

No. 14740

Supreme Court of Illinois

Webster et al

vs.

Pierce et al

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 60

J. W. Muehlen & Co., Stationers, 106 Lake St.

April, T. 1864

Depts. Accounts,
Registered,
Working

Webster

vs

Purce

14730

Printed by JAMESON & MORSE, 14 La Salle Street.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

GEORGE WEBSTER AND
DANIEL F. BAXTER,

Appellants,

vs.

WALTER W. PIERCE AND
CHARLES F. BARBER,

Appellees.

*} Appeal from Superior
Court of Chicago.*

And it was, by the said defendants, thereupon in open Court admitted that the same was rendered by the defendants to the plaintiffs at the day of its date.

And the said plaintiffs further offered the testimony of Charles H. Reed, who testified as follows:

I presented the account as rendered to the defendants on the tenth of May, 1861. They offered to pay in "stumptail." I suppose it was known at that time as currency or Illinois bank notes, of depreciated value. They refused to pay in anything else.

The foregoing was all the evidence offered on the part of the plaintiffs, and they rested their case.

And thereupon the defendants offered as a witness S. H. Smith, who testified as follows:

11

12

And thereupon the defendants prayed the Court to instruct the jury as follows :

1. If the jury shall believe from the evidence that the parties to this suit dealt in all their transactions upon the understanding that Illinois currency or bank bills were depreciated below the standard of coin, and that the defendants should be accountable only for the value of such

depreciated currency at the time of demand made for it, then the defendants are only liable for such value.

13 2. If the jury shall believe from the evidence that Pierce & Barber knew that the defendants deposited the money, or currency, received for gold and drafts on their own bank account, and were notified that it would be at the risk of the plaintiffs unless withdrawn, and the plaintiffs chose to let it remain there, they can charge the defendants only for its value at the time of demand.

3. It is a rule of law that a principal is presumed to know the invariable custom of his factor or commission merchant.

4. If the jury shall believe from the evidence, that Illinois bank bills or currency, of the kind or value received by Webster & Baxter, were current in common business transactions, on the tenth of May, 1861, and that such bank bills were tendered by the defendants on demand, then the defendants are liable only for the value of such currency at that time.

5. The jury are instructed that the proof in this case is insufficient in the law to support any count in the declaration.

6. If the jury shall believe from the evidence, that the parties did not deal with "currency" as money, then the evidence does not support the counts of the declaration.

14 But the Court refused so to instruct the jury, and the defendants then and there excepted.

Assignment of Errors.

19 First. The Court erred in refusing the instructions prayed for by the appellants.

Second. The Court erred in giving the instruction prayed for on the part of the appellees.

Third. That the Court erred in overruling the motion of the defendants for a new trial.

Fourth. That the Court erred in rendering judgment in favor of plaintiffs.

GALLUP & HITCHCOCK,
Of Counsel for Appellants.

²⁰⁷
Supreme Court

Geo Hebb

vs

Walter H. C.

Abstract

Filed at

S. I. L. L. L.
M

Printed by BEACH & BARNARD, 14 South Clark St.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

GEORGE WEBSTER AND
DANIEL F. BAXTER,
v. Appellants,

WALTER W. PIERCE AND
CHARLES F. BARBER,
Appellees

} Appeal from the Superior Court
of Chicago.

BRIEF FOR APPELLEES.

From an examination of the record in this case, it will be seen that on April 30th, 1861, the appellants rendered to the appellees an account between them, in which the appellants *admitted that they were indebted to the appellees in the sum of three hundred and sixteen dollars, and sixty-eight cents in currency.*

See page 9, of the Record.

From the record, it appears that appellants, in open court, on the trial below, admitted that *said account was correctly rendered at the day of its date.*

See page 9, of Record.

From this, we insist, that the appellants, by their own admissions, were indebted to the appellees in the sum of \$316.68, *in coin or its equivalent.*

This court has decided that the term *currency*, when used in business dealings, means *coin* or *specie*, or its equivalent.

Marine Bank of Chicago v. Rushmore et al.,
29 Ills. 476.

*Chicago Marine and Fire Insurance Company
v. Keiron*, 27 Ills. 506.

If, then, currency means coin or its equivalent, surely the appellants could not discharge their liability to appellees by offering to pay them in depreciated bank notes (commonly called stumptail) worth sixty or sixty-five cents on the dollar.

The instructions asked by appellants, and which were refused by the court, are substantially in all respects like those which were refused by the court in the case of

Marine Bank of Chicago v. Rushmore et al.,
28 Ills. 463.

And the instruction given by the court on behalf of the appellees, is substantially like those which were given by the court in the above case in 28 Ills. 463.

So we submit, that the questions presented in this case were substantially decided by this court in that case, (28 Ills. 462,) in favor of the appellees.

We ask especial reference to the cases above cited, to wit :

28 Ills. 463 ; 27 Ills. 501 ; 27 Ills. 525.

Inasmuch as we believe, that the cases above cited, overruled all of the errors presented by the appellants, and decide the case in favor of the appellees, we submit most respectfully, that the judgment of the court below should be affirmed.

KNOX & REED,
Attorneys for Appellees.

George Webster et al.

^{vs.}
Walter W. Pierce et al.

Brief for Appellees

Filed May 5, 1861
J. L. Smith 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 March in the year of our Lord One Thousand Eight Hundred and Sixty Three and of the Independence of the United States of America the Eighty Seventh

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

Van H. Higgins and } Judges.
Grant Goodrich }

Joseph Knox Prosecuting Attorney.

David S. Hammond Sheriff of Cook County.

Attest, Thomas B. Catta Clerk.

Be it remembered that hereunto to wit on the Twenty Fourth day of July in the year of our Lord One Thousand Eight Hundred and Sixty one there was filed in the office of the Clerk of the Superior Court of Chicago, by Knox Emstace & Reed Attorneys for the Plaintiff a Certain Declaration in words and figures following to wit

In the Superior Court of Chicago
Of the August Term A.D. 1861

State of Illinois }
Cook County } ss
City of Chicago }

Walter W. Peirce and Charles
H. Barber partners under
the name and style of Peirce & Barber, Plaintiffs
in this suit by G. Eustace & Rud. Thine Attorneys
Complain of George Webster and Daniel H.
Barber. Partners under the name and style
of Webster & Barber Defendants who were
summoned etc in a plea of trespass on the case
on promises, For that whereas the said defend-
ants who then and now were partners under
the name and style of Webster and Barber as
such partners herefore to wit on the first day
of July, in the year of our Lord One Thousand &
Eight hundred and Sixty one to wit at Chicago
in the County of Cook aforesaid, became and
were indebted unto the Plaintiffs in a large
sum of money, to wit Four hundred dollars for
money before that time lent and advanced to and
paid out and expended for said Defendants
by said Plaintiffs at said Defendants request
and for money before that time had and received by said Defendants to and for the use of said
Plaintiffs; and also in less sum for goods, wares and
merchandise, before that time sold and delivered

3.

by said Plaintiffs & said Defendants at like
 special instance and request; and also in
 like sum for the labor, time, and diligence of said
 Plaintiffs before that time done and performed
 by said Plaintiffs; for said Defendants, at age at
 the like instance and request of said Defendants
 and being so indebted, said Defendants, in Con=
 sideration thereof, then and then undertook and
 promised & pay said Plaintiffs said sum of money
 when themselves afterwards requested

Yet the said Defendants not regarding
 their said promises and undertakings, but Con=
 triving, etc., although often requested to do so.
 have not paid said Plaintiffs said sum of
 money or any part thereof, but so to do have
 hitherto wholly neglected and refused, and
 still do neglect and refuse, to the damage of
 said Plaintiffs of Ten Hundred dollars, and
 therefore, ^{this} bring this Suit etc

Amos Cutace & Paul
 Attys for Plffs

Copy of Account sent upon
 Webster & Dwyer

To	Pence & Barber Dr	
To	Money received for use of	\$295 08
To	Goods, Wares and Merchandise	\$295 08
To	balance due on Account	\$295 08

14. And afterwards to wit on the first day of August in the year aforesaid the defendants in the suit by Gallup & Hitchcock their attorneys filed herein this Certain Plea and Affidavit of Pleadings in words and figures following to wit

Sept 1st Aug^t 1861

George Webster & Daniel H. Carpenter }
 vs } In Aft
 Walter W. Pierce & Charles H. Barber }

And the said George Webster and Daniel H. Carpenter by Gallup & Hitchcock their attorneys come and defend the wrong and injury wherein and state that they did not undertake to promise in manner and form as the said Walter W. Pierce and Charles H. Barber have above thereof complained against them and of this they put themselves upon the Country
 of Geo Webster & Daniel H. Carpenter
 By Gallup & Hitchcock Attys

And the Plaintiffs do the like

Amos Emataw & Reed
 Attys for Plffs

In the Superior Court of Chicago
 Of August Term AD 1861

Return

Walter W Price &
Charles H Parker

Plaintiffs

Against
George Webster and
Daniel H Parker

Defendants

State of Illinois }
Cook County } ss

George Webster, being duly
sworn, maketh oath and says, that he is one
of the defendants in the above entitled Cause, and
that he verily believes that they have a good defence
thereto upon the merits

Geo Webster

Subscribed & sworn to
before me this 29th day
of July A D 1861
Eug E Gallup
Notary Public

And afterwards on the Third day of March in the
Year of our Lord One thousand Eight Hundred and
Sixty three, Said day being one of the days of the
March Term of Said Supreme Court of Chicago
the following Among other proceedings were had in
Said Court and entered of Record to wit:

6 Walter W. Juice and
Charles H. Barber

vs
George Webster and
Daniel H. Barber

Assumpsit

This Cause being this day called
for trial comes said plaintiffs by Knapp & Reed
their Attorneys and said defendants by Gallup & Hitch-
cock their Attorneys also come and issue being joined
herein it is ordered that a jury come to hear
come the jury of good and lawful men to wit,
Clarence Robert John Cifley, Joseph Croto, D. Wm.,
Arthur Gustavus Ehrhart, John Carpenter, Cyrus Rubin
C. D. Beacore, H. P. Hatch, Robert Fingers, A. A. Seal
and G. E. Gerts, who being duly elected tried and
sworn to try the issue joined herein as aforesaid after
hearing evidence argument of Counsel and instructions
of the Court retire to consider of this Verdict and
afterwards return into Court submit this Verdict
and say. As the jury find issue for said plaintiffs
and as said plaintiffs demand herein against
both of said defendants to the sum of two hundred
and ninety five dollars and eight Cents

And therefore said defendants submit this motion
herein for a new trial in said Cause which is overruled
to which ruling of the Court said defendant then
and then accepted. Therefore it is considered that
said plaintiffs do have and recover of and from said

7 Defendant to this damages of two hundred and
ninety five dollars and eight Cents in form aforesaid
by the jury here found and assessed and also this
Costs and Charge in this behalf expended and have
satisfaction therefor

And therefore said defendant pray an
Appeal herein to the Supreme Court of this State
from the judgment of this Court. Which is allowed
on Condition that they file this bond in penalty
of five hundred dollars with Security to be approved
by one of the judges of the Court and to be filed
with the Clerk of the Court within ten days from this day

And afterwards to wit on the Thirtieth day
of March in the Year last aforesaid the defend-
ant in this Cause by Gallup & Hitchcock
filed herein this Certain Bill of Exceptions
and Appeal Bond in words and figures following
to wit

Superior Court of Chicago
March Term AD 1863

Walter W Paine
Charles A Barber

George Webster
Daniel A Dayton

Be it remembered that on
the third day of March in the Year of Our Lord
One Thousand Eight Hundred and Sixty three,
the above Cause Came on to be tried before the
Hon Van H Higgins, one of the Judges of said
Court, and a jury duly empanelled and thereupon
the plaintiffs to sustain the issue on this part
offered the following account Current to wit
Chicago April 30th 1861

Meigs Paine & Barber

Debit with Webster & Dayton

Mar 5	By Balance as per ac ^t rend ^d	525.73
" 8	" Proceeds as per ac ^t	113.25
" 9	" " " " "	16.10
22	" " " " "	10.10
Apr 8	" Dft on Chicago RR 740 ⁰⁰	
"	" " " " " 60.	800.00
30	" Proceeds as per ac ^t rend ^d	647

1471.65

Centro

Mar 8	Tr Paid aft to Palmer & Co	6
" 15	" " " " Earing Briggs & Co	36.93
" 24	" " " " J. H. Allen	18.80
April 3	" aft Sent W. W. Price 350 Pms 40/10 14 ⁰⁰	364.
" 9	" " " " " " 600 " 6.36	636
" 25	" paid aft farm H. B. Ulrich	14 50
" "	" 1 bbl 15 D Apples 11 ⁰⁰ @ 3 1/2 ^c	4 24
30	" paid aft farm Day Allen & Co	69 50
		<u>1154.97</u>
	Pal to open Cr in Currency & Ind Q E	316.68

And it was by the said defendants themselves in open Court admitted that the same was rendered by the defendants to the plaintiffs at the day of its date

And the said plaintiffs further offered the testimony of Charles H. Reed, who testified as follows.

I presented the account as rendered to the defendants on the tenth of May 1861. They offered to pay in "Hempstead", I suppose it was known at that time as Currency or Illinois bank notes of depreciated value, They refused to pay in any thing else

The foregoing was all the evidence offered on the part of the plaintiffs and they rested their case

10 And Thompson the defendant offered as a witness S. H. Smith who testified as follows
 (I know Peice, one of the plaintiffs and know the defendants; have been in the employ of the defendants for five years; the transactions between the parties were made up mainly of sales of gold and collecting on drafts. The gold was sold at a premium and payment taken in Illinois Currency or Illinois bank-bill at that time passing as currency in business transactions, but depreciated below the standard of gold coin under instructions from the plaintiffs. The Plaintiff was in the habit of drawing from time to time on the defendants, and accepting payments in such Illinois bank bills. No Commission was charged for selling the gold or collecting the drafts. Com-
 -missions were charged for selling produce. Business was done for the plaintiffs for something like a year. The entire Commissions during that time I think were \$6.27. The defendants are Commission Merchants doing business in Chicago. A newspaper was worth at the time of May about 65 per cent. I was present at an inter-
 -view between Peice one of the plaintiffs, and Webster one of the defendants in April 1861. Webster told him that if they held the currency the plaintiff must stand the loss from depreciation - that

11.

otherwise they must draw it out. Pince did not draw out the money that was in defendant's hands, Pince knew that the proceeds of the gold and draft were at that time ^{but} upon defendant's bank account. Such had been the custom throughout the transactions between these parties. Webster & Baxter kept this bank account with J D Cannon Co., I do not know that Pince knew this fact.

And upon the Cross-examination the witness testified as follows:

There were at that time some Illinois bank bills which were good - some worth gold but as good as eastern bills - but few however were in circulation. When Webster told Pince that he must draw his currency, or it would be at his risk, Pince said that it would be all right. There was no agreement unless it was implied.

And in reply to a question propounded by the Judge, the witness said:

I know that Pince understood that the currency was deposited in the defendant's bank account only, because it was the custom of Commission Merchants to keep such money on their own account. I think, although I am not confident that Mr Webster told Pince that it was in bank.

And upon the re-examination the wit-

12 - One testifying as follows:

I have been a Cashier for Webster & Gayles for five years: It has been this invariable custom to keep the account of this Custom in the City, & I have never known of this doing otherwise. I am positive that such bank bills were current in all business transactions until the fifteenth or sixteenth of May 1861. A draft for \$21⁰⁰ was paid on the Eleventh of May in same kind of currency as before.

And the foregoing was all the evidence in the case.

And therefore the defendant prayed the Court to give to the jury the following instructions.

1 If the jury shall believe from the evidence that the parties to this suit dealt in all their transactions upon the understanding that Illinois Currency or bank bill was depreciated below the standard of coin, and that the defendants should be accountable only for the value of such depreciated currency at the time of demand made for it, then the defendants are only liable for such value.

2 If the jury shall believe from the evidence that P. Barber knew that the defendants deposited the money or currency received for gold and

13 Drafts on their own bank account and were
certified that it would be at the risk of
themselves unless withdrawn and the plaintiffs
chose to let it remain there. They can charge
the defendant only for its value at the time
of demand

3 It is a rule of law that a principal is
presumed to know the invariable contents of his
factor or Commission Merchant

4 If the jury shall believe from the evidence that
Illinois bank-bills or Currency of the kind or
value received by Webster & Paustor were current
in common business transactions on the tenth of
May 1861, and that such bank bills were
tendered by the defendants on demand, then
the defendants are liable only for the value
of such Currency at that time

5 The jury are instructed that the proof in this
case is insufficient in law to support any
Count in the declaration

6 If the jury shall believe from the evidence that the
plaintiffs did not deal with "Currency" as money, then
the evidence does not support the Count of the
declaration

14 Which was refused. To which refusal the defendant
threw and threw up a stick

And the Court gave to the jury the
following instructions to wit

If the Plaintiffs sent gold & draft to the defendant
to be sold for Currency, and defendant sold the
same & rendered an ace of the same, stating that
there was any sum due to the Plaintiffs in Currency,
that is prima facie evidence that there was so much
or such sum due to Plaintiffs in Current funds, & to
release the defendant from liability, defendant
must show that they paid over the same or of-
fered to do so. An offer to pay in Stamp Rail or
depreciated Currency on demand could not release
the defendant from all liability; if they rely
upon a tender, they must show that they had
the Currency & that they offered to pay it & they
should have continued the offer & brought the
money into Court or otherwise kept the tender good.
An Agent has no right to mix the funds of his
Principal up with his own & thus hold his prin-
-cipal liable for the depreciation of moneys in his
hands - if he seeks to make his principal liable
for losses on failure of Banks or other losses on
moneys of his Principal the Agent must keep the
moneys of his Principal separate & distinct from
his own

15 To the giving of which said defendants then and
there accepted

And therefore the jury found a
verdict for the plaintiff and assessed the dam-
ages at the sum of Two Hundred and Ninety
five dollars and eight Cents and therefore the
defendants moved the Court for a new trial
which said Court was overruled, & which order
overruling said motion, the defendants then and
there accepted and filed this return therefor
in writing

And therefore the said defendants
prayed an appeal which was allowed and this
Bill of Exceptions presented and signed and
sealed by said judge

Done the 13th day of March A.D. 1863

Van H. Higgins
Judge

16. Know all men by these Presents, that we George Webster, Daniel H. Barber and Joseph H. Moore are held and firmly bound unto Walter W. Pince and Charles H. Barber in the sum of Five Hundred Dollars, lawful money of the United States for the payment of which well and truly to be made, we bind ourselves, our heirs and administrators, jointly severally and firmly by these presents.

Witness our hands and seals this tenth day of March A D 1863

The Condition of the above obligation is such, that whereas at the March Term A D 1863 of the Superior Court of Chicago, Ill., on the third day of March A D 1863 in a Certain suit at Common Law pending in said Court wherein the said Walter W. Pince and Charles H. Barber are plaintiffs, and the above bounden George Webster and Daniel H. Barber are defendants, the said Walter W. Pince and Charles H. Barber by the consideration of said Court, recovered a judgment against the said George Webster and Daniel H. Barber for the sum of Two Hundred and Ninety five dollars and Eight Cents damages and Costs of Suit, from which judgment the said George Webster and Daniel H. Barber have prayed an appeal to the Supreme Court of the State of Illinois, Now of the said George

17 Victor and Daniel H Baylton shall duly pro-
secute said Appeal, and well and truly may the
judgments Cuts, interests and damages, in Case
the judgment aforesaid shall be affirmed by
the said Supreme Court, then this obligation
to be void, otherwise to remain in full force

Approved
Wm H Higgins
Judge

Geo Victor Seal
D H Baylton Seal
J H Moore Seal

State of Illinois }
County of Cook } ss

Joseph H Moore being duly
sworn says he is the same person whose name
is subscribed to the foregoing bond, and that he
is worth the sum of fifteen hundred dollars
or more and above all his debts and liabilities

Subscribed & sworn to before
on the 10th day of March
A D 1863

J H Moore

Chas H Phillips Seal
J. P.

The above bond is sufficient

March 10th 1863

Knapp & Reed
Attys for Plffs

18

State of Illinois }
County of Cook }

I Thomas J Carter Clerk
of the Superior Court of Chicago within and for
the County and State aforesaid do hereby certify
that the foregoing is a full true and complete
transcript, of all the pleadings on file in my
office. the order of judgment entered of record
in said Court together with the Appeal Bond
and Bill of Exceptions filed in a Criminal
Cause wherein Walter W Pence and Charles
H Barber were Plaintiffs and George Webster
and Daniel H Bayless were Defendants.

In testimony whereof I hereunto
set my hand and affix the
Seal of said Court at the
City of Chicago in the County
and State aforesaid this 10th
day of April A D 1863
Thomas J Carter
Clerk



Supreme Court of Illinois
Third Grand Division.
April Term AD 1863.

George Webster and
Daniel F. Baxter
Appellants

vs
Walter W. Pierce and
Charles F. Barber
Appellees.

Appeal from the
Superior Court of
Chicago.

And now come the said George Webster and Daniel F. Baxter, appellants in the above entitled cause, by Gallup & Hitchcock their attorneys, and say that there is manifest error in the said record in this:

First - The Court erred in refusing the instructions prayed for by the appellants.

Second - The Court erred in giving the instruction prayed for on the part of the appellees.

Third - That the Court erred in overruling the motion of the defendants for a new trial.

Fourth - That the Court erred in rendering judgment in favor of the plaintiffs.

Gallup & Hitchcock
Attorneys for
Appellants.

Supreme Court of Illinois
 Third Grand Division
 April Term AD 1863.

George Webster &
 Daniel F. Baxter
 Appellants
 vs
 Walter W. Pierce and
 Charles F. Barber
 Appellees.

Appeal from the Superi-
 or Court of Chicago.

And now come the said Pierce
 and Barber by Knox and Reed, their attorneys,
 and say that there is no error in the said
 record as is by the said George Webster and
 Daniel F. Baxter above alleged.

Knox & Reed
 Atty's for Appellees.

Proc. and. Webster
#4.50

~~207~~ 68.59
Supreme Ct of Chicago
Geo Webster et al

vs
Walter W. Pierce et al

Record.

Filed April 23, 1863
L. Deland
Clerk