


No. 13168

Supreme Court of Illinois

Rup^Ert

vs.

Roney

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1859

STATE OF ILLINOIS, } THIRD GRAND DIVISION,
SUPREME COURT. } APRIL TERM, A. D. 1859.

RUPERT & HAINES, Appellants,

vs.
RONEY, Appellee.

Brief for Appellants.

In this case the record shows that the money paid was current bank bills of the Rhode Island Central bank; that they were then current at the time and place of payment, and were generally current through the state and elsewhere, though some persons refused to take them; and the bank at the time of the payment of the bills to the appellee was solvent, and paying specie at its counter for its bills; and that after the payment to the appellee the bank failed, and its bills became uncurrent while in the hands of the appellee, who afterwards offered to return them to appellants; and this suit is to recover the amount of those bank bills paid him.

1. The first point we make, is, that a payment in current bank bills is a good payment and satisfaction of the debt. If the bank bills are paid and received as money, and the bank is not then insolvent, and the bank afterwards fails, the loss must fall on the party in whose hands the bills are at the time of the failure.

This principle is manifestly in accordance with the requirements of commerce, and is declared, if not decided, in 13 Wendall 105, 113; and a like principle is recognized in Story on Promissory Notes § 119, and at page 509; and is more fully determined in 9 Pick. Rep. 539, 542; and in 1 Metcalf, 158.

2. Appellants insist that bank notes are not at law to be treated as drafts and bills of exchange, but are passed and conventionally treated as money. See 1 Burr Rep. 457, 3 T. R. 554. And the payment as money is conclusive on the appellee; and even though he had received the bills under protest, it would be unavailing. 1 Metcalf Rep. 159.

The admission of the proof of ownership of the bank at Joliet was immaterial and irrelevant, and calculated to mislead the jury; and so also the reading of Thompson's Bank Note Reporter to the jury was improper, incompetent, mere hearsay, and not the best evidence the case was susceptible of.

3. The first and third instructions of the appellee are not based upon the evidence given in the cause. No witness testified that the money was paid on any condition; and the witness Blossom was the agent of appellants for a special purpose only, viz: to receive and pay out money on deposit; and he, as an agent for a special purpose, could not bind his principal out of the scope of his authority; and any guarantee or assurance of the validity of any bill or note, if made by a special agent without authority, would be void as to the appellants. This principle is decided in 9 Pick. Rep. 542.

And the instructions of the appellee, not being based upon the evidence as given, were calculated to mislead the jury and injure the appellants, and ought not to have been given in this case. See 1 Scam. 47, 14 Ills. Rep. 472; 3 Gill. Rep. 368.

The instructions as asked for by appellants stated the law upon the proof correctly, and should have been given as asked; and the modification of them by inserting the word "unconditionally" after the word "paid," not being founded upon the testimony, is, for like reasons, erroneous, and they thus were improperly modified, and still more calculated to mislead the jury; in doing which the court erred as aforesaid.

And this verdict being palpably contrary to the evidence, a new trial ought to have been granted. 1 Gill. Rep. 70; 5 Gill Rep. 72.

B. S. PRETTYMAN, Attorney for Appellants.

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Report. vs. Roney

Appellants Brief

Filed May 5-1889

L. Leland

Clerk

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STATE OF ILLINOIS, } OCTOBER TERM TAZEWELL
TAZEWELL COUNTY. } CIRCUIT COURT, 1858. THIRD DIVISION.

GIDEON H. RUPERT and JAMES HAINES
vs.
STEPHEN RONEY.

} *Appeal from Tazewell.*

This was an action of assumpsit, brought by Roney against Rupert and Haines at said term of said court, to recover a sum of money of them for a sum of the bills of the "Rhode Island Central Bank," which Rupert and Haines as bankers had paid out in the course of their business to Roney, and afterwards, when the bills of said bank had ceased to be current, refused to receive back on deposit.

Declaration.
Pages 1 to 5.

The declaration contains the common counts.

Plaintiff's testimony 9 to 17

On the trial the plaintiff, Roney, called one B. F. Blossom, who testified that he was clerk for defendants, Rupert and Haines; that on the morning of the 26th of September, 1857, plaintiff had deposited with defendants \$427, \$350 in gold, but the gold having been deposited before the 1st of September, witness thought that plaintiff was not entitled to it according to defendants' rule, which was printed in plaintiff's bank book. The rule was as follows:

"NOTICE TO DEPOSITORS."

"All specie accounts must be settled up twice each year, in September and March, by withdrawal of the specie or changing it into currency at our current buying rates at the time of such change. If depositors neglect such settlement in September and March, all specie deposited by them previous to that time will become currency. Pekin, March 1, 1855. G. H. RUPERT & Co."

The balance of the \$427 was in currency. Roney came in the afternoon of the 26th, and said he wanted to take something to St. Louis, and wished to know what witness thought would go there. Witness told Roney that he had heard from a package of Rhode Island Central received from them at St. Louis on the 24th; that it was good there then. Witness told Roney that the Rhode Island currency was redeemed by Anderson & Co., bankers, St. Louis, and witness supposed he could dispose of it there as well if not better than Illinois bank bills, which were then decried there, and at a discount; Roney then said he would take, and witness gave him, \$427 in Rhode Island Central Bank bills, and charged him therewith \$427. The Rhode Island Central Bank bills were then current in Pekin, in said county, and elsewhere in Illinois, so far as witness knew. Defendants were then and had been receiving them from plaintiff and others as money, and continued to so receive them and pay them out until the morning of the 30th of September.

Soon after October 1st, defendants received by express a package containing several hundred dollars of Rhode Island Central money from Roney from St. Louis; don't recollect the amount; considerably over the \$427; Haines opened it; it contained about \$18 other than Rhode Island Central bills which was current at Pekin, but Roney said uncurrent in St. Louis. Defendants gave Roney credit with the \$18, and threw the Rhode Island Central bills into the vault, and told witness not to enter them as a credit to Roney. They were not then considered good, and defendants were not taking them on deposit or passing them out. They were not received then in Peoria, or elsewhere in Illinois, so far as witness knew, except at a great discount. Witness had been clerk for defendants since July, 1857. On the 6th of October, 1857, and just after Roney got back from St. Louis, he came in and wanted the Rhode Island Central money expressed from St. Louis passed to his credit as current funds. Haines refused to do it, and it was then specially deposited, Rhode Island Bank bills \$465, for plaintiff. There were several conversations between Haines and Roney before the special deposit was made. Roney some time afterwards came in and got the Rhode Island Central money specially deposited by him, and took it off with him, and never afterwards returned it to defendants. The money was generally cur-

rent in Pekin when I gave it to Roney, but many farmers being prejudiced against foreign money, I kept Illinois currency for them. Witness knew that during all the month of September Rhode Island Central money was sent by defendants as bankers to New York, Boston, and Chicago, and, until the 28th, to St. Louis, in payment of drafts and exchange, and was always received and credited by the parties to whom it was sent as current funds.

It was also proved that the defendants were private bankers, and doing business as such in Pekin, and that said Blossom was their clerk and agent to receive and pay out money brought for deposit.

Plaintiff then read the deposition of George D. Hall, who testified that he was doing business in St. Louis in September, 1857; that plaintiff owed him a large sum of money, and on the morning of the 28th of September, 1857, Roney then and there tendered him several hundred dollars Rhode Island Central Bank bills. Witness sent his clerk to his banker, and was informed that the money was uncurrent, and would not be taken on deposit. Witness then refused to receive them of Roney.

Plaintiff then read the deposition of Wm. A. Singer, who testified that in October, 1857, plaintiff owed him, and gave him a check on defendants' bank for special deposit of Rhode Island Central, \$555, on the debt; and witness took it, agreeing that if he could get it off he would account for it; and if not he would return it. The money was uncurrent and could not be disposed of at Pittsburg, and he, at Roney's request, returned it to him in September, 1858.

Plaintiff then produced in court and tendered to defendants \$427, in bills of Rhode Island Central Bank, which defendants refused to accept.

I. E. Leonard, a witness for plaintiff, testified that he was doing business in Pekin, and was in September, 1857; that he got his knowledge of the soundness or unsoundness of currency from the Detectors; that Thompson's Bank Note Reporter is one of the best. The plaintiff offered the printed paper, Thompson's Bank Note Reporter, and defendants objected. The objection was overruled, and defendants excepted; and the paper was read to the jury, which quoted the Rhode Island Central Bank as failed the 24th of August, 1857. Witness did not think that the Marine Bank, or George Smith & Co.'s Bank took it during the month of September. The bank was looked upon as suspicious during the month of September, 1857. Witness himself took it in and paid it out during September; knew it was taken along several railroads and redeemed by Adams & Co., bankers, Chicago.

J. S. Dawson testified that he was Express agent in Pekin, in September, 1857; that he received a package from St. Louis marked money, and dated 28th September, 1857, directed to G. H. Rupert & Co. It would then take a package about three days to come from St. Louis to Pekin by express. Witness sent Rhode Island Central money to Cincinnati and Philadelphia in August and September, 1857, and it was sent back to him; he also sent Illinois currency at the same time to Philadelphia and Cincinnati, and it was also returned as uncurrent; yet Rhode Island Central was current, and received and paid out by witness and others in Pekin all the time up to the 30th of September, 1857, and also along the line of the railroad in the state, but the reputation of the bank was bad; it was not taken at St. Louis, and steamboats would not take it. Illinois currency was also refused, and at a discount, in St. Louis during all the fall.

C. A. Roberts, for plaintiff, testified that he was in St. Louis on the 28th of September, 1857. Could not pass Rhode Island Central money; tried to get it redeemed at Anderson & Co.'s Bank, but they had failed and closed their doors at 10 o'clock the morning of the 28th. Came back with Roney on the 2d of October.

John Haas went down to St. Louis with Roney; was there on the 28th of September, 1857; then understood the money was uncurrent. Witness received and paid out that kind of money all through the month of September.

L. H. Wilkey testified that he had been in business in Pekin fourteen years, and he took the Rhode Island Central money during all the month of September, and it was generally current there, and taken on deposit at defendants' bank, until the 30th of September, 1857.

T. S. Ely then testified: I am a banker by profession; in that business; in Curtis' banking house in the fall of 1857. The Rhode Island Central bills were good as currency until the 1st of October, 1857. There was during all the month of September, Rhode Island Central money sent from the bank at which witness then was, to other places in exchange as currency, and in payment of debts. Don't recollect of any being returned as uncurrent. The Bureau Valley railroad took and deposited that kind of money during the summer.

A. B. Thompson testified that he was engaged in the banking business at the Central Bank in Peoria in the fall of 1857. The money was received in the Central Bank up to the 28th of September, 1857, as other currency, and so paid it out; and was there then so generally received and paid out. Witness went to Chicago; thinks all the banks there received it on deposit and paid it out. It was in September as good as any ordinary currency. The Rock Island railroad took it as long as they deposited at the Central Bank; think they quit depositing there in September. They received from Adams & Co., of Chicago, during the month of September divers packages of Rhode Island Central money, which was always taken and treated by the bank as ordinary currency.

Plaintiff, on cross examination, asked witness, "Who owned the Central Bank?" Objected to by defendants as immaterial, and objection sustained. Also, "Was not the Rhode Island Central money received and paid out on the credit of western capitalists?" Objected to by defendants for like reasons, and objection sustained. The Central Bank at Peoria received and paid out more of the Rhode Island Central money in the summer of 1857 than any other currency. They refused to receive it or pay it out after the 29th of September, 1857, because they heard it was broke.

Brewer Thompson testified for defendants, that he was Accountant in the banking business at Joliet, Illinois; that the Rhode Island Central money was received and paid generally and taken on deposit, and paid out by the bank where witness was, and taken by the Chicago, Alton & St. Louis railroad until the 29th of September, 1857; that he had business with many towns on the line of that railroad, and during all that time it was received and treated at all of them as good currency. On cross examination, plaintiff asked, "Who owned the Merchants' & Drovers' Bank, Joliet, and the Central Bank at Peoria?" Objected to by defendants, and objections overruled. Witness answered, "Governor Matteson." To all of which defendants then and there excepted. The Merchants' & Drovers' Bank circulated this money largely, as did also the Chicago, Alton & St. Louis railroad. Witness thought the Rhode Island Central Bank did not fail in August. Their redeeming agent in New York failed, and their bills were thrown out for a day or two.

David Kern testified for defendants, that he resided at Atlanta, in Logan county, Illinois; was engaged in banking in the fall of 1857; received Rhode Island Central money on deposit and paid it out as other money, and it was current until September 29, 1857. Witness sent off many packages with some bills of that kind interspersed with the bills comprising the packages, and none was ever returned as uncurrent, except a package sent to Springfield on the 28th of September.

James Milner testified that he was a merchant at Pekin in the fall of 1857; knew Rhode Island Central money during the month of September. Received and deposited and paid it out in business until the 30th of September; took some with him to St. Louis on the 17th or 18th of September, 1857, and passed it there as current funds. Witness got back to Pekin on the 25th of September. It was taken for fare on the railroad, and by hotel keepers on the way.

T. N. Gill testified: Was doing business in Pekin in the fall of 1857. Rhode Island Central money circulated generally here as money, until in September; don't remember what date; it also circulated at Delavan, where witness kept a business house. In August and September all Illinois money was considered shaky. Rhode Island Central money was received and paid out for grain generally about the 15th or 20th of September, 1857, as other money. Witness got New York city money for Rhode Island Central money at a small discount, about 1-2 or 1 per cent. in New York city, of the house of Swift, Bronson & Co. There were several hundred dollars, but don't recollect the exact amount.

B. F. Blossom testified for defendants, that the package, when first received from St. Louis from Roney, contained more than \$465 Rhode Island Central bills; and witness, before the special deposit, took some of it, don't recollect how much, and gave it to plaintiff. Anderson & Co. failed about October 1, 1857. Witness sent over \$400 Rhode Island Central bills to New York in September, 1857. Sent one package on the 9th, and one on the 24th, to buy exchange. It was sold at 1-2 per cent. discount in the New York market at that time. At the same time the Ohio, Indiana and Kentucky bank bills were selling at from 2 to 3 per cent. discount. Sent to Woodruff & Co., New York city.

J. T. McDougall testified for defendants, that he was, in the summer and fall of 1857, President of the Rhode Island Central Bank; and the bank did not suspend payment or close its doors, until after the general suspension of the Rhode Island banks, which was on the 28th day of September, 1857. Witness thinks he redeemed at the Rhode Island Central Bank some bills presented the day after the general suspension, 28th September, 1857, but can't say certain. On the 6th of October, an injunction was obtained against the Rhode Island Central Bank, to prevent its paying out and redeeming any more bills, and from that time witness left and considered the bank failed. Thompson, the publisher of the Thompson's Bank Note Reporter, was the agent in New York city to redeem the bills of the bank in New York city, and he failed on the 25th August, but the Rhode Island Central Bank did not then fail. The capital of the bank was \$496,000.

Plaintiff resumed, page 22

John Tooker testified for plaintiff, that the package of money shown in court, was the same money received by express from Pittsburg in September, 1858.

Plaintiff called one Friday, who testified that he was with plaintiff in defendants' banking house in September, 1857; and plaintiff wanted over \$400 in specie. Witness, Blossom, the clerk of the defendants, said they had not got it to spare, but had some Eastern money that was perfectly good in St. Louis. Then plaintiff took it.

Plaintiff's instructions.

This was all the testimony offered in the cause.

The court gave for the plaintiff the following instructions to the jury:

1st. The court instructed the jury that, if they believe, from the evidence, that the plaintiff took the money upon the condition that he could use it in St. Louis, and that the plaintiff in a reasonable time tried to use it in St. Louis, and could not do so, and returned it to the defendants in a reasonable time, they will find for the plaintiff.

2d. If the jury believe from the evidence, that the Rhode Island Central Bank had failed at the time the money was paid to the plaintiff, they will find for the plaintiff.

3d. If the jury believe from the evidence, that the money in question was paid to the plaintiff to be used in St. Louis, and was induced to take it upon the representation of the defendants' agent that he could use it in St. Louis, and before the plaintiff, by the use of reasonable diligence, could use the money in St. Louis, the bank failed, they will find for the plaintiff.

To the giving of which defendants then and there excepted, and defendants the Court to instruct the jury as follows:

Defendants' instructions, page 24.

If the jury believe, from the evidence, that the bank bills were generally received and treated as money in business transactions, and so considered by the community at the time and place of payment, then if the bank failed, or they afterwards were discredited, the loss must fall on the plaintiff, in whose hands they were at the time, and they will find for defendants.

2. If the jury believe from the evidence, that the money, (said bank bills in controversy) on the 26th day of September, 1857, was paid by the defendants to the plaintiff, and was then passing as current money in the state of Illinois, and at the place where it was paid, and in that commercial community, and that the bank itself was paying specie at its counter for the bills at that time, then they will find for the defendants.

3. That if the jury believe from the evidence, that the money was current at the time it was paid to the plaintiff, and the bank broke after the day of payment, that the party in whose hands the money was found at the time it broke must bear the loss; and if they further so believe that the plaintiff had the money in his hands at the time the bank broke, they will find for the defendants.

And the Court then modified the defendants' instructions as asked, and inserted the word "unconditionally," so that each instruction would read: If the money was paid "unconditionally." To which modification the defendants then and there excepted; and thereupon the jury returned a verdict for the plaintiff for \$427. And defendants then moved the Court for a new trial for the following reasons:

Motion for
new trial, &c.
page 25.

Because the finding of the jury was contrary to the law and the evidence.
Because the Court gave improper instructions to the jury for the plaintiff.
Because the Court improperly modified the instructions asked for by defendants.
Because the instructions, as given by the Court, were calculated to mislead the jury.

Which motion the court overruled, and entered judgment for plaintiff. To all which the defendants then and there excepted.

B. S. PRETTYMAN, for Defendants.

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Roney

Abstract

Filed April 26, 1859

L. Leland
Clerk

Proper

State of Illinois } 2^d Grand Division
Supreme Court } April Term 1859

Gideon H. Rupert &
James Holmes

vs.
Stephen Boney } Appraiser from
Logan

The abstract in this case does not show the evidence very fully, and in order that the Court may get fairly at the merits of the case, it will be necessary to examine the bill of exceptions.

It is apparent from the ~~bill of exceptions~~ evidence of Blossom the Clerk and agent of appellants, and the evidence of Friday, that Boney wanted his deposit of gold 350 dollars to meet his ~~to~~ liability in St Louis. To this he was fully entitled as will be hereafter shown, But the Clerk (Blossom) thought that they had not the specie to spare, as Friday states, but that they had Eastern Money in ~~it~~ that was purporting to be good in St Louis. Blossom knew that he wanted the money to use in St Louis, and take

him that Anderson's Co were receiving it, upon ~~this~~ such representations he was induced to take ^{it}. If the Appellants had as they ought to have done paid Bony his share deposit, this suit would never have ~~been~~ ^{been} introduced the docket of this Court. But instead of doing that they put such a construction upon their rule as no principle of law will warrant and Bony by such pretenses and under the ~~the~~ information that they had not the specie to spare, that the money could be used in St Louis, and that it would be redeemed by Anderson & Co Bony by their persuasion, not of his own choice took the money. Bony had deposited money with them that would go in any part of the world and the Appellants knew it, but that they could not spare, that they had to use for their own private benefit and advantage, and took the responsibility of paying Bony in money that they were willing to lead him to believe would answer his purpose in St Louis, knowing for what purpose they represent and affirm to

him that it will answer that purpose.
That he went there for the purpose of
getting his specie is perfectly evident
from the conversation, and circumstances
that Blossom discloses about the
rule. If he had ^{not} asked for specie
there would have been ^{no} necessity
of any reference to the rule, besides
it is perfectly preposterous ~~for~~ to
suppose that a man who had gold
deposited in with his Banker should
ask what currency would go in
another place, he knew his gold
was current all over the world
but finding he could not get that
he asks that they shall ~~be~~ supply
him with what will answer
his purpose, and this is corroborated
by the evidence of Friday.

The
appellants know well enough that
under the rule as printed in Romys
book that he was entitled to his specie
in deposit. It is a rule of law so well
established, that it would be a work of
supererogation to refer to the authorities
to prove it. That when a person has
a day or month to do an act in he

has the whole day or month. 14 Illinois
Rep. 55: Roney had the whole month
of September in which to make the change
agreed by the rule, he was fully
in time, and honestly and fairly entitled to
his specie deposit. This was well
known to appellants, but they have not
the spine to show, and cannot let
him have Illinois currency, because
they prefer to keep that for the farmers
because they were suspicious of
of all Eastern money. This was Roney
indeed to out to his injury. This was
on the 26th of September, which was
Saturday and on the morning of the
28th, being Monday Roney presented it
at St Louis and could not
use it. On the morning of the first of
October the money was ^{shown} ~~used~~ by
the appellants by express from Roney.
The wisdom of Garrison shows that
it is about 3 days trip from St Louis
to Pekin. Haines one of the appellants
opened the package, and took out
what was of good money
being 18 dollars and directed the clerk
to throw the other into the vault and
sent to enter it to the credit of Roney

Thoroughly fully recognizing that Appellants
were the proper persons to receive
the package, and to whom it had been
and that Brown ~~sent~~ Appellants it
to be ~~received~~ by them, They credit
him with the 18 dollars but refuse
to receive the other, thus showing
the utmost diligence on the part
of Brown to get the money back to
Appellants, and an utter refusal on
their part to receive ^{it}, He (Brown) ~~remained~~
it upon the representation that it would
answer his purpose, but finding that
it would not, he in good faith and
due diligence returned it.

Let us apply
these facts to a few plain and well
settled principles of Law.

It ~~was~~ is well settled that every affir-
mation made at the time of the
~~at~~ Sale of an article, if made to be
received as such by the purchaser
amounts to a warranty. 1 Parsons on
Contracts 463. Chitty on Contracts 452.
So if ~~a~~ the seller affirms goods to be
of a particular quality, and the buyer
receives them upon the ^{Credit} ~~fact~~ of the

affirmation, he may in a reasonable time return the goods and receive his money back, if the goods turn out to be of a different quality; Butts v. Blake 2 Harris & Johnson Rep. 353.

In the case of *Humphrey v. Pratt* 5 Bligh (Ct. D.) Rep. 154, it was held, upon a writ of *habeas corpus* from Ireland, that if a judgment creditor, who had issued a pro process, affirms that certain goods belong to the judgment debtor, by which affirmation the sheriff was induced to act and was injured, that the sheriff might maintain an action against the judgment creditor; In the well known case of *Jones v. Bright* 5 Bing. Rep. 533, The plaintiff wanted sheeting copper for a particular purpose, the Defendant said, "I will supply you well"; the plaintiff was induced to act upon this representation, and the expense was held responsible. This case has been approved universally and is quoted by C. J. Bator with approbation in 4 Gilman. The principle involved in this case

is in law and justice the same, upon the affirmation and representations of appellants that Roney could use the money for the purpose he wanted, he found he could not use it for that purpose and having returned it within a reasonable time, in justice, good faith and honesty the appellants ought to have received it back, and the court very properly as will be shown hereafter left it to the jury to say upon what terms the money was received, upon what condition the money was received, and what was the understanding of the parties, and the verdict of the jury is fully justified by the evidence.

There is still another very significant circumstance about this case, claims one of the appellants, opened the package received from Roney by express, and felt himself fully authorized to take 18 dollars of the money sent and pass it to Roney's credit, but the balance he retained, thereby fully recognizing for what purpose the bills had been returned, by Roney, and that Roney expected to have ^{the bills returned} ~~them~~ placed to his credit.

It also appears from the evidence that some of the Banking houses paid out their money up to the 28th of September, some until the 29th some until the 30th all before the bank had actually suspended specie payment according to the evidence of the President.

This shows most clearly that it was mined and paid out by the whole community, not because ~~not~~ it was a specie paying Bank, but because it was mined and paid out as currency by the Affiliants and other Bankers. After the 26th the next Banking day was the 28th by some of the Banks it was never taken after that day, by the ~~affiliants~~ ^{affiliants} it was not taken after the 29th. The evidence shows that the Bank itself is situated at East Greenwich in the State of Rhode Island. The President says but he is not certain, that he thinks some was redeemed after the 28th the day of general Suspension, but that he did not consider the Bank as having finally failed until the fifth of October. Now there is one thing certainly strikes the mind

very possibly in this very Singular
Banking institution, and ~~this that~~
~~that~~ is that this ~~Central~~ Thro
Island Central Bank, either
failed in August as quoted by the
Debtor or never was a specie pay-
ing bank. The evidence of Leonard,
Dawson, & George Soll all show
that this Bank in Commercial
communities was of very doubt-
ful reputation all the month of
September at St Louis, Cincinnati,
Philadelphia & Chicago, and during
that month it was considered as
~~not~~ a specie paying Bank. And the
jury would have been fully justified
in finding that it was ^{not} a specie pay-
ing Bank at the time Henry mined
the Bills. If ^{it} was a Bank that redeemed
its bills at its counter in gold it
needed no redeeming agents to
keep up its credit. These redeeming
agents only redeemed it in other
thin plastic currency not in
gold. It was not necessary that
the bills should be presented to the
Bank itself in order to know
that they would not be redeemed.

of Shipley 88. The whole evidence must
convince any one that this money was
ruined and paid out in the Community
not because of its ~~own~~ solvency,
but because it was circulation
by the defendants with other
Banks. If it did not suspend until
the 5th of October, it was a Spring
paying Bank when it was
returned by Honey, and as it had
been paid to him for a particular pur-
pose, and could not be used for that
purpose, and appellants were bound
to ruin it.

It is well settled by the Current of
authorities, that payment in the bills
of an insolvent bank is no pay-
ment. *Lighthbody v. Ontario Bank*
11 Wendell Rep. 9; 13 Wendell ~~105~~
101; *Wainright v. Webster* 11 Vermont
Rep. 576. *Gilman v. Park* 516;

Frontier Bank is otherwise of Shipley Rep
85. In the case of *Lighthbody v. Ontario*
Bank 11 Wendell 9. The rule is stated
to be that what was the intention of
the parties, as to the import of their contract.

act shall be taken as conclusive against them. This rule is recognized by ~~the~~ Whittman & J in Frontier Bank v. Morse & Shipley Rep 88, and he then adds the following pertinent remarks,

"If it could be inferred from what took place between the parties, that the party accepting the Bank bills in payment or exchange was to run the risk of their genuineness or value, he should be required to abide the consequences, but if it should be apparent from the nature of the transaction or otherwise that no such risk was intended in contemplation of the parties a different result should follow". The case all turns upon a question of fact which is properly left to the jury.

Judge Story says that it is after all more a question of intent than of law, that is to bring all the circumstances together, whether the bills were taken as absolute payment, or only conditional payment, and that the weight of authority is in favor of the payment be considered as null in the latter case. Story on

Promissory notes Section 389 note, and
this position is quoted and approved
by Chan. Kent 3 Kent Comm. 86 note.
This question of intention is a question
to be left to the jury the following cases
fully prove, 8 Seargent & Watts Rep
361: Commonwealth v. Stone 4 Chittell
Rep. 46. Story on Promissory notes Section
104. It was then very properly left
as a question of fact to the jury to
find whether the bills were issued
by Boney as conditional payment
that is upon the condition that they
would answer his purpose. And
the qualifications to the instruction
of Appellants were strictly proper.

The third instruction given
on the part of Boney is just the
doctrine laid down by Judge Story
and is supported by numerous author-
ities in Story on Promissory Notes
Section 502. He then says if the
Bank has actually failed or should fail
before the notes can within such
reasonable time be presented,
the holder upon giving due notice of the
dishonor may recover the amount or
consideration from the person from

whom he mind the same.
The 3rd instruction only tells the Jury
that if the bills were taken by Roney
upon the condition that they could be
redeemed in St Louis, and he used reasonable
diligence to ~~return~~ use them there
and could not do so, the loss would
fall upon the one who committed the
first wrong. Take this in connection
with the other instructions for
plaintiff and defendant, ^{And it} does not lay down
the law very so strongly as the above
extract from Judge Story would jus-
tify.

If a man sells an other an article of as
fit for a particular purpose, there is an
implied warranty that it is fit for that
purpose. Now there was an implied
understanding that these Bills should
serve the purpose intended, and
they would not do so, according to
the doctrine of Judge Story as above
quoted, Roney would have a reason-
able time after he mind the bills
to present them to Anderson & Co,
the redeeming agents in St Louis
and if the ~~agents~~ redeeming agents
poiled ~~by fire~~ before he could

by the use of reasonable diligence
present them for payment, he is
entitled to recover. This view of the
law is supported by reason and
the clearest principles of law.

The
fact, as well ^{very} much, ^{that} Chan. Wolworth
13 Russell 101, of receiving Bank
bills as money is merely a conventional
^{rule} and ought not to be carried any
farther than that conventional
^{rule} extends. These Bills were
issued for the reason that other
Banks receive and pay paid
them out, upon the faith of their redeem-
ing agents - not upon the credit of
the Bank itself. Now there was a
conventional rule in regard to these
particular bills, and in accordance
with every principle of law, and honesty
Money should have been allowed
to a reasonable time in which to
present the bills at the counter of
Anderson & Co, for redemption.

During these efforts, King Borden
had every opportunity to know whether
these bills were issued by a safe

and reliable institution or not. The means of knowledge were not equally accessible to both parties. The appellants, had the means of superior knowledge.

It is well settled that if a contract is made between an attorney and his client, he shall not be allowed any advantage which ~~at~~ his superior knowledge and situation will give him. So in this case, the appellants were the Bankers and agents of Romy, he depended upon their superior knowledge, as he had a right to ~~know~~ do, they made representations and affirmations to him that misled him, that induced him to act to his injury, and this having been left as a question to be found by the jury, and they having found that Romy took them upon the faith of those representations, ~~and~~ should not be set aside. It holds Romy to a wholesome stippling to which they ought to be held, and is a most just and righteous verdict.

James Roberts

Over

At Section 389 of Story on Promissory notes, the author says, as between the maker and holder, the payment in Bank notes is but conditional payment, to be void if the Bank is then insolvent, or if being then solvent, the holder demands payment within a reasonable time and payment is refused.

I would also call the attention of the Court to the remarks of Chan. Walworth in the case of Mohawk Bank v. Broderick 13 Wendell Rep. ~~72~~ 133, where the Chancellor states a case almost precisely similar ~~to~~ to this. Also note 4 to Section 491 of Story on Promissory notes, Owen v. Morse 7 Term. Rep. 64. The following cases have also a strong bearing on this case,

Gilman v. Peck 11 Vermont Rep. 516
Manufacturers & Mechanics Bank v. Gore 15 Mass Rep. 75, and the ~~same~~ remarks of C. J. Parker at page 79. and also the case of Owen v. Morse above cited

James P. Smith

~~314~~ 316

Gideon H. Rupert
- James Haines
11

Stephen Roney

Argument for
appellus.

Filed April 26. 1839

L. Lebeand
clerk

Rupert & Hains app'ts \approx Supreme Court

Stephens Roney appo 3 Division April 1859

Argument for appellee

This was an action brought by the appellee against the appellants bankers in Pekin to recover \$427.00 which the appellants had paid out to the appellee on the 26th day of September 1857. The proof shows that on that day Roney had due him from the bankers \$427.00 of which \$350.00 had been deposited in gold. That desiring to go to St Louis & pay out this money he called upon the bank for gold but the bank being short (as usual) the Clerk in the bank induced him to take "Rhode Island Central" money under the assurance that it would be available to him there - That he took the money and went immediately to St Louis and on the morning of the 28th Sept tried to pay it out but failed; found the money worthless & sent it back by express to the bankers who refused to receive it -

The above is the substance & marrow of the whole case Roney was induced to take this money on the assurance that he could use it in St Louis; could not do it, and the question is whether the bank still owes him the money or whether by some legal demand known only in our system of banking the bankers have paid their debt giving nothing of any value & the plaintiff Roney having received nothing - If the debt is paid that is the end of the matter & the judgment ought to be reversed

On the contrary if the debt yet remains unpaid the recovery is right & the judgment should be affirmed. All questions of fact have been found by the jury for the appellee and if any force at all is to be given to the finding of a jury it seems to me that this judgment ought to be affirmed.

The clerk of the bank testifies to a notice printed in the bank book of Roney see page 4 of Record "Notice to Depositors" and swears that he don't consider Roney's debt due in specie because it was not withdrawn or turned into currency at the going rates in Sept. Now it is submitted that Roney did every thing he could do on the 26 Sept to withdraw his deposits. How it is that this clerk arrives at the conclusion that the 26 Sept is not in the month of September I do not know nor can I comprehend it; his opinion must be founded upon some rule of banking the whole of which rules I acknowledge to be far above my comprehension.

The appellants Counsel argue that Blossom the clerk in the bank was only authorized to receive & pay out money but that any stipulation or condition made by him being out of the scope of his authority is not binding upon the appellants. Already it may in truth be said "Great is the mystery of Banking" They now sail along down the tide doing as we fondly if not foolishly think an immense amount of good to the places in which they are located rendering unheard of & unapproachable banks perfectly good solvent

& reliable things go on thus swimmingly for a while until the "bills" of these concerns "burst" the now worthless money in the hands of the Confident Community and on a thorough investigation which is usually had in such cases the Committee reports as they do in Steam boat & Rail road slaughters "no body to blame" All praise being due to the very attentive engineers & Conductors who at the time had retired to take a little indispensable recreation Human nature can't be on the watch always.

I have no fear that our Court will decide that a principal is not answerable for the acts of his agent done in the ordinary transactions of his business and not only for the acts but the representations & contracts made by him therein.

I doubt whether the decision that the appellants ask would be of any real benefit to them for our banking operations being based upon three times as much confidence as Capital. If the Court should decide that no legal Confidence can be placed in the Clerks & Managers of the bank it seems to me that the sand would be knocked from under them & their most valuable pillars prostrated so that the magnificent Confidence structure must fall to the ground.

A. S. Davison
for appellee

316-40

Robert & Maria

as
Stephen Rorer

Arg for Spence

A. L. Dawson

Filed May 23, 1859
L. Leland
Clerk

Gideon H. Rupert }
 James Haines } Appeal from Stazewell.
 vs }
 Stephen Roney } Additional Points for Appellee

As it has been contended for the Appellants in this case, that the Admission of the Bank Note Detector, was an error for which the Judgment should be reversed. - I wish to submit the following suggestions. As stated by Leonard it was his means of telling the Currency of Bank Bills. - It was manifestly proper to show what was the standing of the Bank in Commercial Communities. It is only by General Reputation that the currency of any Banking institution can be known 9 Shepley Rep 88.

And as at the Trial it was not objected to, as not being the Best Evidence, that point is waived, as is well settled by the discussions of our own Courts Sargent vs Kellogg 5 Gilman 273.

But even if this Evidence was improperly admitted it could not have been prejudicial to the Appellants. The evidence shows that the Bills were taken upon the assurance, that they could be used in St Louis, and the question of intent having been left to the Jury, and they having done substantial Justice, the Court will not on that account reverse the Judgment. New Kirk vs Com 18 Minn's Rep 449. 1 Gilman Rep 475. - 3 Do 202. - 1 Scam Rep 491. Do 15. -

Scam 107: - No 47: - 2 Scam 308: - 3 Scam 218: - 4 Scam 58: -
Scam 10: -

In regard to the question of Agency, the Clerk being there
to receive and pay out money and do that kind of business
it would be a singular ^{thing} if he could pay out any kind
of Worthless Trash, and yet the principals be not
responsible. If their agent paid out Worthless money
for which he received gold then they have received
the benefit of his fraud, - they cannot disclaim his acts
and yet retain the Reward. They would in such
case clearly hold money to which the Appellee would
be *ex aequo et Bono* entitled: - Story on agency sections
114. 127. 139. are expressly in point in this case.

James Roberts.

316-40
J. W. Roberts
James Haines

MS.

Stephen Roney

Additional bonds for Appell

No 317.

Filed May 10, 1839

L. Leland
Clerk

STATE OF ILLINOIS, } OCTOBER TERM TAZEWELL
TAZEWELL COUNTY. } CIRCUIT COURT, 1858, THIRD DIVISION.

GIDEON H. RUPERT and JAMES HAINES
vs.
STEPHEN RONEY.

} *Appeal from Tazewell.*

This was an action of assumpsit, brought by Roney against Rupert and Haines at said term of said court, to recover a sum of money of them for a sum of the bills of the "Rhode Island Central Bank," which Rupert and Haines as bankers had paid out in the course of their business to Roney, and afterwards, when the bills of said bank had ceased to be current, refused to receive back on deposit.

Declaration.
Pages 1 to 5.

The declaration contains the common counts.

Plaintiff's testimony 9 to 17

On the trial the plaintiff, Roney, called one B. F. Blossom, who testified that he was clerk for defendants, Rupert and Haines; that on the morning of the 26th of September, 1857, plaintiff had deposited with defendants \$427, \$350 in gold, but the gold having been deposited before the 1st of September, witness thought that plaintiff was not entitled to it according to defendants' rule, which was printed in plaintiff's bank book. The rule was as follows:

"NOTICE TO DEPOSITORS."

"All specie accounts must be settled up twice each year, in September and March, by withdrawal of the specie or changing it into currency at our current buying rates at the time of such change. If depositors neglect such settlement in September and March, all specie deposited by them previous to that time will become currency. Pekin, March 1, 1855. G. H. RUPERT & Co."

The balance of the \$427 was in currency. Roney came in the afternoon of the 26th, and said he wanted to take something to St. Louis, and wished to know what witness thought would go there. Witness told Roney that he had heard from a package of Rhode Island Central received from them at St. Louis on the 24th; that it was good there then. Witness told Roney that the Rhode Island currency was redeemed by Anderson & Co., bankers, St. Louis, and witness supposed he could dispose of it there as well if not better than Illinois bank bills, which were then decried there, and at a discount; Roney then said he would take, and witness gave him, \$427 in Rhode Island Central Bank bills, and charged him therewith \$427. The Rhode Island Central Bank bills were then current in Pekin, in said county, and elsewhere in Illinois, so far as witness knew. Defendants were then and had been receiving them from plaintiff and others as money, and continued to so receive them and pay them out until the morning of the 30th of September.

Soon after October 1st, defendants received by express a package containing several hundred dollars of Rhode Island Central money from Roney from St. Louis; don't recollect the amount; considerably over the \$427; Haines opened it; it contained about \$18 other than Rhode Island Central bills which was current at Pekin, but Roney said uncurrent in St. Louis. Defendants gave Roney credit with the \$18, and threw the Rhode Island Central bills into the vault, and told witness not to enter them as a credit to Roney. They were not then considered good, and defendants were not taking them on deposit or passing them out. They were not received then in Peoria, or elsewhere in Illinois, so far as witness knew, except at a great discount. Witness had been clerk for defendants since July, 1857. On the 6th of October, 1857, and just after Roney got back from St. Louis, he came in and wanted the Rhode Island Central money expressed from St. Louis passed to his credit as current funds. Haines refused to do it, and it was then specially deposited, Rhode Island Bank bills \$465, for plaintiff. There were several conversations between Haines and Roney before the special deposit was made. Roney some time afterwards came in and got the Rhode Island Central money specially deposited by him, and took it off with him, and never afterwards returned it to defendants. The money was generally cur-

*The identical
notes that
have been given
up for proof
of R.*

rent in Pekin when I gave it to Roney, but many farmers being prejudiced against foreign money, I kept Illinois currency for them. Witness knew that during all the month of September Rhode Island Central money was sent by defendants as bankers to New York, Boston, and Chicago, and, until the 28th, to St. Louis, in payment of drafts and exchange, and was always received and credited by the parties to whom it was sent as current funds.

It was also proved that the defendants were private bankers, and doing business as such in Pekin, and that said Blossom was their clerk and agent to receive and pay out money brought for deposit.

Plaintiff then read the deposition of George D. Hall, who testified that he was doing business in St. Louis in September, 1857; that plaintiff owed him a large sum of money, and on the morning of the 28th of September, 1857, Roney then and there tendered him several hundred dollars Rhode Island Central Bank bills. Witness sent his clerk to his banker, and was informed that the money was uncurrent, and would not be taken on deposit. Witness then refused to receive them of Roney.

Plaintiff then read the deposition of Wm. A. Singer, who testified that in October, 1857, plaintiff owed him, and gave him a check on defendants' bank for special deposit of Rhode Island Central, \$555, on the debt; and witness took it, agreeing that if he could get it off he would account for it, and if not he would return it. The money was uncurrent and could not be disposed of at Pittsburg, and he, at Roney's request, returned it to him in September, 1858.

Plaintiff then produced in court and tendered to defendants \$427, in bills of Rhode Island Central Bank, which defendants refused to accept.

I. E. Leonard, a witness for plaintiff, testified that he was doing business in Pekin, and was in September, 1857; that he got his knowledge of the soundness or unsoundness of currency from the Detectors; that Thompson's Bank Note Reporter is one of the best. The plaintiff offered the printed paper, Thompson's Bank Note Reporter, and defendants objected. The objection was overruled, and defendants excepted; and the paper was read to the jury, which quoted the Rhode Island Central Bank as failed the 24th of August, 1857. Witness did not think that the Marine Bank, or George Smith & Co.'s Bank took it during the month of September. The bank was looked upon as suspicious during the month of September, 1857. Witness himself took it in and paid it out during September; knew it was taken along several railroads and redeemed by Adams & Co., bankers, Chicago.

J. S. Dawson testified that he was Express agent in Pekin, in September, 1857; that he received a package from St. Louis marked money, and dated 28th September, 1857, directed to G. H. Rupert & Co. It would then take a package about three days to come from St. Louis to Pekin by express. Witness sent Rhode Island Central money to Cincinnati and Philadelphia in August and September, 1857, and it was sent back to him; he also sent Illinois currency at the same time to Philadelphia and Cincinnati, and it was also returned as uncurrent; yet Rhode Island Central was current, and received and paid out by witness and others in Pekin all the time up to the 30th of September, 1857, and also along the line of the railroad in the state, but the reputation of the bank was bad; it was not taken at St. Louis, and steamboats would not take it. Illinois currency was also refused, and at a discount, in St. Louis during all the fall.

C. A. Roberts, for plaintiff, testified that he was in St. Louis on the 28th of September, 1857. Could not pass Rhode Island Central money; tried to get it redeemed at Anderson & Co.'s Bank, but they had failed and closed their doors at 10 o'clock the morning of the 28th. Came back with Roney on the 2d of October.

John Haas went down to St. Louis with Roney; was there on the 28th of September, 1857; then understood the money was uncurrent. Witness received and paid out that kind of money all through the month of September.

L. H. Wilkey testified that he had been in business in Pekin fourteen years, and he took the Rhode Island Central money during all the month of September, and it was generally current there, and taken on deposit at defendants' bank, until the 30th of September, 1857.

*The fact
the bank
had failed
could not be
proved by the
"reporter" it
was good
evidence
coupled with
a scientist -*

T. S. Ely then testified: I am a banker by profession; in that business; in Curtiss' banking house in the fall of 1857. The Rhode Island Central bills were good as currency until the 1st of October, 1857. There was during all the month of September, Rhode Island Central money sent from the bank at which witness then was, to other places in exchange as currency, and in payment of debts. Don't recollect of any being returned as uncurrent. The Bureau Valley railroad took and deposited that kind of money during the summer.

A. B. Thompson testified that he was engaged in the banking business at the Central Bank in Peoria in the fall of 1857. The money was received in the Central Bank up to the 28th of September, 1857, as other currency, and so paid it out; and was there then so generally received and paid out. Witness went to Chicago; thinks all the banks there received it on deposit and paid it out. It was in September as good as any ordinary currency. The Rock Island railroad took it as long as they deposited at the Central Bank; think they quit depositing there in September. They received from Adams & Co., of Chicago, during the month of September divers packages of Rhode Island Central money, which was always taken and treated by the bank as ordinary currency.

Plaintiff, on cross examination, asked witness, "Who owned the Central Bank?" Objected to by defendants as immaterial, and objection sustained. Also, "Was not the Rhode Island Central money received and paid out on the credit of western capitalists?" Objected to by defendants for like reasons, and objection sustained. The Central Bank at Peoria received and paid out more of the Rhode Island Central money in the summer of 1857 than any other currency. They refused to receive it or pay it out after the 29th of September, 1857, because they heard it was broke.

Brewer Thompson testified for defendants, that he was Accountant in the banking business at Joliet, Illinois; that the Rhode Island Central money was received and paid generally and taken on deposit, and paid out by the bank where witness was, and taken by the Chicago, Alton & St. Louis railroad until the 29th of September, 1857; that he had business with many towns on the line of that railroad, and during all that time it was received and treated at all of them as good currency. On cross examination, plaintiff asked, "Who owned the Merchants' & Drovers' Bank, Joliet, and the Central Bank at Peoria?" Objected to by defendants, and objections overruled. Witness answered, "Governor Matteson." To all of which defendants then and there excepted. The Merchants' & Drovers' Bank circulated this money largely, as did also the Chicago, Alton & St. Louis railroad. Witness thought the Rhode Island Central Bank did not fail in August. Their redeeming agent in New York failed, and their bills were thrown out for a day or two.

David Kern testified for defendants, that he resided at Atlanta, in Logan county, Illinois; was engaged in banking in the fall of 1857; received Rhode Island Central money on deposit and paid it out as other money, and it was current until September 29, 1857. Witness sent off many packages with some bills of that kind interspersed with the bills comprising the packages, and none was ever returned as uncurrent, except a package sent to Springfield on the 28th of September.

James Milner testified that he was a merchant at Pekin in the fall of 1857; knew Rhode Island Central money during the month of September. Received and deposited and paid it out in business until the 30th of September; took some with him to St. Louis on the 17th or 18th of September, 1857, and passed it there as current funds. Witness got back to Pekin on the 25th of September. It was taken for fare on the railroad, and by hotel keepers on the way.

T. N. Gill testified: Was doing business in Pekin in the fall of 1857. Rhode Island Central money circulated generally here as money, until in September; don't remember what date; it also circulated at Delavan, where witness kept a business house. In August and September all Illinois money was considered shaky. Rhode Island Central money was received and paid out for grain generally about the 15th or 20th of September, 1857, as other money. Witness got New York city money for Rhode Island Central money at a small discount, about 1-2 or 1 per cent. in New York city, of the house of Swift, Bronson & Co. There were several hundred dollars, but don't recollect the exact amount.

B. F. Blossom testified for defendants, that the package, when first received from St. Louis from Roney, contained more than \$465 Rhode Island Central bills; and witness, before the special deposit, took some of it, don't recollect how much, and gave it to plaintiff. Anderson & Co. failed about October 1, 1857. Witness sent over \$400 Rhode Island Central bills to New York in September, 1857. Sent one package on the 9th, and one on the 24th, to buy exchange. It was sold at 1-2 per cent. discount in the New York market at that time. At the same time the Ohio, Indiana and Kentucky bank bills were selling at from 2 to 3 per cent. discount. Sent to Woodruff & Co., New York city.

J. T. McDougall testified for defendants, that he was, in the summer and fall of 1857, President of the Rhode Island Central Bank; and the bank did not suspend payment or close its doors, until after the general suspension of the Rhode Island banks, which was on the 28th day of September, 1857. Witness thinks he redeemed at the Rhode Island Central Bank some bills presented the day after the general suspension, 28th September, 1857, but can't say certain. On the 6th of October, an injunction was obtained against the Rhode Island Central Bank, to prevent its paying out and redeeming any more bills, and from that time witness left and considered the bank failed. Thompson, the publisher of the Thompson's Bank Note Reporter, was the agent in New York city to redeem the bills of the bank in New York city, and he failed on the 25th August, but the Rhode Island Central Bank did not then fail. The capital of the bank was \$496,000.

Plaintiff resumed, page 22

John Tooker testified for plaintiff, that the package of money shown in court, was the same money received by express from Pittsburg in September, 1858.

Plaintiff called one Friday, who testified that he was with plaintiff in defendants' banking house in September, 1857; and plaintiff wanted over \$400 in specie. Witness, Blossom, the clerk of the defendants, said they had not got it to spare, but had some Eastern money that was perfectly good in St. Louis. Then plaintiff took it.

Plaintiff's instructions.

This was all the testimony offered in the cause.

The court gave for the plaintiff the following instructions to the jury:

1st. The court instructed the jury that, if they believe, from the evidence, that the plaintiff took the money upon the condition that he could use it in St. Louis, and that the plaintiff in a reasonable time tried to use it in St. Louis, and could not do so, and returned it to the defendants in a reasonable time, they will find for the plaintiff.

2d. If the jury believe from the evidence, that the Rhode Island Central Bank had failed at the time the money was paid to the plaintiff, they will find for the plaintiff.

3d. If the jury believe from the evidence, that the money in question was paid to the plaintiff to be used in St. Louis, and was induced to take it upon the representation of the defendants' agent that he could use it in St. Louis, and before the plaintiff, by the use of reasonable diligence, could use the money in St. Louis, the bank failed, they will find for the plaintiff.

To the giving of which defendants then and there excepted, and defendants asked the Court to instruct the jury as follows:

Defendants' instructions, page 24.

If the jury believe, from the evidence, that the bank bills were generally received and treated as money in business transactions, and so considered by the community at the time and place of payment, then if the bank failed, or they afterwards were discredited, the loss must fall on the plaintiff, in whose hands they were at the time, and they will find for defendants.

2. If the jury believe from the evidence, that the money, (said bank bills in controversy) on the 26th day of September, 1857, was paid by the defendants to the plaintiff, and was then passing as current money in the state of Illinois, and at the place where it was paid, and in that commercial community, and that the bank itself was paying specie at its counter for the bills at that time, then they will find for the defendants.

3. That if the jury believe from the evidence, that the money was current at the time it was paid to the plaintiff, and the bank broke after the day of payment, that the party in whose hands the money was found at the time it broke must bear the loss; and if they further so believe that the plaintiff had the money in his hands at the time the bank broke, they will find for the defendants.

And the Court then modified the defendants' instructions as asked, and inserted the word "unconditionally," so that each instruction would read: If the money was paid "unconditionally." To which modification the defendants then and there excepted; and thereupon the jury returned a verdict for the plaintiff for \$427. And defendants then moved the Court for a new trial for the following reasons:

Motion for
new trial, &c.
page 25.

Because the finding of the jury was contrary to the law and the evidence.

Because the Court gave improper instructions to the jury for the plaintiff.

Because the Court improperly modified the instructions asked for by defendants.

Because the instructions, as given by the Court, were calculated to mislead the jury.

Which motion the court overruled, and entered judgment for plaintiff. To all which the defendants then and there excepted.

B. S. PRETTYMAN, for Defendants.

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Rupert et al

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Roney

abstracts

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remind

Filed April 26, 1859

L. Leland

clerk.

Magistrate Carmack

13 M. 290

STATE OF ILLINOIS, } THIRD GRAND DIVISION,
SUPREME COURT. } APRIL TERM, A. D. 1859.

RUPERT & HAINES, Appellants,

vs.
RONEY, Appellee.

Brief for Appellants.

In this case the record shows that the money paid was current bank bills of the Rhode Island Central bank; that they were then current at the time and place of payment, and were generally current through the state and elsewhere, though some persons refused to take them; and the bank at the time of the payment of the bills to the appellee was solvent, and paying specie at its counter for its bills; and that after the payment to the appellee the bank failed, and its bills became uncurrent while in the hands of the appellee, who afterwards offered to return them to appellants; and this suit is to recover the amount of those bank bills paid him.

1. The first point we make, is, that a payment in current bank bills is a good payment and satisfaction of the debt. If the bank bills are paid and received as money, and the bank is not then insolvent, and the bank afterwards fails, the loss must fall on the party in whose hands the bills are at the time of the failure.

This principle is manifestly in accordance with the requirements of commerce, and is declared, if not decided, in 13 Wendall 105, 113; and a like principle is recognized in Story on Promissory Notes § 119, and at page 509; and is more fully determined in 9 Pick. Rep. 539, 542; and in 1 Metcalf, 158.

2. Appellants insist that bank notes are not at law to be treated as drafts and bills of exchange, but are passed and conventionally treated as money. See 1 Burr Rep. 457, 3 T. R. 554. And the payment as money is conclusive on the appellee; and even though he had received the bills under protest, it would be unavailing. 1 Metcalf Rep. 159.

The admission of the proof of ownership of the bank at Joliet was immaterial and irrelevant, and calculated to mislead the jury; and so also the reading of Thompson's Bank Note Reporter to the jury was improper, incompetent, mere hearsay, and not the best evidence the case was susceptible of.

3. The first and third instructions of the appellee are not based upon the evidence given in the cause. No witness testified that the money was paid on any condition; and the witness Blossom was the agent of appellants for a special purpose only, viz: to receive and pay out money on deposit; and he, as an agent for a special purpose, could not bind his principal out of the scope of his authority; and any guarantee or assurance of the validity of any bill or note, if made by a special agent without authority, would be void as to the appellants. This principle is decided in 9 Pick. Rep. 542.

And the instructions of the appellee, not being based upon the evidence as given, were culculated to mislead the jury and injure the appellants, and ought not to have been given in this case. See 1 Scam. 47, 14 Ills. Rep. 472; 3 Gill. Rep. 368.

The instructions as asked for by appellants stated the law upon the proof correctly, and should have been given as asked; and the modification of them by inserting the word "unconditionally" after the word "paid," not being founded upon the testimony, is, for like reasons, erroneous, and they thus were improperly modified, and still more calculated to mislead the jury; in doing which the court erred as aforesaid.

And this verdict being palpably contrary to the evidence, a new trial ought to have been granted. 1 Gill. Rep. 70; 5 Gill Rep. 72.

B. S. PRETTYMAN, Attorney for Appellants.

Rupert vs Roney

Apptl Bries

Filed May 5-1859
Leland
clerk

[illegible][illegible]

STATE OF ILLINOIS, } OCTOBER TERM TAZEWELL
T A Z E W E L L C O U N T Y. } CIRCUIT COURT, 1858, THIRD DIVISION.

GIDEON H. RUPERT and JAMES HAINES

vs.
STEPHEN RONEY.

} Appeal from Tazewell.

This was an action of assumpsit, brought by Roney against Rupert and Haines at said term of said court, to recover a sum of money of them for a sum of the bills of the "Rhode Island Central Bank," which Rupert and Haines as bankers had paid out in the course of their business to Roney, and afterwards, when the bills of said bank had ceased to be current, refused to receive back on deposit.

Declaration.
Pages 1 to 5.

The declaration contains the common counts.

Plaintiff's testimony 9 to 17

On the trial the plaintiff, Roney, called one B. F. Blossom, who testified that he was clerk for defendants, Rupert and Haines; that on the morning of the 26th of September, 1857, plaintiff had deposited with defendants \$427, \$350 in gold, but the gold having been deposited before the 1st of September, witness thought that plaintiff was not entitled to it according to defendants' rule, which was printed in plaintiff's bank book. The rule was as follows:

"NOTICE TO DEPOSITORS."

"All specie accounts must be settled up twice each year, in September and March, by withdrawal of the specie or changing it into currency at our current buying rates at the time of such change. If depositors neglect such settlement in September and March, all specie deposited by them previous to that time will become currency. Pekin, March 1, 1855. G. H. RUPERT & Co."

The balance of the \$427 was in currency. Roney came in the afternoon of the 26th, and said he wanted to take something to St. Louis, and wished to know what witness thought would go there. Witness told Roney that he had heard from a package of Rhode Island Central received from them at St. Louis on the 24th; that it was good there then. Witness told Roney that the Rhode Island currency was redeemed by Anderson & Co., bankers, St. Louis, and witness supposed he could dispose of it there as well if not better than Illinois bank bills, which were then decried there, and at a discount; Roney then said he would take, and witness gave him, \$427 in Rhode Island Central Bank bills, and charged him therewith \$427. The Rhode Island Central Bank bills were then current in Pekin, in said county, and elsewhere in Illinois, so far as witness knew. Defendants were then and had been receiving them from plaintiff and others as money, and continued to so receive them and pay them out until the morning of the 30th of September.

Soon after October 1st, defendants received by express a package containing several hundred dollars of Rhode Island Central money from Roney from St. Louis; don't recollect the amount; considerably over the \$427; Haines opened it; it contained about \$18 other than Rhode Island Central bills which was current at Pekin, but Roney said uncurrent in St. Louis. Defendants gave Roney credit with the \$18, and threw the Rhode Island Central bills into the vault, and told witness not to enter them as a credit to Roney. They were not then considered good, and defendants were not taking them on deposit or passing them out. They were not received then in Peoria, or elsewhere in Illinois, so far as witness knew, except at a great discount. Witness had been clerk for defendants since July, 1857. On the 6th of October, 1857, and just after Roney got back from St. Louis, he came in and wanted the Rhode Island Central money expressed from St. Louis passed to his credit as current funds. Haines refused to do it, and it was then specially deposited, Rhode Island Bank bills \$465, for plaintiff. There were several conversations between Haines and Roney before the special deposit was made. Roney some time afterwards came in and got the Rhode Island Central money specially deposited by him, and took it off with him, and never afterwards returned it to defendants. The money was generally cur-

rent in Pekin when I gave it to Roney, but many farmers being prejudiced against foreign money, I kept Illinois currency for them. Witness knew that during all the month of September Rhode Island Central money was sent by defendants as bankers to New York, Boston, and Chicago, and, until the 28th, to St. Louis, in payment of drafts and exchange, and was always received and credited by the parties to whom it was sent as current funds.

It was also proved that the defendants were private bankers, and doing business as such in Pekin, and that said Blossom was their clerk and agent to receive and pay out money brought for deposit.

Plaintiff then read the deposition of George D. Hall, who testified that he was doing business in St. Louis in September, 1857; that plaintiff owed him a large sum of money, and on the morning of the 28th of September, 1857, Roney then and there tendered him several hundred dollars Rhode Island Central Bank bills. Witness sent his clerk to his banker, and was informed that the money was uncurrent, and would not be taken on deposit. Witness then refused to receive them of Roney.

Plaintiff then read the deposition of Wm. A. Singer, who testified that in October, 1857, plaintiff owed him, and gave him a check on defendants' bank for special deposit of Rhode Island Central, \$555, on the debt; and witness took it, agreeing that if he could get it off he would account for it, and if not he would return it. The money was uncurrent and could not be disposed of at Pittsburg, and he, at Roney's request, returned it to him in September, 1858.

Plaintiff then produced in court and tendered to defendants \$427, in bills of Rhode Island Central Bank, which defendants refused to accept.

I. E. Leonard, a witness for plaintiff, testified that he was doing business in Pekin, and was in September, 1857; that he got his knowledge of the soundness or unsoundness of currency from the Detectors; that Thompson's Bank Note Reporter is one of the best. The plaintiff offered the printed paper, Thompson's Bank Note Reporter, and defendants objected. The objection was overruled, and defendants excepted; and the paper was read to the jury, which quoted the Rhode Island Central Bank as failed the 24th of August, 1857. Witness did not think that the Marine Bank, or George Smith & Co.'s Bank took it during the month of September. The bank was looked upon as suspicious during the month of September, 1857. Witness himself took it in and paid it out during September; knew it was taken along several railroads and redeemed by Adams & Co., bankers, Chicago.

J. S. Dawson testified that he was Express agent in Pekin, in September, 1857; that he received a package from St. Louis marked money, and dated 28th September, 1857, directed to G. H. Rupert & Co. It would then take a package about three days to come from St. Louis to Pekin by express. Witness sent Rhode Island Central money to Cincinnati and Philadelphia in August and September, 1857, and it was sent back to him; he also sent Illinois currency at the same time to Philadelphia and Cincinnati, and it was also returned as uncurrent; yet Rhode Island Central was current, and received and paid out by witness and others in Pekin all the time up to the 30th of September, 1857, and also along the line of the railroad in the state, but the reputation of the bank was bad; it was not taken at St. Louis, and steamboats would not take it. Illinois currency was also refused, and at a discount, in St. Louis during all the fall.

C. A. Roberts, for plaintiff, testified that he was in St. Louis on the 28th of September, 1857. Could not pass Rhode Island Central money; tried to get it redeemed at Anderson & Co.'s Bank, but they had failed and closed their doors at 10 o'clock the morning of the 28th. Came back with Roney on the 2d of October.

John Haas went down to St. Louis with Roney; was there on the 28th of September, 1857; then understood the money was uncurrent. Witness received and paid out that kind of money all through the month of September.

L. H. Wilkey testified that he had been in business in Pekin fourteen years, and he took the Rhode Island Central money during all the month of September, and it was generally current there, and taken on deposit at defendants' bank, until the 30th of September, 1857.

T. S. Ely then testified: I am a banker by profession; in that business; in Curtis' banking house in the fall of 1857. The Rhode Island Central bills were good as currency until the 1st of October, 1857. There was during all the month of September, Rhode Island Central money sent from the bank at which witness then was, to other places in exchange as currency, and in payment of debts. Don't recollect of any being returned as uncurrent. The Bureau Valley railroad took and deposited that kind of money during the summer.

A. B. Thompson testified that he was engaged in the banking business at the Central Bank in Peoria in the fall of 1857. The money was received in the Central Bank up to the 28th of September, 1857, as other currency, and so paid it out; and was there then so generally received and paid out. Witness went to Chicago; thinks all the banks there received it on deposit and paid it out. It was in September as good as any ordinary currency. The Rock Island railroad took it as long as they deposited at the Central Bank; think they quit depositing there in September. They received from Adams & Co., of Chicago, during the month of September divers packages of Rhode Island Central money, which was always taken and treated by the bank as ordinary currency.

Plaintiff, on cross examination, asked witness, "Who owned the Central Bank?" Objected to by defendants as immaterial, and objection sustained. Also, "Was not the Rhode Island Central money received and paid out on the credit of western capitalists?" Objected to by defendants for like reasons, and objection sustained. The Central Bank at Peoria received and paid out more of the Rhode Island Central money in the summer of 1857 than any other currency. They refused to receive it or pay it out after the 29th of September, 1857, because they heard it was broke.

Brewer Thompson testified for defendants, that he was Accountant in the banking business at Joliet, Illinois; that the Rhode Island Central money was received and paid generally and taken on deposit, and paid out by the bank where witness was, and taken by the Chicago, Alton & St. Louis railroad until the 29th of September, 1857; that he had business with many towns on the line of that railroad, and during all that time it was received and treated at all of them as good currency. On cross examination, plaintiff asked, "Who owned the Merchants' & Drovers' Bank, Joliet, and the Central Bank at Peoria?" Objected to by defendants, and objections overruled. Witness answered, "Governor Matteson." To all of which defendants then and there excepted. The Merchants' & Drovers' Bank circulated this money largely, as did also the Chicago, Alton & St. Louis railroad. Witness thought the Rhode Island Central Bank did not fail in August. Their redeeming agent in New York failed, and their bills were thrown out for a day or two.

David Kern testified for defendants, that he resided at Atlanta, in Logan county, Illinois; was engaged in banking in the fall of 1857; received Rhode Island Central money on deposit and paid it out as other money, and it was current until September 29, 1857. Witness sent off many packages with some bills of that kind interspersed with the bills comprising the packages, and none was ever returned as uncurrent, except a package sent to Springfield on the 28th of September.

James Milner testified that he was a merchant at Pekin in the fall of 1857; knew Rhode Island Central money during the month of September. Received and deposited and paid it out in business until the 30th of September; took some with him to St. Louis on the 17th or 18th of September, 1857, and passed it there as current funds. Witness got back to Pekin on the 25th of September. It was taken for fare on the railroad, and by hotel keepers on the way.

T. N. Gill testified: Was doing business in Pekin in the fall of 1857. Rhode Island Central money circulated generally here as money, until in September; don't remember what date; it also circulated at Delavan, where witness kept a business house. In August and September all Illinois money was considered shaky. Rhode Island Central money was received and paid out for grain generally about the 15th or 20th of September, 1857, as other money. Witness got New York city money for Rhode Island Central money at a small discount, about 1-2 or 1 per cent. in New York city, of the house of Swift, Bronson & Co. There were several hundred dollars, but don't recollect the exact amount.

B. F. Blossom testified for defendants, that the package, when first received from St. Louis from Roney, contained more than \$465 Rhode Island Central bills; and witness, before the special deposit, took some of it, don't recollect how much, and gave it to plaintiff. Anderson & Co. failed about October 1, 1857. Witness sent over \$400 Rhode Island Central bills to New York in September, 1857. Sent one package on the 9th, and one on the 24th, to buy exchange. It was sold at 1-2 per cent. discount in the New York market at that time. At the same time the Ohio, Indiana and Kentucky bank bills were selling at from 2 to 3 per cent. discount. Sent to Woodruff & Co., New York city.

J. T. McDougall testified for defendants, that he was, in the summer and fall of 1857, President of the Rhode Island Central Bank; and the bank did not suspend payment or close its doors, until after the general suspension of the Rhode Island banks, which was on the 28th day of September, 1857. Witness thinks he redeemed at the Rhode Island Central Bank some bills presented the day after the general suspension, 28th September, 1857, but can't say certain. On the 6th of October, an injunction was obtained against the Rhode Island Central Bank, to prevent its paying out and redeeming any more bills, and from that time witness left and considered the bank failed. Thompson, the publisher of the Thompson's Bank Note Reporter, was the agent in New York city to redeem the bills of the bank in New York city, and he failed on the 25th August, but the Rhode Island Central Bank did not then fail. The capital of the bank was \$496,000.

Plaintiff re-
solved, page
22

John Tooker testified for plaintiff, that the package of money shown in court, was the same money received by express from Pittsburg in September, 1858.

Plaintiff called one Friday, who testified that he was with plaintiff in defendants' banking house in September, 1857; and plaintiff wanted over \$400 in specie. Witness, Blossom, the clerk of the defendants, said they had not got it to spare, but had some Eastern money that was perfectly good in St. Louis. Then plaintiff took it.

Plaintiff's in-
structions.

This was all the testimony offered in the cause.

The court gave for the plaintiff the following instructions to the jury:

1st. The court instructed the jury that, if they believe, from the evidence, that the plaintiff took the money upon the condition that he could use it in St. Louis, and that the plaintiff in a reasonable time tried to use it in St. Louis, and could not do so, and returned it to the defendants in a reasonable time, they will find for the plaintiff.

2d. If the jury believe from the evidence, that the Rhode Island Central Bank had failed at the time the money was paid to the plaintiff, they will find for the plaintiff.

3d. If the jury believe from the evidence, that the money in question was paid to the plaintiff to be used in St. Louis, and was induced to take it upon the representation of the defendants' agent that he could use it in St. Louis, and before the plaintiff, by the use of reasonable diligence, could use the money in St. Louis, the bank failed, they will find for the plaintiff.

To the giving of which defendants then and there excepted, and defendants asked the Court to instruct the jury as follows:

Defendants'
instructions,
page 21.

If the jury believe, from the evidence, that the bank bills were generally received and treated as money in business transactions, and so considered by the community at the time and place of payment, then if the bank failed, or they afterwards were discredited, the loss must fall on the plaintiff, in whose hands they were at the time, and they will find for defendants.

2. If the jury believe from the evidence, that the money, (said bank bills in controversy) on the 26th day of September, 1857, was paid by the defendants to the plaintiff, and was then passing as current money in the state of Illinois, and at the place where it was paid, and in that commercial community, and that the bank itself was paying specie at its counter for the bills at that time, then they will find for the defendants.

3. That if the jury believe from the evidence, that the money was current at the time it was paid to the plaintiff, and the bank broke after the day of payment, that the party in whose hands the money was found at the time it broke must bear the loss; and if they further so believe that the plaintiff had the money in his hands at the time the bank broke, they will find for the defendants.

And the Court then modified the defendants' instructions as asked, and inserted the word "unconditionally," so that each instruction would read: If the money was paid "unconditionally." To which modification the defendants then and there excepted; and thereupon the jury returned a verdict for the plaintiff for \$427. And defendants then moved the Court for a new trial for the following reasons:

Motion for
new trial, &c.
page 25.

Because the finding of the jury was contrary to the law and the evidence.
Because the Court gave improper instructions to the jury for the plaintiff.
Because the Court improperly modified the instructions asked for by defendants.
Because the instructions, as given by the Court, were calculated to mislead the jury.

Which motion the court overruled, and entered judgment for plaintiff. To all which the defendants then and there excepted.

B. S. PRETTYMAN, for Defendants.

#68 816-40

Ruperto et al
M

Honey

Abstract

Filed April 26, 1889

L. L. Leland

Att'y

And now afterwards: to wit: on the day and
year last aforesaid. a Simmons issued
in the words and figures following
to wit:

"State of Illinois } The people of the State
"Bazell County } of Illinois to the Sheriff of
"Said County Greeting;

"We command you that
"you summon Guidoni & Ruffalo and James
"Baines partners under the style of G. H. Ruffalo
" & Co. If they shall be found in your county, per-
"sonally to be and appear before the Circuit
"Court of said County, on the first day of the
"next term thereof to be held at the Court House
"in Pekin, in said County, on the second Monday
"of October next, then and there to answer unto
"Stephen Roney, in a plea of Trespass on the
"case upon promises to the damage of the
"said plaintiffs as he says in the sum of
"One Thousand dollars. And here you return
"and there this writ, with an endorsement
"thereon, in what manner you shall have
"executed the same.

"Witness M. C. Young Clerk of our said
"Court, and the Seal thereof, at Pekin,
"aforesaid, this 14th day of September
"A.D. 1838. M. C. Young Clerk of said Court.
"by S. W. Shepley Secy & C.

Page "3"

Which said summons was afterwards returned on
the 7th. October 1858 with the following endorsement:
"Served by reading the within writ, ^{to} the within
named Rufus B. McQuinn Sept 24. 1858
B. Williams S. J. C."

And now afterwards ^{on the 1st. October at 1858} to wit: a Declaration was
filed in the words and figures following: to wit:
"State of Illinois In Tazewell County Circuit
"Tazewell County 3/ Court October Term 1858
"Stephen Emory the Plaintiff in this cause
"by Quison & Roberts his attorneys complains of
"Gideon B. Russell & James McQuinn partners
"under the name & style of G. B. Russell & Co
"the defendants in this cause, who have been sum-
"moned to answer the plaintiff in a plea
"of trespass on the case or promises.

"For that whereas the said defen-
"dants heretofore to wit: on the first day of Septem-
"ber A.D. 1855. were indebted to the plaintiff
"in the sum of One Thousand Dollars for
"money before that time had and received by the
"defendants to and for the use of the Plaintiff -
"and in the further sum of One thousand
"dollars for money before that time lent and
"advanced by the plaintiff to the said
"defendants at the special instance and
"request of the said defendants; and in the
"further sum of One thousand dollars

Page 4 - for money before that time paid said debt and
expended to and for the use of the said defendant
at their special instance and request, and in
the further sum of One thousand dollars for
money before that time found to be due and
owing from the said defendants to the said
plaintiff upon an account then & there stated
between them, and being so indebted they the
said defendants in consideration thereof
afterwards to wit: on the day and year aforesaid
to wit at Tazewell County aforesaid undertook
and there and there faithfully promised the
plaintiff to pay him the said several sums of
money when they the said defendants should
be thereto afterwards requested.

Wherefore the said defendants notwithstanding
their several promises and undertakings but
violating to injure the plaintiff have not
paid the said several sums of money or
any part thereof to the plaintiff although often
requested so to do but to pay the same to said
plaintiff have hitherto wholly refused and
neglected and still do refuse and neglect
to the damage of the plaintiff of One thousand
dollars wherefore he sues &c.

A. S. Davison & James Roberts
attys for plff

Account Paid me

Page 5-

" 1854	G. H. Rupert vs S Roney	87
" Sept 5	To Specie deposited	\$300.00
" 8	" Currency	116.45
" 12	" "	215.00
" 23	" "	145.00
" 26	" "	34.90
		<u>\$881.35</u>

And now of towards: to wit: at 6
a term of the Circuit Court began and
held at the Court House in the City of
Peking within and for the County of Piquette
and State of Illinois on the second Monday
of the Month of October in the year of our
Sovereign Lord One thousand Eight hundred and fifty
eight. Present the Hon James Danforth
Judge Hugh Fullerton Prosecuting
attorney, Chapman Williams Esq Sheriff
and Merrill C. Young Clerk the
following proceedings were had in
said cause: to wit:

" Friday October 22^d 1858

" Stephen Roney

" "

" Gibson H. Rupert

" James Haines style

" of G. H. Rupert & Co

"

} Trespass on the case
} on Promises

This day came the parties
by their attorneys, whereupon came a jury

Page 7.

in the words and figures following: *to-wit:*

"Know all men by these presents that We,
"Gideon H. Rusk and James W. Haines
"Principal and Benjamin S. Patterson
"Security are held and firmly bound
"unto Stephens Roney in the sum of One
"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
"firmly by these presents sealed with our Seal
"this 22nd day of November AD 1808.

"Whereas at the Supreme Court
"Court in and for the County of Piquette
"of Illinois at the October Term thereof AD
"1808 in a certain suit of common law
"wherein Stephens Roney was plaintiff
"and the above bounden Gideon H. Rusk and
"James W. Haines were defendants in the said
"and final issue of said cause the said
"Stephens Roney recovered a judgment
"against the said Gideon H. Rusk
"and James W. Haines for the sum of
"four hundred twenty five dollars and
"costs of suit and that being the ruling
"of the Court and judgment thereon
"the said Gideon H. Rusk and James

Page 8

"Haines has prayed an appeal to the Supreme
"Court. Now the conditions of the above
"obligations is such that the said Hiden
"H. Rufus and James Haines, will well and
"truly prosecute their appeal with success
"and in case the said judgment shall
"be affirmed, that they will well and truly
"pay said judgment costs interests and
"damages by reason of the said appeal.
"there this obligations to be void otherwise
"remain in full force and virtue

Witness our hands & seals the 22^d day
" of November A.D. 1838

Approved the 22^d day
of November A.D. 1838

G. H. Rufus (Plaintiff)

James Haines (Plaintiff)

D. C. Rufus (Plaintiff)

By W. W. Haines

Deputy

And now afterwards to wit: on the 1st day
of April A.D. 1859 a Bill of
Acceptance was filed in said
cause in the words and figures
following to wit:

Stephen Roney of the October term of
Hiden & Rufus } the Small Circuit Court
James Haines }

Page "9"

AD 1855

In a former file

" We do remember that on this Day, the Plaintiff
" on the trial of the above cause, called one B. F.
" Blossom, who testified that he was Clerk for
" Defendants & that on the Morning of the 1st
" of September 1837, Plaintiff had deposited
" with Defendants \$427, three hundred and
" fifty dollars in gold, ^{but} the gold having been
" deposited before the first of September. Witness
" did not think that according to Defendants
" rule which was printed in Plaintiff's Bank
" Book, that Plaintiff was entitled to the gold
" The Rule was as follows

" Notice to Depositors "

" All specie accounts must be settled
" up twice each year, in September and
" March by withdrawal of the Specie or
" changing it into Currency at our current
" buying rate at the time of such
" change. If Depositors neglect such
" settlement in September and March
" all Specie deposited by them previous
" to that time will become Currency
" Retire March 1, 1855 G. A. Rapports & Co.

I don't think I ever explained the
rule to Roney the balance of the 427 dollars
was in currency. Plaintiff came in the
afternoon of the 26th and said he wanted to
take something to St Louis, and wished to know
what Witnep thought would go there. Witnep
told plaintiff that he had just received a
letter from Saint Louis acknowledging the
receipt of a package of Rhode Island Central
money on the 24th and that it was then good
there Witnep told plaintiff that the Rhode
Island Currency was redeemed by Anderson
& Co Bankers in St Louis and Witnep supposed
he could dispose of it there as well if not better
than he could Illinois Bank Bills, which
were then dearer there and at a discount.
Plaintiff then said he would take and Witnep
gave him \$427 in Rhode Island Central
Bank Bills & charged him with the money 427
dollars. The Rhode Island Central Bank
Bills were then current in Pekin in
said County and elsewhere in Illinois
so far as Witnep knew ^{the Defendants} were then and

11

" & had been receiving them on deposit from
 " Plaintiff & others as Money, and continued
 " to receive them and pay them out until
 " the morning of the 30th of September
 " when they ceased to receive them or pay them
 " out. Some after the first of October 1887 witness
 " for defendants or defendants received by express
 " a package of Money from Plaintiff from St.
 " Louis containing several hundred dollars
 " of Rhode Island Central Money. don't recollect
 " the amount considerably over the \$427.
 " Defendants Haines opened the package it
 " contained about \$18 other than R. I. C. Bills
 " which was current at Pe King & which
 " Pett's said was uncurrent at St Louis
 " Wills gave Pett's credit with the \$18 then
 " current at Pe King, and then the R. I. Central
 " Bills in the vault & told witness not to enter
 " the R. I. C. Bills as a credit to Pett's. Wills
 " the R. I. C. Bills were ^{then} not considered good
 " and defendants were not authorized to bring
 " them on deposit or paying them out. they
 " were not then received at Pe King or
 " elsewhere in Illinois so far as witness
 " knew except at a great discount.
 " Witness had been clerk for defendants since
 " July 1887. On the 6th day of October 1887
 " and just after Mr. Perry got back from

"St Louis. He came in and wished to have the
 "B. I. C. money received by express from
 "St Louis passed to his credit as current
 "funds. Witness refused to do it, and it
 "was there specially deposited Rhode
 "Island Bank Rich \$465 for Plaintiff. There
 "were several conversations between Witness
 "and Plaintiff before the special deposit was
 "made. Pltff some time afterwards came in
 "and got the "B. I. C." Money so specially deposited
 "etc. & took it off with him and never after-
 "wards returned it to defendants. The money
 "when witness gave it to Plaintiff was generally
 "current at St Louis, but many farmers being prejudi-
 "ced against foreign Money. I kept Illinois
 "currency for them - Witness knew this during
 "all the month of September "B. I. C. Central
 "Money was sent by Drafts as Bankers to New
 "York, Boston, Chicago & until the 28th to St
 "Louis. no payment of drafts and exchange &
 "was always received and credited by the
 "parties to whom it was sent as current
 "funds. Witness knew not much about its
 "general circulation, otherwise than as
 "stated. It was also from facts
 "the defendants were private bankers and
 "doing business as such in St Louis, and that

" Unit 1. Hofsone was then clerk and agent to
 " receive and pay out money. that was brought
 " for deposit. Plaintiff then read the depositions
 " of George D. Hall of St Louis that he was in
 " the month of September 1854 doing business in
 " Saint Louis, who testifies that he was in the month
 " of September 1854 doing business in St Louis and
 " that Pltff was him a large sum of money & on
 " the morning of the 28th September 1854 plaintiff
 " then and there tendered him several hundred
 " dollar R. I. C. Bank Bills. Witness immediately
 " sent his Clerk to his Banker and was informed
 " that the money was uncurrent & would not
 " be taken on deposit. the money was received
 " in St Louis with suspicious and as of doubtful
 " reports. during the early part of September and
 " were refused by bankers and business men generally
 " & was refused altogether as valueless commercially during
 " the latter part of the month of September 1854 he viz
 " ascertained that the R. I. C. Bank Bills were uncurrent
 " Witness refused to receive them of plaintiff.

" Plaintiff then read the deposition of Wm. A. Singer
 " who testified that in October 54 plaintiff wrote
 " him & offered to give him a check on deft
 " Bank for special receipts of R. I. C. of \$500 on
 " the debt in R. I. C. Money & witness took it with
 " the agreement that if he could get it off he
 " would account for it & if not would return it

14. to plaintiff. the money was incurred at
Pittsburg & could not be disposed of. and by
request of Plaintiff. he returned it to him by
express in September of 1855. Plaintiff then
produced in Court & tendered to deft \$427. in Bill
of R. I. C. Bank & deft refused to accept the
same. Plaintiff then offered J. E. Leonard as a witness
who testified that he was doing business at Pittsburg
& was in Sept 1854 & that his knowledge of the
soundness ^{or unsoundness} of currency he got from the detectors
that Thompsons Bank Reporter is one of the best
He offered the printed paper Thompsons
Bank note reporter & deft objected. objections
overruled & deft accepted & the paper was read to
the jury. which quoted the R. I. Central Bank
as failed the 24 August 54. Witness knew
the R. I. Central Money did not think either
the Marine Bank or George Smith & Co Bank
took it during the month of September. its
reputation was not good. and business
men were afraid to take it at any time
the Bank was looked upon as suspicious during
the month of September 1854. Witness himself
took it and paid it out during the month of
September but he took it not because he thought
the Bank was good. but because he could use
it and deposit at the Bank of Defendants
as current funds. He knew it was taken at

15

"Perkins & along the line of the Chicago & Rock Island
 " & Chicago & St Louis Rail Road & was received
 " and redeemed by Adams & Co Bankers of Chicago
 " but knew nothing of any other Bankers taking
 " it or further about the money
 " Platt then offered J. J. Dawson as a witness who
 " testified that he was the express agent in
 " Perkins in Sept. 57 that he rec^d a package
 " from St Louis marked Money & dated 28 Sept
 " 57 directed to H. H. Rupert & Co. the package was
 " not receipted for in the usual form and it
 " would take about 3 days to come from St
 " Louis then to Perkins by express Witness sent A. I
 " Central money to Philadelphia on the 23 of Sept
 " 57 it was returned to him as uncurren^t.
 " Sent also a package of the same to Cincinnati
 " & on the 26th of August 57 it was sent back to him
 " yet A. I. C. money was current & received and
 " paid out by witness and others in Perkins
 " all the time up to the 30th of September 57
 " & also along the line of the Rail Roads in the
 " state. But the reputation of the Bank was
 " bad, & it was not taken at St Louis and Steam
 " boats would not take it. Illinois Bank
 " Bills or currency was also refused and at
 " a Dis Comb in St Louis during all the fall
 " & Witness also sent some Illinois Currency
 " to Philadelphia & Cincinnati at the same

"time he sent the R. I. Central & it to, was returned
 "as uncurrent. There was a general suspic-
 "ion about money, though Illinois Bills
 "were good in Pekin all the time
 "C. A. Roberts for Plff testified that he was in
 "St Louis on the 28th Sept 1857 & had with
 "him some R. I. C. Money, could not pass
 "it, tried to get it redeemed in the afternoon
 "at the Banking house of Anderson & Co but they
 "had failed & closed their doors at 10 o'clock
 "on the morning of the 28th as witness was
 "then informed. He came back with Plff
 "on the 2^d of October 1857.

"John Meas also testified for Plff that he was
 "in St Louis on the 28th of Sept 57, and he
 "there understood no commercial conversation
 "that R. I. Central money was uncurrent
 "He went down with Roney to St Louis came
 "up with Roney on the 2^d of October 1857. Witness
 "had received & paid out that kind of money
 "at Pekin all through the month of September
 "until he started to St Louis

"S. H. Wilkey testified for Plff, that he had
 "been in business at Pekin 14 years and
 "he took Rock Island Central Money
 "during all the month of September & it
 "was generally taken & current at Pekin

17 " until the 30th Witness took it because he
" could deposit at Banks & the defendants were
" receiving and paying it out until the 30th
" of Sept. 57

" J. S. Ely then testified for the defendants
" that he was a Banker by Profession & was
" in that business in Paris in the fall of
" 57 in Curtis' Banking House The Rhode
" Island Central Bills were good as currency
" until the 1st October 57 and to them
" stopped. There was during all the month of
" September R. I. C. Money sent from the
" Banks at which witness then was to other
" places in exchange as currency and in
" payment of debts and don't recollect of
" any being returned as in current that
" was sent during the month of Sept
" 57. That kind of money was sent &
" deposited by the Bureau Valley
" R. I. C. during the summer
" don't recollect about the month of
" September. It was considered doubtful
" in August & September by many
" people

" A. B. Thompson testified for W. to
" that he was engaged in the Banking
" Business at the Central Bank in
" Providence in the fall of 57 & they received
" it at the Central Bank up to the 28th
" of September 57

" as other currency. the R. I. C. money & so paid it
 " out & it was used then by people generally rec?
 " & paid out. Witness then went to Chicago & thought
 " all of the Banks then received it in payment &
 " one deposit. Don't remember of any being sent
 " away in Sept: 57. But it was then as good
 " as any ordinary currency. The Rock
 " Island Road took it as long as they depos-
 " ited at the Central Bank & thought they quit
 " depositing in September 57 & don't know about
 " their taking it after that time they quit
 " depositing with the Central Bank they
 " received from Adams & Co of Chicago
 " during the month of September eleven packages
 " of R. I. C. Money, which was always taken
 " and treated by the Banks as ordinary
 " currency. But then on cross examination
 " asked Witness who owned the Central Bank
 " objected to be left as immaterial &c. Objections
 " sustained. Also was not the R. I. C. Bank
 " money received & paid out on the credit of Western
 " Capitalists and not on the credit of
 " the Bank. objected to by defendants for
 " like reasons and objections sustained
 " The Central Bank at Peris received and paid
 " out more of the R. I. Central money in the
 " summer of 1837 than of any other currency
 " They refused to receive it or pay it out after the

19

" the 29th of September 1834 because they heard
 " it was broke
 " Brewar Thompson testified for depts that he was
 " accountant in the Banking business at Joliet
 " Illinois, & that the R. I. C. Money was received
 " & paid out & generally passed as good
 " currency until the 29th of September
 " 1834 it was so taking on deposit at the
 " Bank & paid out & so taken by the Chicago
 " Alton & St Louis R. I. C. until that time
 " & that he had business with many towns on
 " the line of that R. I. C. & during all that
 " time it was received at all of them & passed
 " as good currency. On cross examination
 " Plff asked who owned the Merchants & Drapers
 " Bank of Joliet. objected to by Plff & objection
 " overruled & Witness answered Geo Matthews
 " owned it & the same question objection & answer
 " as to who owned the Central Bank at Peoria,
 " to all which Plff accepted them & then the
 " Merchants & Drapers Bank circulated the money
 " largely & Chicago & St Louis R. I. C. was also
 " engaged in circulating it and Witness thought
 " the R. I. C. Bank did not fail in August
 " their redeeming agent in New York failed
 " & the Bills were thrown out for a day or
 " two. Daniel Kemp then testified for
 " Plff that he resided at Atlanta in Georgia

County Mo. in the fall of 57. Was engaged in
 "Banking & they received R. I. C. Money on
 "deposit & paid it out as other Money. and it so
 "passed ^{as} current until Sept 29/57. Witness sent off
 "many packages with some Bills of that kind
 "mixed with the Bills. comprising the
 "packages and none was ever returned
 "as uncurrent except a package sent to
 "Springfield on the 28th of September. it was
 "sent back to us. We usually received our
 "Money from the Central Bank at Peoria,
 "or G. H. Rusk & Co. Peoria

"James Milner testified for Deft. that he
 "was a Merchant at Peoria in the fall of 57
 "knew R. I. C. Money circulated there during
 "the month of September. Received & deposited &
 "paid it out in business until the 30th of September
 "took some with him down to St Louis on the 17th or
 "18. of September 57 and passed it there as cur
 "rent funds. Witness got back to Peoria on the
 "25 of September. it was taken for value on
 "the Rail Roads & by hotel keepers on the way

"J. N. Gill. testified for deft. that he
 "was in business at Peoria in the fall
 "of 57. R. I. C. Money circulated generally
 "here as Money until in September
 "don't remember what date it also cir

21.

"culated at New Orleans when ~~Witnes~~ kept a
"business House. In August & September all
"Illinois Currency was available & Shanty R.I.
"6 Money was received and paid out for grain, generally
"as other Money about the 15th or 20th of Sept. 54.
"Witnes got New York City money for R.I. 6
"money at a small discount about 1/2 or
"1/4 per cent. in New York City got it of the name
"of Smith & Morrison & Co. there were several
"hundred dollars but don't recollect the
"exact amount. J. F. V. Blo from testified
"for depts that ^{the parties} when first received by depts
"from St. Louis, from Remy contained
"more than \$460 in R.I. 6 Bills. Witnes
"before the Special deposit took some of it down
"recollect how much & gave it to the depts -
"Anderson & Co failed about Oct. 1, 54 Witnes sent
"over \$400 in U.S. 6 bills to New York in Septem
"ber, 54. sent 1 package on the 9. & one on
"the 24th. sent it to buy Exchange it was ^{marked}
"sold at 1/2 per cent discount in the New York at
"that time & at the same time the Ohio Indian
" & Kentucky Bank Bills were selling at from
"2 to 3 per cent discount. sent to Woodruff & Co New York
"City. J. S. Mc Donough testified for depts that
"he was in the summer & fall of 1854. President
"of the Rhode Island Central Bank and the
"Bank did not suspend payments or close
"its doors until after the general suspension of
"the Rhode Island Bank & which was on

22

" 28th day of Sept 07. Witness thinks he re-
 " deemed at the R. I. to B. I. B. I. some time passed
 " the day after the general suspension 28 Sept 07
 " but can't say certain. on the 6th of October
 " an injunction was obtained against the
 " R. I. B. I. Bank to prevent its paying out and
 " redeeming any more Bills. from that
 " time Witness left and considered the Bank
 " as having failed. Thompson the publisher of
 " the Thompsons Bank note reporter
 " was the agent in New York City to redeem
 " the Bills of the Bank in New York City and
 " he failed on the 20th August but the R. I. B.
 " Bank did not then fail. Witness lives in
 " John Ill was the Capital of the R. I. B.
 " Bank was \$496,000

" John Proctor testified for Plff that the
 " package of money shown in Court was the
 " same money received by express from
 " Pittsburg in Sept 1838 Plff called me Friday
 " who testified that he was with plaintiffs
 " in defendants Bank in Sept
 " 1834 & Plff wanted one \$100 in Specie. Witness
 " proposed the Clerk of defendants said
 " they had not got it to spare but had some
 " Eastern money that was perfectly good in
 " St Louis then Plff took it
 " The above was all the testimony offered in the

23

" Cause

Thereupon the Plaintiff asked the Court
to instruct the jury as follows:

" " Stephen Roney

" " " Plaintiff Instructions
" G D Report & Co

" G. H. Rupert 160

"1st. The Court instructs the jury that if they believe
" from the evidence that the Plaintiff took the
" Money upon the condition that he could
" use it in St Louis, and that the Plaintiff
" in a reasonable time tried to use it in
" St Louis, and could not do so, and returned
" it to the defendant in a reasonable time
" they will find for the Plaintiff.

20 After the Jury believe from the
evidence that the Rhode Island Central
Bank had failed at the time the Money
was paid to the Plaintiff they will find
for the Plaintiff

3^d If the Jury believe from the evidence
that the money in question was paid to the
Plaintiff to be used in St Louis and was
induced to take it upon the representation
of the Defendants agents that he could use
it in St Louis, and before the
Plaintiff by the use of Barnards diligence
could use the Money in St Louis the Bank
failed they will find for the Plaintiff

" To the jury of which I left them
 " & then accepted. & I left them asked
 " the Court to instruct the jury as follows

" 1 " If the jury believe from the
 " evidence, that the Bank Bills were generally
 " received and treated as money in business
 " transactions, and so considered by the
 " community at the time & place of
 " payment, then if the Bank failed or they
 " afterwards failed were discredited, then
 " the loss must fall on the Plaintiff & in
 " whose hands they were at the time
 " & they will find for the defendant

" 2 " If the jury believe from
 " the evidence, that the money (said Bank
 " bills in controversy on the 16th day of
 " September 1854 was paid by the defendant
 " to the Plaintiff & was then passing as
 " current money in the State of Illinois, and at the
 " place where it was paid among the
 " Commercial Community, and the
 " Bank itself was paying & passing
 " its Counter for the Bills at that time
 " Then they will find for the defendant

" 3 " That if the jury believe from
 " the evidence that the Money was current
 " at the time it was paid to the Plaintiff

26.

& which Motion the Court overruled and
 Entered Judgment for Plff. to all which the
 Defendant to show & there he refused & pray
 that the then Verdict of Exceptions be signed
 & sealed which is done

James Hamilton C. J.

State of Illinois

Tazewell County J. I. McNeill C. Young
 Clerk of the Circuit Court within & for
 said County do hereby certify that the
 foregoing 25th pages contain a true & correct
 complete & correct copy of the record
 in the cause therein named as the
 same appears in my office.

In Witness Whereof I have hereunto
 set my hand & the seal of said Court
 at De Kalb this 1st day of April
 A.D. 1859. M. C. Young. Clerk



State of Illinois } April Term A.D. 1859
Superior Court }
3^d Grand Division }

And now comes the said G. A. Rupert
& James Haines, and say that in the
Record and proceedings of said and in the
giving of the judgment for said their
Manifest Error, & their injury, and
they ask for Error

- 1st The Court erred in admitting improper testimony
for ~~Plaintiff~~ - the Plaintiff - below.
- 2nd The Court Erred in giving the instructions
asked for by Plaintiff.
- 3^d The Court Erred in improperly modifying
the instructions asked for by Plaintiff & Haines.
- 4th The Court Erred in refusing a new trial to
Appellant, and in rendering a judgment for
Plaintiff.

For which and for other reasons appearing
upon the record and proceedings of said the
said Rupert & Haines, pray that said judgment may
be reversed annulled & set aside & that the said
B. H. Haines & Haines

I have now come, the said
 Appellee and says that in the
 record and proceedings aforesaid
 there is no error and prays
 that said judgment may be affirmed
 at L. Bonisian &
 for Appellee

316-40

Stephens Roney

G. W. V. V. V. V. V.

Transcript

Filed April 26. 1839

L. Deland
Clerk

\$5.00

Pretty near