No. 13324

Supreme Court of Illinois

Marine Bank

---

vs.

Birney

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 164

Marine Bk

vs

Birney

13824

Affirmed

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, 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 Seventh day of April in the year of our Lord One Thousand Eight Hundred and Sixty one/two and of the Independence of the United States of America the Eighty Sixth.

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago.

Wm. H. Higgins
Grant Goodrich } Judges.

Carlos Kaun Prosecuting Attorney.

Anthony C. Hesing Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore to wit on the twenty fifth day of October in the year of our Lord one thousand eight hundred and sixty one, there was filed in the Office of the Clerk of said Court, a declaration in a certain suit pending in said Court, in a certain suit therein, wherein William Burney was Plaintiff and the Marine Bank of Chicago, Defendant, which said declaration is in words and figures as follows, to wit.

"State of Illinois } Superior Court of Chicago
County of Cook } ss. Of the November Term A.D. 1861.

William Burney Plaintiff in this suit by Scates Mc Allister & Jewett his Attorneys

complains of the Marine Bank of Chicago, Defendant in this suit who was summoned to answer the Plaintiff of a Plea of Trespass on the case on promises

For that whereas the said defendant heretofore to wit on the first day of October in the year of our Lord One thousand eight hundred and Sixty one at Chicago in said County, became and was indebted to the said Plaintiff in the sum of Fifteen hundred dollars of lawful Money of the United States of America, for divers goods wares and Merchandise by the said Plaintiff before then time sold and delivered to the said Defendant, and at the special instance and request of the said defendant And being so indebted to the said Plaintiff the said Defendant in consideration thereof afterwards to wit on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said Plaintiff, well and truly to pay unto the said Plaintiff the same of Money last mentioned, when the said Defendant should be there unto afterwards requested

And whereas also the said Defendant afterwards to wit, on the same day and year and at the place aforesaid, in consideration that the said Plaintiff, had before that time, at the like special instance and request of the said defendant sold and delivered to the said Defendant divers other goods wares and Merchandises of the said Plaintiff, the said defendant then and there undertook and faithfully promised

the said Plaintiff to pay to the said Plaintiff so much money as the said aforesaid goods wares & Merchandises at the time of the Sale and delivery thereof were reasonably worth when the said defendant should be thereunto afterwards requested And the said Plaintiff avers that the said goods wares & merchandises last mentioned, at the time of the Sale and delivery thereof was reasonably worth the further sum of Fifteen hundred dollars of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the said Defendant afterwards on the same day and year and at the place aforesaid, had notice.

And whereas also the said Defendant afterwards to wit, on the same day and year and at the place aforesaid was indebted to the said Plaintiff in the further sum of Fifteen hundred dollars of like lawful money as aforesaid, for money before that time lent and advanced by the said Plaintiff to the said Defendant and at the like request of the said Defendant And in the like sum for money before that time paid laid out and expended for the said Defendant and at the like request of the said defendant And in the like sum for other money by the said defendant before that time had and received to and for the use of the said Plaintiff. And in the like sum for other money by the said defendant before that time and then due and owing the said Plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said defendant to said Plaintiff, and in the like sum for the price and value of work then done and material for the same provided by the plaintiff for the defendant and at the like request of the Defendant And being so

indebted the said defendant in consideration thereof afterwards to wit, on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said Plaintiff 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 same day and year and at the place aforesaid accounted together with the said Plaintiff of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiff and then and there found in arrear and unpaid and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said Plaintiff in the further sum of fifteen hundred dollars of like lawful money as aforesaid, and being so found in arrear and indebted to the said plaintiff the said defendant in consideration thereof afterwards to wit, on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said Plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested

Nevertheless the said defendant (although often requested so to do) has not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof to the said Plaintiff, but to pay the same, or any part thereof, to the said Plaintiff the said defendant has hitherto altogether refused and still doth refuse to the damage of the said plaintiff of fifteen hundred dollars and therefore the said

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Plaintiff brings Suit &c
Scates McAllister & Jewett
Plaintiffs Attys."

The Marine Bank of Chicago
To William Birney Dr

To money lent & advanced	$1500
To money paid Law out & expended	$1500
To money had & received to the use of said Pl	$1500
To goods wares & Merchandize sold & delivered	
To labor & services	
To balance due on account Stated	$1500.

And thereafter to wit on the fifth day of November A.D. Eighteen hundred and Sixty one came the said defendant and filed in the Office of the Clerk of said Court, its Plea to said declaration, Which said Plea is in words and figures as follows to wit.

"State of Illinois } Superior Court of Chicago Of the
Cook County } ss. November Term A.D. 1861.

William Birney
vs
The Marine Bank of Chicago } Assumpsit

And now comes the said Defendant by McCagg & Fuller its Attorneys and defends the wrong and injury when &c and says that it did not undertake & promise in manner and form as the said Plaintiff hath above thereof in his said Declaration complained against it And of this the said Defendant puts itself upon the Country &c

McCagg & Fuller
Defts Attys."

And afterwards to wit on the Seventh day of April (being one of the days of the April term of said Court) A.D. Eighteen hundred and sixty two, the following proceedings were had in said cause and entered of record in said Court to wit.

"William Birney
vs
The Marine Bank of Chicago } Assumpsit.

This cause being this day reached for trial comes said plaintiff by Scales McAllister & Hewitt his Attorneys and said defendant by Mulvaey Fuller its Attorneys also comes and upon agreement of the parties made now here in open Court, this cause is submitted to the Court for trial upon the issues joined therein without intervention of a Jury and the Court now here after hearing the Evidence and arguments of Counsel and being fully advised in the premises finds issues for said Plaintiff, and assesses his damages herein against said Defendant to the sum of Seven hundred and ninety two dollars and thirty one cents.

And thereupon said Defendant submits its Motion herein for a New trial in said cause, which Motion it is considered by the Court be and is hereby overruled.

To which ruling of the Court said defendant excepts, and thereupon prefers its exceptions herein to the ruling of the Court in overruling its said Motion for a New trial.

Wherefore the said Plaintiff ought now to have judgment entered for his damages upon finding of the Court as aforesaid.

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Therefore it is considered that said Plaintiff do have and recover of and from said Defendant his damages of Seven hundred and ninety two dollars and

$792.31 thirty one cents in form aforesaid by the Court here found and assessed, and also his costs and charges in this behalf expended, and have execution therefor.

And thereafter to wit on the Ninth day of April A.D. Eighteen hundred and sixty two came the said defendant and filed in the Office of the Clerk of said Court its Bill of Exceptions in said cause; Which Bill of Exceptions is in words and figures as follows, to wit.

"In Superior Court of Chicago
Cook County. Illinois.

William Birney
vs
The Marine Bank of Chicago } Bill of Exceptions

Be it remembered that on the trial of this cause the plaintiff offered in evidence the following letter of advice

Letter of Credit

"The Marine Bank of Chicago
Chicago. Ill: April 17, 1861.

William Birney
Cashier - Dear Sir,

I credit your account this day Eight hundred & Seventy six dollars Received from Yourselves in Illinois Currency

801 Respectfully yours
[illegible] 76 H. B. [illegible] - Cashier."
$ 876 [illegible] Ent. C. S. Long.

To the admission of which the defendant objected because it was not admissable under the Common Counts of the Declaration, but the Court overruled the objection and admitted the Evidence. To which the Defendant then and there excepted.

The Plaintiff then read in Evidence without objection the Affidavit of Edward Sanford as follows,

"Williams Birney } Superior Court, Chicago. Ill.
vs } March Term 1862.
Marine Bank. } State of Illinois } ss
Grundy County }

Edward Sanford being duly sworn on oath saith that he has acted as Agent for the above Plaintiff Williams Birney for the past two years and more,- that as such Agent he did about the last of June 1861- and also on or about the 20th day of July A.D. 1861 and also on or about the 12th day of October A.D. 1861 demand from N.K. Seamans President of the Marine Bank and from those acting as "paying tellers" in said Bank the money due on Certificate of Deposit (called "a Letter of Advice") dated A.D. 1861 for $476 $ said Certificate showing that Williams Birney had deposited the above amount with said Bank to be paid on his Order in Illinois Currency signed by Dow the Cashier of said Bank- which demands were made in the Marine Bank, during business hours- At each of said demands I presented written Orders or drafts, with said Plaintiffs signature to each, in which said Plaintiff ordered the said Marine Bank to pay to me the said sum of Money- and at the last of said demands

9

I also presented the Original "Letter of Advice" heretofore mentioned - but at each and every time of such demand said Seamman and those acting as Paying Tellers of the Bank, refused to pay the same except in Bills of Banks of Illinois, which were worth (as said Seamman and said Tellers then informed me) from forty to Sixty Cents on the dollar - it was such paper money as is denominated and was then called "Stump Tail" or "depreciated Illinois Currency."

It is my impression that once said Seamman offered me in gold Sixty Cents on the dollar for the said claim of said Plaintiff William Burney

Upon said claim of Eight hundred and seventy six dollars there has been paid as follows - Having an Order on said Bank from said Burney for $40 and one for $10. and I think another for $25. and being under the necessity of raising some money for Mr Burney, the Plaintiff, I gave up the two first mentioned Drafts (viz. the $40. & the $10 Drafts) and I think also the $25 draft and received for the said Drafts Fifty five Cents on the dollar in gold - Which is all I have ever received, and which I was informed by a Paying Teller of said Marine Bank was all that had been paid upon said claim of $876.

I was also informed by said Seamman that the consideration of said Letter of Advice was $500 in gold deposited by the Plaintiff - which gold being at a premium of (I think) 9 1/2 per Cent said Burney left with said Bank, and adding the amount deposited $500 and the per Centage together, took the aforesaid "Letter of Advice" for $876 payable in Illinois Currency as his evidence of indebtedness

11.

"$100 00/100. New York. October 5. 1861.
Pay to the Order of Edward Sanford Esq.
One hundred dollars and charge to account of
To the William Birney "
Marine Bank of Chicago"

"$100 00/100 New York October 5. 1861.
Pay to the Order of Edward Sanford Esq.
One hundred dollars and charge to account of.
To the William Birney "
Marine Bank of Chicago."

"$100 00/100 New York October 5. 1861
Pay to the Order of Edward Sanford Esq.
One hundred dollars and charge to acct of
To the William Birney "
Marine Bank of Chicago."

"$100 00/100 New York October 5. 1861
Pay to the Order of Edward Sanford Esq.
One hundred dollars and charge to account of
To the William Birney "
Marine Bank of Chicago."

Which it is admitted were drawn by Plaintiff
on the account with defendant proved above

Here the Plaintiff rested

The defendant then read in evidence three
checks drawn by Defendant on Plaintiff as follows
" No 1. Chicago. April 18. 1861.
Chicago Marine and Fire Insurance Company.
Pay to self or Bearer Twenty six dollars.
$26 00/100 " William Birney "

" New York May 30, 1861.

Marine Bank of Chicago.

Pay to the Order of Edward Sanford Esq. Ten dollars and charge to account of

Yours truly

$10 00/100. William Byrne "

"$40 00/100. New York. June 17, 1861.

Pay to Edward Sanford, or order, forty dollars and charge to account of.

To the William Byrne "

Marine Bank of Chicago "

The defendant then called one Hamilton B. Dow who being sworn testified;

That in April last he was the Cashier of the Marine Bank of Chicago (the defendant). The letter of Credit offered in Evidence by Plaintiff is signed by me for Defendant. Have been engaged at Banking here (at Chicago) Seven years.

The defendant then asked the witness to state what was "Illinois Currency" in April last, at the date of the letter of credit, for the purpose as was stated of showing what kind of Money or bank bills was received of the Plaintiff, and insisting by way of defence that defendant was only liable to plaintiff for the Coin value of such Currency or Bank Bills.

To which the Plaintiff objected and the Court sustained the objection, and excluded the Evidence on the ground that the Defendant was estopped

from denying that it was liable for anything less than the amount of the credit it had given Plaintiff in coin or par funds.

To which ruling of the Court the Defendant then and there excepted.

The defendant then offered to prove by the witness Dow, that the words "Illinois currency" in said letter of credit meant the Bills of Illinois Banks that were in general circulation in this Community and State after the 1st day of April 1861. That these Bills were of a fluctuating and uncertain value That the value of the Bills of the different Banks differed from each other. That these Bills were a depreciated currency and continued in April and May last the sole circulating medium of this City and State. That the coin value of these Bills fluctuated from day to day with the value of the Stocks deposited for their security.

That the Illinois Currency or Banks Bills received from Plaintiff were intermixed with their general funds, according to the common usage and custom among all Bankers to keep one Common fund That the funds received of Plaintiff were mixed with defendants funds which were composed wholly of the Bills of Illinois Banks and that the value of the whole fluctuated according to the Market value of the Stocks in the New York Market, That this currency composed the whole circulating Medium of the community until the 18th of May 1861, when the depreciation became so great that it ceased to circulate as money or Currency

That Plaintiff was fully advised of the character of this currency. That the three checks which he

owed to the defendant and offered in evidence were paid in this currency or in coin at the actual value of the currency at the date of payment. That at the time of first demand made by Plaintiffs Agent in June 1861, this currency was no longer used as money or as circulating medium. But was bought and sold as a commodity in this community at about Sixty cents on the dollar. That its value on the 14th October 1861 was from 65 to 70 cents on a dollar. That it has been the uniform usage and custom of Banks and Bankers in the community where this currency was deposited with them in the usual course of dealing between depositor and banker to repay the deposits either in the same kind of Bank bills or the coin value of such bills at the time payment was demanded and made. That this usage and custom was well known to the Plaintiff.

That while this currency was so used as money, it was the usage and custom of Bankers where the Bills and Notes of other Banks than those of Illinois were deposited and also where coin or exchange on New York was deposited to give the depositor a specific credit in the kinds of funds deposited and repay him in like funds, which usage and custom was known to the Plaintiff, or to pay or credit him the premium which such funds were worth over and above Illinois currency, which usage was known to the Plaintiff. That the issues of the Illinois Banks have always been as a whole a depreciated and fluctuating currency. That coin was always worth from 1/2 to 1/2 of 1 per cent more than exchange.

That the figures of 800 on the left hand side of the receipt or letter of advice was intended to signify and does signify the amount of New York exchange paid defendant - And the 9/2 - 76 meant the difference of value of such money in currency, and that the value of the currency depreciated from that time. This part of defendants offer and which is included in brackets, the Plaintiff admitted to be true.

Plaintiffs counsel stated that they claimed $758.20 of the deposit with interest from 1st July 1861.

The defendant also offered to show that it was the usage and custom of defendant in this Community and all other Banks, to repay deposits in the same currency, or in its coin value at time of payment - whether the evidence of indebtedness was such as was offered in this case, or in any other kind of acknowledgment or credit that was given on its receipt.

To the admission of all which testimony the Plaintiff then and there objected, and the Court sustained the objection, and excluded the evidence, to which the defendant then and there excepted.

The above was all the evidence admitted or offered in the case.

The Court then found the issues for the Plaintiff and assessed his damages at the sum of $792.31.

The defendant then moved for a New Trial because
First. The Court admitted improper
Evidence for the Plaintiff.
Second. Because the Court excluded proper
Evidence for the Defendant.
Third. Because the finding of the Court
is against the law and the Evidence.

But the Court overruled the Motion and
rendered Judgment for the Plaintiff for the sum
of $792.31 to which the defendant then and
there excepted, and prayed that this Bill of
Exceptions be signed and Sealed, Which is done
Grant Goodrich (Seal)."

State of Illinois }
Cook County } ss.

I. Thomas B. Carter
Clerk of the Superior Court of Chicago within and
for the County of Cook in the State of Illinois
Do hereby Certify the above and foregoing to be
a full true and Correct Transcript of the
Declaration, Plea and Bill of Exceptions now
on file in my office, together with the order
and Judgment entered of record in said Court
in a certain suit therein pending, wherein
William Birney was Plaintiff and The

Marine Bank of Chicago was defendant.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Chicago in said County this tenth day of April A.D. 1862.

Thomas. B Carter Clerk

In Supreme Court of Illinois
3 Grand Division. April T. 1862

The Marine Bank
of Chicago — Pff in error —
v.
William Birney Deft in error —

And now comes the Pff in error and says that in the record and proceedings above, there is manifest error in this.

1. That the Court erred in admitting in evidence the Letters of admin offered by Pff under the common counts of the declaration

2. That the Court erred in excluding the evidence offered by Deft below

3. That the finding and judgments of the Court is against the law and the evidence

4. That the finding and judgment of the Court under the declaration and evidence should have been for the Deft below —

5. That the judgment was

longer than the Pff was
under the evidence
entitled to

And now comes
the said defendant in
error and says that in the
record & proceedings aforesaid
there is no error and submits
the same to the Court for trial

April. 11. 1862

Scates McAllister & Jewett
atty for Deft in Error

164

Superior Court of Chicago

William Birney

vs.

Marine Bank of Chicago

Record

Filed April 12. 1862

L Leland

Clerk

$5.00

Printed by Beach & Barnard, 14 South Clark St. Chicago.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,
APRIL TERM, A. D. 1862.

THE MARINE BANK
Of Chicago,
Plaintiff in Error,
vs.
William Birney,
Defendant in Error.

Error From Superior Court of Chicago.

ABSTRACT OF RECORD.

This was an action of **Assumpsit,** brought by defendant in error against the plaintiff in error.

2, 3, 4 **The Declaration** contained only the common money counts.
5 **Plea,** non assumpsit.

6 **Trial** by the court; finding and judgment for the plaintiff below for
7 $792.31.

On the trial, plaintiff below offered and read in evidence the following instrument:

"The Marine Bank of Chicago,
"*Chicago, Ills, April* 17, 1861.

"William Birney:

"*Dear Sir:* I credit your account this day eight hundred and seventy "six dollars, received from yourselves, in Illinois currency.

"Respectfully your's,

"*Letter of credit.* H. B. DOX, *Cashier.*

"$800
"Pr. 9½ 76
"$876

"Entered. E. C. Long."

8 To the admission of which the defendant objected, because it was not admissible under the common counts of the declaration; but the court overruled the objection, and admitted the evidence. To which the defendant then and there excepted.

The plaintiff then read in evidence without objection the affidavit of Edward Sanford, as follows:

Edward Sanford,

Being duly sworn, on oath saith: That he has acted as agent for the above plaintiff, William Birney, for the past two years and more; that as such agent, he did, about the last of June, 1861, and also on or about the 20th day of July, A. D. 1861, and also on or about the 14th day of October, A. D. 1861, demand from J. Y. Scammon, president of the Marine Bank, and from those acting as "paying tellers" in said bank, the money due on certificate of deposit, (called a "letter of advice,") dated A. D. 1861, for $876, said certificate showing that William Birney had deposited the above amount with said bank, to be paid on his order in Illinois currency, and signed by Dox, the cashier of said bank, which demands were made in the Marine Bank during business hours. At each of said demands, I presented within orders or drafts, with said plaintiff's signature to each, in which said plaintiff ordered the said Marine Bank to pay to me the said sum of money. And at the last of said demands,
9 I also presented the original "letter of advice" heretofore mentioned,

but at each and every time of such demand, said Scammon, and those acting as paying tellers of the bank, refused to pay the same, except in bills of banks of Illinois, which were worth (as said Scammon and said paying tellers then informed me) from forty to sixty cents on the dollar. It was such paper money as is denominated, and was then called "stump tail," or "depreciated Illinois currency."

It is my impression that once said Scammon offered me in gold sixty cents on the dollar for the said claim of said plaintiff William Birney. Upon said claim of eight hundred and seventy-six dollars there has been paid as follows: Having an order on said bank from said Birney for $40, and one for $10, and I think another for $25, and being under the necessity of raising some money for Mr. Birney, the plaintiff, I gave up the two first mentioned drafts (vis., the $40 and the $10 drafts) and I think also the $25 draft, and received for the said drafts fifty-five cents on the dollar in gold, which is all I have ever received, and which I was informed by a paying teller of said Marine Bank was all that had been paid upon said claim of $876. I was also informed by said Scammon that the consideration of said letter of advice was $800 in gold deposited by the plaintiff, which gold being at a premium of (I think) 9½ per cent. said Birney left with said bank, and adding the amount deposited $800 and the per centage together, took the aforesaid "letter of advice" for $876, payable in Illinois currency, as his evidence of indebtedness from said bank.

The plaintiff then read in evidence eight checks, each of which was of the following tenor:

$100 00-100 NEW YORK, October 5, 1861.

Pay to order of Edward Sanford, Esq., one hundred dollars, and charge to account of WILLIAM BIRNEY.

To the Marine Bank of Chicago.

Which it is admitted were drawn by plaintiff, on the account with defendant, proved above.

Here the plaintiff rested.

The defendant then read in evidence three checks drawn by the plaintiff Birney on the defendant below as follows:

No. 1. CHICAGO, April 18, 1861.

Chicago, Marine and Fire Insurance Company:

Pay to self or bearer twenty-six dollars.

$26 00-100 WILLIAM BIRNEY.

12 NEW YORK, May 30, 1861.

Marine Bank of Chicago:

Pay to the order of Edward Sanford, Esq., ten dollars, and charge to account of Yours truly,

$10 00-100 WILLIAM BIRNEY.

$40 00-100 NEW YORK, June 17, 1861.

Pay to Edward Sanford or order forty dollars, and charge to account of WILLIAM BIRNEY.

To the Marine Bank of Chicago.

2 76
2 76
38
3 80
41,80
800 00
758.20

The defendant then called one

Hamilton B. Dox,

Who being sworn, testified, that in April last he was the cashier of the Marine Bank of Chicago (the defendant). The letter of credit offered in evidence by plaintiff is signed by me for defendant. Have been engaged at banking here (at Chicago) seven years.

The defendant then asked the witness to state what was "Illinois currency" in April last, at the date of the letter of credit, for the purpose, as was stated, of showing what kind of money, or bank bills, was received of the plaintiff; and insisting, by way of defense, that defendant was only liable to plaintiff for the coin value of such currency, or bank bills.

To which the plaintiff objected, and the court sustained the objection,

and excluded the evidence, on the ground that the defendant was es-
13 topped from denying that it was liable for anything less than the amount of credit it had given plaintiff in coin or par funds.

To which ruling of the court the defendant then and there excepted.

The defendant then offered to prove, by the witness Dox, that the words "Illinois currency" in said letter of credit, meant the bills of Illinois banks that were in general circulation in this community and State after the first day of April, 1861. That these bills were of a fluctuating and uncertain value. That the value of the bills of the different banks differed from each other. That these bills were a depreciated currency, and constituted, in April and May last, the sole circulating medium of this city and State. That the coin value of these bills fluctuated from day to day, with the value of the stocks deposited for their security.

That the Illinois currency, or bank bills, received from plaintiff, were intermixed with their general funds, according to the common custom and usage among bankers, to keep one common fund. That the funds received of plaintiff were mixed with defendant's funds, which were comprised wholly of the bills of Illinois banks, and that the value of the whole fluctuated according to the market value of the stocks in the New York market. That this currency composed the whole circulating medium of the community until the 18th of May, 1861, when the depreciation became so great that it ceased to circulate as money or currency. That plaintiff was fully advised of the character of this currency.

14 That the three checks which he drew on the defendant, and offered in evidence, were paid in this currency, or in coin, at the actual value of the currency at the date of payment. That at the time of first demand made by plaintiff's agent, in June, 1861, this currency was no longer used as money, or a circulating medium, but was bought and sold as a commodity in this community, at about sixty cents on the dollar.

That its value on the 14th October, 1861, was from sixty-five to seventy cents on a dollar. That it had been the uniform usage and custom of banks and bankers, in the community where this currency was depos-

ited with them in the usual course of dealing between depositor and banker, to repay the depositor either in the same kind of bank bills, or the coin value of such bills at the time payment was demanded and made. That this usage and custom was well known to plaintiff.

That while this currency was so used as money, it was the usage and custom of bankers, when the bills and notes of other banks than those of Illinois were deposited, and also when coin or exchange on New York was deposited, to give the depositor a specific credit in the kind of funds deposited, and repay him in like funds, which usage and custom was known to the plaintiff, or to pay or credit him the premium, which such funds were worth over and above Illinois currency, which usage was known to the plaintiff. That the issues of the Illinois banks have always been as a whole a depreciated and fluctuating currency. That coin was always worth from one-fourth to one-half of one per cent. more than exchange.

15 That the figures of 800 on the left hand side of the receipt or letter of advice was intended to signify and does signify the amount of New York exchange sold defendant. And the 9½-76 meant the difference of value of such money in currency, and that the value of the currency depreciated from that time. This part of defendant's offer and which is included in brackets, the plaintiff admitted to be true.

Plaintiff's counsel stated that they claimed $758.20 of the deposit with interest from 1st July, 1861.

The defendant also offered to show that it was the usage and custom of defendant in this community and all other banks, to repay depositors in the same currency, or in its coin value at time of payment; whether the evidence of indebtedness was such as was offered in this case, or in any other kind of acknowledgment or credit that was given on its receipt.

To the admission of all which testimony the plaintiff then and there

objected, and the court sustained the objection, and excluded the evidence, to which the defendant then and there excepted.

The above was all the evidence admitted or offered in the case.

The court then found the issues for the plaintiff and assessed his damages at the sum of $792.31.

The defendant then moved for a new trial, because:

1. The court admitted improper evidence for the plaintiff.

2. Because the court excluded proper evidence for the defendant.

3. Because the finding of the court is against the law and the evidence.

Motion overruled and exception by defendant.

Errors Assigned.

1. That the court erred in admitting in evidence the letter of advice offered by plaintiff under the common counts of the declaration.

2. That the court erred in excluding the evidence offered by defendant below.

3. That the finding and judgment of the court is against the law and the evidence.

4. That the finding and judgment of the court under the declaration and evidence should have been for the defendant below.

5. That the judgment was larger than the plaintiff was, under the evidence, entitled to.

164-94

The Marine Bank

vs

William Brinsy

Abstract

Filed April 23rd 1862

L. Leland Jr
Clk.

Argued

Ready

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

THE MARINE BANK, OF CHICAGO, Pl'ff. in Error,
vs.
WILLIAM BIRNEY, Def't. in Error.
} No. 164.

POINTS AND AUTHORITIES FOR PLAINTIFF IN ERROR.

This was an action of assumpsit; the declaration contained only the common counts, and plaintiff below offered the following instrument in evidence:

"THE MARINE BANK OF CHICAGO,
"CHICAGO, ILL., April 17, 1861.

"WILLIAM BIRNEY—*Dear Sir:* I credit your account this day, eight hundred and seventy-six dollars, received from yourselves, in *Illinois currency.*

"$800
"Pr. 9½ 76
"$876"

Respectfully yours,
H. B. DOX, *Cashier.*

Sandford, a witness for plaintiff, testified, that Scammon, President of the Marine Bank, told him that this credit was for $800, in gold, and the $76 was 9½ per cent. premium on the gold in Illinois currency, added to that sum, which was deposited by plaintiff below with defendant below, (page 3 Abstract,) and that he had demanded payment of it from defendant, and received but a part of it.

The defendant called a witness, H. B. Dox, who swore he had been engaged in the banking business, at Chicago, and asked him to state

what "Illinois currency" was at date of the letter of credit, and the meaning of those words as used in the instrument offered in evidence, with a view of showing what defendant received of plaintiff, and then insisting, by way of defence, that it was only liable to plaintiff for the real value, in coin, of such currency, at the time payment was demanded.

Plaintiff objected to this evidence, and the Court sustained the objection on the ground that defendant was estopped to deny it was liable for anything less than the credit it had given the plaintiff in coin or par funds!

The defendant below offered much other proof, which was all excluded by the Court, and is fully set out in the Abstract.

We will not swell this brief by quoting it; it is fully set out in the abstract.

The case, in brief, is this: Birney deposited $800, in coin or its equivalent, with the Marine Bank of Chicago, which credited him the difference in value between that and Illinois currency, amounting to $76, and the Court below excluded all evidence of what "Illinois currency" was, and held the Bank liable to Birney for coin or par funds, equal in real as well as nominal amount to $875!

If this was right, then Birney made, and the Bank lost $76, quicker than was almost ever done before by two parties acquainted with business matters, and the door which has always been open for the admission of parol evidence to explain and apply commercial terms aad language, is suddenly closed against a party, who will, in consequence, suffer a great loss.

I. The defendant should have been allowed to prove what the words "Illinois currency" meant.

"The meaning of terms of art and science, technical phrases, and "words of local meaning, when employed in an agreement, may be "proved by extrinsic evidence, and when used in an agreement, the "presumption is, that the parties understood their meaning, and em-"ployed them according to their local signification."

24 Illinois, 123, *Myers et al.* vs. *Chas. Walker* et al., meaning of word "season."

23 Wendell, 71, *Thompson* vs. *Sloan* et al, in case of a note payable in "Canada money."

5 Hill, 437, *Hinton* vs. *Lock*, as to meaning of word "day."

13 Peters, 89, *Bradley* vs. *The W. A. & G. Packet Co.*, as to meaning of word "route."

23 English Com. Law, 169, *Smith* et al., vs. *Wilson*, meaning of word "dozen."

2 Kernan, 40, *Dana* et al. vs. *Fiedela*, meaning of commercial abbreviations.

2 Greenleaf Evidence, 280–292.

2 Phillips' Evidence, 708–787.

The testimony which ought to have been admitted, would have shown that the words "Illinois currency" meant bills of the banks created under the banking law of Illinois, and that they were of a depreciated, fluctuating value.

That it was a depreciated currency, was evident from the fact that it was worth 9½ per cent. less than gold, the standard of value, for this was the difference agreed upon by the parties.

In determining the meaning to be given to the words "currency," and "Illinois currency," the Court below, in this and other cases, felt bound by former decisions of this Court, which are the following:

20 Illinois, 144, *Swift et al.* vs. *Whitney.*
21 Illinois, 101, *Trowbridge et al.* vs. *Seamen.*

These cases decide (and we say it with all deference,) correctly, that, in the absence of proof to the contrary, the words "currency," "current bank bills," &c., *prima facia*, imply bills that pass at and for par, as for money. This is the presumption; but when the presumption is rebutted by positive proof, that the parties used the words in a different sense, and that they distinctly understood and dealt with each other on the knowledge that "Illinois currency" meant bank bills worth 9½ per cent. less than par, or than gold, the Court should not shut its eyes to that state of facts, and hold that the Bank received of Birney, and was liable to pay him, $876 in par funds, for $800 in gold.

The Bank ought to have been allowed to prove that "Illinois currency" had a "local signification," and what it was.

20 Illinois, 255, *Moore* vs. *Morris.*

Any other interpretation of the contract would inflict on the Bank a loss of $76, and give Birney a gain of the same amount, which neither of them contemplated at the date of the transaction.

The Bank then held $876 of "Illinois currency" for Birney, which was a depreciated, fluctuating currency, and had Birney demanded it of the Bank at that time, he would have been entitled to recover only its actual value at the time of demand.

12 Illinois, 184, *Smith et al.* vs. *Dunlap*, and 14 Illinois, 103, *Stevenson* vs. *Unkefel*, settle this to be the rule of damages in such cases.

The Bank and Birney had converted the latter's gold into a depreciated currency, by agreement, and their relations to each other were thenceforth based upon the value of this currency at the time it should be called for.

II. The defendant below also offered to show, that it was its usage and custom, as well as of all other bankers in that place, when such dealings had taken place between the Bank and a depositor, to repay the depositor in like funds, or "Illinois currency," or to discharge its liability for such currency by paying the depositor its actual value at the time of payment, and that this usage of the Bank with which he dealt was known to Birney.

The usage of a Bank is binding on all persons dealing with the Bank, whether they know the usage or not.

1 Cushing, 177, *Dorchester & Milton Bank* vs. *New England Bank.*
1 Peters, 25, *Bank of Washington* vs. *Triplett.*

Had this proof been made, it would then have appeared that Birney was only entitled to either the "currency" itself, or its value at the date of his demand for payment; and to exclude the evidence and hold that he was entitled to recover $876 in par currency or coin, is to change the fair agreement and understanding of the parties, and make a new contract for them, wholly at variance with the rights and liabilities established between them by their own lawful agreement.

The Bank also offered to show that the currency fluctuated in value, and that its custom was to repay the depositor of such currency either in like bills, or its coin value at date of demand, all which being known to Birney, he took the risk of the fluctuations, and the Bank ought to have been allowed to prove what was the value of the currency at time of demand.

To refuse this was error, as was decided in 12 Illinois, 184, and 14 Illinois, 103.

It matters not, in the present condition of the case, what was the value of "Illinois currency" at the time Birney demanded payment, or how the $76, for which his checks were drawn, had been paid, although the proof offered would have shown it was only worth 60 or 70 cents on the $1 00, at date of demand in June, 1861, for the Bank ought to have been allowed to show what it received of Birney, what was the contract and agreement between the parties, (for no written or express contract was made between them,) and when all this proof was before the Court, their rights could have been fairly settled.

For excluding the proof offered by defendant below, the judgment should be reversed. There are other questions connected with this subject which will receive attention in subsequent cases.

We only insist, in the present case, on being allowed to prove what was the agreement between the parties; when that is shown, the legal or other consequences of their agreement can be considered.

McCAGG & FULLER,
For Plaintiff in Error.

THOMAS HOYNE,
Of Counsel.

April 23d, 1862.

164-94

Marine Bank

Binney

Plff's Points

Filed April 28 1862

S Leland

Clerk

SUPREME COURT OF ILLINOS.

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

MARINE BANK OF CHICAGO
vs.
WILLIAM BIRNEY.

Error to Superior Court of Chicago

The plaintiff's points and argument would be hard to answer, if the facts were as assumed. The letter of credit does not bear him out. It is not true, as a matter of fact, that defendant deposited Illinois currency, or agreed to take back Illinois currency. The letter of credit shows that defendant paid in in value $876 in Illinois currency, not $876 of Illinois currency. Had we deposited that amount in value, as we did, in corn, wheat, horses, or any other kind of property, it does not result in law that we are to take back corn, wheat, horses, or other property in kind, in liquidating that account. Nor is it true that the law will make the depositor bear the depreciation that may be suffered by that kind of property in which the value was paid. By the general principles of law governing banking operations, a depositor parts with his property in the coin, checks, or bank bills, paid into bank on a general deposite account, and the bank acquires the property and ownership of such deposite, and becomes debtor for the amount to the depositor. The plaintiff assumes, in this case, that the deposite was a special one in currency, which would throw upon Birney its loss by theft, fire, or depreciation, or that it was deposited upon a special agreement to repay to him $876 of Illinois currency. Now, neither of these positions or assumptions is true. The letter of credit shows the contrary.

If it was a special deposite, then the property in the identical bills deposited remained in Birney, and should have been kept, and returned to him on demand. If the agreement was special to repay the numerical number of dollars in Illinois currency, then the case would fall within the facts in 12 Ills. 184, and 14 Ills. 103. But there was no such con-

tract here. The letter of credit was the contract, and that needed no explanation. It was plain, and easily understood. Under the pretense of explaining technical terms, or terms and usages of banking, the plaintiff has attempted to prove a special contract different from the face of the letter of credit. He has no right to alter or change this contract any more than any other. When a bank receives and places to a customer's credit, so many dollars in value, it matters not whether it is coin, bills, or the value of the proceeds of bills of exchange or other property, the contract and obligation between them is the same—and that is, that the bank will return the full value back again.

In doing this, it is wholly immaterial whether it is repaid in coin, bank bills, bills of exchange, or other property, so that the full amount in value is returned. Had the Bank offered enough in value of the Illinois currency, we would even have taken that; but its offer was not of this currency, but in uncurrent stump-tail, at par, when it was worth only 60 cents on the dollar, and when it had ceased to be currency. Even had the deposite been payable in currency, it would have been necessary to offer enough of it to meet the value due, which was $876. This was the face of the contract. But although we had the advantage of the Bank on the face of the contract, yet we did not use it. We had deposited only $800 in cash, and, having received part back, we have only taken judgment for the balance of our $800, with interest from 1st July, the date of demand.

The plaintiff's imaginary hardship and wrong does not then exist in this case. We insist upon trying the case upon the facts in the record, and not upon an imaginary one. We deposited a bill on New York, worth in cash here $800, and we received a part back, and have taken judgment for the balance, with interest from time of demand. Now this is fair, just, and equitable, instead of trying to enforce such a hard and unconscionable case as is presented in plaintiff's brief. The plaintiff has received full $800 of us in good money, and now asks us to take 60 cents on the dollar, in full payment. The wrong is sought to be perpetrated by the plaintiff upon the defendant.

With this statement of the case, we leave it with the Court to do us simple justice, by giving us back the balance of what we paid in, in cash.

SCATES, McALLISTER & JEWETT,
Counsel for Defendant.

91-164

Marie Bank
as
Wm Binney

Defts. Points

Filed May 6. 1842
J. Scott
Clk

SUPREME COURT OF ILLINOS,

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SCATES, McALLISTER & JEWETT,
Counsel for Defendant.

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Marine Bank
of Chicago
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Argument for
Defendants