No. 14359

Supreme Court of Illinois

Marine Bank of Chicago.

vs.

Chandler.

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 165.

4259

Marine Co

vs

Chandler

1862

Maine Bank
vs
Chandler

Argument of Defendant in reply—

Mr Beckwith, in his oral argument, to avoid my position that the evidence does not show that the Bank, in fact, received any Illinois Bank notes on Collections made for Chandler, for the reason that the drafts &c on the other banks or bankers were paid in the daily exchanges, and nobody can tell which way the balances were in any exchange, uses this illustration—i.e. Suppose the Bank had $10.000 drafts on Tucker & Co and the latter had the same amount on the Bank—The Bank collects the $10.000 in Illinois Bank notes from Tucker & Co mixes them with its general stock of Illinois Bank notes, & then Tucker & Co come & collect

their $10.000, and ask if the effect would not be the same as the are produced by the daily exchanges wherein only the balance is paid in Illinois Bank notes— Suppose that his illustration is an apt one— it only shows how impossible it is to go into the inquiry at all as to the value of the medium which the parties used as money— for it might as well be contended, as to all dealing during the period while the Notes used as Currency were depreciated, that the parties, if they had paid their debts, would, by Common Consent, have paid in Illinois Bank notes— therefore that was their contract— therefore the inquiry must now be made as to how much they would have been worth if they had been paid—

In reply to his Statement

that the Chicago Marine and Fire Insurance Company recognized the agreement by sending it to Chandler with a Circular that it had been entered into and thus supplied any want of authority on the part of Scammon to execute it, I have to say that it does appear by the record that Scammon had not then signed it, for the reason that he was in Springfield when the preliminary meeting of Brokers was held on the 26th of April 1861 & did not return until after the agreement was sent to Chandler - See. bottom of p. 27. & top of p. 28. of abstract. I dont know why I may not ask the Court to take notice that he was a member of the legislature at the Called Session, Convened April 23. which adjourned May 3. (See laws of Extra Session of 1861) as well as of other things which the Court is asked to see with judicial eyes in this case.

Nor can the want of authority on the part of Cameron & Wadsworth as Presidents of their respective Insurance Companies be supplied by the fact that the Bill of Exceptions does not show that we objected to the introduction of the agreement.

It is not our Bill. Were we complaining that the Court admitted it, it would be necessary for us to show that we objected, giving our reasons, & excepting when the objection was overruled. But the case is reversed. They complain that the Court did not instruct the jury properly. At least that is the only ground of complaint open to them. Then they must show that the authority was proved, or that we waived it, in order to show that they were entitled to any instruction based on the existence of such authority.

The Court can see how the Court below treated the objection to the evidence under the Money Counts on p. 4. Abstract

by reserving the question for instruction to the Jury — So as to this want of authority — I dont ask the Court to take as the fact, what the record does not show, but it is easy to see how the Bank, trying to patch up the want of authority by the subsequent Conduct of the Insurance Co. in acting upon the agreement, would compel the Court to admit it in evidence, against our objection, because the question of recognition and ratification by such subsequent conduct was one of fact. the 12th instruction given is pointed at that question of fact. R 37 Abstract

It is not for us to show, in a bill of exceptions in the making of which we had no hand, that we did not waive any part of our legal rights, but it for them to show that we did, if the fact had been so —

We are not called upon to show the judgment to be right, but they, that it is wrong —

In order to reverse the judgment upon any question growing out of that agreement, it is necessary for the Bank to show that it was a valid agreement, binding upon both parties, remaining in force, and performed on their part i.e. not violated by them. They show only one link in all the proof they would be required to make and that is the handwriting of Seamon & Woodworth. How much more testimony in the court below was given as to the violation and rescission of the agreement this Court cannot tell, because the Bill of Exceptions is silent on the subject. The presumption is that the Court below did not err.

Joseph E. Gay
Atty. for Deft.

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Marine Bank

vs

Chandler

Reply to Pltff.
Argument

Filed May 3. 1862
L. Leland
Clk.

Josh E. Gary
Defts. Attys.

Charles Chandler
vs
Manier Bank

1st Instruction.

The law relative to deposits has no application to the present case. The rights, duties and liabilities of a depositary are not in any manner involved in it.

2° Instruction

The word "equivalent" as used is ambiguous and calculated to mislead the jury - It does not mean the same measure of value, nor the same species. Under this instruction ~~an equivalent~~ something equal to the thing loaned must be restored, without regard to the fact whether the thing loaned was loaned as a measure of value or as a species. The right of the depositor when the loan is of a species is not to a return of an equivalent in kind but to a return of the same quantity and quality - If the return is to be of a measure of value, then the return of that value is to be made, and not of something equal to it.

The inquiry about the loss or destruction of the property had no application to the case, as the property depositum was neither lost nor destroyed -

3° Instruction

This instruction assumes that the law has already been correctly stated, and is incorrect because the previous instructions had not correctly stated the law. - When the loan is of a species as such, and not as a measure of-

value, the return must be of a like quantity and quality, and not an equivalent in kind or value as stated in the previous instructions. Where the loan is of a measure of value, there the return must be made of the same value and not of something equal to it. as stated by the court below. The second and third paragraphs should have been qualified so to have had there relate to loans of a measure of value, and not to all loans. and they should have distinguished between a loss of the thing loaned, and a depreciation of the species loaned. The instruction assumes that all loans are of a measure of value, and excludes the idea of a loan of a species. It is an incorrect heresy calculated to mislead the jury.

4th Instruction

The court below having erroneously defined the legal relations between a banker and his customers, then proceeds to instruct the jury what facts they must find to establish the erroneous relation.

5th Instruction

This instruction assumes that the drafts, checks and currency. described by the plaintiff were described as a measure of value and not as a species, where this was a question of fact which should have been submitted to the jury - The latter part of the instruction in regard to mixing the representation of value with other representations of value, and in regard to the defendants using the representations described

were ~~already~~ erroneous for the reason that the title passed by the right to use, if it passed at all whether mixed or used or not. If there was no right to use, the mixing by consent would not change the title. The instruction is calculated to mislead the jury as thereby the liability of the defendant to return a measure of value is made to depend upon immaterial acts, which in no manner create or affect that liability

The instruction is further erroneous because the word "subject" is ambiguous in the sense in which it is used in not stating whether it refers to the individuals deposited or to the species deposited ~~and~~ thereby leaving the jury to infer that the ~~species deposited~~ depreciation of the species deposited was in all cases at the risk of the defendant.

6th Instruction

This instruction assumes ~~a matter of law. that~~ if bank bills that are current are deposited, then the obligation is to return the numerical value, although the real value is much less than numeric value. whereas this is a question of fact to be submitted to the jury. The question of fact is whether such bank bills were received as a measure of value or as a species. The distinction made by the instruction between ~~such~~ current bank bills, and depreciated bills, was such to give the jury to understand that the former meant all bank bills, which passed current, although worth less than their numeric value, and that the latter meant bank bills ~~which were not~~ uncurrent, when the deposits were made. The court substantially instructed the jury if the bills were current the rule would apply, but if

uncurrent another rule would apply without regard to the question of fact whether they were received as a particular measure of value or as a species.

7th Instruction

This instruction is susceptible of a double construction We can tell whether the question of fact submitted to the jury was ~~either~~ whether the bank bills were accepted and credited as money, or whether they were accepted and credited as bank bills passing current at the time in all business transactions - The words "as such" if refered to the last antecedent would refer to the word "money", but then the sentence would be ungrammatical as the word "were" should be in the singular - The words "as such" are only required to refer to the word "money" by grammatical construction and the same grammatical construction requires the words "as such" to refer to bank bills passing current. The sentence is much ~~less~~ less ungrammatical if the words "as such" refer to the bank bills, than if they refer to the word money, and jurys bring good grammarians undoubtedly put that construction upon it. The ~~instruction~~ court then substantially instructed the jury that bank bills passing current, although worth less than their numeric value were as a matter of law described as a measure of value in all cases, whether at a discount for specie or not, and excluded from their consideration the question of fact whether such bank bills were described as a species. The instruction then proceeds to state the law in regard to the discharge of the

obligation where the representation of value are borrowed as a measure of value, taking no notice whatever of the rule of law in regard to deposits as a species, thus leaving the clear and unmistakable inference that the deposit in this case was as a measure of value and not as a species - The defendant ~~clearly~~ had a right to have given such instructions as would clearly submit the real question of fact whether the bills were received as a measure of value or as a species, to the jury -

8th Instruction

This instruction also assumes that current bank bills were to be considered as a measure of value, whether at a greater or less discount for specie, instead of leaving the question as one of fact to the jury.

9. Instruction.

This instruction is erroneous for the reason that it requires an agreement that the bank bills shall be returned to make a deposit as a species ^ agreement that the bank bills shall be returned without regard to their value as currency or in money, when it should have been without ~~to~~ regard to the value of money alone

11 & 12th Instructions.

Are erroneous because ~~they~~ the Court instructs the jury that Scammon & Woodworth had no authority to sign the agreement for their respective institutions - Whereas the law presumes they had such authority, and such authority was admitted where the

agreement was read in evidence without objection -

13th Instruction.

Assumes that the defft must show, after the letter of April 27. refusing to do business unless the agreement was signed and after the plff had signed the agreement as the basis of future action, the defendant acted on the faith of it - The law under such circumstances presumes that the defft acted on the faith of the agt.

14th Instruction.

Assumes that an agent can become a borrower for consumption without the right to use the funds borrowed. The court instructs the jury that the defft as an agent becomes a borrower for consumption by keeping an account of the sums collected as agent.

Having turned an agent into a borrower for consumption contrary to the well settled rules of law the court proceeds to say that the liabilities of the defft as borrower were to ascertained and settled by an application of the common principles already clearly stated and defined in the previous instructions -

Defendants Instructions

3 & 7. Relate to the depreciation of the species

4. As to Agency

5 "

6 "

1865-95.

In Bank

Chandler

Passed

Filed May 2 1867
L. Leland
Clerk

Argued
Ready

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

THE MARINE BANK OF CHICAGO
vs.
CHARLES CHANDLER. } No. 164.

POINTS AND AUTHORITIES,

SUBMITTED FOR PLAINTIFF IN ERROR.

WE believe there is no conflict of evidence in regard to the material facts upon which this case is founded.

They are, in brief, the following:

That for several years past the words "currency," and "Illinois currency," have been used to signify the bills of the Free Banks of Illinois and Wisconsin, based upon state stocks deposited with the state officers for their redemption; that these bills have composed nearly the whole circulating medium of the state, and especially of the city of Chicago, the great commercial center of Illinois:

That, in Nov., 1860, the value of these stocks declined in the market, and the value of the bills based upon those stocks declined at the same time and to the same extent:

That the bills were at a discount of from 3 to 10 per cent. during the months of November and December, 1860, and fluctuated in value during the immediately succeeding months of 1861:

That, in Nov., 1860, the bills of nine banks of Illinois were so much depreciated that they were no longer used for circulation:

That in March, 1861, thirty more of the banks were discredited and no longer circulated as currency:

Thas after March 30, 1861, no Wssconsin bills were in use in this state as currency:

That after the 1st of April, 1861, the aggregate circulation of the banks of this state amounted to $6,500,000, of which amount the bills of only a few banks were nominally at par, and the circulation of those banks was only 60,000 or 70,000 dollars out of $6,500,000, say about 1 per cent. of the whole circulation:

That after April 1, 1861, the currency was at a discount of 10 per cent. at least for specie, and was never worth more than that until its final crash in May, 1861:

That about the middle of April, 1861, the Bank made collections for Chandler, by his direction in currency, and held the proceeds for him, subject to his order:

That Chandler was a banker in this state, who had full knowledge of the state of the currency:

That on the 27th April, 1861, Chandler signed an agreement with the Bank to receive and pay out as currency the notes of all the banks of the state then taken by the several bankers named in the agreement, during the present war:

That, after the date of signing this agreement, most of the collections were made by the Bank for Chandler, and in the bills of the banks referred to in the agreement:

That, on the 18th May, 1861, the bills of the "Illinois banks" were so much depreciated that they were no longer used as currency, but were bought and sold as a commodity, at an average price of 60 or 70 cents on the $1 at the time Chandler demanded payment of his claim against the Bank:

That the Bank had collected for Chandler, and had on hand at the date of the crash in the currency, (May 18, 1861,) about $16,000, which at no time was worth over 90 cents on the $1, during the dealings between the parties:

And that the jury, under the instructions of the Court, found a verdict for Chandler for the full nominal value of this currency, or $1,600 more than it was ever worth when received by the Bank for Chandler;

And for 5,000 or 6,000 dollars more than it was worth when plaintiff demanded it;

And this, too, when defendant had collected and held it by Chandler's direction and for his account.

This, in effect, made the Bank an insurer of Chandler's "Illinois currency," received by it for him, against all future loss.

For reversing this judgment, we insist on the following propositions:

I.

It was proper to show, by parol evidence, the meaning of the words "currency," "Illinois currency," &c., as used by the parties in their dealings and correspondence with each other; and when those words or their equivalent are shown to have had a "*local signification*" in the vicinity where the parties lived, they are presumed to have used the words in their local sense.

24 Ill. 133, *Myers* et al. v. *Walker*.
23 Wendell, 71, *Thompson* v. *Sloan*.
5 Hill, 437, *Hinton* v. *Locke*.
23 Eng. Com. Law, 169, *Smith* et al. v. *Wilson*.
2 Karnan, 40.
13 Peters, 89, *Bradley* v. *The W. A. & G. P. Co.*
2 Greenleaf Ev. 280, 292.
2 Phillips Ev. 708, 787.

II.

That proof showed, that the words "currency," "Illinois currency, &c.," as used by the parties, referred to and meant the bills issued by banks organized under the free banking law of Illinois, and that such bills composed nearly the whole circulating medium of the state of Illinois, and of the community where the dealings between plaintiff and defendant occurred.

See testimony of witnesses Ellsworth and Dox, fully set out in the Abstract; and we say here, once for all, there was no conflict in the evidence below as to matters of fact, or what was "currency," or that the dealings between the parties were conducted solely upon that basis.

The facts will plainly appear in the evidence, to which the Court is referred, as it appears in the Abstracts; in this we only state the points of law arising in the case.

III.

The cases of *Swift* et al. vs. *Whitney*, 20 Illinois, 144, and *Trowbridge* et al. vs. *Seaman*, 21 Illinois, 101, were supposed by the Court below, in trying this and similar cases, to hold that "currency," or "Illinois currency," *must be a par currency*, and that the parties *could not* use those words in a different sense. This was a mistake; those cases decide that those words, *prima facie*, import a par currency, but that presumption, like all others, may be rebutted and the truth shown.

The proof was made in this case, but the Court refused to allow the legal consequences to follow the facts proved.

IV.

The notes of the Illinois banks which made up the currency in which the parties dealt, not only was, in fact, at the date of their dealings, a depreciated currency, but that was a contingency contemplated by the law under which those banks were created.

1 Purple's Statutes, page 198, sec. 1, 2.
" " " 200–1, sec. 14, 15.
" " " 204, sec. 34.

The Court will take judicial notice of the various provisions of the banking law, but the sections cited show that the notes were based upon the securities deposited for their redemption; that to those securities the bill-holder as well as the state officers looked to ascertain the real value of the bills; that this value fluctuated with the value of the securities in the New York market; and it was this fluctuating value of the securities, and the bills based upon them, that fixed the varying rates of exchange which are noted and referred to in the correspondence of the parties.

Testimony of Dox, Abstract p. 25, and following to page 30, inclusive.

From the testimony and the judicial knowledge of the Court it is apparent, that the currency largely depreciated from Nov., 1860, until May 18, 1861, according to the political condition of those states whose stocks furnished the securities for Illinois banks.

This depreciation was fluctuating and different in regard to different banks at the same time. In fact, the contingency contemplated by the law had arrived; the bills depreciated, and the banks could not make good their securities for the redemption of the bills.

Under these circumstances, the defendant collected and paid out to and for the plaintiff, and by his knowledge, this "Illinois currency," depreciated when their dealings began, fluctuating all the time they dealt with each other; yet the Court and jury below held, in effect, that the defendant was bound to make the currency received by it for plaintiff more valuable to him then when it was collected.

It never was at less than 10 per cent. discount after the 18th April, 1861, until its final crash, May 18, 1861, yet the verdict and judgment below gave the plaintiff full indemnity for the depreciation, by holding defendant liable for par funds to the nominal amount of depreciated funds received by it for plaintiff.

This is turning depreciated bills into money or coin by the magic of judicial construction, in opposition to the knowledge of both parties and of the whole community where their dealings occurred, and makes judges and juries decide and hold that to be true, which as business men and citizens they know to be false.

V.

The relations of the parties were those of principal and agent in collecting notes, bills for each other, and disposing of the proceeds.

The Bank had a right to collect the demands of plaintiff according to the usual course of dealing in that community. Plaintiff was bound to take notice of that course of dealing, and was bound by it.

1 Cushing, 188, *Dorchester & Milton Bank* vs. *New England Bank.*

But plaintiff had express notice and knowledge of all the matters relating to the currency in which his demands were paid to defendant. This appears from the evidence set out in the Abstract, and especially from the agreement between the parties, set out on page 22 of the Abstract.

VI.

It follows from this, that the Bank received for plaintiff, by his authority and knowledge, a fluctuating, depreciated currency, and was directed by him to credit his account with those collections, or, in other words, and to the sams effect, to hold it for the plaintiff. After it had been collected it depreciated in value. Plaintiff, and not the Bank, should bear this loss.

The Bank had thus far been Chandler's agent; it had obeyed his instructions, and ought not to suffer any loss from so doing.

4 Scammon, 519, *Hamilton*, et al. vs. *Cook County.*
Story on Agency, sec. 202.

But this proposition hardly needs authority to support it.

VII.

It is, however, insisted that the fact that defendant was a Bank, and received Chandler's funds and mixed them with its own, made it his debtor for the money or currency it had collected for him, and that it is estopped to deny this.

We do not controvert the general proposition, that in case of a deposit of *money* with a bank, in the ordinary course of dealing, that the relation of debtor and creditor is established between the parties.

If any authorities are cited to that effect, we admit the proposition as one not in general needing authority to support it.

But those principles apply when the parties are dealing in *money of a par value*, and cannot have the same application where they deal in a *depreciated representative of money, constantly changing in value.*

It is true, the defendant mixed the currency it collected for plaintiff with its own, but that was the usage of banks, and being a banker, he was bound to know it. It was, however, mixed with like funds of its own. The proof shows that Chandler's "Illinois currency" was mixed with the same kind of currency; that Chandler frequently sent for currency, and sent it to the Bank in return; not the same bills collected for him, but similar bills—all "Illinois currency."

This mixture did not and ought not to change the relations and liabilities of the parties.

Suppose the bills of one bank only, say the State Bank, had made up the currency; that plaintiff's collections and payments had all been made in that; that the Bank, having no other funds than State Bank bills, had put plaintiff's with its own, and then all State Bank bills had largely depreciated, after the parties had dealt with each other upon the basis of those bills representing money:

There would be no doubt, in that case, the loss by depreciation must fall on the depositor or creditor, because the parties had dealt with each other recognizing the real value and character of the bills in question, and neither expected that the Bank was to give the depositor better money than it received for him, or was liable to make good to him the fluctuations which happened to it. Any other rule would make the Bank a guarantor of the depositor's currency, and would do injustice to the parties.

We only insist in this case, that the Bank shall be governed by rules and principles applicable to the real facts of the transactions.

VIII.

If it is insisted that the Bank was liable for the real value in coin of the currency at date of its receipt and mixture with the funds of the Bank, we answer that was not the contract or course of dealing between the parties.

The duty of the Bank was to receive and hold plaintiff's "Illinois currency" until he demanded it. It was in no default until a demand was made for it. Supposing it had put plaintiff's money by itself, and refused to pay it on demand, it having depreciated say 20 per cent. after deposit; it would be liable in such case only for its real value at the time of demand.

12 Illinois, 184, *Smith* et al. vs. *Dunlap.*

But it put Chandler's currency with the same kind of bills or currency, all of which depreciated together, and he knew it. In such case the intermixture does not change the rights or relations of the parties.

Chandler had the chance of Illinois currency becoming more valuable when he delivered it to the Bank, and he ought to take the loss which really occurred.

If these views are correct, the instructions asked by the defendant below should have been given.

The authorities upon the subject of currency and bank bills are so fully collected and referred to in the brief prepared by Mr. Hoyne, in this case, that we will not refer to them here.

McCAGG & FULLER,
Counsel for Plaintiff in Error.

THOMAS HOYNE,
Of Counsel for Plaintiff in Error.

165 – 95

The Marine Bank Chi

vs

Chandler

Pltffs. Points

165

Filed April 30, 1862

File

L. Leland

Clerk

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 Fourth day of November in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the United States of America the Eighty Eighth

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

Van H. Higgins } Judges.
Grant Goodrich }

Carlos Haven Prosecuting Attorney.

Anthony C. Hesing Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that heretofore to wit on the 21st day of June in the year of our Lord one thousand Eight hundred and Sixty one. there issued out of and under the seal of the said Superior Court of Chicago. The Peoples writ of Summons which said writ with the Sheriffs return thereon endorsed is in the words and figures following to wit.

State of Illinois }
County of Cook } ss.

The People of the State of Illinois. to the Sheriff of said County Greeting! We command you that you

summon The Prairie Bank of Chicago if it shall be found in your County. personally to be and appear before the Superior Court of Chicago. of said Cook County, on the first day of the next term thereof, to be holden at the Court house in Chicago in said Cook County. on the first Monday of July next to answer unto Charles Chandler in a plea of Trespass on the case upon promises. to the damage of the said Plaintiff as it is said. in the sum of Twenty Thousand Dollars - And have you there this writ with an endorsement thereon in what manner you shall have Executed the same.

Witness Walter Kimball Clerk of our said Court. and the seal thereof. at Chicago aforesaid this 21st day of June A.D. 1861.

Seal

Walter Kimball

Clerk

Served the within writ on the within named defendant The Prairie Bank of Chicago. by reading the within writ to J. Y. Scammon and also by delivering a copy thereof to him. being the President of the said Prairie Bank of Chicago. this 21st day of June 1861. Anthony C Hesing Sheriff

by John A Nelson deputy

And afterwards. to wit. on the 21st day of June in the year aforesaid. came Charles Chandler. Plaintiff by Joseph E Gary his attorney. and filed in the office of said Clerk his certain Declaration in the words and figures following to wit.

In the Superior Court of Chicago
July Term AD 1861

State of Illinois
County of Cook } ss.

Charles Chandler plaintiff in this suit who does business in the name & style of Charles Chandler & Co. by Joseph E Gary his attorney. complains of The Marine Bank of Chicago a Corporation under the laws of the State of Illinois. defendant in this suit. of a plea of trespass on the case upon promises —

For that whereas. the said defendant heretofore to wit on the 20th day of June AD 1861. at said County of Cook. became & were indebted to the said plaintiff in a large sum of money to wit the sum of Twenty Thousand Dollars for money before that time had & received by said defendant to & for the use of the said plaintiff — And also in the like sum

for money before that time lent & advanced to said defendant by said plaintiff at said defendants request - and being so indebted said defendant in consideration thereof then & there undertook & promised to pay said plaintiff said several sums of money above mentioned when thereunto afterwards requested -

And whereas also the said defendant afterwards but on the same day & year last aforesaid & at the place aforesaid accounted together with the said plaintiff of & concerning divers other sums of money before that time due & owing from the said defendant to the said plaintiff & then & there being in arrear & unpaid & upon such accounting the said defendants were found to be in arrear & indebted to said plaintiff in the further sum of Twenty Thousand Dollars. and being so found in arrear & indebted to said plaintiff the said defendants in consideration thereof afterwards but on the same day & year last aforesaid & at the place aforesaid undertook & then & there faithfully promised the said plaintiff to pay unto the said plaintiff the said sum of money last above mentioned when they the said defendants should

be thereunto afterwards requested.

Yet the said defendants not regarding their said promises and undertakings but contriving &c although often requested so to do. have not paid said plaintiff either of said sums of money above mentioned or any part thereof. but so to do have hitherto wholly neglected and refused & still do neglect and refuse to the damage of said plaintiff of Twenty Thousand Dollars and therefore he brings this suit &c

Joseph E Gary
Plffs atty

The Marine Bank of Chicago
1861 To Charles Chandler Dr
To amount of money deposited
with you as Banker $ 10,000

The above deposit was made in the name of Charles Chandler & Co. by said plaintiff alone & without any partner

To Money lent & advanced $ 10,000
" " had & received to the
use of the plaintiff 10,000
" Balance on account stated 10,000

And afterwards to wit on the Second day of July in the year aforesaid. said day being one of the days of the July Term of said Court the following among other proceedings were had and entered of record in said Court to wit.

Charles Chandler
vs
The Marine Bank of
Chicago

On motion
Jamman McCagg & Fuller defendants
attorneys it is ordered that the rule
to plead herein be and is hereby
Extended Ten days from this date

And afterwards to wit on the Eleventh day of July in the year aforesaid came The Marine Bank of Chicago defendant herein by its attorneys and filed in the office of said Clerk its certain plea and affidavit of merits. in the words and figures following to wit!

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State of Illinois }
Cook County } ss.

J. Young Scammon. being duly affirmed. deposes and says that he is the President of the Marine Bank of Chicago. the Defendant in the above entitled cause. and that he verily believes that the said Marine Bank of Chicago has a good defense thereto upon the merits: and that he makes this affidavit for the company aforesaid and as its president

J. Young Scammon

Subscribed and affirmed before me the Eleventh day of July A.D. 1861

John Forsythe
Notary Public

And afterwards to wit: on the twelfth day of November in the year aforesaid said day being one of the November term of said Court, the following among other proceedings were had and entered of record in said Court to wit.

James Chandler
vs
The Marine Bank of Chicago. asst.

This day come the said plaintiff by Joseph Glass his attorney, and the said defendant by McCagg & Fuller its attorneys also come and issues being joined herein it is ordered that a jury come whereupon comes the jury of good & lawful men to wit W. P. Roach. Nicholas Hoffman Erastus Law Edward Cobb. W. Jones. W. Hoffman. G. F. Kidder. L. Landregan. Edwin Watson. R. Boone. Joseph Sanders & Royal D. A. who being duly elected tried & sworn to try the issues joined as aforesaid after hearing part of the testimony and the hour of adjournment having arrived, it is ordered

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by agreement of parties that the jury separate and meet the Court to-morrow Morning

And afterwards to wit. on the twenty first day of November in the year aforesaid said day being still one of the days of the November term of said Court the following among other proceedings were had and entered of Record in said Cause.

Charles Chandler
vs
The Marine Bank of Chicago

This day again come the said plaintiff by Joseph Clay his attorney and the said defendant by McCagg & Fuller &c. attorneys as come and the jury impannelled herein on yesterday on the trial of said cause, and after hearing further testimony and the hour of adjournment having arrived it is ordered that the jury separate and meet the Court to-morrow Morning.

and afterwards to wit on the twenty second day of November said day being still one of the day of the November term aforesaid the following among other pro ceedings were had and entered of record in said Court. to wit:

Charles Chandler
vs
The Marine Bank of Chicago

This day again comes the said plaintiff by Joseph Elgin his attorney, and the said defendant by its attorneys McCagg & Fuller also come. and the jury impannelled herein for the trial of said Cause and do on yesterday also come and after hearing all the testimony and the hour of adjournment having arrived. it is ordered that the jury seperate and meet the Court to morrow morning by agreement of parties now here in open Court.

and afterwards to wit on the twenty third day of November said day being still one of the days of the said November term of said Court, the following among other proceedings were had and entered of record in said Cause,

Charles Chandler
vs
The Marine Bank of Chicago. Asst.

This day again comes the said plaintiff by Joseph Elsey his attorney. and the said defendant by its attorneys McGagg & Fuller also come and the jury heretofore empannelled herein for the trial of said Cause, and do on yesterday also come. and after hearing arguments of Counsel and instructions of the Court. the Cause is submitted and the jury retire and consider of their verdict. and the hour of adjournment having arrived. It is ordered upon agreement of the parties that when the jury shall have agreed upon a verdict. they shall reduce the same to writing sign & seal the same & deposit with the clerk of this Court and thereupon be discharged.

and afterwards to wit, on the twenty fifth day of November in the year aforesaid said day being still one of the days of the November Term of said Court the following among other proceedings were had and entered of Record in said Cause to wit.

Charles Chandler
vs
The Marine Bank of Chicago

This day again comes the said Plaintiff by Joseph Elgar his attorney, and the said defendant by its attorneys McCagg & Fuller also come and the jury having rendered their verdict, say, we the jury find issues for said plaintiff and we assess his damages therein, against said defendant to the sum of Sixteen thousand three hundred & seventy six dollars and eighty three Cents, and then upon the defendant by its attorneys submits motion herein for new trial in said Cause, which motion is overruled by the Court whereupon the said defendant enters exceptions thereto to the ruling of the Court in overruling its said motion for a new trial.

Therefore it is considered, that the said plaintiff do have and recover of and from the said defendant his damages of Sixteen thousand three Hundred and seventy five dollars and eighty three Cents in form aforesaid by the jury here found and assessed together with his costs and Charges in this behalf expended and have execution therefor.

And thereupon the said defendants by its Counsel pray an appeal herein to the Supreme Court of this State from this judgment of this Court, which is allowed on filing bond in penalty of twenty thousand dollars with security to be approved by the judge of this Court, within twenty days from this day. and such bill of Exceptions also to be filed within twenty days from this day.

and afterwards to wit, on the
Sixteenth day of December in
the year aforesaid, said day
being one of the days of the
December Term of said Court
the following among other pro-
ceedings were had and entered
of Record in said Cause, to wit:

Charles Chandler

vs.

The Marine Bank of Chicago

and
now again come the parties
to this Cause by their attorneys
and on motion of McCagg
& Fuller attorneys for said de-
fendant, it is ordered that the
time for defendant to file bill
of exceptions herein on appeal
to Supreme Court, be and is
hereby extended ten days from
this day.

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And afterwards to wit, on the fourteenth day of December in the year aforesaid. Said day being still one of the days of the December term of said Court the defendant filed in the office of the Clerk aforesaid a certain appeal bond in the words and figures following to wit.

Know all men by these presents that We the Marine Bank of Chicago (principal) and P. Gandy Scammon and Hugh T. Dickey (sureties) of the County of Cook & State of Illinois are held and firmly bound unto Charles Chandler of Macomb in the County of McDonough and State aforesaid, in the penal sum of thirty four thousand dollars lawful Money of the United States for the payment of which well and truly to be made we bind ourselves our Heirs, Executors and administrators jointly severally & firmly by these presents.

Witness our hands and seals the fourteenth day of December A.D. 1861.

The Condition of the above obligation is such, that whereas the said Charles Chandler did in the Superior Court of Chicago in and for the County of Cook and State aforesaid and of the November Term thereof A.D. 1881 recover a judgment against the above bounden The Marine Bank of Chicago for the sum of Sixteen thousand three hundred and Seventy four dollars and eighty three Cents besides Costs of Suit, from which said judgment of the said Superior Court, the said Marine Bank of Chicago has prayed for and obtained an appeal to the Supreme Court of said State. Now therefore if the said The Marine Bank of Chicago shall duly prosecute its said appeal to effect and moreover pay the amount of the judgment Costs interest and damages rendered and to be rendered against it in case the said judgment shall be affirmed in said Supreme Court then the above obligation to be void. otherwise

remain in full force and
virtue. In Witness of its
Execution of this Bond
the said Marine Bank of
Chicago has caused these
presents to be signed by its
President and attested by
its Cashier with its Corporate
Seal affixed at the City of
Chicago in said County the
Fourteenth day of December
A.D. 1861

L. Young Scammon
President.

L. Young Scammon (Seal)
Hugh T. Dickey (Seal)

(Seal) Hamilton B. Dow
Cashier.

Approved in Open Court
Grant Goodrich
Judge of Superior Court of Chicago

And afterwards to wit on the Sixth day of
January A.D. 1862 the defendant filed
herein his Certain Bill of Ex
ceptions in the words and
figures following. to wit.

In the Superior Court of Chicago
of November Term of 1861

Charles Chandler
vs
The Marine Bank of Chicago } Assumpsit

Be it remembered that on the trial of the above entitled cause which was commenced on the 20th day of November A.D. 1861 in the Superior Court of Chicago - the said day being one of the days of the November Term of said Court. The Plaintiff called as a witness Lewis C. Ellsworth, who being duly sworn testified as follows on the part of said plaintiff

"I am a Banker of the firm of H.A. Tucker & Co. and one of the partners in said firm I have been engaged in the business of banking in Chicago for several years past -

Plaintiffs counsel here shew the witness a draft of which the following is a copy.

$9957- Wisconsin Marine & Fire Insurance Company's Bank. Milwaukie April 11th 1861
At sight of this first of Exchange (Second unpaid) Pay to the order of Jacob L. Platner. Nine hundred & fifty seven Dollars

he Current Bk notes on account of this
Bank (Signed) D Ingerson
To Ingles A A Junker & Co Cashier
Chicago Ills

And on the back
of which are written the following endorse-
ments.
"Jacob J Platner" "Jacob Strader" "Pay to
Marine Bank Chicago Chas Chandler & Co.
for J B Pearson". *

This Draft was paid
by A A Junker & Co to defendant on the
19th of April last -

Cross examined by defendants Counsel
Witness stated - I have personal knowledge
of the payment of the draft on 19th of
April - The draft was paid in the daily
Exchange between the two Banks - It was
paid in Illinois Currency which at that
time was current Bank notes of the
Illinois Banks, organized under the laws
of the State - The Exchanges at that
time of the Banks with each other were
made in Bills of the Illinois Banks -
The Exchanges were made every day by
the defendant sending in all checks and
drafts against A A Junker & Co and A A

Tucker would make up their account of all checks and drafts against defendant, and the difference if any existed in favor of ~~each~~ Eight, was paid in Illinois Bank Notes. The Bills of all the Banks in the State were then current except nine Banks discredited as thrown out in November previously (1860) and 20 Banks thrown out and discredited on the 30th of March 1861 and these notes had ceased to pass current. After these Banks had ceased to be current the Bills of all the other Banks were the currency in circulation on April 1861, These Bills or Notes were used at this time in all the transactions of ~~him-self~~ business and were such as paid debts) to H A Tucker & Co. and were rec'd. by others in payment of debts.) In April & May the entire circulation was made up of Ills. Bank Bills. On the 17th of April 1861 there was a difference, between in the value in market of ~~between~~ these Bills and coin. I have a Memorandum by which I can tell but I can't tell without it. It is my impression that Coin was worth 10 or 15 per cent in these Bills - Nominally it was 10 but really 15 per cent - I think it cost that to convert the Bills into coin. The Bills of these Banks continued to circulate as money till the 15th of May 1861 and down to

that day almost the entire circulation was made up of these notes. These notes or Bills continued to decrease in value from the 19th of April to the 18th of May 1861.

I have been about ten years engaged in the Banking business in Chicago as paying and receiving teller most of the time

It is the general usage and custom of Banks to keep their customers money or funds in one common not separate fund. This is the custom of all Banks here and has been all the time. Every thing received in the ordinary course of business is put into ~~placed with~~ one common fund.

I have been in the State since the free Banking has been in force and been engaged as a Banker during the last 10 years. The Bills of these Banks have made up the principal part of the circulation here. there was some Wisconsin Bills circulated here. The Bills of Eastern Banks and Coin have always been treated by Bankers as worth more than our Bills the difference being from one to 40 and 50 per cent down to the 18th of May last. The Bills which have been in common use here buying goods & paying debts have been Bills of Illinois Banks

If a deposit was made in eastern bills or bank funds of eastern banks, or in gold and no premium was paid to the depositor it was the custom of the bankers to credit coin or eastern as such, and if the party wished to draw for coin or eastern funds it was specially called for in the check, He drew out like funds to those deposited if he was paid no premium to reduce the deposit to currency the same as other funds in general circulation.

The defendant here insisted that the testimony offered by the plaintiff in the draft in question was not competent evidence under the money counts of the declaration, but the court permitted the evidence to be received reserving that question till he should come to instruct the Jury on the law of the case.

Whereupon the witness Lewis C. Ellsworth was recalled and proceeded to testify as follows.

That he resided here in June last and was engaged in the banking business, had means of knowing the value of Ills. bank notes at that time I converted a considerable ammount at auditors office and bought considerable in market. The average value of all the bills of all the banks which were in circulation after the 1st of April 1861 was on 21st of June 55 to 60 cents on a dollar. On the 18th of May the Illinois banks ceased to circulate as money and became the subject of barter

as a commodity and so continued to the present time. I include in making this average the entire body of bills good, bad and indifferent which were in the circulation. In the Spring of 61 the currency was composed of the poorer class of the banks. The bills of the same banks which were in circulation in April and May 1861 were in circulation in 1860 except those rejected in November & March previously.

Currency depreciated from the 20th of April till the time it went out of circulation and till the 1st of June. In April and May the depreciation was from 10 to 20 per cent compared with coin, and in June the depreciation was from 10 to 60 per cent. The bills of no bank except the Marine Bank were in circulation at par in June. The bills which were in circulation in the Winter of 1860 and Spring of 1861 were the same that were in circulation in April and May and they were used previous to the 18th of May in the payment of debts and in business as money. They composed the currency almost exclusively at that time. They were received on deposit &c.

Direct Examination— There must have been a ballance one way or the other on the day of the exchange but I cant say which it was I cannot say whether the defendant received a ballance or paid one on that day. When a deposit was made generaly it was credited as currency, if in coin or eastern currency it was so noted. When a check was drawn payable generaly it was paid in Ills. bank bills.

Up to the time when bills were thrown out in Novembe
and April the bills of those banks had circulated as mon
ey after the rejected bills had ceased to circulate as money.
Illinois bank bills have constituted the principal part
of the currency for some 9 or 10 years I think those bills have
been as near par from time to time as one half per cent
since the passage of the law. In Nov. the banks here had
on deposit and in their vaults, the bills of the banks
that were then rejected. After they were thrown out one
institution insisted on their depositors taking rejected
bills on checks but this was an exception, all the other
banks acted differently, no other bank attempted to pay them
out. When the 30 banks were thrown out in March the
banks here had the bills of those banks on deposit right
with the common fund of their depositors, but they did
not undertake to pay them out on the checks of their de-
positors. The banks entered into an agreement not to pay
out the bills of those banks on account of their depreciation
They ceased to be current after the banks here rejected them
but they were current to the time of rejection.
For one or two years there was a large ammount of
Georgia bank bills in circulation. The issues of the Wis-
consin banks have constituted a part of the circulation
for during the last 10 years, sometimes for some months quite a
large ammount of them. The banks notes of the bank of
Iowa constituted a very small portion of the circulation
previous to the 19th of April. Some of those notes and
also of banks of Kentucky, Ohio and Indiana also consti-

dated a part of the circulation in April last and previously
When I speak of eastern currency I mean New York and
the New England States. There were also some bills of
Michigan and Pennsylvania in circulation. The notes
of Indiana Penn. Ohio Michigan and Kentucky have
always been considered as worth more than our circu-
lation. When those notes were intermixed with their
deposit it was customary to credit a premium, Georgia
bank notes passed as currency never at a premium, although
the most of it was readily convertable. During April
and May last there was $ 30000 or $ 40000 of Georgia currency
in circulation. The notes that were thrown out in March
had not been discredited by the rail-road companies
before they were discredited at the banks. It is the cus-
tom of country bankers to keep accounts with bankers
here The course of business between them consists in
the country bankers sending checks and drafts on
their banks and business houses together with currency
at times which are placed to their credit and drawn
against by them as they might need, and it has been
customary for merchants and produce men generally to
place money to the credit of country banks with whom
they were dealing at the time. ~~The~~ No charge is made either
way by the banker here or there for the receiving or
having the money thus deposited. The arrangement is
an accommodation for the country banker in having
his money here so that he can draw drafts to parties with
whom he deals so as to avoid the risk of sending money here

The city bankers has usualy a balance to the credit of the country banker which may be an advantage. Whatever is thus placed to the credit of the ~~credit of the~~ country banker he can draw against it. The banker here uses the money this placed to his credit in the same way as money depossited with it by its other customers. As a general thing a deposit account is desirable to the banks. Banks make money out of the buying and selling of exchange, and discounting business paper for business men here. the larger the ammount of the deposit the more it can do. The larger the general balance on hand is, gives the bank so much more that they can use in discounts and exchanges. From the month of November to the 18th of May the fluctuation in the discount on circulation for gold was from 2 to 20 per cent varying from time to time between these extremes.

Cross Examination Resumed.

After the bills were rejected in November & April the bills in the hands of banks here were sorted out by them and laid away. They were not attempted to be paid out by the banks. The bills after rejection were put away as so much dead money.

In 1853, 1854 and perhaps 1855 the bills of the Sagia banks disappeared from circulation mostly & their Sagia money in circulation previous to May was money issued by H. A. Tucker & Co. There was $ 80 to $90,000 of the money in circulation. The bills were treated as cur-

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rency, and circulated in general use. For some portion of May and perhaps in April it was considered at a premium over Ills. bills. In Spring of 1861 the bills of Iowa constituted no perceptable part of the circulation. The bills of free banks were more in circulation at that time than the bills of State banks. Our banks were receiving and paying out ~~from~~ $ 75 to $100,000 per day. It was very rarely that we saw anything else in circulation than Ills. & Wisconsin bank notes, there was not much difference in the value of the two. Sometime in April Wisconsin bills ceased to circulate here, after April 1st the circulation was almost entirely Illinois bills.

Direct Examination Resumed.

The bank notes thrown out in Nov. and March were assorted by the banks from among their deposits and laid away as dead, and the same was the case with the bills of the residue of the Ills. banks after the 18th of May. They likewise then became dead and were thereafter bought and sold as a commodity by brokers.

The plaintiff then called as a witness Jacob Richman who being duly sworn testified as follows.

In April 1861, I had an account with H. A. Tucker & Co. We closed it some time in April and our checks were returned to us. I cannot now lay my hands on the checks. I received a check of Chase on them for $1500. I got that check back from Tucker & Co. in the ordinary course of my business with Tucker & Co. This was some-

time in April. I recd. it back somewhere about the 15th of April

The defendant has admitted the receipt of the two items $4.00 and $1500 for collection and that they were paid by Tucker and Co. The only thing I deposited at the time was Ills. & Wisconsin currency. That was about all the currency in circulation. We sometimes deposited eastern drafts with Tucker & Co. the checks were returned to me

Cross Examination— My deposits were mostly in Ills and Wis. currency. The eastern drafts we sold and converted into currency. We received as from 3 to 4 per cent premium in April and May, last premium in May

Plaintiff then called as a witness Nelson Morris who being duly sworn testified as follows.

This is my check it was returned to me by the bank when I settled with it. I found it among my bank checks, it has been through the bank.

Cross Examination

I deposited Ills. currency with Selpke my account was made up of Ills. currency.

Plaintiff then called as a witness G. W. Tobey who being duly sworn testified as follows.

I deposited in the Marine bank to the credit of the plaintiff $326.47. at one time, $300 at another $26.47. Think first deposit was made about the 10 of May & last on 17th of May.

Cross Ex.

Think I deposited Ills. currency. I think I took a receipt or letter from the bank for deposit. I left the deposit by

30 direction of plaintiff

Direct Ex. Resumed. All I need. is that deposit it was made in the money passing current at the time

Plaintiff then called as a witness Wm. H. Rogers, who being duly sworn testified as follows.

In May last I was in the commission business, I was book Keeper. On the 18th of May I deposited $28.25 to the credit of plaintiff with defendant. It was made in a check on the Marine bank. I. W. Finleys check.

Plaintiff then called as a witness Charles S. Hamill who being duly sworn testified as follows.

In April last I was teller in the Western Marine and Fire Insurance Co. The papers were paid by them. They are certificates of deposit payable in currency amounting to $1550. They have the stamps of defendant and I presume they were paid to deft.

C. x's Examination

They were paid in Ills. currency, we were then using nothing else except some Wisconsin currency in circulation which was considered about the same thing. On the 18th of April I think gold was 10 to 15 per cent premium in the street at that time.

After Ills. bills ceased to circulate in May miscellaneous currency succeeded composed of the bills of Ohio Iowa, Ind. and eastern currency, and the difference between that kind of currency and specie varied since, from ½ to 1 per cent generally about one half per cent.

Cross Examination

The ward currency was used by business men in April and May last, in reference to bills of Ills. & Wis. banks. The same distinction between gold and currency continued after Ills. bills went out of circulation though it was and is small. At the time these certificates were given there was a small quantity of Missouri currency in circulation, the term was generally applied to currency as then composed of Ills. bills

Direct Exy.

The ward currency now means such bills as circulate as money and pass current. A year ago the ward meant such bank notes as passed current at the time. I have been in the business of banking 6 years here, the currency has been used in that sense, though a distinction has generally been made between currency and eastern funds. I mean by eastern funds the bank notes of New York and New England Banks.

The bills of the banks of Missouri, Iowa, Ind., Ohio &c. were called currency and included in that term. And by currency the business world here have always meant the bills of all such banks as passed current as money except eastern bills.

Cross Exy.

Nichols & Kinchman kept an account with our bank &c was the same as our other accounts. Ills currency last Winter and Spring what was called currency was made up of Ills. and Wis. bills and some Missouri but the

circulation of the latter was hardly appreciable. They were at a premium. The Ills. bills constituted the medium of busines, they were recd. generally in all business transactions, in payment of debts and general business.

Direct Ex. Resumed.

These certificates could not have been in our possession if they had not been paid.

Plaintiff here recalled Victor Jacob Richman who testified as follows.

I gave one check of $1663,14 and another of $1000 to P. W. Hastings both dated April 21st on H A Tucker & Co. They were paid in current money out of my account with Tucker. On 29th of April I gave a check of $700 on the West. Mar. & Fire Ins. Co. to Hastings, the check was returned to me by the bank as paid in the regular course of business. My account at the West. Mar. & Fire Ins. Co's bank was a currency account, and these checks were drawn against it.

On the 6th of May we gave a check to Hastings for $1000. on same Co. It has been retd. to me by the bank as the rest and all of them have been lost or destroyed it was paid out of my currency account. I had no other act. On 6th of May currency depositted passed dollar for dollar but exchange or coin was from 10 to 15 per cent premium.

Plaintiff then called as witness W. W Leonard who being duly sworn testified as follows.

I went with plaintiff on 21st of June last to the

Marine bank with this check and demanded money on it, they proposed to pay it in funds on various Ills. banks which I declined to accept; for the reason that they were not worth the face of the check. The teller said they bills on various banks of Ills. they were of different values as the teller said and as I know. I looked over the kind of bills which were offered, none of them were such as would pass at that time as money or currency The teller said they were of various values after making the demand, I went to the office of plaintiffs atty and this was before the suit was brought, or the praecipe was filed.

Cross Examination. The amount demanded was $16,126,85 and demand was made June 21st last. I was book keeper in June last for the Union Ins. Co. I have lived here 6 years I have had occasion to handle money and know what has been passing as current I saw the bills offered by the teller, they were the bills of banks whose bills had passed as current in the Spring and Winter previously. They passed as such down to some time in May when the currency broke and they ceased to circulate, down to that time the currency had been composed of Ills. currency mainly, partly also of Wis. and some of Missouri. I demanded such funds as were worth one hundred cents on the dollar. Ills. bills were then worth at that time from 35 to 40 cents less than their face, taking the whole body together. The bills offered by the defendant were of the same kind as had been used and circulated as currency in April

and May previous to demand.

Direct Ex.

There was some conversation between plaintiff and Potter as to what he would take on the check Plff. did not insist upon the full amount of money called for by the check, nothing was said about what kind of funds he would take on the check. He demanded currency worth 100 cents on the dollar.

Cross Ex resumed.

The ~~conversation~~ conversation about settlement had no reference to the demand.

Plaintiff here called as a witness P. H. L. Mayfield who being duly sworn testified as follows

I have been with Adams banker for the last two years This draft was paid by us May 8th for $ 99,50 also the one for $ 142,85 dated 10th May. also the one of May 15th for $ 9,25

Cross Ex. I was corresponding secy. I have knowledge of this payment from the fact of possession They all bear the stamp of defts they were paid in the exchange between defts and ourselves I presume the one May 3rd for $ 225 was payable in currency it was payable in bills then passing current. The currency at that date was almost wholly made up of Ills & Wis bk. notes.

Plaintiff here called as witness William Randolph who being duly sworn testified as follows.

In April and May last I was book keeper of C. S. Potter & Co. This draft was paid by them, it bears date April 19/61 for

$500. drawn by M. Belden.

Cross Ex. I have no personal knowledge of payment except that the draft has been in our posesion and the proper entries on their books.

Direct Ex. Resumed.

The draft of Belden on us for $524.92 dated 9th of May is now and has been in our posesion since May, it was filed on the 15th of May with us it was then taken up, since that it has been kept among our vouchers as having been paid by us.

Cross Examined. I did not pay the draft, and do not know to whom or in what it was paid, nor do I know to whom or in what the first was paid of any own personal knowledge.

Plaintiff then called as a witness Wm. S. Goodrich who being duly sworn testified as follows.

I keep the Matteson House in this city. I deposited on the 7th of May by request of Strader $3628,24 to the credit of the plaintiff in the Marine Bank, I handed the envelope to the clerk Long and asked him if correct to pass it to the credit of plaintiff

Cross Exd. Strader was a cattle trader. This is a copy of the receipt or ticket given me by the clerk of the bank of the amt deposited. The receipt describes the amt as currency deposited, but the deposit was in fact made in checks and drafts. This a copy of the certificate given me by the clerk, Long was receiving teller of dept at the time. Receipt given in evidence.

$500. drawn by M. Belden.
Cross Ex. I have no personal knowledge of payment except that the draft has been in our posesion and the proper entries on their books.
Direct Ex. Resumed.
The draft of Belden on us for $524,92 dated 9th of May is now and has been in our posession since May, it was filed on the 15th of May with us it was then taken up, since that it has been kept among our vouchers as having been paid by us.
Cross Examined. I did not pay the draft, and do not know to whom or in what it was paid, nor do I know to whom or in what the first was paid of any own personal knowledge.
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Cross Exd. Strader was a cattle trader. This is a copy of the receipt or ticket given me by the clerk of the bank of the amt deposited. The receipt describes the amt as currency deposited, but the deposit was in fact made in checks and drafts. This a copy of the certificate given me by the clerk, Long was receiving teller of deft at the time.
Receipt given in evidence.—

It was here admitted that all the drafts constituting additional items amounting to the Sum of $
were obtained by the plffs. from the drawees or the parties whose duty it was to pay and take them, and that those drawn on defendants were charged by the deft. to the drawees
Plaintiff here called as a witness C. E. Babcock who being duly sworn testified as follows.
I am one of the firm of B. F. Carver & Co. That firm paid certificate of Strader dated Apr. 15th 1861 & paid Apr. 17th for $ 1204,28 signed by me.
Cross Exd. It was paid to defendant or Chicago Mar. & Fire Ins. Co. as shown on the back, that is its stamp. It was paid in Ills. currency, that currency was a compound of Ills bank notes, at the time of payment exchange at that date was 10 per cent, but sold only to to customers, and then only when we were compelled, it was nominally a good deal higher and sold sparingly at 10 per. cent. The words in the certificate "Ills. Cy." stands for Illinois Currency among bankers. The difference between exchang and gold is generally 1/4 per cent. it is the cost of transportation, the difference is 1/4 per cent. Gold would not rule more than 1/4 per cent above exchange as a general thing. Gold is worth 1/4 per cent more than exchange.
Plaintiff here called as a witness Junius Rogers who being duly sworn testified as follows.
In May last I was book keeper for Jas. McKindley & Co. merchants in this city. On the 7th of May last I deposited $ 307,31 to the credit of C. Chandler of Macomb in the

Marine Bank

Cross Exd. I got no receipt when I made the deposit I made it by direction of of Dos. Burton of Macomb. Mc. K. & Co. in May kept their account with the West. Mar & Fire Ins. Co. I deposited the money in a check of Mc. K. with defendant their account at West. Ins. Co. was in current money, their deposits with them were principally Illinois bills.

Direct Exd resumed.

On 7th of May we recd. gold, silver and bills on the different banks of Ills, not much Wis. or Georgia, might occasionally have received a note on Georgia and Iowa, occasionally got some of Indiana money.

Cross Exd.

At that time gold and silver were at a premium. dont recollect that I deposited any Indiana or Iowa in May. I may have deposited Indiana free bank money. In the first week in May if a man paid us $10 in gold we gave him credit for $10 on account. Dont recollect exactly what the rate of exchange was at that time we had to pay large premiums during that week. We charged the regular rate for goods, sold them for money that was current, we made no difference in the price of our goods at that time whether paid in one thing or another

Plaintiff here called as a witness H. B. Dox who being duly sworn testified as follows.

On 17th of April last I was cashier of defendant. It came to the bank in this letter, it was credited to plaintiff and

charged to Holmes & Son for $ 165.00
Cross Exd. On that day Ills. bank notes were bankable funds, and this draft was paid in these funds. Their (Holmes & Son) act. with dft. was a currency account.
Direct Exd. Resumed
There was no money handled in the operation, The draft was charged to Holmes & Son and credited to plaintiff.
This check of Mich. Southern R.R. for $ 1,977.50 payable to Mr Paxton or order came to us through this letter, the amt. of the check was credited to plaintiff and charged to Mich. Sou. Road. The account of that company at the bank was kept in the name of W. F. Stanton.
Cross Exd. This check was paid out of their account, that account was a currency account.
Direct Exd. Resumed
No money was paid on the check. Both plaintiff and Stanton kept an account with the bank and the first was credited and the last charged with the amount of the check. The drafts of Barup and Oakes came in this letter one for $ 100 and the other for $ 150 they were rects. from plff. on 7th of May and credited to him and charged to Barup and Oakes on that day
Cross Exd. The word ex means currency. Their (B. & O.) act. was a currency account.
Plaintiff here read the deposition of Francis & Lyle which was done without objection.

Question 1st by Plaintiffs Attorney –
What is your name, age and occupation and place of residence, and are you acquainted with the parties to this suit?
Ans. My name is Francis D. Lipes. My age is forty five. My occupation at this time is trading in Stock I reside in the city of Macomb McDonough County Ills. I am well acquainted with the plaintiff Mr Charles Chandler and am acquainted with the bank so far as doing business through its officers at said bank in Chicago

Question 2nd by Plaintiffs Attorney.
State whether you know of any money or other transactions between the plaintiff and defendant during the months of April 1861. If you do, state fully and particularly what you know about the same –
Ans.— I do know of some money transactions between the parties about the time specified – I was trading in hogs and selling at Chicago, and on the 22nd day of April 1861 deposited at the Marine Bank of Chicago agreeably to Mr. Chandlers request to his credit and subject to his order Seven hundred thirty five Dollars. I know of no other transactions during said month of April 1861. between said plaintiff and defendant.

Francis D. Lipes.

40 Letters from plaintiff to defendant produced by defendant— dated April 16th 1861.

Macomb Ills. Apr. 16th 1861

B. F. Carver Cashr.
Marine Bank Chicago

Sir—

Enclosed find for Coll. & our credit
Wm A. Tucker & Co. $67,00
Same 1500,00
Same 400,00
B. F. Carver & Co. 1204,28
$ 4061,28

You will please send us by return a draft on England of 1£ Sterling drawn in our favour & much oblige

Yours Truly
Charles Chandler & Co
Pr. J. B. Pearson

It was admitted that the word "Coll" means collection when used in plffs letters— Reply was then read.

Chicago Ill, Apr. 18th 1861

Messrs Chas Chandler & Co.
Macomb Ills.

Dear Sir

Yours of 16th is at hand with enclosures — Your have credit $4061,28—

I enclose one 1st & 2nd of Exch. on Baring Bros. & Co.
for £1 stg. & debit you therefor $ 5.15

Yours Truly
H. B. Dox Cy
Roberts

Ex 10 % firms
Rejected Ills & Wis Cy. 50 % disct

Letter of plffs. of Apl 17th to deft.

Macomb Ills. Apl 17th 1861

B. F. Carver Cash.r
Maine Bank
Sir

Enclosed find for Col. & our credit
A. Holmes & Sons on you $ 165.50
Respectfully Yours
Charles Chandler & Co
Pr P. B. Pearsons

Letter of plffs. of Apl 20th to deft.

Macomb Ills Apl 20th 1861

H. B. Dox Cash.r
Maine Bank
Sir

Enclosed find for col. & our credit
C. S. Dole & Co. 500—
Western Maine & Fire Ins. Co. 500—
Same 550—
Same 500—
$2050
Respectfully Yours
Chas Chandler & Co
pr J. B Pearsons

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Letter of Pfff. of Apr 22nd to dept

Macomb Ills Apr 22nd 1861

H. B. Day Cash.r
Maine Bank — Sir

Enclosed find for collection and credit

C. J. Wheler	136 —
H. A. Tucker & Co.	1000 —
Same	1663, 14
Ourselves	80, —
I. H. Burch & Co.	99. 75
	$ 2978 89

Respectfully Yours
Charles Chandler & Co
Pr. S. B. Pearsons

Letter of Pfff of April 24th to defendant

Macomb Ills Apl. 24th /61

H. B. Day Cashr.
Maine Bank — Sir

Enclosed find for collection and credit, with premium

Hoffman & Selpecke 160.00

What will you sell us an 80 £ Sterling draft at, on London

Respectfully Yours
Charles Chandler & Co.
Pr S. B. Pearsons

This draft came in letter of April 24th
Coop's Exp. — This German draft was paid by Hoffman & Selpecke through our exchange between the two banks.

Here were presented the following letters which were read.

Letter May 4th from pltff. to deft.

Macomb Ills. May 4th 1861

Marine Bank

Chicago Ills

Enclosed please find for Coll. & our credit

Bamps & Cakes on you 150—

do. 100—

Jas. Burton on Mc Kinley & Co 100—

$ 350—

Yours Truly

Charles Chandler & Co

Pr L. H. Cummings

Letter May 6th from pltff. to deft.

H. B. Loy Esqr. Cashr. Macomb Ills May 6th 1861

Chicago Ills

Enclosed please find for coll & our credit

Hoffman & Selpeche 286—

Western Marine & Fire Ins. Co. 1000—

W. S Burne 22

$ 1318—

Also enclosed find power of atty. L. H. Cummings

Mr L. B. Parson is not in our employ at present.

Yours Truly

Chas. Chandler & Co.

Pr L. H. Cummings

Letter May 8th from pltff. to deft

Macomb Ills. May 8th 1861

W. B. Foy Esqr. Cashr.
Chicago Ills

Enclosed find for coll. & our credit

Adams	$99-50
I. H. Burch & Co.	25 00

Please send us by Express Currency 2000—

Yours Truly
Charles Chandler & Co.
Pr. I. H. Cummings

Letter from pltffs Apr 29th to dept.

Macomb Ills. Apl. 29th 1861

W. B. Foy Chr.
Marine Bank Chicago

Dear Sir

Enclosed find for coll. & our credit

Wilson	26,54
Yourselves	13,75
"	19. 77,50
Western Marine & Fire Ins. Co.	700,00
	$ 2717,81

Yours Truly
Charles Chandler
Pr. H. C. Tenyman

Letter May 7th from dept. to pltffs.

Chicago May 7th 1861

C. Chandler & Co.

Your account has credit as follows

Hamilton B. Fox Cashier.

H. & G. $ 160.

Letter May 8th from plff. to dept.

Macomb Ills May 8th 1861

H. B. Fox Cashr.

Chicago Ills.

Enclosed find for col & our credit.

F. G. Adams $ 99.50

I. H. Burch & Co. 25.00

Please send us by Express currency Yours

Yours Truly

Chas. Chandler & Co.

Pr I. H. Cummings

Letter May 9th from plff. to dept

Macomb Ills May 9th 1861

H. B. Fox Esqr.

Cashr Marine Bank

Enclosed find for col & our credit

C. S. Dale & Co. 3 dys. $ 524.92

Yours

Truly

Chas. Chandler & Co.

P. I. H. Cummings

Letter from dept to pltff. dated Apr 27th

Chicago Ills April 27th 1861

Mess Chas. Chandler & Co
Macomb Ills.

Dear Sir

I credit your account this day four hundred thirty dollars, Received from Mess. Cooley Farnell & Co.
$430. Respectfully Yours
James Rogers
Cashier

Letter from dept to pltff. dated April 29th

Chicago Ills. Apr 29th 1861

Mess. Chas. Chandler & Co.
Macomb Ills.

Dear Sir

I credit your account this day
Three Thousand Dollars. Received from Mr Jacob Stade
$3000 Respectfully Yours
James Rogers Cashier

Letter from dept to pltff dated May 4th

Chicago Ills May 4th 1861

Mess Charles Chandler & Co.
Macomb Ills— Dear Sir

I credit your account this day

Six Hundred Fifty Four Dollars. Received from ~~col~~ F.P. Sape
$654 Respectfully Yours
Saml Rogers A Cashier

Letter from plf to deft May 10th

Macomb Ills May 10th 1861

H. B. Doy Chs.
Marine Bank

Dear Sir — Enclosed find for col & our credit
F. Adams 142.85
Luther Rossiter. Lake Forest 200.—
Yours Truly
Chas. Chandler & Co
Pr F. H. Cummings

Letter from plff. to deft May 13th
H. B. Doy Cashr.

Dear Sir — Enclosed please find for col
& our credit 4052
Package of Cy. Pr. Express $1000 came to hand all safe
Yours Truly
Chas. Chandler & Co.
Pr. F. H. Cummings

Letter from plff. to deft. May 16th

Macomb Ills May 16th 1861

H. B. Doy Cashr.

Dear Sir — Enclosed find for coll & our credit

G. Adams $ 25.

Hoffman & Felsicke 325—

334. 25

Truly Yours

Chas. Chandler & Co

P. J. H. Cummings

Defendent here called as a witness Eugene Long who being duly sworn Testified as follows.

In April and May last I was receiving teller of the Miners Bank. The deposit made on the 22nd of April by Mr. Lisle was paid to me as teller. The deposit consisted of Ills bank notes then passing here as currency. These are so called Letters of advice, given where money was deposited by one person for another. The deposits mentioned in these were made with me the deposit was in Ills. Bank Notes or Ills Currency current at the time of deposit.

Cross Exd.— Either Lisle or his clerk came to the bank it was received from him, or somebody representing him. I have no recollection of the bills paid to me, dont think it was a check, cannot say it was not in check, but that is improbable. I have no distinct recollection of what the deposit was, but it must have been Ills currency or something equivalent. It might have been a check or certificate of deposit of West. Mar. Fire Ins. Co. Dont know what the deposit was in I have no recollection what the deposit of Cooley Farwell & Co. was in. Think Shaden made me deposit

and Lifpe 2 or 3 deposits. I cant tell whether these deposits were checks or bank notes, I think the deposit of $3,000 was in bank notes

The Marine & Fire Ins. Co. & Marine Bank do busineſs in the same room. they have the same officers. I was and am receiving teller of both I received funds for both through the same grating and counter, all the money I received to the credit of plff. was put into one act. Hee had but one account in the building, I made but one credit. The money deposited by Shader to credit of plff. went into the same account kept with plff.

Direct Exp Resumed. — If anything else had been deposited than currency a note of it would ~~have been~~ be made, if gold had been brought the credit would have been given in gold

Plaintiffs Resumes

Plaintiff here called as witneſs S. H. Cummings who being duly sworn testified as follows.

I have been plffs clerk, have been since Apr 30th last past. I was attending to the general busineſs of his office receiving deposits, paying checks, keeping books, and attending generally to his busineſs. Plaintiffs place of busineſs is in Macomb in this State 210 miles from Chicago. Plff. does busineſs in the name of Charles Chandler & Co. Hee had no partner.

Plaintiff here recalled witneſs H. B. Fox who testified as follows. — Part of plffs account was composed of Nichols & Richmans checks. Defts here says no exception will be taken on account of bills of particulars if the amount is proved.

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All the items in the letter of Apr. 22nd were placed to credit of plff except the item of $136 All the items except $2656 in letter of Apr. 29th were recd. and credited to plff. on 1st of May. The item in letter of 6th of May was recd. and amount of $1,000 credited to plff May 9th

The plaintiffs here rested their case.

The defence here by agreement with plff. stated that the balance due upon the accounts between the parties was the sum of $ 15,971,23 as appeared from the book of defendant, some payments having been made since the presentation of the plaintiffs check on the 21st of June on checks which he had before drawn but which had not then been presented.

The defendant then offered in evidence an agreement signed by the plaintiff of which the following is a copy

No. 1

Chicago Marine & Fire Insurance Co.

The undersigned agree to receive and pay out as Currency in payment of debts and genral transactions of business, during the present War, the notes of all the Banks of this State at present taken by the following named Banks & Bankers of Chicago, provided the Bankers named below agree to do the same.

Def
57 1/2

The Defendant also offered in evidence an agreement of which the following is a copy.

No. 2

Chicago April 26th 1861

We the undersigned Citizens and Business Men of Chicago agree to receive and pay out as Currency in payment of Debts and general transaction of business during the present War, the Notes of all Banks of this State at present taken by the following named Banks and Bankers of this City provided the Bankers named below agree to do the same:

Chicago Marine and Fire Insurance Company
B. F. Carver & Co.
J. Granger Adams
H. A. Tucker & Co.

Western Marine & Fire Insurance Company
Hoffman & Selfridge.
Edward F. Tinkham & Co.

Chicago Marine and Fire Insurance Company.
B. F. Carver and Company.
F. Granger Adams.
Hoffman & Gelpcke.
W. A. Tucker & Company.
Western Marine and Fire Insurance Company
Edward S. Finkham & Co.

This agreement to be terminated upon the transfer of our account with the Chicago Marine and Fire Insurance Company.

Chas. Chandler & Co.

Hamm. B. Doy.

This page & the last should be transposed. This belongs at the end of page 52 at the *

In accordance with the above We the under-
signed Bankers do hereby ratify and confirm
the agreement therein expressed.

S. Young Scammon. Presidend of Chicago and
Marine & Fire Insurance Company.
H. A. Tucker & Co.
G. F. Adams.
B. F. Lauer & Co.
Hoffman & Felpcke.
Edward S Finkham & Co.
D. H. Woodworth ~~& Co.~~ Pres^{t}

Defendant here called as a witness H. B. Pay who being duly sworn, testified as follows. — Witness is told to look at agreement numbered "2" a copy of which is given above and states, The first signature to the said agreement is that of R. G. Scammon, he was president of the Chicago Marine & Fire Insurance Company, this is his signature attached to the agreement. I know the signatures of H. H. Tucker & Co. I have seen them write this is the signature of them I know F. F. Adams's signature, have seen him write, this is his signature attached to the agreement. I know B. F. Carver & Co's signature, have seen them write, this is their signature, it is their hand writing attached to this agreement. I know the signature of Hoffman & Delpeche, this is their signature I know also the signature of E. S. Pinkam & Co. this is their signature attached to this agreement. James H. Wadsworth is President of the Western Marine & Fire Ins. Co. I know his signature, this is his signature attached to the agreement.

Cross Exd. — My name is signed to the paper No. 1 as secretary, this paper was signed about the 27th of April the agreement was sent to Pelff about the 29th of April to be signed by him, we sent with it a circular that we should not receive this kind of currency on deposit unless he signed the agreement, the circular was attached on the other half of the same sheet upon which the agreement was printed so that he could separate the circular from the agreement and enclose us the agreement signed by him, the circular also notified him that the business would not be continued unless he signed it.

This is a copy of the circular enclosed with the agreement
Chicago Marine and Fire Insurance Company.

No 3

Chicago Apr 27th 1861

Dear Sir — I inclose a copy of an agreement entred into by the Bankers and business men of Chicago, for your signature, should you be disposed to cooperate with us — Our board of directors have ordered, that no deposits of money be received, or open accounts kept with parties who do not agent to this agreement — Should it be declined please direct a transfer of your account, collections &c — I also enclose a list of the names of parties who have to day deposited under this agreement.

Yours Respectfully,

Hamilton B. Dey Sec'y.

I cant say when I first saw the agreement signed by Plff. after it was returned, or after he had signed it.

Defendant read in evidence the two papers above, numbered one & two.

H. B. Dey was then recalled by the defence & testified as follows. The circular sent to Plff. was on the other half of the sheet on which an agreement to be signed by plaintiff was contained. This is the circular (looking at the paper numbered 3 already referred to above) which was sent to the Plff. Our correspondents to whom the circulars were sent tore off the part to be signed by them and returned only that part with their signature thereon, keeping the other part. Defendant then read the circular copied above, in evidence. Chandler & Co never had any business with defendants before the month of April last. The act was passed on the 18th of April 1861. At that

time the currency was in a disturbed & unsettled state here. I dont think it ceased before the 18th of May last at which time the whole currency broke down and ceased to circulate as money.

I have seen the evidence of debt introduced in evidence the defts. recd. for plffs. the same kind of currency it received on its own claims. We received Ills currency in payment of debts due the bank during the same time plffs account continued, and the same kind of currency that we received was, that which was in the same kind generally in use among banks and business men, and by the great bulk of business community. The currency was then composed of Ills. bank bills, and after the 30 banks were thrown out the nominal amount of Ills bills in circulation was $6,500,000 I arrive at this from the State Auditors reports. I dont know how much the circulation was composed of. I speak from public rumor. The bills of the 30 banks which were discredited in March and which defendant had on hand were not mixed with its other funds but were separated therefrom, and kept separately. They were not after thrown out, paid or offered to depositors on their checks. I have been engaged as a banker seven years. The usage and custom of bankers is to indemnify all the moneys collected for its customers as well as those kept on deposit. They were not kept separately. The funds which were recd. on collections made for plaintiff went into the common funds of the bank. The funds with which

Composed of
plaintiffs funds were intermixed were Ills bank notes.
They were made up of such bank notes as had been
in general circulation in the Spring of 1861 except
discredited notes. They were the same kind that we
received for our debts and paid debts with and ~~the~~
were received by others for the same purposes.
The rate of discount for specie on the currency receive
from plff was as follows at the rates specified

April 16th rate of discount 8 per cent
" 17 " " 10 " "
" 20 " " 10 " "
Sold very sparingly " 22 " " 12 " "
Not sold " 24 " " 15 " "
Sold sparingly " 29 " " 10 " "
May 1 " " 10 " "
" 4 " " 10 " "
" 6 " " 10 " "
" 8 " " 10 " "
" 9 " " 10 " "
No Sales " 10 " " 10 " "
But little sold " 13 " " 10 " "
$ 15'd sold " 15 " " 10 " "
for what was sold " 17 " " 25 " "
" 18 " " 25 " "

After that no rate, the currency ceased to circulate
as money and was no longer used as such. Exchange was
readily sold on 16th April at the rate named, after the
20th April it was sold sparingly. After the 18th of May &

down to the 21st of June it had no value except for sale to brokers who bought it up for the purpose of converting the same and obtaining the bonds of the banks from the State Auditors. The average price for purposes of sale from the 18th of May to time of demand in this case (21st June) I should say was between 50 and 60 cents. During that time and since then there was no such thing in circulation as currency, as the bills of the Ills. banks. The great body of it has risen in value since that date. The rise in Southern Stocks has caused this. Since the 18th of May the bills fluctuated in value as the stocks on which they were based fluctuated. After the 18th of May there was nothing in use which had been used as currency before.

These drafts have been paid by the defendant (It was here admitted that all the plffs. drafts have been paid.) They were all paid out of the common fund of the bank which consisted of like funds with those which have been described. No objection was ever made to such payment by plaintiffs. There would be no profit from an act with an interior bank. unless the balance is large, it would be no advantage to a bank unless they helped to create that balance. In April & May last the bankers were averse to taking a new act. on account of the state of the currency exposing the banks to additional risk and the feeling in the business community was such at that time that these funds could not be employed in the

transaction of business. The course of these funds was into the banks, the funds could not at that time have been employed in the business of the bank to only a limited extent. They could not be employed in the purchase of exchange and in loaning on securities to a limited extent. Two of the banks thrown out in April were restored to circulation and were treated as currency. My estimate of the average value of Ills bills in June does not include the bills of the bank which had been discredited before the first of April. One charge for sterling bills was $6,00 per £ and the 10 cents was the difference in bank bills and specie, but I will not speak positively on this point. The dept. at the time of plffs demand in June offered to pay its debts in the bills which were current in April and May. The bills of the discredited banks were kept in a separate place and not mixed up with the funds of the bank.

Cross Ex — I have no knowledge except from the bank books that plffs. was not a customer till Apl. last. I have not seen his name on the books. There is no profit from collections unless there is a reliable average balance all the time with the bank. It is customary for the banks to use a certain part of the average surplus of deposits in its general business in buying exchange and in loaning money and advancing to its customers on securities. Some bankers consider a deposit-ack valuable because it brings other

business. After this agreement was signed by the bankers signing it needs and paid out the money described in it in payment of debts and in the general transaction of business till the circulation broke down after May 18th. After that time I dont recollect an instance in which Mar. & Fire Ins & Co or dept need those bills in the payment of debts or in the general transaction of business, if deposited they were only taken by them as special deposits. At that time both institutions had a large amount of bills receivable 8 or 900,000 which had mostly matured before, a perhaps from 1/8 to 1/4 of the whole amt. after the 18th of may small part matured after the 18th of May, I think none of the bankers named in the list continued to take any of these bills. They were alike refused by all as currency. I was cashier of the Marine Bank of Chicago, and secretary of the Mar. & Fire Ins. Co. Scammon was pres't of both. The same Officer was paying teller and receiving teller and assistant cashier of both the paying teller & Rec'g teller acted for both — both had same persons as directors, and stockholders had same interest in both, they held equal shares in both, no one could have stock in one and not in the other, the certificate of stock is a joint certificate in both There were no separate shares in either, the stock shows on its face that the share is in both, and that a transfer of it transfered a share in each, Everything that was done was known to the officers of both institutions.

There was a meeting of the bankers at the dept's office preliminary to the making of the agreement signed

by them. This meeting was held on the 26th of April
The officers of deft were present thereat, the Vice Presidt
the Asst. Vice Pres'dt and myself. Judge Dickey Loomis
& Myself. Scammon at that time was in Springfield,
at the time this circular was enclosed to the plff.
Scammon was not here. We had such a large amount of
Ills bills we had to keep a police officer, the risk was
also on account of the depreciation and thereby raising
a question with depositors as to the extent of the lia-
bility of the bank. Plff's deposits went into the com-
mon deposits of the bank. No attempt to keep them
separate was made, or ever is made in such cases.
I think Plaintiff was then seeking a settlement of his
act before the demand was made by him, he was
trying to effect a settlement of his account. — The paying
teller at the time of demand had an assortment of
the different grades of bills with which to pay depos-
itors. The better grades in April and May were assorted
and held by the cashier to keep, that which was paid
out was during those months the worst, this assorting took
place every day and the best separated and put away.
The better grades were thus reserved, the worst grades
were put into paying teller's hands to pay out. After the
18th of May we would take out of that fund to put with
and pay out to depositors, the checks on deft and Chas's
Fire Ins. Co. were paid out of the same fund. Checks on
the deft were always paid by the Ins. Co. The funds in
the hands of the teller on the 27th of June to pay checks

with were not so good as those in the hands of the cashier The reserved fund was the best. The cashier had all kinds to pay with while the reserved fund was the best. The teller had in his hands on that day between $100 & $200,000. The assorting teller had $ 600 to $ 800,000 and the reserved fund contained $ 300 to 400,000. The assorting was made immediately after the 18th of May and was completed about that time. The reserved fund was the best but as the assorting teller had some of the higher grades the paying teller would go to the assorting teller. On the 21st of June the paying teller had in his hands more than an average in value of all the bills of what were actively in circulation in April and May. On the 21st of June the paying teller had not in his hands of an average of all the bills then on deposit in the bank, his assortment was much below the average. The instructions to the teller were made to pay Pitt's checks in the lower grades of currency, because his deposits were made when we were receiving only the lower grades. During the seven years last past the word currency meant among bankers such bank notes as passed current among bankers and business men. Currency, bankable funds and current bank notes have meant and mean the same thing among them. Since 1856 the currency has been composed almost exclusively of Ills. bank notes with some Wis. There was some Iowa in circulation paying in small lots, there was also some of Kentucky paying in the same way. Currency, bankable funds and current bank

notes mean the same thing, that is to say the bank notes which pass current as money, & the word has always been used in the same sense through all varying circumstances, and means the paper circulation passing as money. It has always been at a discount for coin, and is still. Par currency, means just the same as currency. Par funds mean the same thing as currency. If demand is made in currency worth 100 cents on the dollar, I should think it would be payable in currency. The currency pases at 100 cents on the dollar and ordinarily means a dollar. The teller was not authorized to pay the plaintiff in anything but an average of the lower grades then in the bank. The state of mind refered to by me in the business community in reference to the circulation of these bills which prevented bankers from using these deposits in their business to any thing like the usual extent, there had been an uneasy feeling in regard to it all the previous Winter but it became still more marked and apparent after the 10th of April.

Direct Exam. Resumed.

The first disturbance in the currency began in November last from the 16th to the 20th. Nine banks were thrown out after the 16th of Nov, those were almost exclusively based upon the stocks of the Southern States. No material amount of Northern Stocks. After that there continued to be an uneasy feeling in reference to those which were based on same stocks. The confidence or want of confidence

Stocks in

in the bills was governed by the price of N.Y. and also by the appearance of the political horizon.

The first assesing by us was in Nov. after the 8 banks were thrown out, at that time the dept. & the Maine & Fire Ins. Co. held from $60,000 to $70,000 of the bills of rejected banks. The bankers could not during the Winter tell which would depreciate and which would not, until we had the State Auditors Report in Jany last which shewed the securities for each bank and the circulation. During the Winter & early months of Spring the stocks of all the banks were varying and fluctuating. Previous to the meeting of the bankers at which the 30 banks were thrown out we could not tell with any certainty what banks would be thrown out by the bankers.

Of those 30 we had $170,000. I have no means of telling how much of the issues of the same banks was held by the other city bankers. After that meeting the currency was very unsettled, and the feeling in consequence was very unsettled and anxious in regard to it

regard to N. and that anxiety was largely increased after the 19th & 20th of April when hostilities had begun this feeling continued likewise to grow worse till the 18th of May when the whole circulation depreciated and was thrown out and ceased to circulate. At that time the depts of Mar. & Fire Ins Co. had on hand between $1,200,000 & 1,300,000. That amount

included all the funds of all kinds in the banks, reserved fund and all.

After the 18th I dont recollect that any money of this kind was offered on deposit. The dep. received and continued to receive checks on themselves in payment of debts due the bank, and they have received them ever since in payment. Prior to the 18th this currency had flowed into the city from the country in an unusual degree, so that both depts and the Marine & Fire Ins. Co. had to increase their clerical force. I know that a great many of the country bankers would not receive bills of the banks which we were receiving here, though they were rec'd. by others, I might say a majority but will not. The draft and current of the circulation was into this city at that time. Before we gave instructions to the paying teller we looked at the act. and judged as near as we could when the money was deposited by each depositor, and we went on the basis that those who had deposited in April & May were only entitled to the lower grades of the currency, for the reason that, that was all we did get in those months, and the instructions to the teller were given accordingly. Those whose deposits had come in before April were entitled to a better class of currency & special instructions were given to teller in ffs case. The average value of what was actually in circulation in April & May was from 60 to 70 cents on the dollar, but that estimate

does not include the bills which had been rejected but taking the whole body of the bills together it was from 60 to 70 cents on the dollar, this estimate includes good, bad and indifferent whether in actual circulation or assorted and withheld from circulation

Cross Examination Resumed.

I cant say that I have any personal knowledge of what was deposited by plffs. I could not say when the deposits were made by the persons whose checks the plffs deposited whether in April or May or previously. Have no knowledge on the subject. All the drafts deposited by plffs. drawn on other banks, were paid by those banks in the course of our daily exchanges. The dept. was ordinarily the creditor in all those settlements We had more customers who gave checks and drafts on other banks and deposited with others, than the others had on us. If we had done less with other banks plaintiff would have been better off. None of the November discredited belonged to the Marine Bank, this all belonged to the Man & Fire Ins. Co. None of the $175,000 belonged to dept. all of it belonged to the Man Fire Ins. Co. I dont recollect how much of the currency we had on hand on May 18th belonged to dept. I don't know that any of it did. After the 18th neither the Man & Fire Ins. Co. nor the dept. recd. checks on other banks or bills bank notes in payment of debts due them, nor would the other banks. I don't know of a single instance in which those bills were used as currency or money

after the 18th. Dept was organized under the general Banking Law some time after that law went into force

Defendant here offered the following in evidence which were read as such, viz

Letter from plffs. to defendant April 29th 1861

Macomb Ill Apr 29th 1861

H. B. Dey Esq

Cashier Marine Bank Chicago

Dear Sir

We notice in the reports a list of current money in the Tribune of this morning that the report three following banks as goods

Grayville Bank

Shawanese "

Southern Bank of Ills.

Do you take these please inform us and oblige

Yours Truly

Chas. Chandler & Co.

Per K. C. Layman

Letter from plaintiffs to defendant with no date

Macomb Ills.

H. B. Dey Cash.

Marine Bank

Sir

Is the firm of Messrs. Leeds & Barrington commission merchants of your city good &

reliable? They propose drawing on your city through us, and offer you as reference. You will confer a favor on us by answering promptly.

Respectfully Yours
Chas. Chandler & Co.
Per I. B. Pearson

Letter from plaintiff to defendant May 10th

H. B. Pox
Cash'r Maine Bank

Macomb Ills May 10th 1861

Enclosed find for collection and our credit.
O. S. Camp $16 00
Yours Truly
Chas. Chandler & Co.
Per I. H. Cummings

Letter from plaintiff to defendant - May 14th

Macomb Ills. May 14th 1861

H. B. Pox Cash'r
Maine Bank

Dr Sir. Please send us per Express Currency
20-00
Yours Truly
Chas. Chandler & Co.
Per I. H. Cummings

Letter from plaintiff to defendant June 10th

Macomb Ills June 10th 1861

H. B. Dox Cash.r

Chicago Ills

Please render our a/c Current as we wish to compare with our Books.

Yours Truly

Chas. Chandler & Co.

Pr I H Cummings

Letter from plaintiff to defendant June 11th

H. B. Dox Esq Macomb Ills June 11th 1861

Cash.r Maine ~~Bank~~

Dr Sir— On May 18th we drew a draft No. 2913— for Beardsley & Kemms for. 100—

and duplicated it. The duplicate came back under protest and redeemed by us. We notify you not to pay ~~again~~ original

Yours Chas. Chandler & Co

Pr W. Cummings

The court here gave the following instructions which ~~were read~~ were read to Jury to the giving of which instructions the defendants then and there by their counsil except

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In Superior Court
of Nov T 1861.

Charles Chandler

"Chicago" Marine Bank

Instructions by the Court
Nov 23. 1861.

1. A deposit commonly signifies a bailment of property for custody without compensation, the title remaining with the depositor and the depositary acquiring no right in the thing deposited but to its mere possession and custody. Hence the depositor is entitled to a return of the specie chattel on demand and to an action to recover its possession when wrongfully withheld. As a consequence of this principal if the property is lost, stolen or destroyed while in the custody of the depositary and without gross or wilful negligence on his part the loss falls on the depositor.

2. But where the subject matter of the deposit or loan is money, wheat or other property and it is delivered to the depositary for use or consumption, the law implies a contract to return not the thing deposited or lent, but an equivalent of the same kind, nature or quality. In such cases the title to the thing deposited vests in the depositary ipso facto and it remains at his risk. The only right of the depositor is to a return of an equivalent in kind or value and his right is not impaired by reason of the subsequent loss or destruction of the property in the hands of the depositary.

3. Such is ordinarily the relation implied by law, from the dealings between a banker and his customer where no special agreement exists varying their rights. The money checks or Bills which are the subject of the deposit become the property of the bank and the de-

depositor becomes a Creditor.
stolen lost or destroyed, or if
they become of no value by reason
of depreciation the bank must
sustain the loss. His legal title
having passed by operation of law
his right is resolved into a mere
chose in action or claim against
the bank for the value of the de-
posit usually fixed by the Credit
given, as in the case of an or-
dinary loan of money. Indeed,
a general deposit with a bank
is termed a gratuitous loan
payable to the depositor on de-
mand.

Given.

4. In this case, therefore, the
first question for the jury to con-
sider, is, What is the nature and
character of the relation arising
out of the dealings between these
parties as disclosed by the evidence.
Is it the ordinary relation of a
Customer with his banker? If
so then, what was the subject

Given.

matter of the deposit? Was it money or Currency or something else? And first as to the relation of Banker and Customer. On this point the Court instructs the jury:—

5. That if the defendant was engaged in banking, and in receiving general deposits from its Customers; if the plaintiff as an Interior Banker kept a deposit account with the defendant, and deposited drafts, Checks and Currency to his own Credit to be drawn against from time to time in accordance with the usage of banks; That if the moneys thus deposited were, according to like usage, mingled and intermixed with the moneys of other depositors, and used by the defendant in the course of its business, then in that case, the relation implied by law is that of banker and Customer,— or debtor and Creditor, and the title to the Currency or money deposited vested in the defendant, And in the absence of any special arrangement and understanding varying or Modifying the rights

Given

of the parties, the subject of the deposit remained at the risk of the defendant.

6. If this relation is found to have existed, the jury should next enquire into the nature and subject of the deposit. Was it money, Current bank bills, or depreciated bills of Illinois banks circulating at the time as money? If the latter then were these bills received on deposit as money or Currency to be accounted for on demand in like Current funds or money; Or were they received as depreciated bills Ex nomine, upon an agreement expressed or implied that they should be accounted for in identically like bills of the Illinois banks whether Current or uncurrent at the time of demand. In determining this question the jury should inquire into the course of dealing between the parties, the state and condition of the Currency the nature and value of the deposit and whether or not any Express arrangement existed regulating and fixing the basis of their dealings with each other.

7.

On this point the Court instructs the jury that if they find from the evidence that the deposits were made in Illinois bank bills passing current at the time in all business transactions as money, and as such were accepted and credited by the defendant, then the law implies a promise to pay in Illinois or other bank bills current at the time of demand, though the bills deposited were subject to a discount for specie when deposited and subsequently became entirely discredited and greatly depreciated. Such a contract can only be discharged by the payment or tender of bank notes current at the time of demand or their equivalent in money, and the measure of the plaintiffs damages in this case would be such value on the 21st of June, the time of the demand with interest thereon to date. And if no bank notes were then in circulation as money the engagement became absolute for the payment of money. For when an amount of money is made payable in a particular thing the contract can only be discharged in the identical description of property called for, or in money. Nothing else can be substituted.

8. It must therefore be manifest to the jury that the rights of the parties here strictly depend upon the nature of the deposit, and their intentions concerning it. — Whether the deposit of the bills was made and accepted as Currency on the basis of Money, and Credited as such, or as a Commodity or species of property, to be accounted for in the like kind and quality rather than in money. The law will allow parties to deal with each other on any basis which is legal and their intentions will govern in the determination of their respective rights. No principal prevented these parties from dealing with each other in Illinois bank bills as a specific Commodity or as Currency. If the deposits were intended to be received as Currency and were Credited at their nominal value as such, then the law will enforce the payment in Currency though the bills were depreciated below their nominal value and have since gone out of circulation altogether. Parties make their own Contracts and mere inadequacy

Given.

of consideration is never a defence to them unless so gross as to be evidence of fraud. If on the other hand the parties were dealing in these bills as a species of merchandise to be repaid in kind or value, then the law will enforce the agreement and not impose a different one upon them. When the subject of deposit is ascertained then the law will imply a promise to pay in kind or an equivalent in value. If money then in money. If currency then in currency: if in stock or depreciated bank notes as a species of property, then in each case the like and not in something else of a different nature or value. Where the deposit is property then a merchantable article of average value of the kind deposited must be delivered under the contract. And less than that will not be a legal tender.

Given

9. Therefore if the jury find from the evidence that by the course of dealing between the parties or by their express agreement the deposits were made in depreciated

78 bank bills and as such accepted to be repaid by the defendant in the same kind of bills without regard to their value as currency or in money at the time of the demand. then the measure of plaintiffs damages is the value in money of an average lot of such Illinois bank bills as were in circulation after the 1st of April of the nominal amount due the plaintiff with interest at 6 per cent to this date.

Given

10. As a part of the evidence tending to establish the character of the arrangements and relations between the parties, a paper signed by the plaintiff and in the following words has been given in evidence. viz.

"Chicago April 26. 1861.

"We the undersigned citizens and "business men of Chicago agree "to receive and pay out as Cur- "rency in payment of debts and "in the general transaction of "business during the present war "the notes of all the banks of "this state at present taken

Given

"by the following named banks
"and bankers of this City,
"provided the bankers named
"below agree to do the same;"
So this is attached the
following instrument purporting
to be signed by all the banks
and bankers therein named.
"In accordance with the above
"we the undersigned bankers
"do hereby ratify and confirm
"the agreement therein expressed"

11. Among the bankers referred
to are two Incorporated Com-
panies and their assent is
expressed by the signatures
of their respective Presidents.
It is claimed by the plaintiff
that if these officers had
authority express or implied to
execute the agreement. the
plaintiff is not bound by
the promise alleged. as this
promise is Conditional.
This is the law and before
any weight as evidence shall
be given to this agreement in
determining the basis of the
dealings between the parties.
the jury must be satisfied
from the evidence that it was

Given

signed by authority of said Companies and is binding upon them. Unless signed by all the parties named it is not in force as against the plaintiff and the defendant can derive no benefit under it. Therefore

12. If the jury find that no Express authority existed and that the only evidence from which an authority could be implied is the fact that those institutions continued to do business with such bank notes as are described in the said agreement in the same manner as they had done before, then such fact is not in itself sufficient for that purpose. And unless the jury shall further find that the making of such an agreement was within the scope of the duties of the officers signing it they will reject it altogether from their consideration.

Given

13. If the jury find that the instrument

was duly executed by the parties. then its operation is by way of Estoppel. so far as third persons were induced to act upon the faith of it. In this view it is not material whether it was actually signed by the defendant as well as by the plaintiff in order to give the defendant a right to claim under it. But to entitle the defendant to make that claim it must be proved that the defendant dealt with the plaintiff solely in reference to and on faith of it:—
But if the defendant did not rely upon it. and its dealings with the plaintiff had no reference to it then the plaintiff is not estopped from alleging the want of mutuality or binding obligation of the same, and the Jury should disregard it.

Given

14. But the evidence in this case may show that the business relations between the parties were of a two fold character viz. that of Principal and Agent with respect to the checks and drafts sent by the

plaintiff for collection and of depositary of the moneys after they were collected by the defendant. If the defendant was thus employed and as agent received bills and drafts for collection, then the law imposed upon the defendant the duty of making such collections in money, unless authorized to collect the same in the depreciated currency then in circulation as money. Such authority may be implied from the course of dealing between the parties — If the jury find that such authority was given and that the defendant was instructed to collect in such bills and put the same to the plaintiffs Credit as a depositor. and did so, then the liability of the defendant is that of a depositary of the plaintiffs funds and is to be ascertained and settled by an application of the principles already stated. — In other words the case is left before the jury precisely as if the defendant had received no paper for collection — and as if the several deposits had been made

Grier

15.

in Illinois Currency by the plaintiff and not through the medium of collections. That is to say: were the deposits made as currency treated as money in the ~~dealings~~ dealings of the parties, or in depreciated bills as such. as already more clearly defined in these instructions

Signed

Defendant by its Counsel here upon asked the Court to give the following instructions to the jury. the giving of which instructions the Court refused and declined. to which decision in refusing and declining to give said instructions as asked defendant by its Counsel then and there excepted.

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Defendants Instructions

1st If the jury believe from the evidence that the funds received by defendant were received in payment of notes drafts or Bills sent to defendant for collection - and that the such notes drafts or Bills were collected for plaintiff at his instance or request either Express or implied in depreciated Illinois Bank Notes or Currency and not Specie, then the law is for defendant in this action, the declaration being only for money and not depreciated Currency or other Specie Commodity or property.

Refused

2. If the jury believe from the evidence that defendants acting at the instance and request of plaintiff received by way of Collection for him the funds sued for in this action, and such funds were depreciated Bank notes or Currency at the time they were collected then the plaintiff could only recover in any event the value of the funds collected or the ballance

Refused.

on hand at the time of demand made on 21st of June 1861 with interest

3. If the jury believe from the evidence, that at any time during the Continuance of the business transacted between the Plff and defendant - that the plff stipulated or agreed that during the war they would receive and pay out Illinois bank notes in payment of debts & ordinary transactions of business, and the defendant relying upon such agreement accumulated a ballance of collections made upon account of plaintiff in such Illinois bank notes, and that the funds sued for were received in Illinois Bank Notes upon plffs collections & accounts then the plaintiff can only be entitled to receive such notes, or in case of refusal of defendant to pay him such notes then their value in money or coin at the time of demand made on the 21st of June 1861.

Refused.

But if upon demand made the plff was offered Illinois bank notes in payment of

his balance, then the plff cannot recover in this action the tender having discharged the defendant of any default or failure to perform by his Contract.

4. If the jury believe from the evidence that the defendant collected at the request of plaintiff or by his assent large amounts of Illinois bank notes or Currency, depreciated in value at the time below that of specie, in payment of bills drafts or notes sent to defendant by plaintiff for collection, and held the proceeds subject to his demand, according to his request, or instructions, & according to the ordinary usage of bankers, in such Cases - then and in that case there was existing the relation of agent on the part of defendant to the plff as their principal and if defendant exercised the ordinary diligence of other bankers in like Case - then and in such Cases the law does not cast the risk of further

Refused.

depreciation or loss on the funds receive upon defendants & the plaintiff can only recover the actual or average value of the depreciated medium — at the time of the demand made by the Plff.

5. If the jury believe from the evidence that the defendant acted in pursuance of the request or by direction or assent of Plff in making collections of Checks, notes or bills in Illinois Bank Notes or Currency when they were depreciated at a value below that of Specie — and the defendant acted with ordinary diligence according to the usage and Custom existing among bankers in Chicago; this constituted the relation of principal & agent & defendant was not liable to Plff except for the same or like funds to those received and if such funds were tendered to plaintiff on demand made — it was a sufficient discharge of the liability arising out of the Contract between them.

Refused

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Charles Chandler & Co
vs
The Marine Bank of Chicago

Defendants Instructions

1 If the jury believe from the evidence that plaintiff sent to defendant for collection notes bills and drafts with the knowledge that the financial business of this place was done with a depreciated currency, fluctuating in value from causes out of the control of the defendant, and expressly or impliedly authorized the defendant to receive payment of such collections in such currency, and that defendant did so receive payment of them in such depreciated currency and by direction of plaintiff placed such funds so received to his credit, and if the jury further believe from the evidence that defendant mingled the funds so received with its own funds of a similar character according to the usage & custom of bankers in like cases, and

Refused

that all defendants like funds including those collected for the plaintiff depreciated in value after such Collection from Causes not within the Control of defendant, then the loss of such depreciation of the funds collected by defendant for plaintiff must be born by the plaintiff and he is only entitled to recover of the defendant such sum of money as the jury shall believe from the evidence was the average value per Coupon the 21st day of June 1861, of the notes of all the Banks of Illinois that were used as Currency after the first day of April 1861 with interest from that date for the balance due from defendant to plaintiff for such Collections.

Refused.

2. If the jury believe from the evidence that it is the usage and Custom of Banks and Bankers to mingle all the funds received by them in a Common Mass, and that according to such usage the defendant mixed the funds received on account of plaintiff with its own, and

Refused

that its own funds with which plaintiffs were mingled were composed of the notes of the Bankers of Illinois received by it in its ordinary Course of business for Cash and its Customers which were afterwards depreciated in value from Causes not within defendants control, then the loss by such depreciation on plaintiffs funds must fall on him

Therefore.

If the jury believe from the evidence that at the time defendant made the collections for plaintiff and the several other deposits were made by him, the Circulating Medium of this vicinity and City was City depreciated notes of the Banks of this State and Wisconsin and that plaintiff knew it and expressly or impliedly authorized defendant to collect his notes drafts & Checks in those bills, place them to his Credit and mix them with the like bills belonging to defendant and that the parties dealt with each other with the understanding that

Refused do.

defendant should collect such Currency or depreciated paper money, and that plaintiff should only demand the like funds of defendant in payment of such collections whether of Current value at the time of demand or not, then the loss by the depreciation of such funds after they were received by defendant must fall on the plaintiff for the balance due from defendant to the plaintiff for Collections made for him, which nominal balance is agreed to be the sum of,

Refused.

Whereupon the jury retired to Consider of their verdict and by agreement of parties they were allowed to seal & sign their verdict and thereafter seperate,

And afterwards the verdict of the jury was returned into Court duly signed & sealed in the words and figures following to wit,

We the Jury find for the plaintiff and assess the damages at Sixteen thousand three hundred seventy five dollars and eighty three cents $16375.83
December 23 1861.

Geo F Kidder Foreman
Prentis Law.
Royal Fox Jr.
Edwin Cobb
John R Hoffman
M Rock.
Edwin Watson.
Nicholas Hoffman.
Joseph Sanders.
E Jones
J Moore
Laurence Donegan.

Whereupon upon the reading and entering of said verdict the defendant by its Counsel moved the Court for a new trial. and assigned the following reasons.

1st The Court erred in not excluding from the jury under the Counts Contained in the Declaration the evidence of said plff. it appearing that only depreciated Illinois Bank notes were collected instead of money or par funds.

2d The Court erred in giving his instructions to the jury refusing to give instructions as asked by the parties. and also erred in the law of said Instructions.

3d The Court erred in refusing to give plaintiffs instructions as asked in writing and each of them as requested.

4th Because there was no evidence showing that money had been the subject of Contract or collection between

the parties.

5th The Verdict is against law.

6th The Verdict is against evidence

7th The Court erred in allowing evidence to go to the Jury objected to by defendants.

8th The Court erred in giving the law to the jury in his instructions - the case being one of agency and Contract between the parties. and no default being shown on the part of defendants there is error in the recovery. finding of the verdict and judgment of the Court. and the Record shows error in matters of law as well as fact.

Which motion for a new trial the Court overruled, and entered judgment upon the verdict To the decision of the Court in overruling said motion for a new trial. the defendant by its Counsel

them and there excepted.

Forasmuch as the several matters aforesaid do not appear of Record in this Cause, the Defendants pray that this their Bill of Exceptions may be signed and sealed and made a record in this Cause.

In Witness whereof I have hereunto signed my name and affixed my seal this 23d day of December A.D. 1861

Van H. Higgins (Seal)
Judge.

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State of Illinois }
Cook County } ss.

I Thomas B Carter Clerk of the Superior Court of Chicago in and for said County and State aforesaid do hereby Certify the within and foregoing to be a true, full & Complete Transcript of all the pleadings on file, and all the orders entered of Record including the order of Judgment, together with the Bill of Exceptions in the Case wherein Charles Chandler is plaintiff and the Marine Bank of Chicago defendant.

In testimony whereof I hereunto set my hand and affix the seal of said Court at Chicago in said County this 9th day of April A.D. 1862

Thomas B Carter
Clerk

In the Supreme Court of Illy

Merchants Bank of Chicago
vs
Charles Chandler et al

Appeal from
the Superior Court
of Chicago

And now at this day comes the appellant by Wm Bagg Fuller & Boyd and say that in the Record proceedings there is manifest error in this to wit,—

1st The Court erred in permitting the evidence offered by pltf under the money counts in the declaration against the objections of the defendant.

2d The Court erred in giving his instructions to the Jury.

3d The Court refused refused to give the instructions asked for by defendant.

4th A new trial should have been awarded to defendant upon the ground that the whole record evidence shows that the pltffs recovered as for money had & received, the same as if money or not bank notes or indebtedness had been the real only foundation and cause of action

6th The Court erred in all its ruling treating depreciated bank notes or currency the same as money & allowed the Jury to assess damages as upon a cause of action founded upon money instead of a contract payable in other commodities only.

7. The Court refused to instruct that money only could be the subject of recovery in the action and that if bank notes were not specie paying or depreciated they could

be regarded as money by the Court or Jury in any case whatever.

8th The Court refused to instruct the Jury that in case of agency the Plaintiff or principal took all the risk of loss or depreciation on currency, where the agent followed his instructions in receiving or holding it, and that in this case took away the relation legally existing between the parties.

9. The Court gave no instructions as asked but delivered an opinion on abstract principles of law having application to the case or law

10th The whole recovery is a subversion of the clearest and most fundamental principles of law.

1st in setting up false standards of value in actions for money

2d in establishing a false measure of damages

3d in charging an agent in respect to loss of his principal

4th Putting bank notes not equivalent of coin or specie in the place of money

11th For many other reasons

Filed Jan 7, 1858

Fullerton & Cagg

H. Hoyne

And the said defendant says there is no error in the said record & proceedings & in giving the judgment aforesaid & prays that the said judgment may be in all things affirmed with damages & cost.

Joseph Elgin
Dept. Atty.

Transcript

Filed April 12 1862
S Leland
Clerk

Fees $23.00