, the Complainant, President and Agent, Augustus H. Burley, took the same and slowly counted, one by one, the notes contained in said package, and then took from said package one of said notes, and separately laid it upon the counter by itself, and then brought out a bag containing dimes and half dimes of the silver coins of the United States, and proceeded slowly to count out five dollars, and placed it on the counter for said Beecher, the agent of said Willard and Adsit, and took up said five dollar note thus redeemed, and laid it upon the counter by itself; and then took another note from said package, and in the same manner redeemed it in dimes and half dimes, and thus continued to re-



deem the notes of said package in dimes and half dimes, one by one, till 3 o'clock p. m., when said Burley, President of said Bank, declared the same closed for the day, at which time said Bank had redeemed \$150— which coin so paid in redemption was received by said Willard and Adsit, and said President and acting Teller was, by said Notary, notified that on the next morning at 10 o'clock, he should, on behalf of said Willard and Adsit, present another package of \$500 for redemption.

- 22 That such notice was given in order that complainant might be prepared with money counted, or with such assistance as it might need.

Admit that on the 13th October, 1859, by their said agent, in like manner presented another package of \$500 for redemption.

- 23 Deny that the complainant offered to redeem the same, and say that they refused to redeem it, or any part of it, except in dimes and half dimes, and in the same dilatory manner in which they pretended to redeem the bills presented the day previous.

- 24 Admit that the balance of the packages unredeemed were protested; that the protests and protested notes were presented to and filed in the office of the Auditor, as alleged in said bill.

- 25 That the Auditor gave the notice, and was about to proceed to put such Bank in liquidation, as in said bill alleged.

That a stipulation was thereupon filed in said case as follows :

THE REAPER'S BANK	}	<i>Superior Court of Chicago—In Chancery.</i>
<i>vs.</i>		
ELISHA W. WILLARD,		
JAMES M. ADSIT AND JESSE K. DUBOIS.		

- 25 It is hereby stipulated and agreed in this case, that the facts and circumstances relating to and connected with the presentation and demand of payment and protest of the said protested notes, as set forth in the answer filed in said cause, and in the copy of the Notary's protest attached to said bill, are true, and are to be so considered on the hearing of this case.

CHAS. H. MACK,  
Sol'r for Compl't.  
WALKER, VAN ARMAN & DEXTER,  
Sol'rs for Def'ts.



By a subsequent order, this stipulation is made the stipulation of the complainant and the defendants Willard and Adsit, and the appearance of the defendant Dubois is withdrawn.

29

On the 17th of December, 1859, the default of the defendant, Dubois, was entered for want of an answer.

On the 4th of January, A. D. 1860, a final decree was made in this case, "that the order enjoining the defendants and their agents, and allowing the decree heretofore entered in the above cause, be continued and made perpetual, upon the complainant's depositing in the office of Jesse K. Dubois, the Auditor of State, the legal coins of the United States for the redemption and payment of the circulating notes described in said bill of complaint, together with twelve per cent. interest per annum thereon, from the date of the protest thereof, and all costs and protest fees and expenses, within ten days from the entry of this decree, or if appeal shall be perfected in said cause, then within ten days from notice of the affirmation of such decree, by the Supreme Court of the State of Illinois, upon appeal, if the same shall be so affirmed, and that on default of such payment, the complainant's bill be dismissed.

Appeal prayed and allowed.

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The Reapers Bank

is

Dubois

Abstract

Filed Apr 19, 1866  
L. L. Leland  
Clerk



# SUPREME COURT,

## THIRD GRAND DIVISION.

THE REAPER'S BANK,  
vs.  
ELISHA W. WILLARD, } *In Chancery.*  
JAMES M. ADSIT, &  
JESSE K. DUBOIS. }

### ABSTRACT OF THE RECORD.

The Bill alleges,

Page 2. That Augustus H. Burley deposited with the Auditor of State Stocks of the United States to the amount of \$100,000.

That on the 14th day of April, 1859, the said Burley, under his hand and seal, made the certificate required by section 7 of the general Banking Law of the State of Illinois, and that a copy of such certificate is attached to the bill.

3 That said certificate was acknowledged, and was recorded in the office of the Recorder of Wayne County, and that copies thereof were filed in the offices of the Auditor and Secretary of State.

That thereupon, the complainant became a body corporate, and entitled to certain privileges, immunities and franchises secured by said law, and by contract with the State of Illinois.

That the office of the complainant Bank is in Fairfield, in the County of Wayne and State of Illinois.

That Augustus H. Burley is President, and Frederick G. Clapp, Cashier.

3        That the Auditor, in accordance with the provisions of law, registered and countersigned circulating notes to the amount of about \$94,000, payable at the office of complainant, at Fairfield, in the County of Wayne, and delivered the same to complainant to be circulated as money.

         That a portion of said notes have been executed and signed by the President and Cashier of the complainant Bank, and have been issued and circulated as money.

3        That on the 12th of October, 1859, the defendants, Adsit & Willard, were the owners and holders of a package of \$500 of the circulating notes of the complainant Bank, and at 10 o'clock in the forenoon of that day, by the hand of Charles A. Beecher, a Notary Public, residing at Fairfield, presented the same at the office of complainant and demanded redemption thereof in the legal coin of the United States.

4        That upon such demand, the complainant tendered to said Adsit & Willard, in redemption thereof, the silver coin of the United States, in dimes and half dimes, and that the defendants, Willard and Adsit, accepted \$150 thereof, and refused to receive payment of the balance.

4        That on the 13th of the same month, the said Adsit and Willard were the owners and holders of another package of five hundred dollars of the circulating notes of said Bank, and at ten o'clock in the forenoon of that day, by the hand of said Notary, presented the same for redemption at the office of the complainant, at said Fairfield, and demanded the redemption thereof in the legal coin of the United States.

4        That upon such demand, the complainant tendered the said defendants, Willard and Adsit, in redemption thereof, the silver coins of the United States in pieces of the denomination of dimes and half dimes, and that Adsit and Willard received \$270 thereof, and refused to receive payment of the balance.

         That notwithstanding such tender, Adsit and Willard caused the notes unredeemed by the complainant to be protested by said Notary, and thereupon presented the said protested notes, together with the protests, to the Auditor of State, and filed the same in his office, and delivered copies thereof to the said Burley, and that true copies of said protests are attached to the bill.

5        That the Auditor has notified the complainant to pay the said protested notes, with twelve per cent. interest, with costs and protest fees, and that the said Auditor is about to sell said stocks and put said bank into liquidation.



PROTEST OF NOTES ON THE 12TH OCTOBER, 1859.

STATE OF ILLINOIS, }  
COUNTY OF WAYNE. } ss.

9-11

Be it known, that on this twelfth day of October, in the year of our Lord, one thousand eight hundred and fifty-nine, at ten o'clock in the forenoon, I, Charles A. Beecher, a Notary Public, duly commissioned and sworn, and residing at Fairfield, in the county and state aforesaid, at the request of James M. Adsit, and Elisha W. Willard, the owners and holders thereof, went with a package of five hundred dollars of the circulating bank notes of the Reapers Bank, located in the town of Fairfield, in the county and state aforesaid, of the denominations, numbers, and letters given in the Schedule hereto annexed, and at ten o'clock in the forenoon of said day, demanded at the counter of said Bank, during the usual hours of business, between the hours of ten o'clock in the forenoon, and three o'clock in the afternoon, of A. H. Burley, the President thereof, the redemption of said circulating notes, in the legal coin of the United States, and at the same time stated to said President the amount contained in said package, which the said A. H. Burley, the President, then and there refused to redeem, except in the following manner, that is to say, immediately after said package was laid upon the counter of said bank by me, the said President took the same and slowly counted, one by one, the notes contained in it, and after counting the same, took from said package one five dollar note, and laid it down upon the counter of said bank, and then brought out a bag containing dimes and half dimes of the silver coin of the United States, and slowly proceeded to count out five dollars, and placed it on the counter for me, and took up said five dollar note thus redeemed and laid it by itself upon the counter, and thereupon took another note from said package and laid it upon the counter, and counted out to me in like manner, in dimes and half dimes, the amount thereof, and placed the same on the counter before me, and in this manner continued to redeem the notes of said package, in dimes and half dimes, one by one, till three o'clock in the afternoon, when the said President declared the said Bank closed for the day, at which time the said President had redeemed one hundred and fifty dollars of said package, the specie for which I removed, together with said notes remaining unredeemed from said President, and notified the said President that on the next morning, at ten o'clock, I should present five hundred dollars more of the circulating notes of said Bank, for and in behalf of the said James M. Adsit and Elisha W. Willard, for redemption. Whereupon I, the said Notary, at the request of the said James M. Adsit and Elisha W. Willard, did protest, and by these presents do solemnly protest, as well against the said Bank as all whom it doth or may concern, for exchange, re-exchange, and costs, charges, damages and interest, by reason of the non-redemption of said circulating notes so remaining unredeemed as above stated.

And I, the said Notary, do hereby certify that on the same day and year above written, due notice of the foregoing Protest was left at said bank by me, as follows:

Notice for A. H. Burley, President of said Bank.

“ for

“ for

And I also certify that I did, on the same day, during the business hours thereof, deliver to A. H. Burley, the President of said Bank, at the office and place of business of said Bank, a copy of such Protest, together with a copy of the schedules thereto annexed.

In testimony whereof, I, the said Notary, have hereunto set my hand and affixed my notarial seal, the day and year above written.



CHARLES A. BEECHER,  
Notary Public.

Fees.—Noting, 25 cts.; protest and record, 50 cts.; notices, 25; seal, 25 cts.; certificates, 25 cts.—\$1.50.

PROTEST OF THE NOTES PRESENTED ON THE 13TH OCTOBER, 1859.

STATE OF ILLINOIS, } ss.  
COUNTY OF WAYNE. }

12-14 Be it known, that on this 13th day of October, in the year of our Lord, one thousand eight hundred and fifty-nine, at ten o'clock in the forenoon, I, Charles A. Beecher, a Notary Public, duly commissioned and sworn, and residing at Fairfield, in the county and state aforesaid, at the request of James M. Adsit, and Elisha W. Willard, the owners and holders thereof, went with a package of five hundred dollars of the circulating bank notes of the Reapers Bank, located in the town of Fairfield, in the county and state aforesaid, of the denominations, numbers, and letters given in the Schedule hereto annexed, and at ten o'clock in the forenoon of said day, demanded at the counter of said Bank, during the usual hours of business, between the hours of ten o'clock in the forenoon, and three o'clock in the afternoon, of A. H. Burley, the President thereof, and at the same time stated to said President the amount contained in said package, the redemption of said circulating notes, in the legal coin of the United States, which the said A. H. Burley, the President, then and there refused to redeem, except in the following manner, that is to say, immediately after said package was laid upon the counter of said bank by me, the said President took the same and slowly



counted, one by one, the notes contained in it, and after counting the same, took from said package one five dollar note, and laid it down upon the counter of said bank, and then brought out a bag containing dimes and half dimes of the silver coin of the United States, and slowly proceeded to count out five dollars, and placed it on the counter for me, and took up said five dollar note thus redeemed and laid it by itself upon the counter, and thereupon took another note from said package and laid it upon the counter, and counted out to me in like manner, in dimes and half dimes, the amount thereof, and placed the same on the counter before me, and in this manner continued to redeem the notes of said package, in dimes and half dimes, one by one, till three o'clock in the afternoon, when the said President declared the said Bank closed for the day, at which time the said President had redeemed two hundred and ninety dollars of said package, the specie for which I received, together with said notes remaining unredeemed from said President.

Whereupon I, the said Notary, at the request of the said James M. Adsit and Elisha W. Willard, did protest, and by these presents do solemnly protest, as well against the said Bank as all whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages and interest, by reason of the non-redemption of said circulating notes so remaining unredeemed as above stated.

And I, the said Notary, do hereby certify that on the same day and year above written, due notice of the foregoing Protest was left at said bank by me, as follows:

Notice for A. H. Burley, President of said Bank.

" for

" for

And I also certify that I did, on the same day and year, during the said business hours thereof, deliver to A. H. Burley, the President of said Bank, at the office and place of business of said Bank, a copy of such Protest, together with a copy of the schedule thereto annexed.

In testimony whereof, I, the said Notary, have hereunto set my hand and affixed my notarial seal, the day and year above written.



CHARLES A. BEECHER,  
Notary Public.

FEES.—Noting, 25 cts.; protest and record, 50 cts.; notices, 25; seal, 25 cts.; certificates, 25 cts.—\$1.50.

ANSWER.

- 19 The defendants filed their answer, which, however, by subsequent order, is made the answer of the defendants Willard and Adsit only, in which they admit

That Augustus H. Burley filed the stocks, executed, acknowledged, and caused to be filed and recorded, the certificate, under the general banking law of the State, at the time and in the manner alleged in the bill.

That the complainant Bank became and was duly incorporated and organised under said general banking law. That Augustus H. Burley is President, and Frederick G. Clapp, Cashier of the complainant Bank.

That the Auditor of State registered, countersigned, and delivered to the complainant, to be circulated as money, the said notes, at the time, in the manner and to the amount alleged in the bill, and that a portion of the same have been signed by the President and Cashier of the complainant Bank, and circulated as money.

- 20 That on the 12th of October, 1857, the defendants, Adsit and Willard, were the owners and holders of a package of \$500 in the circulating notes of said Bank, and that they presented the same for, and demanded redemption thereof, at the office of the complainant Bank, at the time and in the manner alleged in the bill.

- 21 Deny that on the presentation of said notes and demand of redemption thereof in the legal coins of the United States, the complainant tendered in redemption thereof the silver coins of the United States, or any other coin whatever.

- 21 Say that on such presentation and demand, the said Notary stated to the complainant the amount contained in said packages, and the complainant refused to redeem said notes contained in said package, or any of them, except in the following manner, that is to say, immediately after said package was laid upon the counter of said Bank by said Beecher, the Notary, the complainant, President and Agent, Augustus H. Burley, took the same and slowly counted, one by one, the notes contained in said package, and then took from said package one of said notes, and separately laid it upon the counter by itself, and then brought out a bag containing dimes and half dimes of the silver coins of the United States, and proceeded slowly to count out five dollars, and placed it on the counter for said Beecher, the agent of said Willard and Adsit, and took up said five dollar note thus redeemed, and laid it upon the counter by itself; and then took another note from said package, and in the same manner redeemed it in dimes and half dimes, and thus continued to re-



deem the notes of said package in dimes and half dimes, one by one, till 3 o'clock p. m., when said Burley, President of said Bank, declared the same closed for the day, at which time said Bank had redeemed \$150— which coin so paid in redemption was received by said Willard and Adsit, and said President and acting Teller was, by said Notary, notified that on the next morning at 10 o'clock, he should, on behalf of said Willard and Adsit, present another package of \$500 for redemption.

22 That such notice was given in order that complainant might be prepared with money counted, or with such assistance as it might need.

Admit that on the 13th October, 1859, by their said agent, in like manner presented another package of \$500 for redemption.

23 Deny that the complainant offered to redeem the same, and say that they refused to redeem it, or any part of it, except in dimes and half dimes, and in the same dilatory manner in which they pretended to redeem the bills presented the day previous.

24 Admit that the balance of the packages unredeemed were protested; that the protests and protested notes were presented to and filed in the office of the Auditor, as alleged in said bill.

25 That the Auditor gave the notice, and was about to proceed to put such Bank in liquidation, as in said bill alleged.

That a stipulation was thereupon filed in said case as follows :

THE REAPER'S BANK	}	<i>Superior Court of Chicago—In Chancery.</i>
<i>vs.</i>		
ELISHA W. WILLARD,		
JAMES M. ADSIT AND JESSE K. DUBOIS.		

25 It is hereby stipulated and agreed in this case, that the facts and circumstances relating to and connected with the presentation and demand of payment and protest of the said protested notes, as set forth in the answer filed in said cause, and in the copy of the Notary's protest attached to said bill, are true, and are to be so considered on the hearing of this case.

CHAS. H. MACK,  
Sol'r for Compl't.

WALKER, VAN ARMAN & DEXTER,  
Sol'rs for Def'ts.