

12331

No. _____

Supreme Court of Illinois

Bank of Pekin

vs.

Farnsworth

The Bank of Peru

or
Elijah N. Farnsworth

119

1857

Bank of Peru
vs

Farnsworth

12331



LaSalle County Court. September Term 1855.

State of Illinois }
LaSalle County } p

Pleas. Proceedings and judgments held and taken in and before the LaSalle County Court, in the State of Illinois at the Court house in Ottawa in the County of LaSalle of September Term thereof - to wit - of the third day of September in the year of our Lord One thousand eight hundred and fifty five and of the Independence of the United States of America the Eightieth -

Present Henry G. Cotton Judge
Saml W. Raymond clerk
Francis Warner Sheriff

Be it remembered that on the 22^d day of August 1855 a precept was filed and Summons issued thereon in which Precept and Summons are in the words ~~and~~ and figures following to wit;

Precept Elijah W. Farnsworth } LaSalle County Court
vs } September Term A.D. 1855
Bank of Peru } Assumpsit - Damages \$500.00

The Clerk of the LaSalle County Court will please issue Summons in the above entitled Cause, returnable to September Term A.D. 1855,

David L. Hough

Atty for plaintiff

Endorsed

"Filed Aug 22 - 1855."

J W Raymond clk

Gerrick Repty

Summons The People of the State of Illinois, To our
Sheriff of our County of LaSalle - Greeting
 We command you that you Summon
Bank of Peno, if they shall be found
in your County personally, to be and
appear in our LaSalle County Court, before our Judge
thereof, on the first day of the next term ~~thereof~~ of said
Court to be held at the Court House in Ottawa,
on the first Tuesday in September next, at ten
O'clock in the forenoon, then and there to answer
unto Elijah N. Farnsworth, in a plea of trespass on
the case as promiss to the damage of said
plaintiff as he says of Five hundred dollars,
And have you then there this writ and the
manner in which you shall have executed the
same - In witness whereof, we have caused
the Seal of our said Court to be here to affixed
and attested by Samuel W. Raymond our Clerk
thereof at Ottawa 23rd day of August 1855.

Sam^l W. Raymond Clerk
E. L. Herrick Deputy

Endorsed

" Executed this writ by reading the same
" to E. C. Allen Cashier of the Bank of Peno
" and by leaving a copy of this writ with
" him - Aug 24th - 1855,

" F. Warner Sheriff

" By L. S. Harris Deputy - "

" Ser & ret 60

" copy 50

" 16 mch 80

" \$190 "

" Filed Sept 3^d 1855

" S. W. Raymond clk "

Be it also remembered that on the 24th 1855 a declaration was filed in this cause which declaration is in the words and figures following, to wit;

State of Illinois } In County Court thereof
 LaSalle County } ss To June Term A.D. 1855,

Elijah N. Farnsworth

vs

The Bank of Peru

Elijah N. Farnsworth

Plaintiff, complains of the Bank of Peru, defendant, in a plea of assumpsit, for that whereas, on the twenty second day of September in the year of our Lord, Eighteen hundred and fifty four at Peru, to wit, at the County of LaSalle aforesaid, the said defendant made his certain promise in writing for the payment of money, commonly called a certificate of deposit, and thereby then and there, in consideration that one John Farnsworth had, before that time, deposited with the said defendant two hundred and forty dollars in current money, promised to pay to the said John Farnsworth or order the sum of Two Hundred and forty dollars in like current money on return of said certificate of deposit, duly endorsed by the said John Farnsworth, in force from the date thereof, which period has long since elapsed, And the said John Farnsworth, to whom, or to whose order the payment of said sum of money current in the said certificate of deposit specified, was to be made after the aforesaid

of the said Certificate of deposit, before the payment
of the said sum of current money therein specified,
to wit, on the day and year first aforesaid, at the
County aforesaid endorsed the said Certificate of deposit,
by which said endorsement, he the said John Farn-
sworth then and there ordered and appointed the
said sum of current money in the ^{said} Certificate
of deposit specified to be paid to the said plaintiff,
and then and there delivered the said Certificate of
deposit so endorsed as aforesaid to the said plaintiff
by means whereof and by force of the Statute in such
case made and provided, the said defendant
then and there became liable to pay to the said
plaintiff, the said sum of current money in the
said Certificate of deposit specified, according to the
tenor and effect of said Certificate of deposit; and
being so liable he the said defendant, in consid-
eration thereof afterwards, to wit, on the day and
year aforesaid, at the County aforesaid undertook,
and then and there faithfully promised the said
plaintiff to pay him the said sum of current
money in the ^{said} Certificate of deposit specified, according
to the tenor and effect thereof, And the said
plaintiff in fact saith, that afterwards, to wit, on
the first day of August, in the year of our Lord
eighteen hundred and fifty five, to wit, at the Banking
House of said defendant, at Peru, in the
County aforesaid, the said Certificate of deposit
was duly returned duly endorsed as aforesaid, to
the said defendant, and payment of the said
sum of current money in said Certificate of
deposit specified was duly demanded by the
said plaintiff of the said defendant according
to the tenor and effect of the said Certificate of deposit,

Yet the said defendant, not regarding his said promise, hath not as yet paid the said plaintiff the said sum of Current money in the said certificate of deposit, specified, nor any part thereof, although often requested so to do, but he so to do hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff of five hundred dollars

And for that whereas also, heretofore to wit, on the 22^d day of September A.D. 1854, at Psm in the County aforesaid, in consideration that one John Farnsworth, at the special instance and request of the said defendant, would deposit in the Bank of Psm, for four months ^{from} and after said last mentioned date, two hundred and forty dollars in currency, he the said defendant undertook and then and there faithfully promised to pay to the plaintiff, the said sum of two hundred and forty dollars in currency in four months after the date of said deposit. And the said plaintiff in fact saith, that the said John Farnsworth, on the day and year aforesaid, at the County aforesaid, did deposit with the defendant, said sum of two hundred and forty dollars in currency, and did suffer the same to remain on deposit with the defendant, for four months from the date aforesaid, which period has long since elapsed, Yet the said defendant has not paid the said sum of Current money, nor any part thereof to the plaintiff although often requested so to do, to the damage of the plaintiff of five hundred dollars, And for that whereas also, the said defendant, heretofore to wit, on the first day of August A.D. 1855, at the County aforesaid, was indebted to the

6,

~~County aforesaid~~ Plaintiff in the sum of five hundred dollars for money then and there lent by the plaintiff to the said defendant, at his request; And in five hundred dollars for money then and there had and received by the defendant for the use of the said plaintiff,

And in five hundred dollars for money found to be due from the defendant to the plaintiff on an account then and there stated between them, And whereas, the defendant afterwards, to wit, on the day and year aforesaid, at the County aforesaid, in consideration of the premises, then and there promised to pay the said several sums of money to the plaintiff on request, Yet the said defendant hath disregarded his promises, and hath not paid the said several sums of money, nor either of them, nor any part thereof, although often requested so to do. To the damage of the plaintiff of five hundred dollars and thereupon he brings suit by

David L. Hough
His Attorney

Copy of Instrument declared on
"Bank of Penn.

Penn Ill. Sept. 22nd 1854

\$240⁰⁰

Certificate of deposit

John F. [unclear] has deposited in this Bank Two hundred and forty ^{four} dollars currency to the credit of himself payable in like funds on return of this certificate, duly endorsed, Four months after date.

Ed. C. Allen C. Cash

7
on the Back of which is endorsed,
" Pay^{to} the order of
E. N. Farnsworth
John Farnsworth
Pay the bearer
E. N. Farnsworth "

Endorsed,

" Filed Aug 24th 1855

J W Raymond clk

E. L. Sterrick Sept

Be it also remembered that on the 3^d day
of September A.D. 1855, the same being one
of the days of said September Term of said
County Court the following order was made
and entered of record in this Cause, to wit;

Elijah N. Farnsworth

do

vs

Bank of Peru

} Assumpsit

} This day comes the Plain-
tiff by Hough his Attorney - and on his Motion
it is ordered that defendant file a plea herein
by Wednesday morning -

On the 5th day of September 1855, the same being
also one of the days of said September Term of
said County Court a plea was filed in this
Cause which is in the words and figures fol-
lowing, to wit,

Sasaw County Court Sept, term 1855

The Bank of Peru

ads

Elijah N. Farnsworth

And now comes the defendant by William Cherramers its attorney & defends & when it ended says that it did not undertake and promise in recourses of form as the plaintiff hath above thereof complained and of this it puts itself upon the the country. And the plaintiff doth the like.

And for a further plea in this behalf as to the first and second Counts of plaintiffs declaration the said defendant says actio non because it says, that the consideration of the said Certificate of deposit in said Counts mentioned, was a certain draft which is in the words of figures following, to wit:

\$250. Per Sep 22 1854

Ninety days after date pay to the order of
J. S. Day & Co at H. A. Tucker & Co Chicago Ill. Two
Hundred fifty Dollars value received and
charge the same to account of
To John L. Coates Esq. John Farnsworth
Per Ill

Endorsed. Pay E. C. Allen Esq cash or order
J. S. Day & Co Allen

And the said defendant saith that the said draft was afterwards to wit on the 23^d day of December 1854 presented at the office of H. A. Tucker & Co, and payment thereof demanded, which said payment was refused and defendant further saith that said draft was on the said 23^d day of December duly protested for nonpayment of which said protest, the said John Farnsworth

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& John L. Coates had due notice - and the
 defendant avers that said draft still remains
 wholly unpaid and the defendant further avers
 that at the time the certificate of deposit aforesaid
 became due and payable and at the time the said
 draft became due and payable the said John L.
 Coates was insolvent and the said John Farnsworth
 was and still is the owner of the said certificate of
 deposit - and defendant further avers that the
 assignment thereof to said plaintiff is fraudulent
 and was made for the purpose of preventing said
 defendant from setting off against the said
 certificate of deposit, the amount of said draft
 above mentioned said draft being as defendant
 avers the sole and only consideration for said
 certificate of deposit, and the defendant further
 avers that this action is prosecuted in the name
 of said plain but actually for the use and
 benefit of said John Farnsworth - and that they
 are entitled to set off the amount of the said
 draft above mentioned against the said cer-
 tificate of deposit, in said first & 2^d Counts
 mentioned - which said sum of money
 mentioned in said draft and so due and
 owing by said John Farnsworth to said
 Bank of Peru exceeds the damages sustained by
 the plaintiff by reason of the nonperformance
 of the said several supposed promises and
 undertakings in the said declaration mentioned
 and out of which said sum of money so due
 and owing from said John Farnsworth to said
 defendant, the said defendant is ready and
 willing and hereby offers to set off and allow to said
 plaintiff the full amount of the said damages

and this the defendant is ready to verify whereupon the defendant prays Judgment &c

And for a further plea in this behalf the said defendant as to the first and second Counts of said declaration saith actio non because it says that the said Certificate of deposit was assigned by said John Farnsworth after the same became due and payable by the terms thereof to said plaintiff and the defendant avers that at the said time when the said Certificate of deposit became due and payable as aforesaid - and at the time the said Certificate was assigned by said John Farnsworth to said plaintiff before and at the time of the commencement of this suit, to wit, at &c aforesaid the said John Farnsworth was indebted to said defendant in the sum of two hundred and fifty dollars upon a certain other bill of exchange bearing date on the 22^d day of September 1854 made and drawn by said John Farnsworth upon one John L. Coates whereby the said John Farnsworth requested said John L. Coates ninety days after the date thereof to pay to F. S. Day &c or their order the sum of two hundred and fifty dollars for value received which said bill of exchange the said F. S. Day &c afterwards to wit, on the day & year aforesaid endorsed & delivered to said defendant and which said bill of exchange when the same became due and payable according to the tenor and effect thereof to wit on the twenty third day of December 1854 was presented & shown at the Office of H. A. Tucker &c the place where said bill of exchange was made payable for payment thereof - but the said John Farnsworth and John L. Coates then & there neglected and refused to pay the said sum

of money in said bill of exchange specified whereof
said John Farnsworth afterwards to wit on the day
& year last aforesaid at the place aforesaid had
notice & then &c

which said sum of money so due & owing from
said John Farnsworth to said defendant exceeds
the damages sustained by plaintiff & out of which
defendant is ready and willing & hereby offers
to set off & allow to plaintiff the full amount of
said damages & this the defendant is ready to
verify & whereof &c

And for a further plea in this behalf as to the
first and second counts of said plaintiff's declara-
-tion said defendant says actio non, because
it says that the said Certificate of deposit was
assigned by said John Farnsworth to plaintiff
after the same became due and payable as
aforesaid and at the time the said Certificate of
deposit was assigned as aforesaid the said John
Farnsworth was indebted to said defendant in the
sum of two hundred fifty five dollars & seventy five
cents upon a certain ~~Certain~~ Judgment which
the said defendant in the name of E. C. Allen who
then was and still is Cashier of the Bank of Peru heretofore
to wit in May term of the Cook County Circuit Court
recovered against the said John Farnsworth in a
certain plea of trespass on the case upon promises, whereby
it was considered and adjudged that said E. C. Allen
should recover against the said John Farnsworth
the sum of two hundred and fifty five dollars and
seventy five cents for his damages besides costs
whereof the said John Farnsworth ~~was~~
was convicted as by the record and proceedings
thereof remaining in the office of the Clerk of said Court

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more fully appears which said Judgment still remains in full force & effect not reversed said satisfied or annulled, & defendant says that Execution has been issued on said Judgment & returned nulla bona and which said defendant is prepared to verify by the record & deft further ^{avows} that the said John Farnsworth is insolvent which said sum of money so due and owing from the said John Farnsworth to said defendant as aforesaid exceeds the damages sustained by said plaintiff by reason of the non performance by said defendant of the said several supposed promises and undertakings in said declaration mentioned and out of which said sum of money so due and owing the defendant is ready & willing and hereby offers to sett off and allow to the plaintiff the full amount of the said damages and this the defendant is ready to verify wherefore it prays judgment &c

Wm Chennerson
deft's atty

Enclosed " Filed Sept. 5th 1855

J. M. Raymond clerk

Be it also remembered that on the said 5th day of Sept 1855 the following order was made and entered of Record in said County Court in this Cause - to wit;

Elijah N. Farnsworth

vs

Bank of Penn

} assumption

} This day comes the plaintiff

13.

by Hough his attorney and the defendant also comes by Chumars its attorney, and files a bill of discovery herein and on his motion it is ordered that a writ of injunction issue herein;

Be it remembered that on the 14th day of December A.D. 1855, the same being one of the days of the December Term A.D. 1857 of said County Court the following order was made and entered of record in said Court, to wit

18
 Elijah N. Farnsworth }
 vs } Assumpsit
 Bank of Peru }
 } This day comes the
 Plaintiff by D. L. Hough his attorney - and defendant
 by Chumars its attorney - whereupon motion,
 this cause is continued to the next term of
 this Court,

Be it also remembered that on the 13th day of ^{at the March Term of said County Court} March 1856, the following replications were filed in this cause, to wit,

Elijah N. Farnsworth } LaSalle County Court
 vs } March Term A.D. 1856
 The Bank of Peru } Assumpsit

And the said plaintiff as to the second plea of the said defendant by him above pleaded says precludi non id because he says that the consideration of the

Said Certificate of Deposit in the said 1st & 2nd Counts of the said plaintiffs declaration mentioned was not the draft in the said plea set forth, but was for the Consideration set forth in the said 1st & 2nd Counts of plaintiffs declaration respectively & for no other or different Consideration - And the plaintiff avers that all and singular the allegations of the said defendant in said 2^d Plea Contained, of & Concerning said draft, as well as the presentment & demand of payment thereof, the protest thereof for non-payment & notice thereof, are wholly untrue - And the plaintiff avers that at the Commencement of this Suit, the said John Farnsworth was not the owner of the said Certificate of Deposit, nor is he now the owner thereof, but on the contrary thereof the plaintiff at the Commencement of this Suit was & now is the owner of the same -

And the plaintiff further avers that the assignment thereof to the plaintiff was not fraudulent, & was not made for the purpose in the said 2^d plea alleged, but on the contrary thereof the said assignment was made in good faith & for a valuable consideration, And the plaintiff further avers that this Suit is not prosecuted in the name of the plaintiff, but actually for the use and benefit of said John Farnsworth, but on the contrary thereof is prosecuted for the sole use and benefit of the plaintiff - And this the plaintiff prays may be enquired of by the Country &c, And doth likewise

And the said plaintiff as to the 3^d plea of the said defendant, by leave of the Court first obtained, says precludi' now, because he says, that at the several times in the said plea mentioned, the said John Farnsworth was not

Page 15

inculcated to the defendant upon the said bill of exchange in the said plea mentioned.

And the plaintiff further says that all the allegations in said plea contained of & concerning the said bill of exchange are wholly untrue - & this the plaintiff prays may be enquired of by the County &c. & defendant likewise -

And the said plaintiff saith that the fourth plea of the said defendant in manner of form pleaded, & the matters in the same contained, are not sufficient in law to bar the said plaintiff of his action against the said defendant, & that he is not bound by law to answer the same & this he is ready to verify - whereupon he prays judgment, & his damages aforesaid to be adjudged to him &c

Bushnell, Gray & Mough
Plaintiffs Attorneys

Enclosed, "Filed March 13th 1856

"J W Raymond clerk"

Be it further remembered that on the 15th day of March 1856 the same being one of the days of the March Term 1856 of said County Court the following order was made and entered of record in this cause - to wit;

Elijah A. Farnsworth

12

Bank of Penn

assumpsit

This day comes the defendant by Chumars & Eldridge its Attorneys

16,

and on their motion it is ordered that this Cause be continued to the next term of this Court at plaintiffs costs to be taxed

Be it also remembered that on the 5th day of Jan 1856 a Demurrer was filed in this Cause which is in the words and figures following, to wit,

Elijah N. Fausworth } March term 1856

vs

The Bank of Penn }

And the defendant by William Chambers his attorney comes and defends & says that the said first and second replications of said plaintiff to the second and third pleas of said defendant are and each of them is insufficient in law and that he is not bound to reply to the same whereupon he prays judgment &c

W^m Chambers

deft atty

And the defendant assigns the following causes of demurrer

1st That said first and second replications to said defendants second and third pleas are and each of them is double

2^d That said replications are informal and insufficient

The defendant joins in Demurrer to Affs Demurrer to 4th plea - William Chambers

deft atty

Entered "Filed Jan 5th 1856."
J. W. Hayward clk

17 Be it further remembered that on the 22^d day of July 1856 an affidavit was filed in the office of the Clerk of said County Court in this cause which affidavit is in the words and figures following, to wit;

Elijah N. Farnsworth }
vs }
The Bank of Peru }
} State of Illinois

Sasalle County J. William Chumarsen being duly sworn says that Edward H. Willard who is a witness for defendant in this cause is not a resident of the County of Sasalle as he is informed and believes but that he resides in Cook County Illinois

Subscribed & sworn before me William Chumarsen
this 22nd day ^{of July} 1856,

Henry H. Brown

Notary Public

Endorsed, "Filed July 22^d 1856

"J. W. Raymond clk

"Heirick Sept"

Be it also remembered that on the 3^d day of September 1856 the same being one of the days of the September Term A.D. 1856 of said County Court the following order was made and Entered of record in said cause, to wit;

Elijah N. Farnsworth }
vs }
Bank of Peru }
} This day again comes

18.

the plaintiff by Hough his attorney - and defendant by Chumason and Eldridge its attorneys whereupon after hearing the arguments of counsel on the demurrer filed, by said plaintiff by his said attorney - to the fourth plea filed herein by defendant, the said demurrer is sustained, by the Court, to the first Count in the declaration of plaintiff filed herein, to which decision of the Court the plaintiff then and there accepted and abides by his said declaration

Saballe County Court March Term 1857
State of Illinois }
Saballe County }

Pleas. Proceedings and Judgments held and taken in and before the Saballe County Court in the State of Illinois - at the Court House in Ottawa in the County of Saballe of March Term thereof to wit of the second day of March A.D. 1857 and of the Independence of the United States of America the Eighty first

Monday March 2^d 1857
Court met Pursuant to Law

Present John C. Champlin Judge
Samuel W. Raymond Clerk
Enl. L. Waterman Sheriff

Be it further remembered that on the 3^d day of March 1857 the same being one of the days of said Term of said County Court the following order was made and Entered of record in

Said Court, to wit;

3
Elijah N. Farnsworth
vs
Bank of Peru } assumpsit

This day this cause came on to be heard on the demurer of the plaintiff to the 4th plea of defendant, and it appearing to the Court that the said demurer had been sustained at a former term to the first count of the declaration, it is ordered that said demurer be overruled so far as said plea applies to the 2^d count of said declaration.

Be it also remembered that on the same day the following order was made and entered of record in said County Court in this cause, to wit;

3
Elijah N. Farnsworth }
vs }
Bank of Peru } assumpsit

This day again came the parties herein by their said attorneys whereupon came the following jurors of a jury, to wit, Dolfus Clark, O. H. Sigler, Josiah E. Shaw, Ransom Palmer, Thomas Halcott, William F. Luckens, H. W. Swetland, Ephraim Beardsley, James Smith, P. L. Porter, Henry S. Clark and O. P. Purdue, who were duly elected tried and sworn, to well and truly try the issues herein according to the evidence whereupon after hearing the evidence and arguments of counsel, and after due deliberation thereon had the jury return the following verdict

Be it also remembered that on the 11th day of March 1857 the same being also one of the days of said term of said County Court a bill of exceptions was filed in this cause which Bill of Exceptions is in the following words & figures - to wit;

Elijah N. Farnsworth } LaSalle County Court
 vs }
 The Bank of Peru }
 }

Be it remembered that on the third day of March 1857 that being one of the days of the March term 1857 of the LaSalle County Court this cause came on to be tried before Honorable John C. Champin and a Jury, upon the pleadings & issues joined in this cause and which are as follows, (See Declaration, pleas of Deft, Replication of Plff, to the pleas of Defendant, and demand to defts 4th plea and the order of the Court sustaining the Plaintiffs demand to defts 4th plea to the first count of the plaintiffs declaration above)

The plaintiff offered in evidence a certificate of deposit, in the words and figures following, to wit,

" Bank of Peru
 " Peru Ill Sept 22nd 1854
 " \$240 #

" John Farnsworth Esqr has deposited in this
 " Bank Two Hundred & forty # Dollars Currency
 " to the credit of himself pay able in like funds
 " on return of this certificate, duly endorsed.
 " Four months after date

No 556.

Ed. C. Allen Cash^r

"Certificate of Deposit"

Two Hundred & forty # Dollars
 to the credit of John Farnsworth
 4 months after date
 March

Endorsed "Pay" ^{to the order of}
 "E. N. Farnsworth"
 "John Farnsworth"

The defendant by its counsel admitted that the signature of Ed. C. Allen Cash, signed to said Certificate was genuine and that said Allen was Cashier of the Bank of Peru on the day of the date thereof - which was all the evidence offered in connection with and to prove the same,

The defendant objected to the introduction of said certificate of deposit in evidence for the following among other reasons

1st that the said Certificate was issued in violation of law and void,

2^d That it is an agreement to pay articles of personal ~~personal~~ property and not money and that the Bank had no authority to issue any bill note or Certificate for the payment of any thing but money -

3^d That no action could be maintained upon the Certificate or to recover the money deposited unless in the name of the depositor,

4th That the Bank of Peru had no authority to issue any bill or note for the payment of money unless such bill or note was signed by the President and Cashier of the Bank

Which objections were overruled by the Court and the certificate was read in evidence to which decision of the Court in overruling said objections and in permitting said certificate to be read in evidence the defendant by its counsel then and there excepted

The plaintiff then introduced David L. Hough as a witness who testified that prior to the

Commencement of this suit he presented the said Certificate at the Bank of Peru and demanded payment thereof which was refused, this was all the evidence introduced by the plaintiff - and the plaintiff rested -

It was admitted by the plaintiff that John Farnsworth the depositor named in said Certificate of Deposit was the owner thereof after the same became due and payable and that he had not transferred the same until after that time,

The defendants Counsel then called Ed. C. Allen as a witness who testified that at the day of the date of said Certificate of deposit he was Cashier of the Bank of Peru and as such Cashier he signed the same that the sole and only consideration of said Certificate of deposit given by said John Farnsworth to Defendant, was a certain bill of exchange which is in the words and figures following

\$250,

Peru Sep. 22nd 1854

Ninety days after date pay to the order of
F. S. Day or to H. A. Tucker or Chicago Two
Hundred ~~and~~ Fifty Dollars value received and
Charge the same to account of
To John L. Carter Esq. John Farnsworth
Peru Ill.

& which was Endorsed

Pay \$ Ed C Allen Cash or order

F. S. Day per Allen

without recourse

Ed. C. Allen

on the Back of which draft is the following Endorsement - and which said Endorsement was not offered

in Evidence by defendant, viz "Judgment
 "obtained on this Note against John Farnsworth
 "in the Cook County Circuit Court on the 9th day
 "of May A.D. 1855 for the sum of \$255.75 costs of suit in favor
 "of E.C. Allen L.D. Hoard Clk C. Court"

The defendant Counsel then offered the said draft with evidence of its protest for non payment in evidence and offered to prove in connexion therewith that at the time of the acceptance of said draft or bill of exchange by said John L. Carter that said acceptor was insolvent and that when the same became by its terms due and payable John Farnsworth the owner thereof was also insolvent - which said draft and evidence offered in connexion therewith was rejected by the Court and the whole of it excluded from the consideration of the jury to which ruling of the Court the defendant Counsel then & there excepted, this was all the evidence received or offered on the trial of this cause.

The cause was submitted to the jury who rendered a verdict in favor of the plaintiff for two hundred and fifty six dollars and four cents damages, whereupon the defendant by its Counsel moved the Court for a new trial which said motion was by said Court then and there denied and overruled, and to which said decision of said Court - overruling said Motion, said defendant by its Counsel then and there excepted and prays that this its Bill of Exceptions may be signed and sealed by the Court and made a part of the record, which

is done in open court this 6th day of March
A.D. 1857 the same being one of the days of
said Term

John C. Champline *Clk*

Enclosed "Filed March 11" 1857

"S. W. Raymond *clerk*

"Herrick

Be it also remembered that on the 24th day of
March 1857 a Bond was filed in the office of the
Clerk of said County Court which Bond is in
the words and figures following, to wit;

Know all men by these presents, that we the
Bank of Peru by Frederick S. Day vice President as
principal and Theron D. Brewster as security
are held and firmly bound unto Elijah N.
Farnsworth in the penal sum of Five Hundred
dollars lawful money &c. for which payment
well and truly to be made we bind ourselves our
heirs executors and administrators jointly
and severally firmly by these presents, sealed with
our seals and dated this 21st day of March 1857 -

The conditions of the above obligation is such
that whereas the said Elijah N. Farnsworth did at
the March Term 1857 of the County Court of the County
of LaSalle recover a judgment against the above
bondsman the Bank of Peru for the sum of two hun-
dred fifty six dollars & four cents besides costs from
which judgment the said Bank of Peru has
taken an appeal to the Supreme Court of the State
of Illinois - now if the said Bank of Peru shall
prosecute their suit with effect and shall pay what

ever judgment. Shall be rendered by the Court
upon dismissal or trial of said appeal then
the above obligation to be void otherwise to remain
in full force & Effect

The Bank of Penn Seal
Hedley J. Day V. Pres. Seal
Sheron & Brewster Seal

Enclosed.

"Filed March 24th 1857

"S. W. Raymond Clerk"

State of Illinois }
LaSalle County } &

I, Samuel W. Raymond
Clerk of the County Court in and for said County
do hereby certify that the above and foregoing
is a true, correct and complete transcript in
the case of Elijah N. Farnsworth vs the Bank
of Penn from the records and files now
remaining in my office.

Witness my hand and the Seal
of said Court at Ottawa this 16th
day of April 1857

S. W. Raymond Clerk

Bank

¹¹⁹
The Bank of
Penn

7

Elijah W. Farnsworth

Record

Filed April 21. 1857

S. Leland
Clerk

Delats fees for Transcript
Paid by Chequers \$8.50

The Bank of San ^{Illinois} Supreme Court
^{appellants} }
^{vs.} }
Elijah W Farnsworth }.

The appellant in this
cause now comes by Chumasco
& Eldredge its attorneys and assigns
the following causes of error.

1st

The Court Erred in proceeding to the
trial of this cause before an issue
was formed on the 4th plea of ~~affidavit~~
appellant to the 1st & 2^d Counts of
the appellee's declaration.

2

The Court Erred in proceeding to
trial without first disposing of
the demurrer of appellant to the
replications of the appellee.

3. The Court Erred in admitting
the Certificate of Deposit Recd on
in Evidence to the jury.

4. The Court Erred in Excluding
the Evidence offered by the
appellant.

5. The Court Erred in not permitting
the Draft offered in Evidence by
the ~~appellant~~ ^{introduced} ~~in evidence~~ ^{in evidence}
to the jury as a set off to the
Demand of the appellee.

6. The Court Erred in overruling

the motion for new trial.

7 The Court Erred in rendering
judgment against the appellant,
Chumasio & Elareajo
Atty for ~~Chumasio~~ Appellants

And now carries the said defendant
in error and says that in the
record & proceedings of said case
there is no error

B. L. Cook

attly for deft in error

Sup. Court
The Bank of
Perm 119

E. N. Hammons
asst. of errors

Filed April 22, 1857
L. Leland
Clerk

The within found in
error filed May 1st 1857
L. Leland
Clerk

Chambers & Eldridge
for R. L. Hammons