No. 8725

Supreme Court of Illinois

E. Z. Ryan

vs.

Charles Guard

71641 7

In the Gallatin Circuit Court July Term AD 1854
Pleas held before the Honorable Samuel Scott Marshall Judge of the 12th Judicial Circuit, present and presiding,

Be it remembered that on the 10th day of May AD 1852 the following Declaration was filed to wit.

State of Illinois } sct.
Gallatin County }

Declaration

In the Gallatin Circuit Court May Term 1852. Ebenezer Z Ryan Survivor of Albert S. Caldwell and Ebenezer Z 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 Lawrenceville, under and by virtue of an act of the General assembly of the State of Illinois entitled "an act supplimental 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 Statute in such cases made and provided, complains of Chalon Guard (Survivor of David Guard and Timothy Guard who have departed this life) defendant Summoned &c of a plea of debt, and thy said plaintiff demands of the said defendant the sum of 268.83/100 dollars which the said defendant owes to and unjustly detains from him as Assignee as aforesaid. For that whereas the said defendant by the name of Chalon Guard together with David Guard and Timothy Guard both of whom have departed this life, heretofore and before the said assignment to wit. on the 16th day of December 1841. at Shawneetown to wit at the County aforesaid by their certain promissory note in writing, the date whereof is the day and year last aforesaid whereby then and there promised to pay Seven months after the date thereof to the said President, Directors,

[8795-1]

and Company of the Bank of Illinois, seven months after the date thereof, the sum of two hundred and sixty eight dollars and eighty three cents, the sum above demanded with interest at the rate of seven per cent per annum from date 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 which said same money being due and unpaid the said President Directors and Company of the Bank of Illinois on the tenth day of ~~May~~ April 1845, at the County aforesaid by their instrument of writing called an assignment, assigning the said promissory note to the said Albert G Caldwell and Ebenezer Z Ryan by means whereof a right of action accrued thereon to the said assignees which has survived to the said Ryan the said Caldwell having departed this life,

And whereas also, heretofore and before the said assignment to wit, on the day and year aforesaid at the County aforesaid the defendant was indebted to the said President Directors and Company of the Bank of Illinois in the further sum of two hundred and sixty eight 83/100 dollars the sum above demanded for money then lent by the said President Directors and Company of the Bank of Illinois to the defendant at his request, whereby and by reason of the non payment thereof an action has accrued to the said plaintiff as surviving assignee as aforesaid, to demand of the said defendant the said sum of money, which said several causes of action in the foregoing declaration mentioned the plaintiff avers accrued in the County of Gallatin, in which corporation aforesaid was located and did business and in which the plaintiff as assignee as aforesaid did and does business as such assignee. Yet the defendant (althoe often requested so to do) has not as yet paid the sum of money above demanded or any part

thereof to the said President Directors, and Company of the Bank of Illinois before this said Assignment or to the said assignees as aforesaid since the assignment of the said President Directors, and Company of the Bank of Illinois But to pay the same or any part thereof to the said President Directors and Company of the Bank of Illinois before their assignment or to the said assignees as aforesaid, since the assignment of the said President Directors, and Company of the Bank of Illinois, he the said defendant has wholly neglected and refused and still doth neglect and refuse to pay the same to the said Plaintiff surviving assignee aforesaid, to the damage of the said Plaintiff as assignee as aforesaid of 500 dollars and therefore he brings his suit &c.

Wm. Thomas
Atty. for Plff.

Copy of note sued on

Bank of Illinois
Shawneetown 16. Dec. 1841

Dollars 268. 83/100

Seven months after date we or either of us promise to pay to the President Directors and Company of the Bank of Illinois. the sum of two Hundred & Sixty Eight Dollars and Eighty three cents with interest from date the note paid at the rate of Eight per cent per annum for

[8725.2]

value received -

David Guard
Chalon Guard
Timothy Guard.

Filed 10th. May 1882
J. E. Hull clerk

Summons

State of Illinois } Set.
Gallatin County }

The People of the State of Illinois
To the Sheriff of said County Greeting

We command you to Summon Chalon Guard if to be found in your county to appear before the Circuit Court of said county on the first day of the next term thereof to be holden at the court house in Shawneetown on the 5th. Monday in the month of May instant to answer Ebenezer Z. Ryan Surviving assignee of the President Directors & Company of the Bank of Illinois - in a Plea of Debt of $68.83/100 - to his damage of Seven hundred dollars, as is alledged, and hereof make due return to our said court as the law directs -

Witness, J. E. Hull. Clerk of our said court and the Judicial Seal thereof at Shawneetown this 10th day of May 1882

Seal of Court

J. E. Hull. Clerk -

Executed the within according to law by reading

the Same To Chalon Guard on 20th. of May 1852
John N. Ralph
Sheriff N.C. Ills.

1. And afterwards at the July term 1852 of said Court the following pleadings were filed and proceedings had – to wit –

Order of Court 5th. August 1852

E. J. Ryan Surviving assignee of the Bank of Illinois v Debt
Chalon Guard

Orders that the foregoing cause be continued to the next term of this court

Plea in abatement.

Plea in abatement

Chalon Guard
vs
Ebenezer J. Ryan Surviving assignee &c.

And the said defendt. comes and defends the wrong and injury when &c. and says judgement of the said writ and declaration of the said Plaintiff because he says that the said promissory note in the said Plaintiffs Declaration said on was made and executed to President & Directors and Company of the Bank of Illinois at Shawneetown and held by the Plaintiff as agents trustees or assignees of said Bank constituted to be

[8725.3]

the acts of the general assembly of the State of Illinois hereinafter ~~xxxxxx~~ mentioned, and by the Plaintiff as surviving assignee of said Bank. That by an act of the general assembly of the State of Illinois, ~~approved 25th day of February 1843~~ ~~hereinafter mentioned and by the Plaintiff as surviving assignee of said Bank, That by an act of the General assembly of the State of Illinois~~ approved 25th. day of February A.D. 1843 and Entitled an act ~~of~~ ~~xxxxx~~ to put the Bank of Illinois into liquidation, The Charter of the Bank of Illinois at Shawneetown was repealed, That said act was suspended by the passage of an act entitled an act to reduce the Public Debt, one Million of Dollars and put the Bank of Illinois into liquidation approved A.D. 25th. day of February A.D. 1843 for the term of four years. and afterwards and before the expiration of the last mentioned act, the same was suspended for the term of four years from and after the passage of an act Entitled an act ~~Supplemental~~ to an act ~~to~~ ~~xx~~ ~~xxx~~ to reduce the Public Debt one Million of dollars and to put the Bank of Illinois into liquidation approved on the 28th day of February A.D. 1845 and that afterwards and before the Expiration of the last mentioned act was suspended until the first day of January A.D. 1851 by an act Entitled an act for the relief of the assignees of the Bank of Illinois and to extend the time for the liquidation

of the affairs of said Bank of Illinois approved
10th day of February A.D. 1849. That said last
mentioned act expired as aforesaid on the 1st day
of January A.D. 1851 without any further extension
of time or suspension of the aforesaid first men-
tioned act thereby leaving said act in full force.
and the said charter of said Bank repealed
and the said offices of the said assignees
expired with the said last mentioned act, they
having existed only by virtue of the aforesaid acts,
and this he is ready to verify, wherefore he
prays judgement of the said writ and dec-
laration and that the same may be quashed.

Filed 29th July 1852. Wilt for Deft.
J. E. Hall Clerk.

Replication

E. F. Ryan Surviving assignee
of Bank of Illinois
against In Debt
Chalm Guard.

And the said Plaintiff for replication to the
defendants plea in abatement filed herein, says,
the said writ should not be quashed or abated
by means of any matter or thing mentioned in
said plea because he says that the President
Directors and Company of the Bank of Illinois
by their deed of assignment dated 10th April
1845 assigned the said note Albert G. Caldwell
& Ebenezer F. Ryan the plaintiffs as they had right

[2725-4]

to do, and that on the 10th. day of June 1851 the said Robert G. Cardwell departed this life, whereby the right of action upon said note in the declaration mentioned survived to the said plaintiff all which he is ready to verify &c wherefore &c.

Thomas
for plff.

Filed 29th. July 1852.
J. E. Hall. Clerk

2

December Term 1852

Order of Court 30th. Decbr. 1852.

E. F. Ryan Surviving assignee of Bank of Illinois v. Chalon Guard. } Debt.

On this day came the plaintiff by Thomas & on his motion leave is given to withdraw his replication, and file an amended replication herein & this cause is continued &c

3 July Term 1853.

Order of Court 15th. of July 1853

Ebenezer Ryan assignee of the Bank of Illinois v. Chalon Guard. } Debt.

The court being now sufficiently

ad

advised of and concerning the questions of law arising upon the pleadings in this cause decides and orders that the plea in abatement filed herein is insufficient and therefore orders that said defendant answers over by Tuesday morning –

Chalon Guard
vs.
Ebenezer J. Ryan, Surviving Ags.

Def 15. plea

And the said defendant by White his attorney comes and defends the wrong & injury when &c. and says, that he does not owe the said Plaintiffs sum of money, in the said Plaintiffs declaration demanded, or any part thereof in manner as the said Plaintiff has above thereof complained against him, and of this the said defendant puts himself upon the Country &c.

White for deft.

And the pltff. doth the like – Thomas for pltff. —

Bedford & Gaitmarsh – Agrument Copied in Bill of Exceptions

[8725-5]

Order of Court 30th. of July 1853

Ebenezer F. Ryan Surviving
assignee of the Bank of Illinois
v Chalon Guard.

On this day came the parties by their attorneys and the issue being joined, say by a Jury come and whereupon came a Jury of 12 good and lawful men to wit - William T. Lammerson Jackson Bell, Rachel Hutchison, Henry McKinnon Pleasant H. Walker, Stacy Hinkle, Jacob Crow, Henry S. Cox, David Andrews, John Rea, Wm. M. Spencer, Alexander E. Bruce, who being Elected tried & sworn, and proofs being heard and arguments pro. & con, by the respective counsell, for verdict say - "We the jury find for the defendant costs of suit" Whereupon came the plaintiff by his attorney & moved the court for a new trial of this cause, & pending this motion this cause is continued to the next term of this court.

October Term 1853.

4.

Order of Court 26th. of Oct. 1853.

Ebenezer L. Ryan Surviving assignee of the Bank of Ill. inois

v

Chalm Guard

Debt

On this day came the parties by their attorneys, and the motion submitted at the last term of this court, for a new trial in behalf of the plaintiff being now again before the court, and having been duly considered, it is ordered and adjudged that the verdict rendered herein be and the same is hereby set aside, and a new trial granted to said plaintiff, and it is further ordered and adjudged that the said plaintiff pay the costs that have accrued in this action, and leave is given to the defendant to amend his notice under the general issue, and this cause is continued to the next term of this court.

The notice referred to in the foregoing order, is as follows, to wit—

[8725-4]

Notice under the general issue.

The plaintiff will take notice that the defendant will offer to prove on the trial of the above cause, that the said note was never discounted by the Bank of Illinois - and that no consideration was given by the Bank or the plaintiff, for the same as appears by the discount Book of the said Bank, a Settlement in full by all the parties to said note & by each separately was demanded and had before the assignment of said note

A release of part of makers of said note

Send on! Evidence of payment.

— White for Deft —

At Tiffin 19th of July. 1833

J. E. Hall Clerk

~~Notice referred to in the foregoing order is as follows to wit~~

July Term 1854.

5

Order of Court 6th. of July 1854

Ebenezer F. Ryan Surviving
Assignee of the Bank of Illinois
vs. } Debt.
Chalon Guard

On this day came the plaintiff by Thomas his atty. as also the Defendant by White his atty, and the issue being joined say let a Jury come, whereupon came a Jury of 12 good and lawful men to wit Benjamin Torrell, John A. Engmings, N. B. Hotterby, Eli Joern, Samuel Seaton, B. F. Bell, Thomas R. Chaney, Simon Hall, William H. Blades, William Dunn, Robert Crow, & Joseph Logsdon No. 2. Who being elected tried and sworn, and Evidence being heard, and arguments pro & con, by their respective counsel, returned into Court the following verdict, to wit, "We the Jury find for the defendant July 6th. 1854.

N. B. Hotterby Foreman"

Whereupon came the ~~Plaintiff~~ parties by their attys. and Plaintiff entered a motion for a new trial, which motion was overruled by the court, It is therefore ordered and adjudged, that the Defendant recover of the Plaintiff his cost in this behalf, and that he have execution therefore &c. The Plaintiff then files his Bill of Exceptions which was signed sealed &c. and ordered to be made part of the Record, and on prayer of Plaintiff, an appeal is allowed.

from the judgment rendered in this cause, to the Supreme Court, upon the filing of a Bond with the Clerk within Sixty days, in the penalty of $200 — Conditioned according to law, with James Dunlap, or John T. Jones, as Security.

ma - The original Deed - of Assignment executed by the Bank to Cardwell & Ryan 10th April 1845, and the copy of the order or resolution of the Board of Directors accepting the provisions, of the law under which the assignment was made as follows -

Bill of Exceptions

State of Illinois } S.S.
Galatin County }

In the Circuit Court of said County.

Ebenezer F. Ryan Survivor of Caldwell & Ryan assignees of Bank of Illinois
against
Chalon Gaurd

} In debt.

Be it remembered that on the trial of this cause the plaintiff read as evidence to the Jury first the original note as follows,

Bank of Illinois
Shawneetown 16 Dec 1841

Note

Dollars 268.$\frac{83}{100}$

Sixty months after date, we or either of us promise to pay to President Directors and Company of the Bank of Illinois, the sum of Two hundred & Sixty Eight dollars and eighty three cents, with interest from the date until paid, at the rate of Eight per cent per annum for value received.

Seal

David Gaurd
Chalon Gaurd
Timothy Gaurd

Deed of Assignment

This Assignment made this tenth day of April in the year 1845 between the President, Directors, & Company of the Bank of Illinois of the first part, and Albert G. Caldwell of Shawneetown and E. F. Ryan of Lawrenceville of the second part, Witnesseth that whereas by the provisions of an act entitled "an Act Supplemental to an act to reduce the public debt one million of Dollars and to put the Bank of Illinois into liquidation, approved February 28th 1845, it is provided that in case the said Bank of Illinois shall accept the provisions of said act, the said Bank shall within Thirty days after such acceptance make an assignment of all the Effects of said Bank both real and personal of every kind, & description to assignees in said act named, and that all the personal estate, rights

[8725-8]

and Credits, and debts of every kind due to said Bank at Shawneetown, and Branch at Lawrenceville, shall be assigned to the said Albert G. Caldwell, and E. J. Ryan. And whereas the President and directors of said Bank of Illinois, by an act and order of the Board of Directors thereof duly tested by corporate seal thereof, (which act and order is hereunto annexed and referred to as part of this instrument) did on the 10th day of March 1845, duly accept the provisions of said act according to the requirements thereof; and did thereby authorise and empower James Dunlap President of said Bank and John Siddall, Cashier thereof within thirty days after the date of said order to make the transfer and assignment of the effects of said Bank to the said assignees, under the corporal seal of said Bank,

Now therefore in consideration of the premises, the said President Directors and Company of the Bank of Illinois, do hereby transfer and assign unto Albert G. Caldwell and E. J. Ryan all the personal estate rights & credits, notes, Bonds, judgments and debts of every kind due to said Bank at Shawneetown and to the branch of said Bank at Lawrenceville.

to have and to hold the said effects of personal property under the said Albert G. Caldwell, and E. J. Ryan, and the survivor of them, and their successors in office, as assignees of Bank of Illinois forever.

In testimony whereof the said President, Directors & Company of the Bank of Illinois have hereunto affixed their corporal seal and executed their conveyance by the signatures and seals of the said President and Cashier of said Bank on the day and year first above written

Seal of Said Bank

James Dunlap, Pres. (Seal)

John Siddall, Cash. (Seal)

Bank of Illinois
Shawneetown 19 March 1845

order of Board or acceptance

Whereas, an act of the Legislature of the State of Illinois at its last Session was enacted entitled "an act Supplemental to an act to reduce the public debt one million of dollars, and for the Bank of Illinois with liquidation", and which was duly approved by the Governor of Illinois on the 28th day of February 1845.

It is

Ordered that the terms and provisions of said act be accepted, and that the President and Cashier of said Bank within thirty days from this date under the corporate seal of said Bank assigned all its effects real and personal of every kind and description to assignees according to the terms provisions and instructions of said act. and that in making of the same the said President and Cashier, deliver over to said assignees, as far as the same deliverable all the moneys Bank notes Bills of Exchange papers choses in action, deeds title papers and personal property of the said Bank, and that the said President and Cashier be invested with full power to do whatsoever they can in the consummation of the provisions of said act according to its true intent and meaning.

A true copy from the minute Book of the board of directors of the Bank of Illinois.

Seal of Said Bank

John Siddall Cashr.

Filed September 17th A.D. 1852 - and is recorded in Book - B - pages 349 & 350 Sept. 17th A.D. 1852

Signed Jacob Young - Clerk -
& Ex officio recorder
by John C Riley deputy.

[8725-9]

Charleston Coles Co. Ills. March 8th. 1854 - filed and recorded in Book R. page 479 & 80.
N. Ellington - Clerk.

Evidence of Marshall.

The defendants then introduced John C. Marshall as a witness who testified that he acted as clerk in the Bank of Illinois at Shawneetown, some years prior to 1842. and was acquainted with the manner of doing business in said Bank. defendant then had witness to examine the note and state whether or not it had ever been discounted by the Bank. The plaintiff objected to the witness answering the question and to his giving testimony as to the discounting of the note upon the ground that the Books of the Bank, afford a higher evidence, The witness then explained to the court that notes offered for discount by the Bank, were listed on a Book which was used by the board, and as the board acted when a note was agreed to be discounted, the letter "D" was placed in the Book opposite to the name of the maker and the letter "R" was placed opposite to the name when the note was rejected, that after the action of the directors the notes discounted, were taken and numbered by endorsement on the back of each note and charged, or credited on the Bank books, by the number, The court then permitted the witness to testify to the Jury - and after examining the note sued on to state whether it had the marks of a discounted note or not, the witness testified that the note was not numbered or marked as a discounted note, that the rule was universal as far as he knew to number all notes discounted, and charge or enter them on the Books by their number, witness testified that notes not discounted where often left in the Bank, and were not lifted or taken away by the persons entitled to them, that when he left the Bank, a large number of such notes were remaining in bank not having been delivered to the persons entitled to them; To which decision of the Court in permitting the witness to testify in relation to the discounting of said note, the plaintiff excepted.

The plaintiff then read as evidence to the jury a certified copy of an order of the board of directors as follows.

Order of Board.

"At a meeting of the board of directors of the Bank of Illinois on Wednesday the 15th. day of Decr. 1841 - present - John Marshall President.
William A. Decker
Isaac Cooper
William Hick
W. A. G. Posey
Abraham Kirkpatrick
John Thos. Jones
Stephen A. Lowan

Ordered that the cashier relinquish in the mortgage given to the Bank by Zachariah Bedford, and Joseph Saltmarsh all the lands contained in said Mortgage, that said Bedford & Saltmarsh purchased from David Guard, on the following conditions viz - that David Guard give his note payable to the President Directors and Company of this Bank at seven months date, bearing interest from date until paid at the rate of eight per cent per annum - for the sum of $268.$\frac{83}{000}$ being half of the amount of a note due this Bank, by said Bedford & Saltmarsh, for which said Mortgage was taken and obtain a written consent from said Bedford and Saltmarsh - for the Bank to relinquish said land above mentioned in said Mortgage - the note of David Guards for $268.$\frac{83}{000}$, above mentioned to be signed by Timothy and Chalon Guard, and to be held by the Bank as collateral security instead of the Mortgage for the payment of that amount in Bedford & Saltmarsh's note now due the Bank, and to be collected from said Guard or his security if it cannot be collected from Bedford and Saltmarsh out of the property now mortgaged to said Bank and which was purchased from John Ellis, or out of their personal property.

Ordered that Isaac Cooper, W. A. Decker & Stephen A. Lowan

[8725-10]

be and they are hereby appointed a Committee, to examine this Bank - in conformity with the 25th rule of the by laws.

Shawneetown Ills. 28 July 1853 -

I certify that the original records and Books of the late Bank of Illinois has been placed in my possession for safe keeping, and to enable me to settle and finally wind up the affairs of said Bank in due order of the Circuit Court of the United States, for the District of Illinois, made and entered in a Suit in Chancery pending in said Court between the Bank of the State of Missouri as complainants and Albert G. Caldwell, Ebenezer J. Ryan, David A. Smith, and George A. Dunlapp assignees of the Bank of Illinois defendants, that said Records and Books, are now in my possession, and the foregoing papers, contain a full and correct copy - of the Record of the proceedings and action of the Board of Directors at a meeting held on the 15th. day of Decbr. 1841. as the same now appears - on the record Book of said Corporation. I further certify that I have no public Seal and I therefore affix - my private Seal hereto, the date above written -

Wm. Thomas - (Seal)

Trustee of the Bk. of Ill.

The foregoing Certificate sworn to before me this 29. July - 1853

S. S. Marshall

I have compared the foregoing copy with the original entry and find the copy - correct -
Shawneetown 29. July. 1853 -

J. S. Campbell

He also read as Evidence an agreement of Bedford and Bullmash - having proved its Execution in the words following -

We do hereby give our consent for the Bank of Illinois

agreement of Bedford & Saltmarsh.

to relinquish the lands that we purchased from David Green in the Mortgage given by us to said Bank on the 4th day of June 1840 to secure to said Bank the payment of Five hundred Dollars

Given under our hands & seals this day of Decr. 1841 — E. Bedford (Seal) Joseph Saltmarsh (Seal)

Witness
Isaac Cooper

The plaintiff then read an original Mortgage executed by Bedford & Saltmarsh to the Bank of Illinois dated 4th June 1840 — Conveying sundry tracts of land as security for the payment of a note of five hundred dolls. made by them to the Bank dated 4th June 1840 payable Seven Months after date with interest at the rate of 8 per cent per annum from date paid.

The plaintiff then produced the record Book of the recorder of Gallatin County in which said Mortgage was recorded and read an entry made in the margin of said record as follows — having proved the signature of John Siddall Cashier.

Release of Mortgage.

Bedford & Saltmarsh to Bk. Ills. Shawn. Recorded 6th. Augt. 1840. Del, a.

For and on behalf of the President and Directors of the Bank of Illinois I do hereby by agreement of all the parties concerned release from this Mortgage — all the lands contained therein except the N.E. qr. S.W. qr. Sec. 31. Town 10 S range 10 W and the N. 1/2 fractional Section 31 — Same township and range 17 — Decr. 1841.

John Siddall. Cashier.

The plaintiff then enquired of witness J. C. Marshall about the said Bedford & Saltmarsh — Witness said they left the country about the date of the transaction between the Bank and Green, and as he understood were insolvent. The report was that they left largely in debt and without means of payment. The testimony then closed and the foregoing being all that was given in the cause the plaintiff asked the Court to instruct the jury as follows —

~~The Court instruct the jury, that the assignment from Green~~

[8725-11]

and read in this cause, is sufficient evidence under the law to entitle the plaintiff to maintain the action.

Refused.

The court instructs the jury that the mere fact that there is no mark on the note such as is usual on notes to the Bank of its having been discounted, does not prove that the plaintiff in this cause is not entitled to judgment.

Refused.

Which the court refused — and instructed the jury as follows.

The court instruct the jury that in the question of payment the defendant is bound to prove the fact of payment to justify the jury in finding such payment, and he is not bound to prove the note not paid.

— Given —

The court on motion of defendant instructed the jury as follows. Bank of Illinois vs. Chalon Guard &c. The Court instructs the jury that to authorise a recovery in an action at law the plaintiff must prove any material allegation in his declaration. — given — 2nd. that where an assignment is set forth in the declaration of the note sued on the plaintiff must prove the note to be assigned as alleged in the declaration — given — 3rd. the court instruct the jury that if they believe the note sued on was held by the President Directors & Co. of the Bank of Illinois, as collateral security for the debt of third persons the plaintiff should show that they could not collect the debt for which the said note was so taken or show some diligence to collect the same before the jury can find for the plaintiff

— given —

If the jury believe from the evidence that the defendant executed the note offered in evidence to the Bank as charged and that the note was assigned to the plaintiff by deed of assignment as charged the verdict should be for plaintiff unless they believe from the evidence that the note has been paid or that the Bank got possession thereof without discounting it or giving any consideration therefor.

— Given —

Plaintiffs instructions refused.

The Court instruct the jury that if they believe from the

Pltffs. instruction asked.

The court instruct the Jury that if they believe from the evidence, that the note was made, and that the deed of assignment was executed as alledged in the declaration, that the Pltff. is entitled to recover, unless it is proved that the note has been paid, or that the note was not accepted by the Bank.

— Refused —

Which the court refused and instructed the jury as follows, " ~~of the Jury to~~

" If the jury believe from the evidence that the defendant executed the note, offered in evidence to the Bank as charged and that the note was assigned to the Pltff. by the deed of assignment as charged, the verdict should be for Pltff — unless they believe from the evidence that the note has been paid or that the Bank got possession thereof without discounting it or giving any consideration therefor —

— Given —

The court then motion of Defendant instructed the jury, as follows —

3rd " The court instruct the jury that if they believe the note sued on was held by the President Directors & Co. of the Bank of Illinois as collateral security for the debt of Thos Gordons, the plaintiff should show that they could not collect the debt for

which the Sd note was so Fastened, or show some Allegiance to call of the Same before the jury can find for the plaintiff.

Given

1st The court instructs the Jury that to authorise a recovery in an action at law, the pltff. must prove every material allegation in his declaration

— Given —

2nd That when an assignment is set forth in the declaration of the note Sued on, the pltff. must prove the note, to be assigned as alleged in the declaration

Given

The Jury having found a verdict for deft. the Pltff. moved for new trial upon the following grounds,

In Gallatin County Circuit Court July Term 1854

Ebenezer F. Ryan Survivor of Cassadell & Ryan
against
Charles Guard
} In Debt

The Sued plaintiff moves the court to set aside the verdict, and grant a new trial

in this cause, for the following reasons, to wit – First the verdict is contrary to the evidence, and the right of the cause.

Second, The court erred in admitting the testimony of Marshall to prove that the Saxon notes Sued on had never been discounted,

Third, The Court erred in giving the 1st 2nd & 3rd instructions to the jury in behalf of Defendants –

Fourth, The court erred in refusing to give the instructions asked by Plaintiff and in giving the jury instructions in lieu of those asked by pltff.

Thomas
for pltff

Which motion the court overruled, to which decission of the court, overruling said motion, the Plaintiff excepts and prays that this his Bill of Exceptions may be signed sealed &c which is accordingly done

T. S. Marshall (Seal)

[8725-13]

Appeal Bond.

Know all Men by these presents that we Ebenezer Z. Ryan and James Dunlap, are held and firmly bound unto Chalon Guard in the penal sum of two Hundred Dollars, for the the payment whereof we bind ourselves our heirs jointly & severally firmly by these presents, sealed with our seals, and dated this 22nd day of July, 1854 – The condition of the above obligation is such, that whereas at the July Term A 1854 of the Circuit Court of Galatin County Illinois in a suit pending before said Court, between the said Ebenezer Z. Ryan, as Survivor of Albert G. Caldwell, and E. Z. Ryan Assignee, of the Bank of Illinois against the said Chalon Guard a judgment was rendered in favor of said Guard in bar of the action, and for the costs of suit, – from which judgment and appeal was allowed the said Ryan, to the Supreme Court, – Now in case the said Ryan shall duly prosecute said appeal, and in case the judgment shall be affirmed, shall pay said judgiments costs, interest, and damages, then this bond to be void, otherwise to remain in full force and effect,

E. Z. Ryan (Seal)
by his atty in fact
Wm. Thomas
James Dunlap (Seal)

Filed 21st August. 1854 –
J. E. Hall. Clerk.

[8725-14]

State of Illinois
Gallatin County } ss

I S. P. Hall Clerk of the Circuit Court of said County do Certify that the foregoing is a true and complete copy of the record & proceedings in the before Styled Cause in the Cir Court of said County all of which appears from the records & files of my office

In testimony whereof I have hereto set my hand & affixed the Seal of said Court at Shawneetown this 29th day of August 1854

S P Hall Clk

Cost in Cir Court $10.79 ~~$11~~
Copy of record for S. Court $4.50

State of Illinois ss. In Supreme Court.
First Grand Division
November Term 1854.

Elbridge G. Ryan Survivor of Albert G. Caldwell & E. G. Ryan Assignees of the Bank of Illinois against Charles Greene	Appeal from Jackson Galatin Circuit Court.

And the said Elbridge G. Ryan Survivor as aforesaid by William Thomas his Atty comes and files the Record of the proceedings and judgment of the circuit court aforesaid; and says that in the said proceedings and judgment, Manifest Errors have intervened to his prejudice, and he here sets down as causes and grounds of Error the following.—

First; The said circuit court Erred in refusing to instruct the Jury as asked by the said plaintiff and giving an instruction to the Jury instead of the instruction as asked by the said plaintiff

Second; The Court Erred in giving each of the first, second, and third instructions asked by the defendant,

Third; The Court Erred in overruling the motion of plaintiff for New trial.

[8725-16]

Fourth; The court erred in permitting John C Marshall to testify in relation to the discounting of the note, ~~not~~ or in respect to the question, as to whether or not said note had been discounted.—

Wherefore the said plaintiff prays that the judgment aforesaid, may be Reversed, set aside, and for nothing held.

Shewmontown
9 September 1854.

W M Thomas
Atty for plff.

No 13

E. Z. Ryan
Surviving Assignee
of B & of M
Appellant

vs } Copy
} Record

Charles Guerra

Assignment of
Errors.

Filed September 14th
1854.

F. D. Preston Clk
By N. Johnston Deputy

In Supreme Court Nov. 1854.

E. Z. Ryan surviving Assignee
of Bank of Illinois

against Appeal from Gallatin
Circuit Court

Action of debt upon a promissory note
made by Grand & others to the Bank
of Illinois dated 16 December 1841.
Plea Nil Debit. and notice of special
matter to be given in evidence on
the trial. –

Verdict and judgment for
defendant, – Motion for new trial
overruled. – Exceptions. & appeal
to this court,

Before the trial of the cause the Plff
read in evidence

1. The note declared on.

2 The deed of Assignment executed
by the President Directors &c of the
Bank of Illinois to Caldwell &
Ryan as Assignees under the provisions
of the Statute authorising the appointment
of Assignees with a copy of the Resolution
of the Board of Directors accepting the
provisions of said Statute.

[8725-18]

The defendant then introduced John C. Marshall as a Witness, who testified that he acted as clerk in the Bank of Illinois at Shawneetown some years previous to 1842 and was acquainted with the manner of doing business in the Bank. — Defendant then told Witness to examine the note and state whether or not it had ever been discounted by the Bank. —

The plff objected to the Witness answering the questions, and to his giving Testimony as to the discounting of the note upon the ground that the Books of the Bank afforded higher evidence.

The Witness then explained to the court that notes offered for discount, were listed on a Book, which was used by the Board, and as the Board acted, when a note was discounted the letter "D" was placed opposite to the name of the maker, and the letter "R" when rejected. That after the actions of the Directors the notes discounted were taken and transferred by Endorsement on the Back, and charged or credited on the Books

by their Number, — the court then permitted the Witness to testify to the Entry to which plaintiff excepted.

The plaintiff then read as evidence, a copy of an order of the Board of Directors of 15th December 1841. by which they agreed to release, the claim of the Bank, upon certain real Estate mortgaged by Bedford & Salt marsh which they had purchased from David Guard one of the makers of the note sued on, — on conditions that Said Guard would give his note to the Bank, payable at 7 months, and bearing 8 percent interest from date until paid for $268. 83/100. to be signed by Timothy Guard & Charles Guard. (being half the amount of a note due the Bank by Bedford & Salt marsh,) the note to be held by the Bank as collateral security instead of the Mortgage for the payment of said amount due Bedford & Saltmarsh, date, and to be collected from said Guard or his Security, if not collectable

[8725-19]

from Bedford & Sattermarsh out of the property mortgaged to the Bank, and which was purchased from John Ellis or out of their personal property.

The plaintiff also read as evidence, ~~by a~~ ~~[illegible]~~ stipulation signed by Bedford & Sattermarsh agreeing to the arrangement mentioned in the order of the Board. — Also a mortgage executed by Bedford & Sattermarsh to the Bank dated 4th June 1840 conveying several tracts of land as security for the payment of a note of $500, — with an ~~[illegible]~~ entry on the margin of the Record Book, showing a Release of the mortgaged premises ~~as~~ agreed on by the Board.

The plaintiff then proved by Witness J. C. Marshall that Bedford and Sattermarsh left the country about the date of the transaction between the Bank and Guard, and as he understood insolvent, — the Report was, that they were largely in debt without means of payment.

The Testimony being closed the Pltff asked the Court to instruct the Jury

that if they believe from the evidence, that the note was made, and that the deed of assignment was executed, as alleged in the declaration, the pltff is entitled to recover, unless it is proved that the note has been paid, or that the note was never accepted by the Bank, which the court refused and instructed the Jury as follows.
If the Jury believe from the evidence that the defendant executed the note offered in evidence, to the Bank as charged, and that the note was assigned to the plaintiffs by the deed of assignment as charged, the verdict should be for pltffs. Unless they believe from the evidence that the note has been paid, or that the Bank got possession thereof without discounting it, or giving any consideration therefor.

On request of defendant the court instructed the Jury as follows.
1. That to authorize a recovery in an action at law, the pltff must prove any material allegations in the declaration

2nd That where an Assignment is set forth in the declaration of the note sued on, the pltff must prove the assignment as alleged. ~~and~~

3. That if the Jury believe, that the note sued on was held by the Bank, as collateral security for the debt of a third person, the plaintiff should shew that they could not collect the debt for which the said note was so taken or shew some diligence to collect the same before the Jury could find for the plaintiff

Verdict being for defendant, the pltff asked for a new trial upon the following grounds.
1 The verdict is contrary to the evidence and the right of the case

Second; The court erred in admitting the testimony of Marshall to prove that the note had never been discounted

Third. The court erred in giving instructions asked for by defendant

Fourth; The court Erred in refusing to give the instructions asked by plff, and in giving instructions in lieu of those asked, —

Motion overruled and exceptions taken incorporating all the evidence in the cause, —

Errors.

1. The court Erred in refusing to the instruct the Jury as asked by plff and in giving one instruction, instead of the one asked for, —

2. The court Erred in giving the instructions first, second, & third, asked by Defendant.

3. The court Erred in overruling the motion for New Trial

4. The court Erred in permitting John G Marshalls to testify in relation to the circumstances of the note, or in respect to the Question whether or not said note had been discounted

[978558]

No 13.

Bryan
vs Abstract
Guard

Hespin.

Elbridge G. Ryan Receiver
of Albert G. Caldwell and
E. G. Ryan Assignees of the
Bank of Illinois

against — Appeal from Gallatin.

Charles Grand

And now at this day comes again the said Appellant by his attorney and the said Defendant not having entered his appearance herein, nor joined in error as required by the rule Entered at a former day of this Term. It is considered and adjudged by the court that the judgment of the circuit court appealed from be, and the same is, hereby Reversed, set aside, and annulled, and that the cause be remanded to the said circuit court for further proceedings. — It is further considered by the court that the said Appellant recover of said Defendant his costs herein expended, & that he have execution therefor &c

[8725-22]

No 13.

Rogers
v
Grand.
From Yorke
Nov '54

No 13

November 1854

E G Ryan, Survivor of
A G Caldwell & E G Ryan
Assignees of the Bank
of Illinois

v

Chalon Guard

Appeal from Gallatin
By the
Court

8725

Judgment reversed for
Nonjoinder his error

No 13

November 1854

E G Ryan, Survivor of
A G Caldwell & E G Ryan,
Assignees of the Bank
of Illinois

v

Chalon Guard

Appeal from Gallatin
By the
Court

Judgment reversed for
Nonjoinder his error.