No. 8554

Supreme Court of Illinois

Ryan & Co.

---

vs.

Vanlandingham

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page 1.

Preamble Title of Court & Term.

State of Illinois Gallatin County ss
Pleas held in the Circuit Court of said County
before the Hon Wesley Sloan Judge of said
Court at the Court House in Shawneetown
of the June Term Eighteen hundred
and fifty nine of said Court
Ebenezer Z. Ryan Survivor of
Albert G. Caldwell and E. Z. Ryan
assignees of the Bank of Illinois
against
Oliver C. Vanlandingham
Ezekiel Vanlandingham
Mary Vanlandingham
Elizabeth Vanlandingham
and Cordelia Vanlandingham
Be it Remembered that on the second
day of May 1859 the said Plaintiff
filed in the Clerks Office of said Court
an affidavit, an attachment Bond
and a declaration, as follows -

[8554-1]

Affidavit for Attachment

State of Illinois Gallatin County ss

William Thomas being Sworn States that on the fifth day of march 1841 One Oliver C. Vanlandingham by his promissory note of that date promised to pay the President Directors and Company of the Bank of Illinois six months after the date thereof the Sum of Two Thousand Dollars with interest at the rate of eight per cent per annum from date until paid without defalcation - that on the fifth day of May 1841 the said Vanlandingham by his certain other promissory notes of that date promised to pay to the said President Directors and Company of the Bank of Illinois, six months after the date thereof, Two Thousand Dollars with interest at the rate of six per cent per annum from date until paid without defalcation, that on the tenth day of April 1845 the said President Directors and Company by their certain instrument in writing called an Assignment Assigned the said two promissory notes to Albert G. Caldwell and Ebenezer Z Ryan under and according to the provisions of the Statute in that case made and provided, that in June 1851 the said Albert G Caldwell departed this life and said Ryan is the Surviving Assignee of said notes. the said Thomas further States on - or about the 10th day of July 1851 there was collected on said two notes

[28554-2]

3.

two hundred twenty six dollars fifty cents for which sum said Vanlandingham is entitled to credit - that said two notes amounting together to four thousand dollars with with interest from the time they severally became due, subject to the credit aforesaid remain unpaid and the amount now due including interest to this date is seven thousand two hundred twenty seven Dollars thirty four cents the said Thomas further states that said Vanlandingham does not reside in the State of Illinois but resides, as deponent is informed and believes in the State of Louisiana and owns real estate situated in the county of Gallatin aforesaid the said Thomas further states that he is the authorized attorney in fact of said Ryan in respect to the collection of said notes and is authorised to prosecute suit or suits thereon in the name of said Ryan he therefore as said attorney in fact makes this affidavit and asks that an attachment be issued in favor of said Ryan agst said Vanlandingham pursuant to the statute -

Wm Thomas

Subscribed & Sworn to
before me this 2 May 1855

S. C. Hall Clk

Attachment Bond

Know all men by these presents that we Ebenezer J. Ryan and William Stewart & Alexander Kirkpatrick are held and firmly bound unto Oliver C. Vanlandingham in the penal sum of Fourteen Thousand Six hundred fifty four dollars Sixty eight Cents lawful money of the United States for the true payment whereof we bind ourselves our heirs &c jointly and severally firmly by these presents Sealed with our Seals and dated this 2d day of May 1855 —

The condition of this obligation is such that whereas the above bounden Ebenezer J. Ryan as Survivor of Albert G Caldwell and E.J. Ryan assignees of the Bank of Illinois hath on the day of the date hereof prayed an attachment out of the Circuit Court of said County at the Suit of said Ebenezer J Ryan against the above named Oliver C. Vanlandingham, for the Sum of Seven Thousand three Hundred twenty seven 34/100 Dollars and the same being about to be Issued out of said Court returnable on the first monday of July next to the term of the Court then to be holden; Now if the said Ebenezer J Ryan shall prosecute his suit with effect or in case of failure thereof, shall well and truly pay and satisfy the said Vanlandingham

[4554-3]

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all such costs in said suit and such damages as shall be awarded against the said Ryan, his heirs executors or administrators in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment then the above obligation to be void otherwise to remain in full force and effect

E. Z. Ryan Seal
by his attorney in fact
Wm Thomas
Wm Thomas Seal
Alexander Patrick Seal

[illegible]

No 4

State of Illinois Gallatin County ss.
In the Gallatin Circuit Court July Term 1853

Declaration

Ebenezer Ryan Survivor of
Albert G. Caldwell and Ebenezer Ryan
Assignees of the President Directors and
Company of the Bank of Illinois. appointed
and qualified as such assignees and duly
invested by assignment with the personal
estate, rights, credits and debts of said Bank
at Shawneetown and the Branch at Lawren-
ceville, under and by virtue of an Act
of the general assembly of the State of
Illinois entitled "An Act Supplemental
to an Act entitled An Act to reduce the
Public Debt One Million of dollars and put
the Bank of Illinois into Liquidation"
" Approved 25th day of February 1845 and
the Statutes in such case made and provided
Complains of Oliver C. Vanlandingham
defendant attached &c of a plea of debt, and the
said plaintiff demands of the said defendant
the sum of Four Thousand dollars which the said
defendant owes to and unjustly detain from the assignees
as aforesaid. For that Whereas the said defendants
by the name of O. C. Vanlandingham heretofore and before the said assignment to wit on
the fifth day of March 1841 at Shawneetown
to wit at the County aforesaid by his certain

(1854-4)

promissory note in writing the date whereof is the day and year last aforesaid thereby then and there promised to pay six months after the date thereof to the said President Directors and Company of the Bank of Illinois by the names and descriptions of the President Directors & of the Bank of Illinois the sum of Two Thousand Dollars part of the sum above demanded with interest at the rate of Eight per centum per annum from due until paid for value received and then and there delivered the same to the said President Directors and Company of the Bank of Illinois at Shawneetown And afterwards on the fifth day of May 1841 at the County aforesaid the said defendant by his certain other promissory note the date whereof is on the day and year last aforesaid thereby then and there promised to pay to the said President Directors and Company of the Bank of Illinois six months after the date thereof two Thousand Dollars the remains of the debt above demanded with interest thereon at the rate of six per cent per annum from due until paid and then and there delivered the said promissory note to the said President Directors and Company of the Bank of Illinois and afterwards on the 10th day of April 1845

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Copy of Notes Issued on
Bank of Illinois Shawneetown, 5 March 1841

Copy of Note $2000. - Six months after date I promise to pay to the President Directors & of the Bank of Illinois Two Thousand Dollars with interest at the rate of Eight per centum per annum from due until paid without defalcation for value received

O. C. Vanlandingham

Bank of Illinois
Shawneetown May 5th 1841

Copy of Note $2000 - Six months after date I promise to pay to the President Directors & of the Bank of Illinois Two Thousand dollars Dollars with interest at the rate of Six per centum per annum from due until paid without defalcation for value received

O. C. Vanlandingham

Whereupon an attachment was issued in said cause, which was subsequently returned as follows.

at the county aforesaid the said President Directors and Company of the Bank of Illinois Declaration by their instrument in writing Called an assignment, assigned the said two promissory notes made as aforesaid to Albert G. Caldwell & Ebenezer Z Ryan pursuant to the Statute in that Case made and provided, whereby the legal title to said promissory notes and the right of action thereon, became and was vested in said Caldwell and Ryan which has, survived to said Ryan said Caldwell being dead of all which the defendants has had notice To wit, at the County aforesaid Yet the plaintiff avers that the defendant has not paid the said sums of money in said promissory notes specified or either of them, either to the said President Directors and Company of the Bank of Illinois or to the said Caldwell and Ryan or either of them, but to pay the same or any part thereof the said defendant has hitherto wholly failed and refused, and yet doth fail and refuse to the damage of the Plaintiff Four Thousand dollars & therefore he sues &

Wm. Thomas
Atty for Plff

1855-57

7

in July next so as to compel the said Vanlaw
dingham to appear and answer the com
plaint of the said Ebenezer Z. Ryan, when
and where and there you shall make known
to the Court how you have executed this writ
and have you then and there this writ

Witness John E. Hull Clerk of the
said Court this 2nd day of May
in the year of our Lord 1853

J E. Hull Clerk

Sheriffs Return of Attachment

I have this day levied this attachment on
the following Lots of Land To wit
S½ qr Sec 4 T 9 S R 9 E.
E½ SE. Sec 8 T 9 S R 9 E
W½ NW. Sec 7 T 9 S R 9 E
part of NW. Sec 1 T 10 S R 9 E = 135 acres
W½ Sec 2 T 10 S R 9 E
SW. Sec 9 T 10 S R 9 E
SE. Sec 9 T 10 S R 9 E
part of SE. Sec 13 T 10 S R 9 E. = 36 acres
NW NW. Sec 9 T 9 S R 9 E.
In Lots in Shawneetown
numbered 1148 - 1156 & 1168
Out Lot, in Shawneetown
numbered 168 - 196 & 198
also 52. 58. Sec 11 T 10 S R 9 E
NW. NE. 14 T 10 S R 9 E

State of Illinois }
Gallatin County } ss The people of the State of Illinois to the Sheriff of Gallatin County Greeting -

Attachment

Whereas William Thomas attorney in fact for Ebenezer J. Ryan hath complained on oath to the Clerk of the Circuit Court of Gallatin County that, Oliver C. Vanlandingham is justly indebted to the said Ebenezer J. Ryan as surviving assignee of the Bank of Illinois to the amount of 7327 dollars 34 cents and oath having been also made that the said Vanlandingham does not reside in this State and said Ryan having given Bond and security according to the directions of the act in such case made and provided. We therefore Command you that you attach so much of the Estate real or personal of the said Oliver C. Vanlandingham to be found in your County as shall be of value sufficient to satisfy the said debt and costs, according to the Complaint, and such Estate so attached, in your hands to secure or so to provide, that the same may be liable to further proceedings thereupon according to law, at a Court to be holden at Shawneetown for the County of Gallatin the first monday

2RSH-E

N.E. Frac sec 13 T.10 S R 9 E

E½ N.W. " 13 T 10 S R 9 E

N.W. S.E. " 4 T 10 S R 9 E

E½ N.E. " 14 T 10 S R 9 E May 3th 1853

R. Richeson Sheriff G.C. Ill.

And at subsequent Terms of the court orders were made and Entered as follows.

July Term 1853.

First order.

[8554-7]

Certificate of Publication filed

Aug 9 1853.

Ebenezer Ryan Survivor of
Caldwell & Ryan
is proceeding by Attachment
Oliver C Vanlandingham
The said plaintiff by W. Thomas Comm
and files the Certificate of the publisher
of the Southern Illinoisan a public
Newspaper published weekly in Shawneetown
Showing that notice of the pending of this
suit was published in said Paper on
the 6th day of May 1853, and the publica
tion thereof continued four successive
weeks thereafter which notice not having
been published sixty days upon the first
day of the present term of the Court It
is Ordered that this Cause be Continued

Ryan Assignee &c
vs Proceeding by attachment
Vanlandingham

Motion to Quash Notice

The said defendant by Freeman his Attorney moves the Court to Quash or set aside the ~~Notice~~ Writ in this cause upon the ground of insufficiency

October ~~July~~ Term 1853. Second order.

Motion to Quash overruled

The motion entered herein to Quash or set aside the notice is overruled by the Court and the defendant has time until tomorrow to plead

October ~~July~~ Term 1853 ~~2nd~~ Third order.

Plea in Abatement

The defendant files a plea in abatement alledging a variance between the declaration and attachment which plea the Plaintiff moves

Motion to Strike from files.

to strike from the files upon the ground that such a plea is not admissible in this case

October Term 1853 from the order.

Plea in Abatement Strikene from files.

27 Oct The motion to strike from the files the plea in abatement herein having been considered is sustained, and said plea is accordingly ordered to be stricken from

[2854-9]

10
12 pleas
fyles

the files- The defendant then filed pleas Numbered 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11 & 12.

October 1853.

Joinder
Demurrer
&
Replications

28- The Plaintiff files his joinder to the first plea- demurrer to the 2. 3. 4. 5. 6. 7. and 9th Replications to the 8. 11. & 12. and by leave of the court he files this replication to the 10th plea-

October 1853.

Demurrer
to
Replications
&
Joinder

- The defendant files demurrer to the replications to the 8th. 11th & 12th pleas and also a demurrer to the second replication to the 10th plea and files his joinder to the first replications to the said 10th plea And the Plaintiff joins in the demurrer to replications- the said Defendants by leave of the Court files a plea Numbered 13 to which Plff filed a demurrer which was joined by defendants,

Whereupon the Questions of Law arising upon the issues aforesaid being argued the Court took time to consider of the same, and the Cause is Continued

Continuance.

July Term 1854.

Ryan Assignee &c
vs Proceeding by attachment
Vanlandingham

Motion to Quash Notice

The said defendant by Brennan his attorney moves the Court to Quash or set aside the ~~Notice~~ writ this cause upon the ground of insufficiency

October ~~July~~ Term 1853. ~~Second~~ Third order.

Motion to Quash overruled

The motion entered herein to Quash or set aside the notice is overruled by the Court and the defendant has time until tomorrow to plead

October ~~July~~ Term 1853 ~~Second~~ Third order.

Plea in Abatement

The defendant files a plea in abatement alledging a variance between the declaration and attachment which plea the Plaintiff moves

Motion to Strike from files.

to Strike from the files upon the ground that such a plea is not admissible in this Case

October Term 1853 from the order.

Plea in Abatement Strikeu from files.

27 Oct The motion to Strike from the files the plea in abatement herein having been Considered is Sustained, and said plea is accordingly ordered to be Stricken from

2854-9

No 7

Ryan Surviving assignee
of J Bank S
vs In Debt
Alvin C. Vanlandingham

Continuance. The Court not being Sufficiently advised
of and Concerning the Questions arising
upon the merits of Law in these Cases
order that the Same be Continued

October Term 1854.

26 Oct '54

Ryan Sprague &c
vs In Debt
Vanlandingham

The Questions of Law arising upon various pleadings in this Cause having been argued at a former term and taken under advisement by the judge then presiding and not having been decided, are now decided by said Judge by Consent of parties and his decision entered as the Judgement of this Court

Judgment upon legal Points.

The court overrules the Demurrer to the second third and fourth pleas and allows Plaintiff to reply -

The Court sustains the demurrer to the fifth sixth and seventh pleas

and decides the eighth plea bad and insufficient upon the demurrer to the replication to said pleas -

The Court sustains the demurrer to the ninth plea, overrules the demurrer to the second replication to the tenth plea and decides said replication Good -

The Court sustains the demurrer to the replication to the eleventh and twelfth pleas and allows the Plff to amend said replications

The court overrules the demurrer to the thirteenth Plea,

upon which decision and Judgement the

(5554-U)

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the plaintiff joined the second and third pleas; filed a replication to the fourth plea amended the replications to the eleventh and twelfth pleas by interlineations in each replication and by leave of the Court filed ~~two~~ one replications to the thirteenth plea —

December Term 1854.

No 7 13 Dec 54

Ebenezer Z. Ryan Summons &
vs In Debt
Vanlandingham

Replication to 13 plea Ammdcs

By leave of the Court the Plaintiff amended the ~~Second~~ replication to the thirteenth plea by striking out a part of the same

~~March Term~~ 1854.

[8854-12]

14 Dec 54 Ney

Ebenezer Ryan Survivor of
Albert G. Caldwell & E.J. Ryan
Assignees of the Bank of Illinois
against In Debt
Oliver C. Vanlandingham

Demurrer to Replication overruled.

on this day came again the parties aforesaid and defendant filed Demurrer to the first and second replications to the Thirteenth plea which was joined by the plaintiff and the Questions of Law arising thereon being argued and Considered It is Ordered that said demurrer be severally overruled.

December Term 1854.

Ryan Survor of Caldwell &
Ryan assignees of Pk
vs In Debt
Vanlandingham

In this Case the defendant at a former day
of the term filed a rejoinder to the defend-
Rejoinder ants first replication to the Thirteenth Plea
overruled also a rejoinder to the second replication
to said plea to which last rejoinder the
Plaintiff filed a Special demurrer
which being joined and the Questions of
Law arising thereon being argued the
Court on this day decides and orders
that the said Demurrer be and the
same is hereby Sustained and the said
rejoinder adjudged insufficient

December Term 1854.

No 7 26 Dec

Ryan
vs In Debt
Vanbandingham

Rejoinder Overruled

The Defendant having leave of the Court amended the rejoinder to the Second replication to the Nineteenth Plea, an intulineation the plaintiff on this day filed a Special Demmur to said rejoinder as amended which being joined. the Court upon consideration thereof orders that the demmur be sustained and that said rejoinder is insufficient in Law

Hunter Term 1854.

[554-13]

Ap 7 23 Dec 51

Ebenezer Z Ryan Survivor of
Albert G Caldwell & E Z Ryan
assignees of the Bank of Illinois
against In Debt proceeding by Attachment—
Olivier C Vanlandingham

This day came again the parties by their
attorneys who agree that both matters of law
and fact may be tried by the court whereupon the Testimony being heard upon all
the pleas, the Court finds for the Plaintiff
upon the issue of Nul tiel Record found by the
first replication to the thirteenth plea as
well as upon all the other issues in the
cause—

Trial & Judgment.

Whereupon it is considered by the Court
that the Plaintiff recover of the defendant
Four Thousand dollars the debt in the
declaration mentioned also the sum
of $3414 71/100 dollars damages sustained
by reason of the non payment of said
debt together with his costs herein
expended—

And the Court Orders that a Special
execution be issued directed to the Sheriff
of Gallatin County requiring him to make
sale of the following Lands and tenements
levied on by the attachment herein to wit
(here copy the list of lands &c from the

(256-114)

15. Sheriffs return on attachment) The defendant exhibited his bill of Exceptions which was signed and sealed by the Court and ordered to be made part of the record)

June Term 1856.

No 14

Opinion of Supreme Court filed

On this day came again the said Plaintiff by his Attorney and presents to the Court a certified Copy of the Opinion and Judgements of the Supreme Court in this Cause which is filed as part of the record herein and on motion of the said Plaintiff the Cause is Continued

October Term 1856

Ryan
vs Debt
Vanlandingham

Replication to 13th & 8th pleas. & Demurrer

The plff files a Second replication to Defendants 13th plea. which was prima facie evidence, the plff also files a replication to Defendants Eighth plea to which the Defendant files a demurrer, which was by the said Defendant filed as amended to which plaintiff

the Second Replication filed at this Term to the 13 Plea and a Demurrer to the replication filed at this term to the 8th Plea and Plff joins in said Demurrer and the Court takes time to Consider Cause Continued

L8954-15

May Term 1857.

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publishers in the County of Gallatin for four weeks six successive the first publication to be at least sixty days before the next Term of this Court,

October Term 1857.

The plaintiff by W Thomas his Attorney

Certificate of publication of Notice filed & four Weeks Notice ordered.

shows to the court that in the publication of a notice to the heirs of the above named defendant of the pendency of this Suit, there was an Error in respect to the name of one of said heirs, and Thereupon moves the Court for an order requiring the said heirs to appear at the next Term of this court, and show cause why they shall not be made parties to this Suit, and that they be notified of the pendency hereof by publication in some Newspaper published in the County of Gallatin as required by Law - Which motion the Court allows, and orders that the notice aforesaid be published four Successive Weeks before the next Term, and the cause is continued

3.

May Term 1858

This day came again the said plaintiff by W Norman his Attorney, and shews to the court that the Scirefacias issued herein against Elias C Vanlandingham Ezekiel Vanlandingham, Mary Vanlandingham Elizabeth Vanlandingham and Cordelia Vanlandingham returnable to the last Term of this court was served on said Elias C Vanlandingham, and that a Notice to the four first of the above named heirs and "Cornelius Vanlandingham" was published previous to the last Term of this court as required by the order of May Term 1857, and also that a Notice to said Elias C. Ezekiel, Mary and Cordelia, has been published since the last Term of this court, as required by the order then made; and the court being of opinion that the said heirs have been sufficiently notified in the premises, orders that they be made parties defendants hereto, as the heirs and legal Representatives of said Original defendant Elias C Vanlandingham, And thereupon

Certificate of Publication filed

Heirs ordered to be made parties

Guardian Ad litem appointed for infant.

appointed George W McCraig Guardian Ad litem for defendant Candelia Vanlandingham who it appears is an infant, and N. L. Freeman Esqr appeared for the other heirs, with permission to plead for them at the next Term of this court, and the cause is continued

October Term 1858

This cause is continued

June Term 1859.

2 Replications to 8th plea filed & demurred to,

This day came again the said plaintiff and the defendants by Freeman their Attorney, and the plaintiff having by leave of the court withdrawn the Replication heretofore filed to the Eighth plea, filed a Replication as of this Term, to which defendants filed a demurrer which was joined. The defendants by leave of the court filed an Additional plea Number twenty, to which the plaintiff by leave of the court filed a first and Second Replication, to each of which defendants filed demurrers which were joined, And the Questions of Law arising upon the foregoing

Additional plea filed No 20 & 1st & 2 Replications thereto.

19.

Demurrer to Repl. Sustained as to 8 plea. to 1. Repl to 20 plea overruled. to 2 Repl Sustained

pleadings being argued and considered the demurrer to the replication to the Eighth plea is sustained; the demurrer to the first replication to the Twentieth plea is overruled, and the demurrer to the second replication to said plea is sustained the plaintiff then by leave of the court filed a second replication to the Eighth plea, to which defendants filed a demurrer which being joined, the court sustains the demurrer to the said Second replication, The plaintiff then by leave of the court amended the said Second replication, to which the defendants demurred, and the court overruled said demurrer, the defendants then by leave of the court filed three rejoinders to said amended replication, the first was joined by the plaintiff, to the Second and Third, the plaintiff filed demurrers which were joined; the defendants also joined the first replication to the Twentieth plea, And the questions of law arising upon the demurrers to the Second and Third

No 11

Nov. Term 1860

Ryan & Co.

vs

Vanlandingham et

Error to Gallatin

Rev. & Remanded

8537

7

Judgment for Defts. Allegeate to Torrance

rejoinders aforesaid, being argued, the said demurrers are overruled, and said rejoinders adjudged sufficient, and the plaintiff not further answering the said rejoinders, It is considered by the court, that he be barred from maintaining his action aforesaid, and that the defendants recover their costs herein, — And on the prayer of the plaintiff an Appeal is allowed him from the foregoing Judgment to the Supreme court, — and appeal bond to be executed and filed in twenty days in the penalty of $200 with William Thomas as security conditioned according to law, —

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[illegible]

The following agreement was, upon the rendering of the Judgment aforesaid filed in said cause, to wit.

Agreement as to Contents of Record.

"In this cause the Judgment has this day been entered for defendants, and plaintiff has appealed to the Supreme Court, and the same cause having been before decided by the Supreme court upon Writ of Error prosecuted by the counsel of defendants, It is agreed, that the Record on file in the Supreme court may be used as part of the Record in this cause, and that the Record for Supreme contain this ~~[redacted]~~ case, shall only contain the Records of proceedings in this court since the filing of the Judgment of Supreme Court.

W. W. Thomas
Shawneetown for plff
18th June 1859. N. L. Freeman
Atty for defts."

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pleadings

The pleadings referred to in the foregoing Record.

Second Replication to 13th plea filed 23rd October 1856.

2 R to 13 plea

And the said plaintiff for second replication to the defendants thirteenth plea in that behalf pleaded, says that he ought not to be further barred or precluded of his action aforesaid, by reason of any thing contained in said plea because although true it is, that at the Term 185 of the Circuit Court of Vanderburgh County Indiana he impleaded the said defendant, for the detaining and not paying the debt in the declaration mentioned and caused to be sued out of said court a Foreign Attachment against the estate of said defendant upon a complaint filed in said court against said defendant, and that such proceedings were thereupon had in said court on the complaint and proceeding aforesaid as at the April Term 1853 of said Court, the said court decided and adjudged upon a Special demurrer filed to the complaint aforesaid as amended, that the matters and things

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(1855-20)

21.

~~10~~

2 Replication

#13 plea.

contained in said amended complaint was not sufficient in law to entitle the ~~plaintiff~~ plaintiff to maintain the complaint aforesaid and therefore adjudged, that the said plaintiff should pay the costs of said proceeding, Yet the plaintiff avers that from said decision and judgment an Appeal was allowed to, and prosecuted by the said plaintiff to the Supreme Court of the said State of Indiana according to the laws of said State, and such proceedings were thereupon had in said cause on said Appeal, before the said Supreme Court of Indiana, as at the May Term 1856 of said Court, and since the filing of the plea aforesaid, that said decision and judgment of the said Circuit Court of Vanderburgh County, was Reversed Set aside and annulled, All which the said plaintiff avers appears by the Records and files of the said Supreme Court of Indiana, Still remaining in said Court Wherefore &c Thomas A Marshall Pltf

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The Eighth plea referred to.

8 plea.

And the said defendant for Eighth and further plea in this behalf says actionem, because he says that both of the said promissory notes in the declaration mentioned was executed by said defendant upon his Subscription to the Capital Stock of the said Bank of Illinois, and for no other purpose or consideration, and he says that said notes now and are, what are called and denominated Stock notes of said Bank, and the said defendant avers that at the time of the Commencement of this Suit, there was no debts or causes of action existing against the President Directors & Company of the said Bank of Illinois, nor against the Assignees thereof, and this he is ready to verify Wherefore he

Demurrer.

Replication filed June Term 1859.

Replication to 8 plea

And the said plaintiff for replication to the Eighth plea filed by the defendants says, that true it is, "That both of the said promissory notes in the declaration mentioned

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was executed by said O. C. Vanlandingham

upon his subscription to the capital Stock of said Bank, and that said notes were, and are, what are called and denominated Stock notes of said Bank" yet it is not true that " at the time of the commencement of this said, there were no debts or causes of action existing against the President Directors and Company of the said Bank of Illinois, nor against the Defendants thereof, as in said plea is alledged, and of this he prays an Enquiry by the Country.

Thomas for pltff

Lemmon & Jouitt

Second Replication to Eighth plea

2 Replication to 8 plea.

And the said plaintiff by leave of the court for replication to the Eighth plea filed by the executor of the defendants says that true it is, both of the said promissory notes in the declaration mentioned, were executed by the said Elias C Vanlandingham upon his subscription to the capital stock of said Bank, and that said notes were, and are, what are called and denominated Stock notes of said Bank" yet the plaintiff says

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that at the time of the commencement of this suit the said Assignees was liable to pay to the State of Illinois Two Hundred and Ninety five Thousand dollars of State liabilities for State Stock in said Bank, also the sum of Twenty Thousand dollars in State liabilities forfeited to the State by reason of the nonpayment of said sum of $295.000, and said Assignees were also liable to pay to the holders of the Bills and certificates of said Bank the sum of Thirty Thousand Dollars, remaining unredeemed and that the interest of the creditors of the said Bank required the collection of said Stock notes, all which the plaintiff is ready to verify &c wherefore &c

Demurrer & Joinder, Thomas

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[8554-22]

15.

Ryan Assignee of Bank of Illinois
Against In Debt
Vanlandingham &c

2 Replication to 8 plea

And the said plaintiff for further and second replication to the eight plea filed herein says, true it is, that both of the notes in the declaration mentioned were executed upon his subscription to the Capital Stock of said Bank, and were, and are, what are called and denominated Stock notes of said Bank," Yet the plaintiff avers, that at the time of the commencement of this suit, there was due to the State of Illinois, which the said Assignees were required to pay, the sum of two Hundred and Ninety five thousand Dollars of State Liabilities, also the sum of Twenty Thousand Dollars of State liabilities forfeited to the State by reason of the nonpayment of said two Hundred and Ninety five Thousand Dollars, that there was also outstanding and undivided the Bills and Certificates of said Bank, to the amount of Thirty four Thousand Dollars, which the said Assignees are bound to redeem, And that the effects of said Bank had been exhausted in paying the liabilities of said Bank by said

15.

Assignees except to the amount of One Hundred Thousand Dollars, so that the Interest the creditors of the said Bank required the collection of said stock notes, all which the plaintiff is ready to verify &c Wherefore &c

Thomas Sergeant

~~17~~

Oliver C Vanlandingham et al
heirs at law of O. C. Vanlandingham dec'd.
ats
E & Z Ryan Survivors &c

In the Gallatin Circuit Court

Rejoinder to Replication to 8 plea

And the said defts for rejoinder to the said plffs. said replication to the said eight plea herein, say that the said replication is not sufficient in law

And for special grounds of demurrer they say that it is not sufficient to aver in said replication that by reason of the said Bank being indebted as set forth therein that the interests of the creditors of said Bank require the collection of said Stock notes - but the said plff ought to aver all the facts necessary to authorize their collection under the law - and to show by facts alleged that the interest of the creditors of said Bank require the collection of said Notes as alleged -

And the said replication is generally insufficient and informal and this they are ready to verify &c

~~Joinder in demurrer~~ Freeman pro
Thomas.

17

19

Oliver C Vanlandingham et al
his at law of Oliver C Vanlandingham dec^{d}
at
E Z Ryan Surviving Ex^{r} &c

In the Gallatin Circuit Court at June T. 1839

And the said defts for 1st rejoinder to the plffs 3^{d} amended replication to the defts said 8th plea, say that it is not true as alleged in said replication that at the time of the commencement of this suit" there was due to the State of Illinois which the said assignees were required to pay, the sum of Two hundred & ninety five thousand Dollars of State liabilities, or the sum of Twenty thousand Dollars of State liabilities forfeited to the State by reason of the non payment of said $295.000, or that there was, at the commencement of this suit, outstanding and unredeemed the bills or certificates of said Bank to the amount of $34000, which the said assignees were bound to redeem - & this they pray may be enquired of by the Country whereof &c

1 Rejoinder to 3rd amended Replication to 8 plea

And the plff likewise

Freeman

[redacted] Thomas p^{q}

And for 2^{d} rejoinder to the said 3^{d} amended replication to the defts said 8th plea, the said defts say it is not true as alleged in said replication that all the assets of said Bank except to the amount of $100.000 had been exhausted

2 Rejoinder to 3 amend. Replication to 8th plea

19

[955408]

in paying the liabilities of said Bank by the said assignees, & of this they put themselves upon Country Whitson &c

Freeman

Demurrer Thomas

3 Rejoinder to 3d Amended Replication to 8th plea

And for 3d rejoinder to the said 3d amended replication to the defts said 8th plea herein the said defts say, true it is as alleged in said replication that at the time of the Commencement of this suit there was due to the State of Illinois which the said assignees were required to pay the sum of $295.000. of State liabilities, also the sum of $20.000. of State liabilities forfeited to the State by reason of the non payment of said $295.000. that there was also outstanding & unredeemed the bills & certificates of said Bank to the amount of $34.000 which the said assignees were bound to redeem, and that the assets other than stock notes which were due & unpaid at the Commencement of this suit of said Bank had been exhausted in paying the liabilities of said Bank by said assignees, except to the amount of $100.000 - but the defts avers that at the time of the Commencement of this suit there was due to the plff and Albert G Caldwell as such assignees upon stock notes given upon original subscription to the capital stock of said Bank, in addition to the said notes sued on herein

21

the sum of $50.000. So that the interest of the creditors of said Bank did not require the collection of the whole amount of the said notes and on hearing & this they are ready to verify wherefore &c

Demurrer

Thomas

Freeman

And the said plff says the matters and things contained in the second & third rejoinders, to the replications do not nor good to Wherefore &c

Demurrer to 2nd & 3 Rejoinders to Replication to 8 Plea.

Joinder in Demurrer.

Thomas

Freeman.

21.

L.9554-86

23

C C Vanlandingham et al
hrs at law of C C Vanland.
-ingham, dec'd
ats
E Z Ryan Executor &c

Gallatin
Circuit Court
June Term 1857
Plea No "20"

And the said defendants for
20th plea other & further plea in this behalf say actio
non because they say that both the said
promissory notes in said declaration men-
tioned were executed by the said Alcor
C Vanlandingham (since deceased) upon his
subscription to the Capital stock of the said
Bank of Illinois and for no other purpose
or consideration and they say that said
notes were and are what are called and
denominated Stock notes of said Bank
and this they are ready to verify whereforce

Freeman

23.

25

Ebenezer Z Ryan Surviving
Assignee of Bank of Illinois

Against

O C Vanlandingham & others his &c

1st Replication to 20th plea.

And the said plaintiff for first replication to the Defendants plea Number twenty filed herein says, true it is, "that the said promissory notes in the declaration mentioned were executed by the said Olivier C Vanlandingham (since deceased) upon his subscription to the Capital Stock of the said Bank of Illinois, and that said notes were, and are what are called and denominated Stock notes of said Banks."— Yet the said plaintiff avers, that the interest of the said Creditors of said Bank, required the collection of the whole amount of said notes, and of this he prays an inquiry by the Country.

Thomas

2nd Replication to 20 plea.

And the said plaintiff for second replication to said plea Numbered twenty Says; true, it is." That both of the said promissory notes in said declaration mentioned, were executed by the said Olivier C Vanlandingham upon his subscription to the Capital Stock of the said Bank of Illinois and that said notes were and are what are called and

25.

[illegible]

denominated Stock notes of said Bank, yet the plaintiff avers that the balance of two Hundred and Ninety five thousand Dollars of State Stock in said Bank has not been paid by the assignees to the State, nor have they paid the State the sum of Twenty thousand Dollars in State liabilities, forfeited to the State by reason of the nonpayment of said Two Hundred and Ninety five Thousand Dollars, as required by law, and of this he prays an Enquiry by the Country.

Thomas

27

Olivr C Vanlandeyham Exr &c
heirs at law of Olivr C Vanland
-eyham dec.d

ats

E. Z. Ryan Surviving Assignee &c

In the Gallatin
Circuit Court
of June Term
1859

Rejoinder to 1st Replication to 20th plea &c.

And the said defts for rejoinder
to the 1st replication of said plaintiff to the
said defts said plea No 20. Says that it is
true that at the time of the commencement
of this suit the interest of the creditors of
said Bank required the collection of the
whole amount of said notes sued on herein
& this they pray may be inquired of by the
Country. whereupon &c.

Freeman

And the plff likewise

Thomas

[DSSW-29]

State of Illinois Gallatin County ss
I James Davenport Clerk of the Circuit
Court of said County do certify that
the foregoing pages contain a full
and Compleate Copy of the record in the
case therein Stated with the exception
of Demurrers, Pleas, and replications
filed before the case was taken to the
Supreme Court upon which no order
or decision has since been made
by the said Circuit Court —

Given under my hand and
the Seal of said Court
this 8th day of June 1860
James Davenport Clk

31

State of Illinois S.S.

In the Supreme Court of said State

First Grand Division

Elanzer G Ryan Survivor of

Albert G Edwards & E G. Ryan

Assignees of the Bank of Illinois

against

Oliver C Vanlandingham

On Writ of Error from Judgment by Gallatin circuit court.

Ezekiel Vanlandingham, Elizabeth Vanlandingham, Mary Vanlandingham and Cordelia Vanlandingham, heirs of Oliver C Vanlandingham deceased.

And the said plaintiffs by W Thomas his Atty comes and says that in the Record of the Judgment and proceedings of the Circuit Court herein Manifest Errors have intervened to his prejudice, and he sets down the following

First; The Court Erred in sustaining the demurrer to the first Replication filed June 1859 to the 8th plea.

Second; The Court Erred in sustaining the demurrer to the Second Replication to the Eighth plea.

Third; The Court Erred in Overruling sustaining demurrers to the second and third rejoinders to the second Replication to the 8th plea as surrejoinder

Fourth; The Court Erred in not deciding the 20th plea insufficient on the

demurrers to the Replications to said plea, and in sustaining the demurrer to the second replication to said plea.

Fifth the Court Erred in giving judgment against the plaintiff in bar of the action, and in not giving judgment for the plaintiff upon all the issues of law in the case, Wherefore the plaintiff prays that said judgment may be Reversed &c. W W Thomas

for pltff

Sixth; The court Erred in permitting ~~plaintiff~~ Sundal Rejoinders to one Replications

In nubbo est corrigendum

W W Underwood

Atty for Dft in Error

No 11

E. J. Ryan & Co
vs
Vanlandingham
et al -

Error to Gallatin

Filed June 26. 1860 -
S. Johnston Clk
Paid by Judge Thomas $5.00

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Sheriff of Gallatin *County.*

Because, *In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of* Gallatin *county, before the Judge thereof between* Ebenezer Z. Ryan - Survivor of Albert G. Caldwell and E. Z. Ryan - Assignees of the Bank of Illinois *plaintiff and* Olivia C. Vanlandingham, Ezekiel Vanlandingham, Elizabeth Vanlandingham, Mary Vanlandingham and Cordelia Vanlandingham, heirs of Olivia C. Vanlandingham dec'd *defendant it is said that manifest error hath intervened to the injury of said* Ebenezer Z. Ryan - Survivor &c *as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at* Mount Vernon, *before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said* Olivia C. Vanlandingham, Ezekiel Vanlandingham, Elizabeth Vanlandingham, Mary Vanlandingham and Cordelia Vanlandingham - heirs as aforesaid of Olivia C. Vanlandingham dec'd *that they be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at* **Mount Vernon,** *in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said* O. C. Vanlandingham et al &c *notice together with this writ.*

WITNESS, *the Hon.* John D Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* twenty Sixth *day of* June *in the year of our Lord one thousand eight hundred and* Sixty

SUPREME COURT.

First Grand Division.

Ebenezer F. Ryan - Survivor of Caldwell and Ryan - Assignee &c

Plaintiff in Error,

VS.

Charlemagne Louis Keis

Defendant in Error.

SCIRE FACIAS.

FILED.

RYAN, } Error to Gallatin.
VS
VAN LANDINGHAM. }

1. The first replication to the 8th plea is bad.

1st. Because it seek to traverse a negative with a negative. Stephen on P. 387. 1. Chitty's P. 613.

2. Because it does not show the facts which are supposed to be within plff's knowledge to warrant this suit, and which are not replied specially.

2. The 2nd Replication to that plea does not show but that there were debts due the Bank that might have been collected, or that the whole amount of the stock notes sued on were necessary to be collected.

The 3rd Rejoinder to this plea, shows that it was not necessary to collect the whole of these notes.

Our practice act allows two Rejoinders by leave of Court, Sec, 14.

WM. H. UNDERWOOD, Atty. for Deft. in Error.

Ryan

vs

Vallandingham

Brief of the

Defendants

Offin

Hannibal, Mo.
Oct: 9th 1859.

Hon. W. H. Underwood

Dr Sir – You perhaps have recd 80 pages of my work on practice, &c. It is due to myself to say that on account of some errors and omissions, I shall revise, correct and re-print that portion of the work. I allowed the impatience of the publishers to hurry me over some of the mss without that careful revision which should have been given it. The re-print will be sent you soon – If the book should happen to be mentioned in your presence, please take occasion to state this.

I recd your kind letter a few days ago – You suggest that I make out a brief and send it to you in the Vandandingham case – I will suggest the point upon which the case turned in the Circuit Court, as you may wish to think about it before you go to Mt. Vernon – You will recollect that in the case of Vandandingham v. Ryan, 17 Ills. 31, the court held the 8th plea to be good. That plea averred that the notes sued upon were stock notes, and that there were no

[P554-348]

debts or causes of action existing against the Bank or against the assignees at the commencement of this suit: When the case went back to the Circuit Court, an issue was made upon that plea. I also filed an additional plea No. 20, in which I simply averred that the notes sued on were stock notes. Judge Thomas replied that, true they were stock notes, but, that at the time of the commencement of the suit the Bank owed the State a given sum, and owed somebody else a given sum & that the interests of the creditors of the Bank required the collection of these notes. I filed three rejoinders – two of them traversing the replication in different forms, and the third confessing the replication to be true as to the indebtedness of the Bank, but avoiding it by averring that at the commencement of the suit there was due to the assignees in stock notes the sum of $500,000, and that the interests of the creditors of the Bank did not require the collection of the whole amount of the notes sued on – Judge Thomas demurred to this 3rd rejoinder, and sought to carry the demurrer back to the 20th plea –

He made two points – first, that the 20th plea was bad because it did not assume the burthen

of proof by averring what I had averred in the 8th plea - that the Bank owed no debts - I insisted that the burthen of proof as to the fact of the indebtedness of the Bank did not, and could not, properly devolve upon me - that all that I need aver was the fact that the notes sued on were stock notes - that the effect of a disclosure of that fact by plea, was the same as though it appeared in the face of the notes themselves - that if it had thus appeared in the face of the notes, the plaintiff would have been required to aver in his declaration such facts (under sec. 9, acts 1845, p. 247) as would authorise the collection of this particular character of notes - as that section forbids their collection until a certain state of facts exists. The court then asked me two questions - was not the act of '45 passed after the notes were given? and for whose benefit was the 9th section inserted? I answered that that the act of '45 was passed long after the notes, were given, and the 9th section was inserted for the sole benefit of the defendants. He then asked me what right the legislature had to super-add a condition precedent to the collection of these notes, which did not exist at the time the contract was made. I answered that I would

[D854-35]

admit that the granting of the charter of the Bank was a contract between the state and the Bank - and that neither party to that contract could change its terms or conditions without the consent of the other - but that the very act which contained this 9th section, contained another section (sec. 3) requiring the Bank to accept ~~the~~ or reject the provisions of that act within a given time, the 9th section was one of its provisions - and by suing in the name of Ryan as assignee, the plaintiffs own pleading showed that the Bank had accepted the provisions of the act - and having accepted those provisions, the 9th section which imposed that condition precedent, was an amendment of the contract between the state and the Bank entered into and assented to by the two contracting parties - and that any two who may make a contract, may mutually change or rescind that contract. I further answered that if the change thus made in the original contract between the state and the Bank, also operated as a change in the contract sued on, and that Vanlandingham's assent was necessary - then the law was, that the change being for the benefit of Van, his assent would be

presumed - and the fact that he now set up that amendment in his plea put the question of his assent beyond doubt.

The court then asked me - if the 9th sec. was for the benefit of the deft: was it not a matter of defence, and must he not, in pleading it, aver and prove that no such facts existed under it as would authorise the collection of these notes - I answered by supposing a case - Suppose A. and B. make a contract by which A. is to do three things, and upon these three things being done, B. is to do a certain other thing - the 3 things to be done by A. are conditions precedent to the performance of the other thing by B. But afterwards A. and B. mutually agree to amend the original Contract; and do amend it upon a separate piece of paper, and the amendment is for the sole benefit of B. by requiring A. to do one more thing before B. shall be required to do that other thing which he agreed in the original contract to do - that is it imposes a 4th condition precedent upon A. Now the law makes these two pieces of paper one contract - and if A. declares upon it, he must aver the performance by him of the 4 conditions precedent.

[8554-36]

or he will fail to show a cause of action against B. But A. in declaring, says nothing about this amendment of the contract, and only avers the performance by him of the 3 conditions precedent spoken of in the original contract — so, of course he has, prima facie a good cause of action, because the amendment requiring him to do one more thing before he can place B. in default, is not shown by his pleading. Now B. comes in and discloses by plea, what A. in common honesty should have disclosed in his declaration — that is, ~~that~~ the fact of the contract being amended so that A. has to do one more thing before B can be in default. Now has B to aver and prove that A has not performed the 4th condition precedent imposed in the amendment — or is it not enough for him to simply disclose the fact that the amendment was made, and what the amendment was? And would not such a disclosure put the plaintiff in the same position as though A. had himself disclosed that fact — that is, must not A. by replication, (if he does not deny the making of the amendment) aver that he has performed the 4th condition precedent?

presumed - and the fact that he now set up that amendment in his plea put the question of his assent beyond doubt.

The court then asked me - if the 9th sec. was for the benefit of the deft: was it not a matter of defence, and must he not, in pleading it, aver and prove that no such facts existed under it as would authorise the collection of these notes - I answered by supposing a case - Suppose A. and B. make a contract by which A. is to do three things, and upon those three things being done, B. is to do a certain other thing - the 3 things to be done by A. are conditions precedent to the performance of the other thing by B. But afterwards A. and B. mutually agree to amend the original contract; and do amend it upon a separate piece of paper, and the amendment is for the sole benefit of B. by requiring A. to do one more thing before B. shall be required to do that other thing which he agreed in the original contract to do - that is it imposes a 4th condition precedent upon A. Now the law makes these two pieces of paper one contract - and if A. declares upon it, he must aver the performance by him of the 4 conditions precedent.

[8554-36]

Can A. by dishonestly concealing the fact that the amendment had been made, change the rules of pleading, or shift the onus upon the shoulders of B? The fact that the amendment was for the benefit of B. alone, can not surely change the respective obligations of the parties - nor the principle that all conditions precedent must be performed before the opposite party will be in default.

I insist that the 9th section is a part and parcel of the note sued on, in legal effect and that the note, in law, read thus -

"I promise to pay to the (Bank) so much money - but upon this condition - that whereas this note is given for my subscription to the Capital Stock of said Bank, and its payment is not to be coerced until the other assets of said Bank are exhausted, or the interest of the creditors shall require the same to be collected - and only so much of this note shall be collected as will be required to meet the liabilities of said Bank."

[RSSH-3T]

The Circuit Court held the 20th plea to be good. Judge Thomas' second point was, that as his replication to that plea showed prima facie that he had a right to collect these notes — therefore, I could not rejoin that he was not entitled to the whole amount. That if he had a right to sue on the notes at all, he must have judgment for the whole amount — and if he should attempt to abuse the judgment by collecting more than was necessary to pay debt, then I might enjoin him in Chancery. That if my 3rd rejoinder was allowed, the question raised by it would involve an inquiry into all the complicated accounts of the Bank — and a Court of law was not adapted to such an inquiry.

This idea seemed to be a good one, at first blush, to the Court below. He asked me what Judge Thomas could do if some of the stock notes mentioned in my rejoinder were not good — I answered that if such were the fact, he could file a sur-rejoinder, alleging that a given amt of those notes ~~was~~ was not collectable by reason of the insolvency of the makers —

But I need not repeat all the questions and arguments below. The court finally concluded that the case in 17th Ills. settled the question as to whether the defence in sec. 9 was a good defence at law, and ruled that such a thing might be as that a party might have a right to sue on a contract, and yet not have a right to a judgment for the whole amount he sued for! The court held my 3rd rejoinder to be good, and thereupon Judge Thomas refused to answer it further and judgt for costs was rendered against the plff.

I made an agreement with Judge T. that the record of the former case in the Sup. Court might be used as far as it went, and that he need have a new record only for those proceedings had after the case was remanded.

I remain very Respy yours

N. L. Freeman

RYAN,
VS
VAN LANDINGHAM.

Error to Gallatin.

1. The first replication to the 8th plea is bad.

1st. Because it seek to traverse a negative with a negative. Stephen on P. 387. 1. Chitty's P. 613.

2. Because it does not show the facts which are supposed to be within plff's knowledge to warrant this suit, and which are not replied specially.

2. The 2nd Replication to that plea does not show but that there were debts due the Bank that might have been collected, or that the whole amount of the stock notes sued on were necessary to be collected.

The 3rd Rejoinder to this plea, shows that it was not necessary to collect the whole of these notes.

Our practice act allows two Rejoinders by leave of Court, Sec, 14.

WM. H. UNDERWOOD, Atty. for Deft. in Error.

[5554-37]

Ryan
vs
Vanlandingham

Brief of the
defendants

State of Illinois. S.S.

In the Supreme Court of said State

First Grand Division.

Ebenezer Z Ryan Survivor of
Albert G Caldwell & E. Z Ryan
Assignees of the Bank of Illinois. Plff
against
Oliver C Vanbandingham,
Ezekiel Vanbandingham,
Elizabeth Vanbandingham,
Mary Vanbandingham &
Cordelia Vanbandingham
heirs of Oliver C Vanbandingham dec'd Defendants.

Plff sue Writ of Error
from Judgment
of Gallatin Circuit Court,

An affidavit being filed setting forth that the said defts are Nonresidents of this State, They
the said Defendants, are hereby notified
that the Record of the circuit court in
the foregoing cause, has this day been
filed in the Clerks office of this Court,
and a Writ of Error and Scirepacias issued thereon,—
with a Scirepacias directed to the Sheriff
of Gallatin County, commanding him to
Summon said Defendants to appear before this Court
on the first day of the next November Term
to be holden at the Courthouse at Mount Vernon
and Show cause if any they have
Why the said Judgment shall not be
Reversed, and unless they do so appear
the cause will proceed, as if they had been
personally served with process.

Witness Noah Johnston Clerk of said Court
this 26th day of June 1860.

Noah Johnston Clk

Filed 26th day of June 1860

S.8554-HD

11

Ryan
v
Vanbandingham
Form of Notice

Judge Thomas to pay
Printing fee

State of Illinois. SS.

In Supreme Court of said State
First Grand Division
November Term 1860.

Ebenezer Z Ryan Survivor of
Albert G Caldwell & E. Z. Ryan,
Assignees of the Bank of Illinois Plff.
against Writ of Error to Judgment
Oliver C Vanbandingham of Gallatin Circuit
Ezekiel Vanbandingham, Contt,—
Elizabeth Vanbandingham,
Mary Vanbandingham &
Cordelia Vanbandingham
heirs of Oliver C Vanbandingham and Defts

The Clerk will file the Record, issue the Writ of Error, and Scire facias to the Sheriff of Gallatin County,— and upon the Affidavit filed, publish a notice to defendants,— Their Post office address is Respectfully to be "Baton Rouge, Louisiana" Send copies of the Notice to them, as required by the Rules of Court. I send the $5. and will pay the Printer

N. M. Thomas
Atty for Plff.

L8554-41

//

E. Z. Ryan Appeal
of Bank of Ala
vs 3 Affidavit
3 of Nonresidence

Plaintiff's Exhibits

Filed June 26. 1860.
N. Johnston Clk

State of Illinois. S.S.

In Supreme Court of said State
First Grand Division
November Term 1860.

Ebenezer Z Ryan Survivor of
Albert G Caldwell & E. Z. Ryan,
Assignees of the Bank of Illinois Plff.
against Writ of Error to Judgment
Elias C Vanlandingham of Gallatin Circuit
Ezekiel Vanlandingham, Comft,—
Elizabeth Vanlandingham,
Mary Vanlandingham &
Cornelius Vanlandingham
heirs of Elias C Vanlandingham and Defts

The Clerk will file the Record, issue the Writ of Error, and Scire facias to the Sheriff of Gallatin County,— and upon the Affidavit filed, publish a notice to defendants,— Their Post office address is supposed to be "Baton Rouge, Louisiana" Send copies of the Notice to them, as required by the Rules of Court. I send the $5. and will pay the Printer

W. W. Thomas
Atty for Plff.

[8554-111]

11

E. Z. Ryan et al
vs
Vanlandingham et al

Precipe

Filed June 26. 1860
A. Johnston Clk

In Supreme Court---November Term, 1859.

Papers of Record

EBENEZER Z. RYAN, surviving Assignee of the Bank of Illinois,
Against
OLIVER C. VANLANDINGHAM, EZEKIEL VANLANDINGHAM,
ELIZABETH VANLANDINGHAM, MARY VANLANDINGHAM, &
CORDELIA VANLANDINGHAM, heirs of O. C. VANLANDINGHAM.
} Appeal from Gallatin.

This case was brought before this court by the ancestor of Appellees and decided at the November Term, 1855, see 17 Ill. R. 25.

15.

In June, 1856, the opinion and judgment of this court was filed in the court below, when the cause was docketed for trial, and continued. In October, the plaintiff filed a second replication to defendants thirteenth plea, which was joined by defendants; the plaintiff also filed a replication to the defendants eighth plea, to which defendants filed a demurrer, which was joined by plaintiff and the court took time, &c., and the cause was continued. In May, 1857, the death of the then defendant was suggested, and an order made requiring the present defendant to be notified of the pendency of the suit, and to appear and defend, &c.

16.

In June, 1859, the defendants having been notified, appeared to the action, when the plaintiff by leave of the court withdrew the replication to the eighth plea, and filed a replication as of that term, to which the defendants filed a demurrer, which was joined; the defendants by leave of the court filed an additional plea, number twenty, to which the plaintiff filed a first and second replication, to each of which the defendants filed demurrers, which was joined, and upon the questions of law arising upon the pleadings, the court sustained the demurrer to the replication to the 8th plea—overruled the demurrer to the first replication to the 20th plea, (after which defendants joined issue) and sustained the demurrer to the second replication of said plea. The plaintiff then, by leave of the court, filed a second replication to the 8th plea, to which defendants filed a demurrer, which was sustained by the court. The plaintiff then, by leave of the court, amended the said second replication, to which defendants demurred, which demurrer was overruled. The defendants then, by leave of the court, filed three rejoinders to said amended replication; the first was joined by the plaintiff, to the seconds and third the plaintiff filed demurrers. The court then overruled the demurrers to the second and third rejoinders, and the plaintiff not further answering said rejoinders, judgment was given against him in bar of the action; from which judgment the plaintiff prosecutes this appeal. The parties agreed that the record of the cause on the files of this court should be used on the hearing of this appeal, and that the record for the Supreme Court in this case, shall only contain the record of proceedings in the Circuit Court, subsequent to the filing of the judgment of the Supreme Court.

Judgment 19

8th plea. 20

The first replication (filed June, 1859,) to the 8th plea, to which the demurrer was sustained is as follows:

21.

"The plaintiff says that true it is, that both of said promissory notes in the declaration mentioned were executed by said O. C. VANLANDINGHAM upon his subscription to the capital stock of said Bank, and that said notes were and are, what are called and denominated "stock notes" of said Bank, yet it is not true that at the time of the commencement of this suit, there were no debts or causes of action existing against the President, Directors, &c., of said Bank of Illinois, nor against the assignees thereof, as in said plea is alleaged, and of this he prays an enquiry by the country."

22.

The second replication contains the same admission of the first, and avows, "that at the time of the commencement of said suit the said assignees were liable to pay to the State of Illinois, Two Hundred and Ninety-Five Thousand Dollars of State liabilities, for State stock in the said Bank, also the sum of Twenty Thousand Dollars in State liabilities, forfeited to the State by reason of the non-payment of said sum of $295,000, and said assignees were also liable to pay to the holders of the bills and certificates of said Bank, the sum of Thirty Thousand Dollars, remaining unredeemed, and that the interest of the creditors of said Bank required the collection of said stock notes, all which the plaintiff is ready to verify, &c."

1855-45

22.

The second replication as amended, contains the same admission with the first, and avers "That at the time of the commencement of this suit there was due to the State of Illinois, which the said Assignees were required to pay, the sum of Two Hundred and Ninety-Five Thousand Dollars of State liabilities; also the sum of Twenty Thousand Dollars of State liabilities, forfeited to the State by reason of the non-payment of said $295,000, that there was also outstanding and unredeemed, the Bills and certificates of said Bank, to the amount of $34,000, which the said Assignees were bound to redeem, and that the assets of said Bank had been exhausted in paying the liabilities of said Bank by said Assignees except the amount of $100,000, so that the interest of the creditors of said Lank required the collection of said stock notes," concluding with a verification.

24

The demurrer to this replication was overruled, the defendants then filed there rejoinders.

25.

The first Traveses the allegations on which issue was made.

25.

The second "denies" that all the assets of the Bank except to the amount of $100,000 had been exhausted in paying the liabilities of the Bank by the assignees, as alleged."

The third admits the allegations in the replecation, and avows, "that at the time of the commencement of

26.

this suit there was due to the plaintiff and ALBERT C. CALDWELL as such assignees upon stock notes given upon original subscription to the capital stock of said Bank the sum of $500,000 so that the interest of the creditors of said Bank did not require the collection of the whole amount of said notes sued on herein, and this they are ready to verify, &c.

26

To each of these rejoinders the plaintiff filed demurrers, which were overruled.

The 20th plea, filed June, 1859, alleges "that both of the notes in said declaration mentioned, were executed

27.

by the said O. C. VANLANDINGHAM (since deceased) upon his subscription to the capital stock of said Bank of Illinois, and for no other purpose or consideration, and that said notes were, and are, what are called and denominated "stock notes" of said Bank, and this they are ready to verify, &c.

To this plea the plaintiff filed two replications:

28.

First; Admitting that said notes were given on the subscription to the capital stock of said Bank, and that they are stock notes, and averring "that the interest of the creditors of the Bank require the collection of the whole amount of said notes," with conclusion to the country.

Second; Making the same admission as the first, and averring, "that the balance of $295,000 of state stocks

28.

in said Bank has not been paid by the Assignees to the State, nor have they paid the State the sum of Twenty Thousand Dollars in State liabilities, forfeited to the State by reason of the non-payment of said sum of $295,000 as required by law," with conclusion to the country.

The Errors assigned are:

31.

First; The court erred in sustaining the demurrer to the replication, filed June, 1859, to the eighth plea.

Second; The court erred in sustaining the demurrer to second replication filed to the said eighth plea.

Third; The court erred in overruling the demurrers to the second and third rejoinders to the second replication, as amended.

Fourth; The twentieth plea contains no defence to the action, and the court erred in not deciding the said plea insufficient, on the demurrers to the replications to the said plea, and in sustaining the demurrer to the second replication to said plea.

Fifth; The court Erred in permitting Several Rejoinders to one Replication

Sixth; The court Erred in giving Judgment for Defendants upon the Pleadings

(2854-44)

WM. THOMAS,
For Appellant.

Wm. Thomas for Appellant.

The first replication to the eighth plea contains a direct and positive denial of truth of those avermnts in the plea, upon which the court decided, that the plaintiff should have taken issue, and was therefore a full answer to the plea. 17 Ill R. 25. 1 Chitty Top page 617. Bradus vs Minicks 20 Johnson 604. 1 Tidd 683-4.

The court below, in deciding upon the sufficiency of the replication to the eighth plea, having expressed the opinion that the plaintiff was bound to aver and prove the existence of the facts upon which the right to coerce the collection of stock notes depends; the effort was made to do so, by filing an additional replication, which being adjudged insufficient, was so amended as to conform to the opinion of that court; and but for sustaining the 20th plea, and the second and third rejoinders, to the amended replication, the plaintiff could have successfully proceeded to the trial of the cause notwithstanding the erronious ruling in respect to the first replication.

The decision of the question now presented by the pleadings depends upon the construction of the acts of the 25th February, 1843, (acts of 1842, p. 30) and the acts 28th February, 1845, (acts of 1844, p. 246) providing for liquidating and winding up the affairs of the Bank.

The notes decared on are dated in 1841, and are admitted in the pleadings, to have been given on a subscription to the stock of the Bank. The maker is not, therefore, entitled to make payment in the paper of the Bank nor to pay in installments. See Dunlap vs. Smith, 12 Ill. R. 400.

The 9th sec. of the act of 1845 provides that; "Said Assignee shall proceed to collect all debts due to said Bank, other than stock notes, according to the provisions of the act to which this is a supplement; and the collection of stock notes shall not be coerced until the other assets of said Bank are exhausted, or the interest of the creditors shall require the same to be collected, and only so much of said stock notes shall be collected as will be sufficient to meet the liabilities of said Bank.

The Bank was required by law to meet its liabilities in specie whenever demanded; the stock notes were taken and held in place of specie, and constituted a part of the fund which bill holders and creditors had the right to claim; first of all should be applied to the payment of debts; and the legislature could never have intended so gross a fraud, as to provide that creditors of the Bank should be delayed in the collection of their debts, until her officers could make collections from ordinary debtors, and permit the Bank to retain its specie in the vaults; or what would be more dishonest, authorize the stockholders to withhold payment on their subscriptions, and receive dividends as though full payment had been made, until all other assets of the Bank had been exhausted.

We cannot presume that the legislature intended to legalize or authorize fraud, and therefore such a construction should be given to this section, as, without doing injustice to stockholders, will secure to creditors their rights, and vindicate the action of the legislature.

The true and honest construction of the section then is, 1st, that the stockholders shall not be allowed to pay their subscriptions in the paper of the Bank. Second, that they shall not be allowed to pay such debts in instalments. Third, that they shall be required to make payment as the interest of the creditors requires. Fourth, Such payments to be limited by the amount of the liabilities of the Bank, but unless the interest of the creditors should require it, no payment shall be coerced.

It is admitted that the assignees did not attempt to coerce payment on stock notes until it became obvious to them, that without the payment of those notes the paper of the Bank could not be redeemed, yet it is insisted that this want of action should not be considered as evidence of what the law was, or of any consent on the part of creditors to a construction working this delay; certainly, when the paper of the Bank was only worth thirty cents per dollar, the interest of the creditors required the collection of these stock notes.

[8554-45]

State of Illinois S.S.

In Supreme court of said State.

First Grand Division

November Term 1860.

Mr Satterfield Brother Editors and publishers of the Mt Vernon Weekly Star a public Newspaper published Weekly in Mt Vernon Jefferson County Illinois, do certify that the notice hereto attached was published in said paper on the 29th June 1860 and for four consecutive weeks thereafter as required by the Rules of this court, adopted at November Term 1857 of said court. Given under our hands this 13th day of November 1860. Satterfield & Bro. printers fee $3. paid by Noah Johnston

State of Illinois, ss.
In the Supreme Court of said state.
First Graud Division.

Ebenezer Z Ryan survivor of Albert G Caldwell & E Z Ryan assignees of the Bank of Illinois, Pl'ff, against Oliver C Vanlandingham, Ezekiel Vanlandingham, Elizabeth Vanlandingham, Mary Vanlandingham & Cordelia Vanlandingham heirs of Oliver C Vanlandingham dec'd, defendants

On writ of error from judgment of Gallatin County circuit court.

An affidavit being filed setting forth that the said defendants are non residents of this state, they the said defendants are hereby notified that the Record of the circuit court in the foregoing cause has this day been filed in the clerk's office of this court, and a writ of error and scire facias sued out, the scire facias directed to the sheriff of Gallatin county commanding him to summons said defendants to appear before this court, on the first day af the next November term to be holden at the court house at Mt Nernon on the 13th day of November 1860. and show cause if any they have why the said judgment shall not be reversed; and unless they do so appear, the cause will proceed as if they had been personally served with process.

Witness Noah Johnston clerk of said court, this 26th day of June 1860.

Noah Johnston. cl'k.

June 29.

Noah Johnston being sworn in due form of law, states, that on or about the 21st day of July 1860 he mailed at Mt Vernon Illinois one Newspaper containing the notice above attached, to each of the said defendants, addressed to them at Baton Rouge Louisiana, that being as defendants were in Louisiana, their usual post office,

Noah Johnston

[illegible]

Sworn to and subscribed before me this 13th day of November A. D. 1860.

Edwin Beecher.

Judge Cir. Court 12th Circuit.

11

E. J. Ryan Assignee

vs 3 Certificates of
3 Publications
3 Affidavits

Vandenburgh & Ryan

Filed Nov 1860.

Filed 13. Nov. 1860
N. Johnston Cly
11

In Supreme Court----November Term, 1860.

EBENEZER Z. RYAN, surviving Assignee of the Bank of Illinois,
Against
OLIVER C. VANLANDINGHAM, EZEKIEL VANLANDINGHAM,
ELIZABETH VANLANDINGHAM, MARY VANLANDINGHAM, &
CORDELIA VANLANDINGHAM, heirs of O. C. VANLANDINGHAM.
} Appeal from Gallatin.

Pages of Record.

This case was brought before this court by the ancestor of Appellees and decided at the November Term, 1855, see 17 Illinois R. 25.

15.

In June, 1856, the opinion and judgment of this court was filed in the court below, when the cause was docketed for trial, and continued. In October, the plaintiff filed a second replication to defendants thirteenth plea, which was joined by defendants; the plaintiff also filed a replication to the defendants eighth plea, to which defendants filed a demurrer, which was joined by plaintiff and the court took time, &c., and the cause was continued. In May, 1857, the death of the then defendant was suggested, and an order made requiring the present defendant to be notified of the pendency of the suit, and to appear and defend, &c.

16

In June, 1859, the defendants having been notified, appeared to the action, when the plaintiff by leave of the court withdrew the replication to the eighth plea, and filed a replication as of that term, to which the defendants filed a demurrer, which was joined; the defendants by leave of the court filed an additional plea, number twenty, to which the plaintiff filed a first and second replication, to each of which the defendants filed demurrers, which was joined, and upon the questions of law arising upon the pleadings, the court sustained the demurrer to the replication to the 8th plea—overruled the demurrer to the first replication to the 20th plea, (after which defendants joined issue) and sustained the demurrer to the second replication of said plea. The plaintiff then, by leave of the court, filed a second replication to the 8th plea, to which defendants filed a demurrer, which was sustained by the court. The plaintiff then, by leave of the court, amended the said second replication, to which defenants demurred, which demurrer was overruled. The defendants then, by leave of the court, filed three rejoinders to said amended replication; the first was joined by the plaintiff, to the seconds and third the plaintiff filed demurrers. The court then overruled the demurrers to the second and third rejoinders, and the plaintiff not further answering said rejoinders, judgment was given against him in bar of the action; from which judgment the plaintiff prosecutes this appeal. The parties agreed that the record of the cause on the files of this court should be used on the hearing of this appeal, and that the record for the Supreme Court in this case, shall only contain the record of proceedings in the Circuit Court, subsequent to the filing of the judgment of the Supreme Court.

Judgment 19.

8th plea – 20

The first replication (filed June, 1859,) to the 8th plea, to which the demurrer was sustained is as follows:

21.

"The plaintiff says that true it is, that both of said promissory notes in the declaration mentioned were executed by said O. C. VANLANDINGHAM upon his subscription to the capital stock of said Bank, and that said notes were and are, what are called and denominated "stock notes" of said Bank, yet it is not true that at the time of the commencement of this suit, there were no debts or causes of action existing against the President, Directors, &c., of said Bank of Illinois, nor against the assignees thereof, as in said plea is alleaged, and of this he prays an enquiry by the country."

22

The second replication contains the same admission of the first, and avows, "that at the time of the commencement of said suit the said assignees were liable to pay to the State of Illinois, Two Hundred and Ninety-Five Thousand Dollars of State liabilities, for State stock in the said Bank, also the sum of Twenty Thousand Dollars in State liabilities, forfeited to the State by reason of the non-payment of said sum of $295,000, and said assignees were also liable to pay to the holders of the bills and certificates of said Bank, the sum of Thirty Thousand Dollars, remaining unredeemed, and that the interest of the creditors of said Bank required the collection of said stock notes, all which the plaintiff is ready to verify, &c."

22. The second replication as amended, contains the same admission with the first, and avers "That at the time of the commencement of this suit there was due to the State of Illinois, which the said Assignees were required to pay, the sum of Two Hundred and Ninety-Five Thousand Dollars of State liabilities; also the sum of Twenty Thousand Dollars of State liabilities, forfeited to the State by reason of the non-payment of said $295,000, that there was also outstanding and unredeemed, the Bills and certificates of said Bank, to the amount of $34,000, which the said Assignees were bound to redeem, and that the assets of said Bank had been exhausted in paying the liabilities of said Bank by said Assignees except the amount of $100,000, so that the interest of the creditors of said Bank required the collection of said stock notes," concluding with a verification.

Demurrer 24 —— The demurrer to this replication was overruled, the defendants then filed there rejoinders.

25. ~~Eff~~ —— The first Traveses the allegations on which issue was made.

~~19 20~~ 25. The second "denies" that all the assets of the Bank except to the amount of $100,000 had been exhausted in paying the liabilities of the Bank by the assignees, as alleged."

26. The third admits the allegations in the replecation, and avows, "that at the time of the commencement of this suit there was due to the plaintiff and ALBERT C. CALDWELL as such assignees upon stock notes given upon original subscription to the capital stock of said Bank the sum of $500,000 so that the interest of the creditors of said Bank did not require the collection of the whole amount of said notes sued on herein, and this they are ready to verify, &c.

26 —— To each of these rejoinders the plaintiff filed demurrers, which were overruled.

27. The 20th plea, filed June, 1859, alleages "that both of the notes in said declaration mentioned, were executed by the said O. C. VANLANDINGHAM (since deceased) upon his subscription to the capital stock of said Bank of Illinois, and for no other purpose or consideration, and that said notes were, and are, what are called and denominated "stock notes" of said Bank, and this they are ready to verify, &c.

To this plea the plaintiff filed two replications:

28. First; Admitting that said notes were given on the subscription to the capital stock of said Bank, and that they are stock notes, and averring "that the interest of the creditors of the Bank require the collection of the whole amount of said notes," with conclusion to the country.

28. Second; Making the same admission as the first, and averring, "that the balance of $295,000 of state stocks in said Bank has not been paid by the Assignees to the State, nor have they paid the State the sum of Twenty Thousand Dollars in State liabilities, forfeited to the State by reason of the non-payment of said sum of $295,000 as required by law," with conclusion to the country.

The Errors assigned are:

32. First; The court erred in sustaining the demurrer to the replication, filed June, 1859, to the eighth plea.

Second; The court erred in sustaining the demurrer to second replication filed to the said eighth plea.

Third; The court erred in overruling the demurrers to the second and third rejoinders to the second replication, as amended.

Fourth; The twentieth plea contains no defence to the action, and the court erred in not deciding the said plea insufficient, on the demurrers to the replications to the said plea, and in sustaining the demurrer to the second replication to said plea.

Fifth; The court Errred in permitting Several Rejoinders to one Replication

3 Sixth; The court Errred in giving Judgment for defendants against the Plaintiff

{8554-49}

WM. THOMAS,
For Appellant.

Whether I am sustained by the court in my construction of the law or not, cannot be material in the decision of this case, because here the defense rests upon two grounds only: First, that no liabilities existed against the trust fund; which is denied by the replication. Second, that the notes sued on are stock notes (the sufficiency of which is denied) with a replication that the interest of the creditors require their collection; and it will not be contended before this court, that the replications do not fully answer the pleas.

By the eigth plea the defendants undertake to prove, that no liabilities existed; this court has said, that if such proof is made, the plaintiff will have no right to recover.

By the replication to the 20th plea (admitting that to be a good plea) the plaintiff undertakes to prove that the interests of creditors requires the payment of the notes sued on, to be coerced. It is however insisted, that the eighth plea sets out the only ground of defence against judgment upon a stock note, which can be made available in a court of law.

I do not understand the words in the statue, "AND THE COLLECTION OF STOCK NOTES SHALL NOT BE COERCED UNTIL ALL OTHER ASSETS OF THE BANK ARE EXHAUSTED," to mean that "NO SUIT SHALL BE PROSECUTED, OR JUDGMENT OBTAINED UPON SUCH NOTES, UNTIL, &c.," but on the contrary, that this provision relates entirely to "coercive collections" after judgment, the intent being to prevent the abuse of disretion, on the part of the assignees, and the "collection" of this class of debts, when the interest of the creditors did not require such collection.

Such a construction should be given to the statue as not only to allow, but require, the assignees to obtain judgment, for purposes of security, and prompt collections, as the interest of the creditors may require.

[8554-46]

No 11-8

Ryan

&

Vanlandingham

Abstract & Brief

Wm. Thomas for Appellant.

The first replication to the eighth plea contains a direct and positive denial of truth of those avermnts in the plea, upon which the court decided, that the plaintiff should have taken issue, and was therefore a full answer to the plea. 17 Ill Repts 25. 1 Chitty Tofe pages 617 Bracken v Miniels 20 Johnson 404. 1 Tidd 683. 4. &c

The court below, in deciding upon the sufficiency of the replication to the eighth plea, having expressed the opinion that the plaintiff was bound to aver and prove the existence of the facts upon which the right to coerce the collection of stock notes depends; the effort was made to do so, by filing an additional replication, which being adjudged insufficient, was so amended as to conform to the opinion of that court; and but for sustaining the 20th plea, and the second and third rejoinders, to the amended replication, the plaintiff could have successfully proceeded to the trial of the cause notwithstanding the erronious ruling in respect to the first replication.

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The 9th sec. of the act of 1845 provides that: "Said Assignee shall proceed to collect all debts due to said Bank, other than stock notes, according to the provisions of the act to which this is a supplement; and the collection of stock notes shall not be coerced until the other assets of said Bank are exhausted, or the interest of the creditors shall require the same to be collected, and only so much of said stock notes shall be collected as will be sufficient to meet the liabilities of said Bank.

The Bank was required by law to meet its liabilities in specie whenever demanded; the stock notes were taken and held in place of specie, and constituted a part of the fund which bill holders and creditors had the right to claim; first of all should be applied to the payment of debts; and the legislature could never have intended so gross a fraud, as to provide that creditors of the Bank should be delayed in the collection of their debts, until her officers could make collections from ordinary debtors, and permit the Bank to retain its specie in the vaults; or what would be more dishonest, authorize the stockholders to withhold payment on their subscriptions, and receive dividends as though full payment had been made, until all other assets of the Bank had been exhausted.

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The true and honest construction of the section then is, 1st, that the stockholders shall not be allowed to pay their subscriptions in the paper of the Bank. Second, that they shall not be allowed to pay such debts in instalments. Third, that they shall be required to make payment as the interest of the creditors requires. Fourth, Such payments to be limited by the amount of the liabilities of the Bank, but unless the interest of the creditors should require it, no payment shall be coerced.

It is admitted that the assignees did not attempt to coerce payment on stock notes until it became obvious to them, that without the payment of those notes the paper of the Bank could not be redeemed, yet it is insisted that this want of action should not be considered as evidence of what the law was, or of any consent on the part of creditors to a construction working this delay; certainly, when the paper of the Bank was only worth thirty cents per dollar, the interest of the creditors required the collection of these stock notes.

[5554-50]

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11

Ryan
v
Vanlandingham

No 11.

Abstract & Brief

Office

Record to remain in hands of
Court —