

14381

No. _____

Supreme Court of Illinois

Willard.

vs.

D
~~W~~ubois.

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

14381

No. 179.

Miller

Dubois

362

318

DePellece

Supreme Court of the State of Illinois Third Grand Division

Elisha H. Willard

vs.

Levi K. Dubois Auditor
of Public Accounts of the
State of Illinois

It is hereby stipulated and agreed between the parties that the above case shall be submitted to said Court at its next term to be holden in Ottawa upon the following facts viz:

On and before the third day of January A.D. 1861 the Highland Bank was duly organized and doing business in said State under the provisions of the General Banking Law of 1857 and its Amendments. That said Bank had deposited securities with the Auditor and issued and put in circulation Bank notes pursuant to said Law and its Amendments. That on the third day of January 1861 said Elisha H. Willard as the owner and holder of the sum of Seven thousand two hundred Dollars of the circulating notes issued by said Bank and the payment & redemption whereof was secured by the deposit of said securities with the Auditor caused the said notes so held by him to be presented to said Bank for redemption and payment.

That said redemption and payment was refused by said Bank and said notes duly protested for non payment and ^{and thereupon said Willard filed said notes & protest} ~~filed~~ with the Auditor pursuant to law and the Auditor ^{proceeded} to put said Bank in liquidation and wind up its affairs as required by law.

That said Bank thereupon filed a Bill in Chancery in the Sangamon County Circuit Court against the Auditor alleging irregularity & illegality in said presentation & protest and obtained an injunction upon his proceedings for winding up said Bank. That the Auditor answered said Bill and at the first term of said Court held after the issuing of said injunction the same was dissolved and said Bill dismissed. That said Willard and J. M. Adair ^{als.} another holder of notes of said Bank, protested for non payment on said 3rd day of January ^{in part} paid the expenses of employing Solicitors and defending said suit. That on the dismissal of said Bill the ^{but} said Bank in liquidation obtain ^{the order necessary} the Auditor proceeded to sell the public stocks deposited to secure the payment & redemption of the circulating notes of said Bank. That the circulation of said Bank at the time when the Auditor was ready to declare a dividend to the Bill holders amounted to the sum of Sixty three

thousand eight hundred Dollars and
the ^{net} proceeds of the sale of said Public
Stocks for the redemption of said Circulation
amounted to the sum of fifty five thousand
six hundred and seventy Dollars and twenty
two cents -

Willard claims that the Auditor in making
a dividend to him upon the said sum of seven
thousand two hundred Dollars of the protested notes
of said Bank should add to the sum of said
protested notes, ^{and also to all other notes of said Bank duly protesting for non payment of bills} interest at the rate of two and
a half per cent per annum from the date
of said protest to the time when the Auditor
was ready to make said dividend; and that
he Willard shall receive his dividend upon
said protested notes on the basis of the
amount thereof with said two and a half
per cent per annum added. The said
two and a half per cent per annum interest
is claimed ^{being} that allowed in lieu of all
damages by the 18th Section of the General
Banking Law -

If the Court on hearing said Cause
shall be of opinion that said two and
a half per cent Damages or interest should
be paid pro rata with the non protested Bills
of said Bank out of the proceeds of said
Public Stocks in the hands of the Auditor
then an order in the nature of a precepting

Mandamus shall issue directing the Auditor to proceed upon said basis in making his dividend of the proceeds of said Securities in his hands ^{without giving amounts or sums} And if the Court shall be of opinion otherwise then the order or judgment shall set forth in general terms the basis upon which said dividend shall be declared in said statement of facts and the law applicable to the Case. The Auditor insists that altho' the law allows damages at 12 $\frac{1}{2}$ per cent against the Bank yet it does not authorize those damages to be paid pro rata with other the Bills of the Bank out of the proceeds of the Securities filed

Jesse K. Hurler Auditor
by S. T. Logan

Elisha W. Willard
By H. W. Broughton his atty.

179-111
Supreme Court

Elisha W. Willard

vs.

Jesse K. Hurler

Auditor &c.

Agua Case.

Filed April 21. 1862

J. G. Moore

clerk