

No. 12321

Supreme Court of Illinois

People, ex. rel.

vs.

Dubois

217.

People ex rel.

Thomas R. Courtney

vs

Jesse K. Dubois

Opinion

1857

217

1

12321

1857



An Act to amend an Act to Establish
a General System of Banking passed Feby.
15th 1851 and The Acts amendatory thereof:-

Sec 1. Be it Enacted by the People of the State of
Illinois represented by the General Assembly
That every Banker or banking Association organized
or doing business under the laws of this
state shall transact all business in the name
of the Bank at the place at which the notes of
such bank shall be dated and as the location
specified in the certificate directed to be made
by the 14th section of the act Approved Feby
15th 1851 authorizing a general system of Banking
and not elsewhere Provided that no Bank
shall be located in any place other than
in some City, town or Village in this State having
a population of at least two Hundred people

Sec 2. All Bank Notes issued by any Banker or
Banking Association or Institution of this
State shall be redeemed by the Banker or
Banking Association issuing the same in such
sum or sums as shall be presented for
redemption and on demand shall redeem
such note or notes some or sums as may be
presented for redemption in the legal coin of the
United States

Sec. 3 In case any Banker or Banking Association
being the maker or makers of any circulating note
or notes countersigned and registered as provided
in the "act to establish a system of Banking
passed Febry 15th 1851 shall at any time hereafter
on lawful demand during the usual hours of
business at the place where such notes are
payable fail, neglect or refuse to redeem the same
in the legal coin of the United States; then the
notes of such bank or banking association
after having been presented for payment and
payment thereof having been refused in such
legal coin, may be protested in any and what-
ever amount so presented by a Notary Public or
by any two householders under oath, in the County in
which said bank is located in case a Notary
Public cannot be obtained or being obtained shall
refuse to act, The Notary Public or such two house-
holders to designate. The numbers, letters and denom-
inations of such protested Bills or circulating
notes - When the bills so protested shall be pres-
ented to the Auditor with the protest accompanying
the same he shall forthwith notify such Bank
by mail to pay the same and he shall hold
the said bills or notes for ten days from
the time of receiving the same; if the said
Bank issuing said Bills or notes shall neglect
to pay the same with twelve per cent interest per

annum thereon from the date of such protest together with all costs and protest fees and expenses, then and in such case after the expiration of the said ten days as herein provided the Auditor shall proceed as Provided in the fourteenth and twenty sixth sections of the act to which this is an amendment provided that in presenting notes or bills for payment under this section the party presenting the same shall not be required to present or receive redemption of each note or bill separately but the whole amount presented shall be treated as though it were a single obligation of that amount, -

Sec 4 The second section of an act entitled "An act to establish a General System of Banking" Approved Feby. 15th 1857 is hereby amended so as to provide that all the stocks of the United States and of the several States on which interest is regularly paid including the stocks of this State deposited with the Treasurer under the provisions of the last named act shall be valued at a rate ^{ten} per cent less than the market price of such stocks to be estimated as is now provided in said section, provided that such stock shall in no instance be received at a rate above this par value

Sec 5 Any bank, banker or banking association doing business under the provisions of, "An Act to establish a General system of Banking" Approved Feb'y 15th 1857. and the various acts in addition thereto and amendatory thereof shall not be authorized to take or receive a greater rate of interest or discount on any real or personal security than ten per centum per annum but said interest may in all cases be received in advance and in the Computation of time, thirty days shall be a month and twelve months a year so much of the twenty eighth section of "An act to Establish a General System of banking" Approved Feb'y 15th 1857 as is inconsistent herewith is hereby repealed -

Sec 6, The Capital stock of every bank or banking association paid in or secured to be paid in except so much thereof as is invested in real estate which shall be taxed as real estate as herein provided together with its surplus profits or reserved funds and also the real estate of every such company shall be listed by the President or Cashier thereof and assessed and taxed in the same manner as the other personal and real estate of the county and town in which such

Bank or Banking Association is located

Sec 7. Sections twenty and twenty one of "An act for the apportionment of property" approved Febry 12, 1853, and sections twenty and twenty one of "An act for the apportionment of Property" ^{and} the Collection of taxes in Counties adopting the township Organization laws" approved Febry 12, 1853 are hereby repealed

Sec 8. The sixth section of "An act to Establish a general System of Banking" shall be so Construed as to require every bank or association established under said act to have a bona fide Cash Capital of at least Fifty thousand Dollars actually paid in in good faith for the purpose of remaining in such bank or association as Capital and the Auditor shall satisfy himself of such fact Before he shall issue any circulating notes or bills to any such bank or association, and for this purpose he is authorized to examine any and all officers, Stockholders, agents and employees of such bank or association under oath and to take all such measures as he may deem necessary

to determine that fact the evidence
required by this section shall be in writing
and shall be filed in the Auditors office

Sec 9 No more circulating notes shall be
issued under any circumstances to
any bank or association organized under
said act until the Auditor shall be
satisfied that such bank or association
has such actual Capital as is required
in the first section of this act.

Saml Holmes
Speaker of the House of Reps

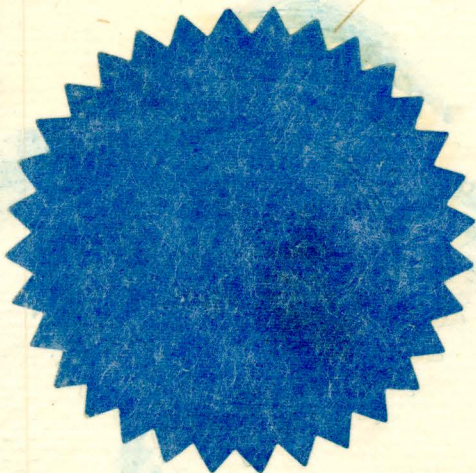
John Wood
Speaker of the Senate

Approved Feb. 14, 1851.

Wm H. Bigell

United States of America,
State of Illinois,

I, Ozias M. Hatch, Secretary of State of
the State of Illinois, do hereby certify that the foregoing
is a true and correct copy of an enrolled
law now on file in my office.



In witness whereof I have hereunto
set my hand, and caused the
Great Seal of State to be affixed,
Done at the city of Springfield
this 15th day of July A.D. 1877.
O. M. Hatch,
Secretary of State

An Act to amend
"An Act to Establish a
General System of
Banking passed
Feb'y. 15, 1861. and
the act amendatory
thereof.



Robert G. Gibson

STATE OF ILLINOIS, }

COUNTY OF LA SALLE. }

BE IT KNOWN, That on this *Eighteenth* day

of *May* in the year of our Lord one thousand eight hundred and fifty *Seven* I

D. F. Cameron, Notary Public, duly commissioned and sworn, and residing in the City of
OTTAWA, in said county and State, at the request of *Thomas R. Courtney*
went with the original *Bank Notes* which ~~is~~ hereto annexed, to

the place of business of the Bank of Ottawa & demanded payment of the same in specie of the Cashier which he tendered in American Quarter Dollars but refused to return the same in gold

WHEREUPON, I, the said Notary, at the request aforesaid, did PROTEST, and by these Pres-
ents do SOLEMNLY PROTEST, as well against the *Makers* of said *Notes*
the endorsers thereof, as against all others whom it doth or may concern, for exchange, re-ex-
change, and all costs, charges, damages and interest already incurred by reason of the non-
payment of the said *Notes* of all of which I have given due notice to the
parties concerned.

Notice for

~~do for~~

~~do for~~

~~do for~~

*George S. Fisher Cashier Ottawa
by leaving a copy of protest at his
place of business*

Each of the above named places, being the reputed place of residence of the persons to whom
this notice was directed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal, the day and year above written.

D. F. Cameron

Notary Public.

Fees.—Noting, 25 cents; Protest and Record, 50 cents; Notices, *45* }
Seal, 25 cents; Certificates, 25 cents.—\$ *2.00* }

State of Illinois Dd.

To The Honorable
Supreme Court of the State of Illinois

Your petitioner Thomas R. Court-
ney respectfully shows that the Bank of
Ottawa is an association for banking
purposes, organized under and by
virtue of the provisions of an act,
entitled "An Act to establish a gen-
eral system of banking" approved
February the 15th 1851. The said
Bank of Ottawa issued its Bills
in pursuance of the provisions of
said act.

Your petitioner further shows
to Your Honors that on the 18th day of
May 1857 he was the legal holder
of two Bills of the said Bank of
Ottawa, each of the denomination
of Five dollars, one being letter A.
number 680 and the other letter A.
number 703 - both dated October 1st
both countersigned & registered as provided in the act aforesaid
1852 - said Bills are annexed to
this petition and made part hereof
that on the day & year aforesaid
he presented the said Bills for re-
demption to George S. Fisher Cashier
of said Bank of Ottawa at the
usual place of business of said
Bank during the usual hours of
business, to wit at the hour of Ten
O'clock of said day, and then there
demanded payment of said Bills in

the legal coin of the United States -

Your petitioner further shows to your Honors that said Cashier of said Bank of Ottawa then & there refused to redeem said Bills in gold coin or in any other manner except by paying the same in silver coin of the United States each piece of which was of the value of twenty five cents. The said Cashier then & there offering & tendering to your petitioner in payment for said Bills forty (40) pieces of silver coin of the value of twenty five cents each, which your petitioner refused to receive in redemption of said Bills. Your petitioner then & there caused the payment of said Bills to be demanded by Dwight F. Cameron a Notary Public in & for the City of Ottawa where said Bank is located, and payment of the same having been refused by the said Cashier except in the silver coin aforesaid your petitioner then & there caused said Bills to be protested in manner & form prescribed in the act aforesaid and in the Act amendatory thereof approved February the 14th 1857.

And afterwards to wit on the 19th day of May 1857 he caused the Bills so protested accompanied by the protest of said Notary to, ^{be sent to} the Auditor of Public Accounts of the State of Illinois, and thereupon requested the said Auditor forthwith to notify the said Bank of

Ottawa to pay the said Bills in manner provided in "An Act to Amend An Act to Establish a General System of Banking" passed February 15th 1851 - and the Act amendatory thereof which act was approved February the 14th 1857 - And the said Auditor thereupon refused to notify the said Bank of Ottawa to pay said Bills in pursuance of said act upon the ground that the Tender of the silver coin aforesaid by the Cashier for the redemption of said Bills was a legal tender under the act aforesaid -

Your petitioner shows to Your Honors that as he is advised & believes said tender was not a legal tender under the act aforesaid, but that he was entitled to have said Bills redeemed in gold coin of the United States -

Your petitioner therefore prays that a writ of Alternative Mandamus be issued from this Court directed to Jesse K. Dubois Auditor as aforesaid, directing him to give said notice to said Bank of Ottawa to pay said Bills or to show cause to this Court why he does not do so, to this Court, on a day to be fixed by this Court - And that upon the final hearing of this Cause that a Peremptory Mandamus be awarded to said Auditor requiring him to give the notice aforesaid to the said Bank of Ottawa

Subscribed and sworn to before me, at Ottawa, Illinois
this 27th day of May 1857

(2321-7)

J. R. Courtney
D. F. Cameron N. P.

State of Illinois Id.

I Jesse K. Dubois Auditor of Public Accounts of the State of Illinois do hereby admit the statements of the foregoing petition to be true & hereby waive the issuing of an Alternative Mandamus thereby consent that this statement shall be taken as my return to an Alternative Mandamus and if in the opinion of this Court the tender of payment of said Bills in silver coin is not a legal tender under the acts mentioned in said petition that a peremptory Mandamus may be issued according to the prayer of said petition.

This agreement is made pro forma and I consent to its being made by agreement that the question may be presented to the Supreme Court for its decision intending hereby to express no opinion on the question submitted by the Mandamus ~~and to present~~ ~~same question~~ ~~to the~~

Jesse K. Dubois Auditor

People ex rel. Thomas
R. Courtney

vs
Jesse K. Dubois

Filed May 22. 1857
S. Leland
Clerk