No. 13619

Supreme Court of Illinois

Chicago Marine & Fire
Ins.Co.

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vs.

Ei
McKeron

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 168

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

THE CHICAGO MARINE AND FIRE INSURANCE COMPANY,
Plff. in Error,
vs.
MARGARET McKEIRON,
Deft. in Error.

No. 168.

POINTS AND AUTHOITIES OF PLAINTIFF IN ERROR.

Most of the questions which arise in this case have been considered in the preceding cases against this defendant, plaintiff in error, and the Marine Bank of Chicago.

But this case differs a little in its aspect from any of the others, and especially in this, that this suit is founded upon a certificate of deposit for $300 "Illinois Currency," which is "payable in like funds" to the order of the depositor. Abstract, p. 1.

Referring to what has been said in the case of the *Marine Bank of Chicago* vs. *Charles Chandler*, No. 165, of the history and character of "Illinois Currency," we desire in this case merely to state the points and authorities upon which we rely for a reversal of the judgment below.

The words "Illinois Currency" signify the bills of the Banks created under the Free Banking Law of Illinois, and which passed from hand to hand in the community as money, but were in fact depreciated below the specie standard, and fluctuated in value from time to time.

It was insisted below, and has been the theory of the creditors in all these cases, that the words "like funds," instead of referring to the preceding words "Illinois Currency" as words of description and identity, referred to the *use* which was made of such bills as composed "Illinois Currency" as a circulating medium; and that, if Illinois Bank bills

ceased, from any cause, to circulate as money or currency, the creditors had a right to demand instead any bank bills which did circulate as money or currency at time of demand, and they generally insisted on bills that were worth nearly, if not quite, par.

On the contrary, the defendant, plaintiff in error, has always insisted, and does here, that those words, "Illinois Currency" and "like funds," are words of *identity*, referring to the same bills or currency in each case, without regard to their value or use as money at the time of demand.

It was not the contract between the parties, that the Bank which had received $300 of Illinois Currency or Bank bills, worth 85 cents on the $1, as in this case, should, when those bills had so far depreciated as not to be used as money, but still were in existence and could be repaid in kind, be obliged to substitute other bills worth par, or nearly so, when the creditor demanded payment or a return of the bills or "currency."

The plain import of the contract is, that the Bank was to return to the depositor or his order, an *equal number of dollars of "Illinois Currency,"* without regard to their value in specie, whenever demanded. Any other construction, and especially one requiring the banker to substitute different bank bills, without regard to value, but merely to their use as currency as a circulating medium, will work surprise and injustice to the Bank.

On the other hand, had the Illinois Currency or bills risen in value after the deposit, the Bank would, upon the principles of cases long since decided in this state, have been liable for their value at the time of demand.

We will not trouble the Court to read a commentary upon the instructions to the jury given by the Court below.

They were adopted by the Judge who tried the case, from those given the jury which tried the case of *Chandler* vs. *The Marine Bank of Chicago*, (No. 165, of this Term,) by another judge, and have, we think, but little application to the rights of the parties arising out of the instrument sued on in this case.

In this view we say, the 7th instruction given for the plaintiff was wholly erroneous; and the instructions asked by defendant below ought to have been given.

The instructions asked by the defendant below ought to have been given as they are found on pages 9 and 10 of the Abstract, and present, in a brief compass, the views we are seeking to enforce.

We repeat here, that we do not offer the Court an argument upon the testimony, for that is fully set out in the Abstract, and may be read in a little time, and cannot be made plainer by comment.

There is no conflict of evidence in the case, and it is clearly proved that "Illinois Currency" has always been distinguished from specie, bills of Eastern Banks, or any other bills that were used as a circulating medium.

If this was so in practice, it ought to be so in judicially determining the rights and liabilities of the parties.

And we insist upon the following propositions, as the law of the case :

I.

It was competent for the defendant below to prove the local meaning of the words "Illinois currency" in the instrument sued on, and in the place where the contract was made; and when that is proved, the presumption follows, that the parties used the words in their local signification.

24 Ill. 133, Myers *et al. v.* Walker.
23 Wendell, 71, Thomson *v.* Sloan.
5 Hill, 437, Hinton *v.* Lock.
23 Eng. Com. Law, 169, Smith *et al. v.* Wilson.
13 Peters, 89, Bradley *v.* The W. A. & G. P. Co.
2 Greenleaf Ev. 280 to 282.
2 Phillips Ev. 708, 787.

II.

That evidence clearly proved that "Illinois currency" was made up of the bills of the banks organised under the Free Banking Law of this state, and that this was well known to the parties, see testimony of Dox.

III.

14 Mo R 435

That these bills, or this currency, had been always, in business transactions, distinguished from specie, Eastern funds, or the bills issued by banks in other states except Wisconsin. Testimony of Dox.

IV.

That it had always been of less value than the other kinds of money or bills used as a circulating medium in this state, and that its value fluctuated from time to time according to the market value in New York of the stocks deposited with the Auditor of this state for their redemption.

V.

That the words "like funds" are equivalent to the words "Illinois currency" used in the same instrument, and are words of identity, and not merely descriptive of the use of the bills as a circulating medium.

VI.

That no right of action existed upon the instrument until a demand was made for payment of it; if payment was then refused, the defendant was in default for not delivering the creditor's "Illinois currency," or the bills described above, and was therefore liable for the specie value, at *that time*, of "Illinois currency;" 12 Illinois, 184, *Smith* et al. v. *Dunlap*; and see the great number of cases cited in Mr. HOYNE's brief in the case of *The Marine Bank of Chicago* v. *Chandler*, No. 165 of present term, all to the same effect.

VII.

The rule of damages in this case is easily ascertained by the facts proved below—that the real value of the money was always equivalent to the market value of the stocks in New York upon which the bills were secured.

The Auditor of the State of Illinois is required to watch the condition of the stock market, and also to know the amount of circulation belonging to each bank.

With these elements, it is easy to arrive at the value of the circulation by comparing the gross amount of it with the market value of the securities.

In this way all buziness men and bankers, or any one else, can easily arrive at the actual value of "Illinois currency."

VIII.

The verdict and judgment in this case was for a sum much larger than the "currency" was actually worth, either at date of the certificate of deposit or ever after—at least 10 per cent. larger than it was worth at the date of the instrument, and 35 per cent. larger than it was worth at date of the demand.

McCAGG & FULLER,
Counsel for Plaintiff in Error.

THOS. HOYNE,
Of Counsel.

APRIL 30, 1862.

168-107

The Chicago Marine & Fire Insurance Co.

vs

M. McKinon

Plffs Points &c

Filed May 6. 1862

S. Leland

Clerk.

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

Margaret M. Keiron
ads Deft. in Error
Chi. Mar. & Fire Ins. Co.
Plf. in Error

Argument for Deft. in Error

I

The first error assigned, viz, that the Court erred in admitting the certificate of deposit in evidence under the money counts seems to have been abandoned -

The declaration had special counts on the instrument sued on and the contract was introduced under them without objection -

Had there been a general objection it would not have availed Sargent v Kellogg, 5 Gil. 281, Russell v Whiteside, 4 Scam. 11, Swift v Whitney, 20 Ill. 144 and this objection here is certainly too late for it was not made in the Court below and has no foundation in fact -

II

This action is instituted upon a certificate of deposit -

The Court below defined in the first instruction the term "deposit" in its common signification, as "a bailment of property for custody, without compensation, the title remaining with the depositor, and the depositary acquiring no title in the thing deposited &c." This instruction clearly defined that class of deposits -

Story on Bailments p. 48

Edwards on Bailments p. 47

The Court then proceeds in the second instruction to define the character of the deposit when its subject matter is delivered to the depositary for use or consumption, in which case the instruction proceeds "the law implies a contract to return not the identical thing deposited or lent, but the equivalent of the same kind, nature or quality - In such cases, the title to the thing deposited rests in the depositary ipso facto, and is at his risk - The only right of the depositor is to a return in kind, or value, and this right is not impaired by reason of the subsequent loss or destruction

of the property in the hands of the depositary"

This also is clearly and indisputably the law - such a deposit being a mutuum by the Civil Law -

Story on Bailments, p. 52 § 47 p. 99 § 88, p. 295, § 285 - p. 454 § 459

Edwards on Bailment p. 137 - Chap. IV

Commercial Bank of Albany v. Hughes, 17 Wend. 94

If the money or other subject matter of the mutuum be lost or destroyed by accident, it is the loss of the depositary - Ejus est periculum, cujus est dominium -

The Court then said in the third instruction that the kind of deposits mentioned in the last instruction is ordinarily the character of deposits with a bank where no special agreement is made by ~~them~~ the banker and his customer "varying their rights" and the instruction goes on: "The money, checks or bills which may be the subject of the deposit become the property of the bank, and the depositor becomes a creditor - If stolen, lost or destroyed, or if they become of no value by reason of subsequent depreciation,

the bank must sustain the loss."

&c
Is this not also the law? It can not be denied —

Edwards on Bailments. page 66

Story on Bailments, p. 99 & 88

In the matter of the Franklin Bank

1 Paige 249 on page 254

Commercial Bank of Albany v Hughes, 17 Wend. 94

The Fourth, & Sixth instructions then declare that the jury are to consider in the first place what was the relation between the parties in this case? was it the relation of a customer with his banker? If so, what was ~~the nature~~ subject matter of the deposit? Was it money, or current bank bills, or depreciated bank bills of Illinois banks circulating at the time as money? If depreciated bills were they received on deposit as money or currency to be accounted for on demand in like current funds or money? Or were they received as depreciated bills eo nomine, upon an agreement express or implied that they should be accounted for in identically like bills of the Illinois banks, whether

current or uncurrent at the time of the demand?

It would seem that these instructions flow naturally out of the others and direct the attention of the jury to the proper subjects of inquiry

Of course, the relation of the parties was to be first ascertained - then the nature of the transaction - It certainly does not lie in the mouth of Plf. in Error, (Defdt. below) to complain of the instructions in directing the jury to consider upon what understanding the bills were deposited

In Swift v Whitney, 20 Ill. 344 on p. 146 Walker, Judge says "it would seem that current bills, or currency, are of the value of cash, and exclude the idea of depreciated paper money" and he says on the top of page 146 "By the term currency is understood bank bills, or other paper money issued by authority, which pass as and for coin"

Now the defendant below claimed the right to show that the words "currency" in this contract meant

depreciated bank notes - Waiving the question whether this was competent testimony, it is enough to say that being admitted it was competent for the Plaintiff below to move or rely on Defendant's testimony to prove that these bank bills passed "as and for money" and were money to the Defts. below at the time they were taken and were to be accounted for on demand in bills likewise current as money or in money. ~~The instructions correctly presented the questions to be examined and determined by the Jury~~ Thus in Bank of Missouri vs Benoist, 10 Missouri 519, Benoist deposited currency less in value in specie - Before the commencement of the suit the bank had ceased to deal in currency, and given notice of the fact - The Court said whether the action, which was for money had & received, would lie depended upon "whether currency was regarded as money by the parties" & sustained it -

The Jury determined in effect that

this deposit was not a special depot but the ordinary deposit for consumption and use, that the relation of debtor and creditor subsisted, that the bills in question were not received by the bank as depreciated bills *eo nomine* to be accounted for in identically like bills of the Illinois banks but were received as money or currency to be accounted for on demand in like *current* funds *or* money - And under the seventh instruction the Jury proceeded thereupon to find a verdict for the value of current funds on the date of the demand, June 15th with interest to date of trial - Dox testified that current bills on the 13th of June were worth from two to five per cent less than Gold and the Jury accordingly split the difference, deducted three per cent and adding interest made the verdict $2978.10 which is a little less than the true amount on that basis -

The seventh instruction is correct if the others are - It may not be drawn with absolute precision but it is substantially correct -

It is impossible to contend that the verdict of the Jury was against

the evidence -

The Bank insists however that it was only bound upon this certificate to give Illinois bank bills to the holder without regard to "their value in specie" and that any other construction would work surprise to the Bank [This idea of surprise or the Banks part as between it and the majority of its customers is decidedly rich]

This is not the question which is whether the bank was not bound to give Illinois bank bills or other bills which would pass as and for money - Assuredly it was and if it failed to do so, it is responsible in money for the value of current bills and the verdict is strictly right -

[In Maine Bank v Chandler, Chandler recovered the full amount in money, that is, as if the deposit were coin but here the difference between coin & bank bills was deducted]

To say that the bank is liable only to deliver bills irrespective of whether they would pass or not

is to put, general deposits on the same ground as special and to decide that this deposit is the same as it would have been if the particular money (for it may have been coin) had been kept in a parcel by itself & the contract had been to redeliver the identical coin or bills.

This construction can not obtain:

(a) The contract shows that the deposit was a general one

(b) The Bank mingled this deposit as it did all others in one common fund & used it as its own (See Dox' testimony)

(c) The contract describes no particular bills as of the "Alabama Bank", "Bulls Head" &c &c —

(d) The Bank used all of its deposits in common & sorted out the best & paid out the worst — Our deposit may have been all in bills (See Dox' testimony) of a Bank, worth ninety or a hundred cents on the dollar but they seek to pay what is worth 50 or 60 — The Bank became the owner of it all as a matter of law and as

appears from Doy' testimony, as matter of fact appropriated and used it as its own—

(c) When, bills of these kinds were thrown out in November '60 and again in March '61, the bank did not pretend that this entitled it to pay out those bills (See Doy testimony, bay 5 abstract, on Cross Examination) Why now is the position taken by the bank here is correct?

III

The Plaintiff in Error claims that it was competent for him to prove that the words "Illinois Currency" had a local meaning—

Waiving the question whether the proof was competent under the circumstances of this case, let us see what was proved, for the evidence was admitted and is before the Court—

Mr. Doy stated on Cross-Examination (bottom of Page 5 and top of Page 6 abstract) "Currency

here meant Illinois bank notes, & possibly Wisconsin - It meant bills that passed current from hand to hand; same thing now. And up to the 18th May, it meant bills that passed current here as money"

Thus out of the mouth of the Bank's own witness and officer it is proved that the currency deposited by the Bank passed as and was well intents and purposes, money.

[We trust the Court will not compound this case with any of those in which there was an agreement between bankers & their customers to take Illinois currency as money. There was no such, nor any special agreement in this case and besides the agreement was made on the 27th April & this certificate is dated April 28th (See pages 6 & 7 abstract)]

Now what becomes of this question of the local meaning of the words "Illinois currency" or "currency". That local meaning is shown by the Bank's own statement not to be inconsistent with our position -

On the contrary the words used meant bills that passed current as and for coin - That is what the words meant in their legal signification (Swift v Whitney, 20 Ill. R. 144) and that is what it was proved to mean by the evidence and that is what both parties considered it meant as is shown by the Bank's action in the premises -

There is no analogy between this case and Smith v Dunlap, 12 Ill. 184 cited by the Bank -

In the latter case Dunlap made a note payable in State indebtedness and it was held that in default of payment of the number of dollars named of the securities described, he was responsible only for their value - Here the contract acknowledges the receipt of $300 in currency which the law presumes to be par currency and which excludes the idea of depreciated paper (Swift v Whitney) and which was to be

~~Contains~~ returned in like current funds - And not only so but the proof sustains the legal presumption

In Smith v Dunlap the suit was brought on a promise to pay in certain specified securities - Here the promise is to pay "currency" which is a generic term and has a well established signification - Here was a deposit and the doctrine of bailments with all its distinctions and principles applies while none of these apply to Smith v Dunlap - And these suggestions are equally appropriate to the cases cited in Smith v Dunlap or to be found elsewhere - Thus in 8 Peters 181, the agreement was to pay "in the paper of the Miami Exporting Company"; in 2 Snedes & M. 485 the note was payable "in Brandon money"; and so on for this class of cases are nearly identical -

Pursuing Smith v Dunlap a little further for it is an excellent case to illustrate the position of Deft. in Error, we find that

the contract in the case at bar falls under neither of the class of contracts mentioned there.

This is not a contract to pay a certain number of dollars in specific articles. It is for the delivery of currency, that is, bills which pass as and for money. "Illinois currency" does not mean commodities as alleged in error seems to be contended. After the 18th May many a large number of the bills of the Illinois banks went into the hands of brokers and they then ceased to be Illinois Currency. That this was the view of the banks themselves is seen in the fact that in November 1860, when the bills of nine banks ceased to circulate as money, the banks did not attempt to pay them out as "Currency". So in March 1861 when the bills of thirty more were no longer used as currency. And there is no difference in principle between the bills of nine or

thirty banks and the larger number known out in May 1861.

There has always been some Illinois currency which has continued good - which was good during this time and "from thence hitherto has been and still is" and among this currency were bills of the very Bank, &c. in Error here or of its twin, the Marine Bank.

Nor did this contract fall within the second class mentioned in Smith v Dunlap, where the promisor agrees to pay a certain sum in bank notes or other evidences of indebtedness which purport on their face to represent dollars and can be counted as such, that is to say, an obligation which is but a promise to deliver so many dollars nominally of the securities described, for this was a contract to deliver currency or that which passes as and for money, not a

contract to pay the bills of the bank of Alabama at Bells Head &c &c — Besides the Jury in the case at bar did not violate the measure of damages stated in Smith v Dunlap — They found the Bank, the debtor responsible only for the real not the nominal value of Currency at the time of demand and in obedience to the instructions of the Court —

The Bank never offered to give us bills which would circulate which was what the contract called for but bills which were no longer currency —

Even if this fell within the second class of contracts Notes of in Smith v Dunlap, still the recovery would have been the same as the Bank failed to deliver bills "nominally of the securities described" but, "currency" and so were liable to pay the value thereof which is all that was done by the verdict

IV

As to the instructions of the Defl. below, asked and refused, if we are correct in our positions they were properly refused.

It strikes us in reading No. 1, that it may be susceptible of this construction that it assumes (contrary to the positions of the Plff. in error Plff. in the Court below anywhere) that all the issues of the Illinois banks current on the 1st of April continued so up to June 20th If this does bear that construction it makes no material difference and the instruction was properly refused because (a) It was calculated to mislead the Jury (b) It assumed that to be true which was denied by the Bank and by the proof (c) The instructions of Plff. below covered the entire ground of the case. (d) The verdict was only for the average value of Illinois bills current on the 13th of June, the date of demand

The 2nd instruction was wholly

erroneous for there was no evidence or pretence thereof that there was any "Special Agreement"

All of the Bank's instructions were incorrect and did not Contain the law of the case which was presented in the Plf's instructions -

Even if either of the Bank's instructions might be tortured into something like consistency with the law of the case, this Court never reverses a judgment when substantial justice has been done, because proper instructions were refused below

Schwarz v Schwarz, 26 Ark. 81

Dishon v Schon, 19 Ark. 59 & cases cited

V

The Court should observe the decided difference between this case and that of Chandler & the Bank or that of Rushmore & the Bank and indeed all the other Bank cases submitted at this Term — This is an action on a certificate of deposit. In the Chandler case, the Plff. below was a banker as well as the Deft. He signed an agreement to receive & pay out the notes of all the banks of the State as currency. The relation of the parties might be held to be that of principal and agent — So in the Rushmore case, the Bank had collected certificates for him & held the proceeds by his direction &c and a discussion springs up there about the relation of principal & agent &c. We think ours the strongest of all the cases, for the Plaintiff below as it raises none of those questions and is in fact, based on precisely (or almost so) the same cause of action as Swift v Whitney 20 Ill. 144 —

There is a question in those cases also as to the admissibility of evidence under the Money Counts which does not arise here as there were special counts & the Contracts introduced under them without objection

VI.

"Currency" is the general term for the money medium, or that which circulates as and for money in business transactions. The term unqualified and unexplained means the standard currency of the country - And if qualified by the word "Illinois" it means none the less that which passes as and for money - It means that which will circulate, not dead bills or bills bought and sold as commodities -

Swift v Whitney, 20 Ill. 144

Trowbridge v Seaman, 21 Ill. 101

If in Moore v Morris, 20 Ill. 257 proof had been introduced to show that "good current money" meant, then bank bills, they would nevertheless have been bank bills which would circulate & pass as money, & the measure of damage would have been exactly what we recovered here, the difference between current bills & coin -

VII.

When money is deposited generally with a banker, it becomes the property of the depositary and the

right of the depositor is a chose in action - The risk as to the funds is that of the depositary, the Bank

Ejus est periculum, cujus est dominium

Edwards on Bailments, N. 66

Story on Bailments § 88

Chapman v White, 2 Selden 417

Corbit vs Bank of Smyrna, 2 Harrington (Del.) 235

Mallet v Franklin Bank, 1 Paige 249

Commercial Bank of Albany v Hughes, 17 Wend. 94

Morris v Edwards, (1 Hammond 189) 1 Ohio 85

VIII.

The parties here were dealing in what they considered as money & the contract was predicated upon that basis, at all events, Deft. in Error deposited what passed as money and was entitled to receive the same -

Bank of U.S. v Waggoner, 9 Peters 378. 400

Hayward v De Baron, 4 Florida 404.

We do not contend that she was entitled to receive coin but current bank bills & the verdict is for the difference between current bank bills & coin & correct

Connell v Humphrey, 9 Indiana (Hanna) 136-8

Bank of Missouri v Bennett, 10 Missouri 519 -

There are many more authorities which might be cited but we believe sufficient has been said and decisions enough referred to, to determine the law of the case & the jury have found the facts thereon

Melville W. Fuller
Atty. for Defts. in Error

168 107

Chi. Mar. & Fin Ry. Co. v

M. M. Marion

Argument for Defts. in Error

Filed May 8. 1872
S. Sloan
Clk

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SUPREME COURT OF ILLINOIS,

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

THE CHICAGO MARINE AND FIRE INSURANCE COMPANY,
Plaintiff in Error,
vs.
MARGARET M. KEIRON,
Defendant in Error.

ABSTRACT OF RECORD.

THIS was an action of **Assumpsit** upon an instrument commonly called a certificate of deposit, which is set out on pages 12 and 13 of the record, as follows:

Page 13 "No. 10,773. STATE OF ILLINOIS,
"*Chicago Marine and Fire Insurance Company,*
"*Chicago, April* 23, 1861.

"John Woollacott, Esq., has deposited in this office three hundred dol-
'lars, Illinois currency, payable in like funds to his order, on return of
'this certificate.

"HAMILTON B. DOX, *Secretary.*
14 "$300. SAMUEL S. ROGERS, *Assistant Secretary.*
"*Registered.*
"EUGENE C. LONG."

signated any particular funds, but only what would pass current. May have demanded gold, but think current funds. I know Dox familiarly and well, and showed him the certificate.

To a Juror:

I made no compromise. I would have taken anything that would pass current, but when they offered me what would only pass at fifty or sixty cents, that ended it.

Plaintiff here rested.

Defendant then called

Hamilton B. Dox,

Who being sworn, testified as follows: I was Secretary of the Chicago Marine and Fire Insurance Company, and Cashier of the Marine Bank, in April and May last. I have been engaged in the banking business in this city for six and a half years. I was handling money last Spring, and in May. Had knowledge of kinds of money used. Illinois currency, in April and May last, was the issues of the Illinois banks. At one time, Wisconsin bank bills were regarded as currency, but it was not so regarded after the 1st day of April, 1861.

Illinois currency has had a fluctuating value. The difference in value between it and coin, or specie, on the 23rd day of April, 1861, was from ten to seventeen per cent., being so much less valuable than coin or specie. Currency was such as was passing from hand to hand. Have been acquainted with value of Illinois currency the last seven years. About the middle of November, 1860, fluctuations began in the value of Illinois currency. Nine of the banks were then discredited. The notes of all the other banks of Illinois constituted the currency, less the nine discredited banks. Its value varied from three to ten per cent. difference between gold and the Illinois currency.

On the 30th day of March, 1861, some thirty more banks were discredited. The issues of those banks were retired from a circulation, except two or three that made good their circulation. All the bills passed except those of the nine and the thirty. The 1st of April the difference

between these bills and exchange, or coin, was four or five per cent. The value of the currency was still fluctuating after this, and continued so until the 18th day of May, 1861. On that day the railroads made a graded list of the notes of the Illinois banks, according to what they considered its coin value, and it then ceased to circulate as currency, or money at all. The basis of its value was the value of the securities or the stocks deposited with the Auditor, for the redemption of the bills, in New York. The stocks declined in value, and the bills declined in the same proportion at the same time.

The defendant did a large business in banking and in currency. Defendant had on hand from $60,000 to $90,000 of the notes of the nine banks which were discredited in November, 1860, at the time they were discredited, which it could no longer use for circulation. It had about
21 $170,000 of the thirty banks thrown out in March, 1861, at that time, which then became so much dead capital. After March, nothing but this currency was in circulation. It was received in payment of debts by defendant, and by people generally. This was the only currency that was in circulation; every thing else at a premium. A difference was always made between Eastern bank bills, coin, and this currency, when they were deposited with the banks by their customers, and this difference was noted in the pass books of the depositors, and each kind was entered as such.

The depositor received a premium on Eastern and gold, in this currency, when he deposited other currency. Coin was always worth more than this currency, and usually from one-eighth to one-quarter of one per cent. more than exchange on New York. On the 1st of April, 1861, the bills of the Illinois banks constituted all the currency, except the bills of those banks which had been discredited, as I have stated. On the 18th of May, 1861, the defendant had $1,200,000 of the bills of Illinois banks actually in its vaults. There was a great difference in the value of the bills of the different banks of this State, at all times. There were nominally about six and a half millions of Illinois bank bills in circulation in May, 1861. The railroad list made them worth from fifty cents on the dollar to par. There were only six or eight banks, out of the

whole, placed at par, but they had an outstanding circulation of only $60,000 or $70,000.

22 We rarely met or saw one of these bills in circulation, and they were exceptions to the general rule or body of the currency, which was made up of the notes of the other Illinois banks, of fluctuating and different values. On the 11th of July, 1861, the average value of Illinois currency, or bank notes, was from seventy to seventy-five cents on the dollar. About the middle of June, it was from sixty to seventy cents on the dollar. This did not include the bills of the banks that had been discredited in November and April before. This estimate is based upon the market value of the stock securities of the money in New York city.

The most part of this circulation was retired about the 25th and 28th of June. It was worth about seventy cents on the dollar. The average value of the Illinois currency was less, when bought and sold by the brokers, than I have estimated. This was the same currency that had been used as money in April and May. This currency had been afloat, or in use as money, several years. Don't remember about Mr. Ham's demand. We had on hand the same bills of which I have spoken, in use and circulation, in April and May, 1861. Did not offer to pay out any of the bills of the banks which had been discredited in November and March. The business of the State has always been done in a depreciated currency.

On Cross Examination,

23 The witness stated: The banks did not offer to pay out the depreciated in November; did not when the thirty banks were thrown out, except the two or three which had ceased to be discredited. There might have been some Indiana and Ohio in circulation, in April and May. Indiana was at a premium generally, a difference from one-fourth to one-half. If a man deposited Indiana with Illinois, he ought to have received a premium. The rule was particularly applied to Eastern and gold. Indiana was in circulation during May or June, and Ohio. Little if any of Michigan. Currency here meant Illinois bank notes, and pos-

sibly Wisconsin. It meant bills that passed current from hand to hand; same thing now. And up to the 18th May, it meant bills that passed current here as money. Up to the 18th May, these Illinois bank bills passed current. After that time they went into the hands of brokers. The one and half millions was in Chicago Marine and Fire Insurance Company. Don't remember what the Marine Bank had. Both institutions were conducted in same place, and I was an officer of both; same paying and receiving teller. The Marine Bank deposited most of its currency with the Insurance Company. Mr. Scammon was president of that also. We sorted money during this period of time. As far as we knew, we put the better kind by itself. When the better grades came in, put them by themselves. All the money of the banks was put together; same with money deposited on a certificate as with account.

The currency in June, 1861, would buy gold at two to five per cent. There was a difference between gold and the bills that actually did circu-
24 late. Little Iowa, in May, in circulation, but materially increased in June. These bills have been within a half per cent. of par.

By the Court:

There was nothing done by the bank to distinguish one from the other class of deposits.

Re-Direct:

Don't think the Marine Bank reserved any of their currency. There was some Georgia passing. There was an agreement made between the banks and their depositors, on the 27th of April, to take and receive Illinois bank bills as money. In this case, I think Illinois currency was deposited. If exchange, it would he reduced to currency. It had been usual for us to give certificates of deposit, naming Illinois currency. The word "currency" has generally meant Illinois and Wisconsin bank notes. Exchange was worth from ten to seventeen. The nominal rate was ten, but really seventeen. Did not sell hardly any. The currency in which Dunham's bank dealt was better than the others. No Illinois bills in circulation after the explosion. The Marine Bank

was good. Had about $16,000 in circulation. There are Illinois bills now in circulation, that will buy exchange at a low rate. The Galena bank was good, but the railroads put it down at seventy. McLean was down to ninety. They didn't form any appreciable part of the circulation.

To a Juror:

The Marine Bank has always, since I have been there, been used to fill out such certificates as this. Don't think certificates stated "Illinois currency" before 1857. After that time, used to insert "Illinois, or Wisconsin currency," because a question arose as to what currrency meant. I was away for six months. As far as I remember, couldn't say it was Illinois currency. Don't think it was filled out as "Illinois currency" before 1857.

This was all the evidence in the case.

The Plaintiff then asked, and the court gave to the jury, the following instructions:

Plaintiff's Instructions.

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

2. But when the subject matter of the deposit or loan is money, wheat or other property, and it is delivered to the depositary for use or consumption, the law implies a contract to return not the identical thing deposited or lent, but the equivalent of the same kind, nature or quality.

In such cases the title to the thing deposited rests in the depositary *ipso facto*, and is at his risk. The only right of the depositor is to a return in kind or value, and this right is not impaired by reason of the subsequent loss or destruction of the property in the hands of the depositary.

3. Such is ordinarily the relation implied by law from the dealings
26 between a banker and his customer, where no special agreement is made by them varying their rights. The money, checks or bills which may be the subject of the deposit become the property of the bank, and the depositor becomes a creditor. If stolen, lost or destroyed, or if they become of no value by reason of subsequent depreciation, the bank must sustain the loss. The depositor's legal title in the deposit having passed by operation of law, his right is resolved into a mere *chose in action* or claim against the bank for the value of the deposit, usually fixed by the credit given, as in the case of an ordinary loan of money. Indeed, a general deposit with a bank is denominated a gratuitious loan, payable to the depositor on demand.

4. In this case, therefore, the first question for the jury to consider, is, what was the nature of the relation arising out of the dealings between these parties, as disclosed by the evidence? Was it the ordinary relation of a customer with his banker? If so, then what was the subject matter of the deposit? Was it money, or currency, or something else? And first, as to the relation of banker and customer?

5. If this relation is found to have existed, the jury should next inquire into the nature and subject of the deposit. Was it money, or current bank bills, or depreciated bills of Illinois banks circulating at the time as money? If the latter, then were these bills received on deposit as money or currency to be accounted for on demand in like current funds or money? Or were they received as depreciated bills *eo nomine*, upon an agreement expressed or implied, that they should be accounted for in identically like bills of the Illinois banks, whether cur-
27 rent or uncurrent at the time of demand? In determining this question, the jury should inquire into the course of dealing between the parties, the state and condition of the currency at the time the deposits were

made; the nature and value of the deposits; and whether or not any express arrangement existed, regulating and fixing the basis of their mutual dealings with each other.

7. On this point, the court instructs the jury that if they find from the evidence that the deposits were made in Illinois bank bills, passing current at the time in all business transactions as money, and as such, though known to be depreciated, were accepted and credited by defendant, without any agreement or understanding that the deposit or collection should be paid in like funds as those in which the deposit or collection was made, then the law implies a promise to pay in Illinois or other bank bills current at the time of the demand, though the bills deposited were subject to a discount for specie when deposited, and subsequently became entirely discredited and greatly depreciated. Such a contract can only be discharged by the payment or tender of bank notes current at the time of demand, or their equivalent in money, and the measure of the plaintiff's damages in this case would be such value on the 13th of June, the time of demand, with interest thereon at date. And if no bank notes were then in circulation as money, the engagement became absolute for the payment of money. For where an amount of money is made payable in a particular thing, the contract can only be discharged in the identical description of property called for, or in money. Nothing else can be substituted.

To the giving of which instructions the defendant then and there excepted.

28 **The defendant** then asked the court to give the following instrucstructions:

1. If the jury believe, from the evidence, that the words "Illinois currency" in the certificate of deposit, offered in evidence by the plaintiff, referred to and meant the bills issued by the banks created under the banking laws of Illinois, and that such bills were, at the time of the deposits, of a fluctuating and depreciated value as compared with coin, then the plaintiff is only entitled to recover the average value of such issues of Illinois banks, as were used as currency after the first day of

April, 1861; the average value of such issues to be determined at the time of the demand made for the payment of the certificate, on or about the 20th day of June, 1861, and interest from that date to this time.

2. If the jury believe, from the evidence, that the parties to the certificate made a special agreement in regard to the Illinois currency, and knew it was depreciated at the time of deposit, and that the depositor assumed the risk of the further depreciation by leaving his funds on deposit with the defendant, after a further depreciation, then plaintiff can only recover the value of the funds deposited at the time of the demand.

3. If the jury believe, from the evidence, that the deposit was made in Illinois bank notes, and that it was to be paid back in like funds, and that the notes deposited were depreciated below their par value, or worth
29 below their face in specie, then the plaintiff can only recover the real value of such funds as were deposited at the time of a demand made upon the certificate.

Which the court then and there refused to give, to which refusal of the court the defendant then and there excepted.

The jury then retired and returned with a verdict for the plaintiff for $289.10.

The defendant then moved for a new trial for the reasons following:

1. Because the verdict was against the law and the evidence.

2. Because the court gave improper instructions to the jury for the plaintiff.

3. Because the court refused to give proper instructions to the jury for the defendant.

Which motion the court then and there overruled, and rendered judg-

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ment on the verdict for the plaintiff. To which decision of the court in overruling the motion for a new trial and in rendering judgment for the plaintiff, the defendant then and there excepted.

Errors Assigned.

31 **1.** In admitting the certificate of deposit, offered by plaintiff below, in evidence under the money counts.

2. In giving improper instructions to the jury for the plaintiff.

3. In refusing to give proper instructions to the jury asked by the defendant.

4. In refusing to grant defendant's motion for a new trial.

5. In rendering judgment on the verdict for the plaintiff, when by the law it should have been for the defendant.

By its Attorneys,
HOYNE, McCAGG & FULLER.

168_107

The Chi Marine & Fire Ins. Comp'y

vs

Kevin

Abstract

Filed Ap. 22. 1842

L Deland

Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Second day of December in the year of our Lord One Thousand Eight Hundred and Sixty one and of the Independence of the United States of America the Eighty Sixth

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

Van H. Higgins, Grant Goodrich } Judges.

Carlos Hamen Prosecuting Attorney.

Anthony L. Hesing Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore to wit on the twentieth day of June in the year of our Lord one thousand eight hundred and sixty one there was filed in the Office of the Clerk of said Superior Court of Chicago a Declaration in a certain suit therein pending, wherein Margaret M. Kiern was plaintiff and the Chicago Marine and Fire Insurance Company was defendant: Which declaration is in words and figures as follows, to wit,

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

Margaret M. Kiern plaintiff in this suit

by Charles H. Ham his attorney complains of the Chicago Marine and Fire Insurance Company a Corporation duly incorporated under and by virtue of the laws of the State of Illinois and doing business at Chicago in said County ~~the~~ Defendants who have been summoned &c of a plea of trespass on the case on promises

For that whereas the said Defendant heretofore to wit on the twenty third day of April in the year of our Lord one thousand eight hundred and sixty one at Chicago, to wit, at said County of Cook made their certain Promissory Note ~~as~~ (commonly called "a Certificate of deposit") in writing bearing date the day and year aforesaid and there and there delivered the same to John Woollacott ~~in~~ and by which said Note (commonly called "a Certificate of deposit") said Defendants by their Agents and Officers Hamilton B. Dox and Samuel S. Rogers by the name style and description of Ham. B. Dox. Secy and Sam. S. Rogers Co. Secy. promised to pay to the Order of the said John Woollacott on return of said Certificate (meaning and intending on return of said Promissory Note commonly called a "Certificate of deposit") Three hundred dollars value received And the said John Woollacott to whom or to whose order said Note (commonly called "a Promissory Certificate of deposit") was

payable, afterwards to wit, on the day and year aforesaid, at Chicago, that is to say, at the County of Cook aforesaid indorsed said Note (commonly called "a Certificate of deposit") in writing, by which said Indorsement the said John Woollacott then and there ordered and appointed the said sum of money in said Note (commonly called "a Certificate of deposit") mentioned, to be paid to the said Plaintiff and then and there delivered said Note (Commonly Called "a Certificate of deposit"), so indorsed to the said Plaintiff -

By means whereof and by force of the Statute in such case made and provided the said defendant became liable to pay said Plaintiff said sum of Money mentioned in said Note (commonly called "a Certificate of deposit") and being so liable in Consideration thereof, then and there undertook and promised to pay the same to the said Plaintiff, according to the tenor and effect of the said Note (commonly called "a Certificate of deposit") and of the Indorsement aforesaid, to wit, at the place aforesaid.

And the said Plaintiff avers that afterwards to wit, at the time and place aforesaid she caused said Note (Commonly called "a Certificate of deposit") of said defendant, so as aforesaid Indorsed to her said Plaintiff to be presented to the said defendants at their office in Chicago and offered to return the same and requested payment thereof which the defendants by their Agent and officer then and there refused, to wit, at the place aforesaid.

And also for that whereas the said defendants

being a Corporation duly incorporated under and by virtue of the laws of the State of Illinois heretofore. to wit, on the twenty third day of April in the year of our Lord one thousand Eight hundred and Sixty one, at Chicago, to wit, at said County of Cook made their certain promissory Note in writing bearing date the day and year aforesaid and then and there delivered the same to John Wallace, in and by which said Note, said defendants by their agents and officers Hamilton B. Don and Samuel. S. Rogers by the name style and description of Ham. B. Don, Secy and Samuel. S. Rogers As. Secy. promised to pay to the Order of the said John Wallace on return of said certificate (meaning and intending said Note) Three hundred dollars value received. And the said John Wallace to whom or to whose Order said Note was payable afterwards to wit, on the day and year aforesaid at Chicago, that is to say, at the County of Cook aforesaid, indorsed said Note in writing, by which said Indorsement the said John Wallace then and there ordered and appointed the said sum of Money in said Note mentioned to be paid to the said Plaintiff, and then and there delivered said Note so indorsed to the said Plaintiff;

By means whereof and by force of the Statute in such case made and provided the said Defendants became liable to pay said Plaintiff said sum of Money mentioned in said Note, and being so liable in Consideration thereof, then and there undertook and promised to pay the same to said Plaintiff, according to the tenor and Effect of

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the said Note and of the Indorsement aforesaid, to wit, at the place aforesaid.

And the plaintiff avers that afterwards to wit at the time and place aforesaid, the caused said Note of said defendants, so as aforesaid indorsed to her said plaintiff to be presented to the said defendants at their office in Chicago, and offered to return the same, and demanded payment thereof, which the defendants by their agent and officer, then and there refused to wit; at the place aforesaid.

And also; For that whereas the said ~~to~~ defendants being a corporation duly incorporated under and by virtue of the laws of the State of Illinois, heretofore to wit, on the twenty third day of April in the year of our Lord one thousand eight hundred and sixty one at Chicago, to wit at said County of Cook, made their certain ~~to~~ instrument in writing commonly called a Certificate of deposit, bearing date the day and year aforesaid and then and there delivered the same to John Woollacott, in and by which said instrument in writing said defendants by their agents and officers Hamilton, B. Doe and Samuel S. Rogers by the names style and description of Ham. B. Doe. Secy and Sam. S. Rogers Co: Secy promised to pay to the order of the said John Woollacott on return of said instrument in writing commonly called a Certificate of Deposit, three hundred dollars, for and in consideration that the said Woollacott had then and there deposited with the said defendants the sum of three hundred dollars Illinois Currency, and the said John Woollacott to whom, or to whose order said

instrument in writing (Commonly Called "a Certificate of deposit") were payable afterwards, to wit, on the day and year aforesaid at Chicago, that is to say, at the County of Cook aforesaid indorsed said instrument in writing, by which said indorsement the said John Woodcock then and there ordered and appointed the said sum of money in said instrument in writing mentioned to be paid to the said plaintiff and then and there delivered said instrument in writing so indorsed to the said plaintiff,

By means whereof and by force of the Statute in such case made and provided the said defendants became liable to pay said plaintiff said sum of money mentioned in said instrument in writing, and being so liable in consideration thereof then and there undertook & promised to pay the same to said plaintiff according to the tenor and effect of the said instrument in writing and of the indorsement aforesaid, to wit, at the place aforesaid.

And the said plaintiff avers that afterwards to wit, at the time and place aforesaid, she caused said instrument in writing of said defendants so as aforesaid indorsed to her said plaintiff, to be presented to the said defendants at their office in Chicago, and offered to return the same & demanded payment thereof which the defendants by their agent and officer then & there refused, to wit, at the place aforesaid.

And also, for that whereas the said defendants being a Corporation duly incorporated under and by virtue of the laws of the State of Illinois were at

the time hereinbefore specified and still are a such Corporation, doing a Banking business in Chicago aforesaid, receiving deposits and transacting other business as Bankers; and that on the twenty third day of April in the year of our Lord one thousand eight hundred and sixty one John Woollacott at the special instance and request of the said defendants, deposited with the said Defendants at the place aforesaid, the sum of Three hundred dollars, Illinois currency, in consideration of which deposit, the said defendants by their officers and agents Hamilton B. Dox Secretary, by the name style and description of Hamil: B. Dox Secy, and Samuel S. Rogers Assistant Secretary, by the name style & description of Sam. S. Rogers Ass. Secy made and delivered to the said John Woollacott a Certificate of deposit wherein and whereby the said defendants a Corporation as aforesaid, promised to pay the said sum of money in like funds to the said John Woollacotts order upon the return of said Certificate: And the said John Woollacott to whom or to whose order said Certificate was payable afterwards to wit, on the day and year aforesaid, at Chicago, that is to say, at Cook County aforesaid indorsed said Certificate in writing by which said indorsement the said John Woollacott then and there ordered and appointed the said sum of money in said Certificate mentioned to be paid to the said plaintiff, and then and there delivered said Certificate so indorsed to the said plaintiff.

By means whereof and by force of the Statute in such Case made and provided the said defendants became liable to pay said plaintiff said sum of

money mentioned in said certificate and being so liable in consideration thereof, then and there undertook and promised to pay the same to said plaintiff, according to the tenor and effect of the said certificate & of the indorsement aforesaid, to wit, at the place aforesaid.

And the said plaintiff avers that afterwards to wit, at the time and place aforesaid she caused said certificates of said defendants, so as aforesaid endorsed to her said plaintiff to be presented to the said defendants at their office in Chicago and offered to return the same & demanded payment thereof which the defendant by their agent and officer then and there refused, to wit, at the place aforesaid.

And also for that whereas the said defendant being a Corporation duly incorporated under & by virtue of the laws of the State of Illinois were at the time hereinafter specified and still are as such Corporation, doing a Banking business in said Chicago, receiving deposits & transacting other business, as Bankers; and that on the twenty third day of April in the year of our Lord one thousand eight hundred and sixty one, John Wallace at the special instance and request of the said defendants, deposited with the said defendants at the place aforesaid, the sum of Three hundred dollars, in consideration of which the said defendants by their officers and agents Hamilton. B. Dox Secretary by the name style and description of Hamil B. Dox Secy and Samuel. S. Rogers Cash Seal by the name style & description of Samel. S. Rogers Cash Seal made and delivered to the said John Wallace a certificate, commonly called a certificate of deposit

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wherein and whereby the said defendants a Corporation as aforesaid promised to pay the said sum of money to the said John Woollacott or order upon the return of said certificate Also the said John Woollacott to whom or to whose order said certificate was payable afterwards to wit on the day and year aforesaid at Chicago, that is to say, at the County of Cook aforesaid, Indorsed said certificate in writing by which said Indorsement the said John Woollacott then and there ordered and appointed the said sum of money in said certificate mentioned to be paid to the said plaintiff, and then and there delivered said certificate so indorsed to the said Plaintiff.

By means whereof and by force of the statute in such case made and provided the said defendants became liable to pay said Plaintiff said sum of money mentioned in said certificate and being so liable in consideration thereof, then and there undertook and promised to pay the same to said plaintiff according to the tenor and effect of said certificate and of the indorsement aforesaid to wit, at the place aforesaid And the Plaintiff avers that afterwards to wit, at the time and place aforesaid she caused said certificate of said defendants so as aforesaid indorsed to her said plaintiff to be presented to the said defendants at their office in Chicago and offered to return the same and demanded payment thereof, which the defendants by their Agent and officer then and there refused to wit at the place aforesaid.

And also for that whereas the said defendants being then and there a Corporation as aforesaid before to wit, on the first day of June in the year of our Lord one thousand eight hundred sixty one

at Chicago in said County became and were indebted to the said Plaintiff in the sum of Six hundred dollars lawful Money of the United States of America for divers goods wares & merchandizes by the said Plaintiff before that time sold & delivered to the said defendants, and at the special instance and request of the said defendants, and being so indebted to the said plaintiff, the said defendants in Consideration thereof afterwards to wit, on the same day and year, and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of Money last mentioned when the said defendants should be thereunto afterwards requested And whereas also the said defendants being then and there a Corporation as aforesaid, afterward to wit, on the same day and year and at the place aforesaid, in Consideration that the said Plaintiff had before that time, at the special instance and request of the said defendants sold and delivered to the said defendants divers other goods wares and Merchandizes of the said Plaintiff the said defendants then and there undertook and faithfully promised the said Plaintiff that the said defendants would well and faithfully pay to the said plaintiff so much Money as the last aforesaid goods wares and Merchandizes at the time of the sale and delivery thereof, were reasonably worth the further sum of Six hundred dollars of like lawful Money as aforesaid, to wit, at the place aforesaid, whereof the said defendants afterwards on the same day and year and at the place aforesaid had notice.

X at the time of sale & delivery thereof.

were reasonably when the said defendants should be thereunto afterwards request'd and the said plaintiff query that the goods wares & merchandizes last mentioned

And whereas also the said defendants being then and there a Corporation as aforesaid afterwards, to wit

on the same day and year and at the place afore said, were indebted to the said Plaintiff in the further sum of Six hundred dollars of like lawful money as aforesaid, for money before that time lent and advanced by the said Plaintiff to the said defendants and at the like request of the said defendants And in the like sum for other money by the said plaintiff before that time paid laid out and expended for the said defendants and at the like request of the said defendants. And in the like sum for other money by the said defendants before that time had and received to and for the use of the said plaintiff And in the like sum for other money before that time and then due and owing the said Plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said defendants to said Plaintiff And in the like sum for the price and value of work then done and material for the same provided by the Plaintiff for the defendants, and at the like request of the defendants And being so indebted the said defendants in consideration thereof afterwards to wit, on the same day and year, and at the place aforesaid undertook and then and there faithfully promised the said Plaintiff well and truly to pay unto the said plaintiff the several sums of money in this Count mentioned when the said defendants should be thereunto afterwards requested.

And whereas also the said defendants being then and there a Corporation as aforesaid afterwards, to wit, on the same day and year and at the place aforesaid accounted together with the said plaintiff of & concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiff

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Sam'l S. Rogers Ass'g.

$300 # Registered. Eugene L. Long

(Endorsements) Pay Margaret M. Kerron

or Order.

(Signed) John Woollacott,"

(The instrument of which the above is a true copy is the sole cause of action upon which judgment is sought to be recovered in the above entitled cause)

"Chicago Marine and Fire Insurance Co.

To Margaret M. Kerron Dr.

To money lent and advanced	$ 600 —
To Money paid paid out and expended	$ 600 —
To money had & received to the use of said plaintiff	$ 600.
To goods wares and Merchandizes Sold & delivered	$ 600. —
To labor and services	$ 600. —
To balance due on account stated	$ 600. —

And afterwards to wit on the second day of July (being one of the days of the July term of said Court) A.D. 1861 the following proceedings were had in said cause and entered of record in said Court, to wit.

"Margaret M. Kerron

vs

The Chicago Marine and Fire Insurance Company } Assumpsit.

And thereafter to wit—on the Eleventh day of July A. D. Eighteen hundred and Sixty one came the said defendant by its Attorneys and filed in the office of the Clerk of said Court, its plea to said declaration, Which plea is in words and figures as follows, to wit.

"State of Illinois } In the Superior Court of
Cook County. } S. S. Chicago. Of the July term
A. D. 1861

The Chicago Marine and Fire Insurance Company
as
Margaret M. Kerin } Assumpsit.

And now comes the said defendant by McCagg & Fuller its Attorneys and defends the wrong and injury. when &c. and says that it did not undertake or promise in manner and form as the said plaintiff hath above thereof in her said declaration complained against it And of this the said defendant puts itself upon the Country &c

McCagg & Fuller
Defendant's Attorneys."

And afterwards to wit on the Ninth day of December (being one of the days of the December term of said Court) A. D. Eighteen hundred and Sixty one, the following proceedings were had in said Cause and entered of record in said Court to wit.

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"Margaret M. Kerin
vs
Chicago Marine and Fire Insurance Company . . . } Assumpsit

This day comes the said plaintiff by Fuller & Hamlin her Attorneys and the said defendant by McCagg & Fuller & Thomas Hoyne its Attorneys also come and issues being joined herein it is Ordered that a Jury come whereupon Comes the Jury of good and lawful men, to wit, Thomas Villas, William Handsworth, William Jaques, John Farrell, Rudolph Schwartlow, Dana P. Foot, Nathaniel Frick, John B. Hammond, James Wright, E. B. Walker, Lewis Reinhart and L. M. Austin, who being duly Elected tried and sworn to try the issues joined as aforesaid, after hearing Evidence, arguments of Counsel and instructions of the Court retire to Consider of their Verdict, and the hour of adjournment having arrived, it is Ordered upon agreement of the parties that when the jury shall have agreed upon a Verdict they shall reduce the same to writing sign and seal the same and afterwards separate and meet the Court tomorrow Morning.

And afterwards to wit on the tenth day of December (being part of the said December term of said Court) A.D. Eighteen hundred and sixty one the following further proceedings were had in said Cause and entered of record in said Court to wit

"Margaret M. Kerin
vs
Chicago Marine and Fire Insurance Company . . . } Assumpsit.

This day again comes said

plaintiff by Fuller & Kane his attorneys and the said defendant by McCagg & Fuller & Thomas Hoyne its attorneys also comes and the jury impannelled herein on yesterday for the trial of said cause, also come and submit their Verdict and say the the jury find issues for said plaintiff and assess her damages herein against said defendant in the sum of Two hundred and twenty eight dollars and ten cents.

Therefore it is considered that the said plaintiff do have and recover of and from the said defendant her damages sustained herein.

And thereupon the said defendant submits its Motion herein for a new trial in said cause.

And afterwards to wit on the twenty sixth day of December (being yet of the December term of said Court) A.D. Eighteen hundred and sixty one, the following further proceedings were had in said cause and entered of record in said Court to wit,

" Margaret M. Kerrin
vs
Chicago Marine and Fire Insurance Company. } Assumpsit—

This day comes said plaintiff again by Fuller & Kane her attorney and the said defendant by McCagg & Fuller its attorneys also come, and the cause coming on to be heard upon the Motion of said defendant submitted at the present term for a new trial in said cause and counsel being heard and the Court being fully advised in the premises overrules the defendants said Motion

as follows

" No 10773. State of Illinois.

Chicago Marine and Fire Insurance Co,

Chicago April 23rd 1861.

John Wallace Esq. has deposited in this office Five hundred dollars Ills Currency, payable in like funds to his Order, on return of this Certificate

Nam: B. Dox. Secy

$300 Sam: S. Rogers. Ass Secy.

Registered. Eugene C. Ling.

(Endorsed) Pay Margaret M. Keiron or order John Wallace."

The plaintiff then called one Charles H. Ham who being sworn testified as follows, " I called on Deft at its Banking House in Chicago, June 13th 1861. The day before this suit was begun with the Certificate of deposit, or instrument-sued on, and offering it to H. B. Dox the Cashier of defendant, demanded payment of it.

He said they would pay it in Illinois Currency. I asked him what kind of Illinois Currency, and he said such as they had on hand. I asked what it was worth? He said 50 or 60 cents on the dollar.

I then spoke to Mr Scammon, the President of defendant. I asked him if he could not pay this Certificate, remarking at the same time, that it was a small amount, or something to that effect and he said, they could do no better with it, than with any others, although it was a small one, and that he could make me no better offer than Mr Dox had done.

I refused those offers. I did not see the bills,

No Specie bills were offered.

On Cross Examination the witness stated.

I asked for Current funds - I don't think I designated any particular funds, but only what would pass Current - They have demanded gold, but I think Current funds. I know Dox familiarly and well and showed him the Certificate.

To a Juror: I made no compromise - I would have taken anything that would have passed Current, but when they offered me what would only pass at fifty or sixty cents, that ended it.

Plaintiff here rested.

Defendant then called Hamilton B. Dox, who being sworn testified as follows

I was Secretary of the Chicago Marine & Fire Insurance Company and Cashier of the Marine Bank, in April & May last. - I have been engaged in the Banking business in this City for five and a half years - I was handling money last Spring and in May. Have knowledge of kinds of money used - Illinois Currency in April and May last were the issues of the Illinois Banks.

At one time Wisconsin Banks Bills were regarded as Currency, but it was not so regarded after the first of April A. D. 1861.

Illinois Currency has had a fluctuating value - The difference in value between it and Coin or Specie on the 23d day of April 1861 was from 10 to 17 per Cent - being so much less valuable than Coin or Specie. - Currency was such as was passing from hand to hand -

Have been acquainted with value of Illinois Currency the last seven years.

About the Middle of November 1860 fluctuations began in the value of Illinois Currency.

Nine of the Banks were then discredited. The Notes of all the other Banks of Illinois constituted the Currency less the nine discredited Banks: its value varied from 3 to 10 per cent—difference between gold and the Illinois Currency.

On the 30th day of March 1861 some Thirty Nine Banks were discredited.

The issues of those Banks were retired from circulation, except two or three that made good their circulation. all the bills passed except those of the Nine and the thirty. The first of April the difference between Bills and Exchange or Coin was four or five per cent.

The value of the currency was still fluctuating after this and so continued until the 18th of May 1861. On that day the Railroads made a graded list of the Notes of the Illinois Banks, according to what they considered its Coin value, and it then ceased to circulate as Currency or Money at all

The basis of its value, was the value of the Securities or the Stocks deposited with the Auditor for the redemption of the Bills, in New York.

The Stocks declined in value, and the Bills declined in the same proportion, at the same time.

The defendant did a large business in Banking and in currency.

Defendant had on hand from $60.000 to $90.000 of the Notes of the Nine banks which were discredited in November 1860, at the time they were discredited: which it could no longer use for circulation.

It had about $170.000 ⁰⁰ of the Thirty Banks thrown out in March 1861. at that time, which then became so much dead Capital.

After March nothing but this Currency was in Circulation, it was received in payment of debts by defendant, & by people generally. This was the only Currency that was in Circulation every where. Things else at a premium.

A difference was always made between Eastern Banks Bills, Coin and this Currency when they were deposited with the Banks by their Customers, and this difference was noted in the pass books of the depositor, and each kind was entered as such.

The depositor received a premium on Eastern & Gold in this Currency, when he deposited other Currency - Coin was always worth more than this Currency and usually from 1/8 to 1/4 of 1 per Cent more than exchange on New York.

On the first of April 1861 the Bills of the Illinois Banks constituted all the Currency except the Bills of those Banks which had been discredited as I have stated.

On the 18th of May 1861 the Defendant had $1,200,000.⁰⁰ of the Bills of Illinois Banks actually in its vaults -

There was a great difference in the value of the Bills of the different - Banks of this State at all times.

There was nominally about 6 1/2 Millions of Illinois Bank Bills in Circulation in May 1861 - The Railroad list made them worth from 50 cents on the dollar to par.

There were only 6 or 8 Banks out of the whole placed at par but they had an outstanding Circulation of only $60.000. or $70,000.

The rarely met us saw one of these Bills in circulation, and they were exceptions to the general rule as bogy of the currency, which was made up of the Notes of the other Illinois Banks of fluctuating and different values.

On the 11th of July 1861, the average value of Illinois currency as bank Notes, was from 70 to 75 cents in the dollar.

About the middle of June it was from 60 to 70 cents on the dollar - This did not include the Bills of the Bank that had been discredited in November and April before.

This estimate is based upon the market value of the Stock Securities of the Money in New York City.

The most part of this circulation was retired about the 25th and 28th of June, it was worth about 70 Cents on the dollar.

The average value of this Illinois currency was less when bought and sold, by the Brokers, than I have estimated - This was the same currency that has been used as money in April and May - This currency has been afloat - or in use as money several years.

Don't remember about Gov Ham's demand - We had on hand the same bills of which I have spoken in use and in circulation in April and May 1861.

Did not offer to pay out any of the Bills of the Banks which have been discredited in November and March. The business of the State has always been done in a depreciated currency.

On Cross Examination the witness stated.

The Banks did not offer to pay out the depreciated

in November. Did not know the Thirty Cents were thrown out except the two or three which had ceased to be discredited. There might have been some Indiana & Ohio, in circulation in April and May. Indiana was at a premium generally, a difference from 1/4 to 1/2.

If a man deposited Indiana with Illinois he might to have received a premium. The rule was particularly applied to Eastern and Gold.

Indiana was in circulation during May or June & Ohio. Little if any of Michigan. Currency here meant Illinois Bank Notes and possibly Wisconsin. It meant bills, that passed current from hand to hand. Same thing now. And up to the 18th May it meant bills that passed current here as money, up to the 18th May these Illinois Bank Bills passed current. After that time they went into the hands of brokers. The 1/2 Millions was in Chicago Marine & Fire Insurance Company. Don't remember what the Marine Bank had. Both institutions were conducted in same place and I was an officer of both. Same paying and receiving teller.

The Marine Bank deposited most of its currency with the Insurance Company. Mr Scammon was President of that also. The sorted money during this period of time. As far as we knew we put the better kind by itself. When the better grades came in put them by themselves. All the money of the Bank was put together. Same with money deposited on a Certificate, as with account. The currency in June 61 would buy gold at 2 to 5 per cent. There was a difference between gold and the bills that actually did Circulate.

Little Iowa in May, by Circulation but materially increased in

June - Three Bills have been within a half per cent of par.

By the Court.

There was nothing done by the Bank to distinguish me from the other class of deposit.

Re direct.

Don't think the Marine Bank received any of their Currency - There was some Georgia passing.

There was an agreement made between the Banks and their depositors on the 27th of April to take and receive Illinois Bank Bills as money.

In this case I think Illinois Currency was deposited. At exchange, it would be received to Currency - It has been usual for us to give Certificates of deposit, naming Illinois Currency.

The word "Currency" has generally meant Illinois and Wisconsin Bank Notes. - Exchange was worth from 10 to 17 - The Nominal rate was 10 but really 17. - Did not pass hardly any. The Currency in which Dunham's Bank dealt was better than the others - No Illinois bills in circulation after the explosion - The Marine Bank was good has about $1,000 - in Circulation.

There are Illinois bills now in circulation they will buy exchange at a low rate.

The Galena Bank was good but the Railroad put it down at 40 - McLean was down to 90. They didn't form any appreciable part of the circulation.

To a juror.

The Marine Bank has always since I've been here, been used to fill out such Certificates as this. Don't think Certificates stated "Illinois Currency" before 1857. After that time used to insert "Illinois or

* 25

This was in currency, because a question arose as to what currency meant. I was away for six months. As far as I remember I couldn't pay it was Illinois currency - Don't think it was filed out as Illinois currency before 1854.

This was all the evidence in the case.

The plaintiff then asked and the Court gave to the Jury the following instructions.

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

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

"3. Such is ordinarily the relation implied by law, "from the dealings between a banker and his Customer

"where no special agreement is made by them varying
"their rights. The money checks or bills which may be
"the subject of the deposit become the property of the
"Bank, and the depositor becomes a Creditor. If stolen
"lost or destroyed, or if they become of no value by
"reason of subsequent depreciation, the Bank must
"sustain the loss. The depositors legal title in the
"deposit having passed by operation of law, his right is
"resolved into a mere chose in action, or claim against
"the Bank for the value of the deposit, usually fixed
"by the Credit given, as in the case of an ordinary
"loan of money. Indeed, a general deposit with a
"bank is denominated a gratuitous loan, payable to the
"depositor on demand.

"4. In this case therefore the first question for the
"jury, to consider, is, what was the nature of the
"relation arising out of the dealings between these parties
"as disclosed by the Evidence? Was it the ordinary
"relation of a Customer with his banker? If so, then
"what was the subject matter of the deposit? Was it
"money, or currency, or something else? And first as
"to the relation of banker and customer?

"5. If this relation is found to have existed the
"jury should next enquire into the nature and subject
"of the deposit. Was it money or current bank bills or
"depreciated bills of Illinois banks. circulating at the time
"as money? If the latter, then were these bills received
"on deposit as money or currency to be accounted for on
"demand in like current funds or money? Or were they
"received as depreciated Bills so nominated, upon an agreement
"expressed or implied, that they should be accounted for
"in identically like bills of the Illinois banks, whether
"current or uncurrent, at the time of demand? In

"determining this question, the jury should inquire into
"the course of dealing between the parties, the state and
"condition of the currency at the time the deposits were
"made; the nature and value of the deposits; and
"whether or not any express arrangement existed,
"regulating and fixing the basis of their mutual
"dealings with each other.

"4. On this point the Court instructs the Jury that if
"they find from the evidence that the deposit were
"made in Illinois bank bills passing current at the
"time in all business transactions as money, and as
"such, though known to be depreciated, were accepted
"and credited by defendant, without any agreement or
"understanding that the deposit or collection should be
"paid in like funds, as those in which the deposit or
"collection was made, then the law implies a promise
"to pay in Illinois, or other bank bills current at the
"time of the demand, though the bills deposited were
"subject to a discount for specie, when deposited, and
"subsequently became further discounted and greatly
"depreciated. Such a contract can only be discharged
"by the payment or tender of bank notes current at the
"time of demand, or their equivalent in money, and
"the measure of the plaintiffs damages in this case
"would be such value on the 15th of June, the time
"of demand, with interest thereon at date. Even if no
"bank notes were then in circulation as money the
"engagement became absolute for the payment of money
"For where an amount of money is made payable in
"a particular thing, the contract can only be discharged
"in the identical description of property called for, or in
"money. Nothing else can be substituted.

To the giving of which instructions the
defendant then and there excepted.

The defendant then asked the Court to give the following instructions.

"If the jury believe from the evidence that "the words "Illinois Currency" in the Certificate "of deposit offered in evidence by the plaintiff, referred "to and meant the Bills issued by the Banks "created under the Banking Laws of Illinois, and that "such bills were, at the time of the deposits, of a "fluctuating and depreciated value, as compared "with Coin, then the plaintiff is only entitled to "recover the average value of such issues of "Illinois Banks, as were used as currency after "the first day of April 1861, the average value "of such issues to be determined at the time of "the demand made for the payment of the "Certificate - on or about the 30th day of June "1861, and interest from that date to this time."

"If the Jury believe from the evidence "that the parties to the Certificate made a special "agreement in regard to the Illinois currency and "knew it was depreciated at the time of deposit, "and that the depositor assumed the risk of the "further depreciation by leaving his funds on "deposit with the defendant, after a further "depreciation the plaintiffs can only recover the "value of the funds deposited at the time of the "demand."

"If the Jury believe from the evidence, that "the deposit was made in Illinois Bank Notes, "and that it was to be paid back in like funds - "and that the Notes deposited were depreciated below "their par value - or worth below their face, in "Specie - then the plaintiff can only recover the

"real value of such funds as were deposited at the "time of a demand made upon the Certificate."

Which the Court then and there refused to give to which refusal of the Court, the defendant then and there excepted.

The Jury then retired and returned with a Verdict for the plaintiff for $398,10.

The defendant then moved for a New trial for the reasons following.

1st Because the Verdict was against the law and the Evidence.

2nd Because the Court gave improper instructions to the jury for the plaintiff

3rd Because the Court refused to give proper instructions to the Jury for the Defendant.

Which Motion the Court then and there overruled and rendered judgment on the Verdict for the plaintiff.

To which decision of the Court in overruling the Motion for a New Trial and in rendering Judgment for the plaintiff, the defendant then and there excepted.

And prayed that this its Bill of Exceptions may be signed and sealed, which is done.

(Signed) Grant Goodrich (Seal).

State of Illinois }
Cook County } ss.

I, Thomas. B. Carter Clerk of the Superior Court of Chicago, within and for the County of Cook and State of Illinois Do hereby Certify the above and foregoing to be a full true and perfect Transcript of the Declaration, Plea and Bile of Exceptions now on file in my office. together with all orders Entered of record in said Cause in a certain Suit pending in said Court, wherein Margaret M. Keiron was plaintiff and The Chicago Marine and Fire Insurance Company was defendant.

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

Thos. B Carter Clerk

31.

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

The Chicago Mutual Fire Insurance Company } Pff in error
v.
Margaret M. Keim } Deft in error

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

1. In admitting the certificate of deposit offered by Pff below in evidence under the money counts.

2- In giving improper instructions to the jury for the Plaintiff

3 In refusing to give proper instructions to the jury asked by the Defendant.

4. In refusing to grant Defendants motion for a new trial.

5. In rendering judgment on the verdict for the Pff when by the law it should have been for the Defendant

By its Attorneys—
Hoyne & Leigh & Tuthill

And now comes the said Defendant in cus. and says that in the said record & proceedings there is no error, and submits the same to the Court here for trial

April 8. 1862

Atty for Deft in cus.

Fuller & Hare
atty for deft in cus.

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Superior Court of Chicago

Margaret M. Keiron

— vs —

Chicago Marine & Fire
Insurance Company

Record.

Filed April 12 1872

S. Sedgwick
Clerk

$9.00