No. 8655

Supreme Court of Illinois

People, for use, W.Thomas

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vs.

Joseph G.Bowman

State of Illinois S.S.

In Supreme Court of said State

First Grand Division

The Governor of the State of Illinois

Suing for the use of William

Thomas Trustee of the Bank of Illinois

against } Upon Appeal from Judgment
} of circuit court of Richland County

Joseph G Borroman

And the said Relator comes and brings the

Errors Assigned. Record of the circuit court aforesaid, here

before this court, and says, that in the

Judgment and proceedings of the circuit

court, Manifest Errors have intervened

to his prejudice, and prays, that because

of those Errors, the Judgment aforesaid

may be Reversed, Set aside, and for

nothing held, and he has Set down

the Errors aforesaid,

First; The court Erred in ~~Sustaining~~ overruling

the demurrers to the fifth and sixth

pleas, and in deciding each of said pleas

to be a good defense to the action,

Second; The court Erred in not rendering

Judgment in favor of the plaintiff upon

the issues of law, and in rendering

Judgment for defendant ~~in~~ in bar of

the action, Wherefore the ~~Plaintiff~~ Appellant

Joinder in error

W. R. Underwood
Atty for appellee

[8455-1]

1st

Preamble title of court

State of Illinois Richland County SS.
Pleas held before the Hon Aaron Shaw
Judge of the Circuit Court of said County in
Olney, at the November term 1866 of the Circuit
Court of said County. The Governor of the State
of Illinois who sues for the use of William
Thomas Trustee of the Bank of Illinois Plaintiff
in a plea of debt against Joseph S. Bowman
Defendant. Be it Remembered that on the 13th
day of November 1865 the said plaintiff
filed a declaration in this cause as follows.

Declaration

State of Illinois Richland County SS.
In the Circuit Court of said County the Governor
of the State of Illinois who sues for the use of
William Thomas Trustee of the Bank of Illinois
complains of Joseph S. Bowman in custody &c
of a plea that he ~~render~~ unto him the sum of
Fifty Thousand dollars which he owes to,
and unjustly detains from her, or that where
as on the twenty seventh day of March A.D. eighteen hundred & sixty five
at the County aforesaid said Joseph S Bowman
by his certain Bond, bearing date the day and year
aforesaid, together with Ebanezer Zane Ryan,
Samuel K. Clubb, Algernon S. Baldwin, James
M. McLane, James Nabb, Jesse K. Dubois, Abner
Green, and Samuel Dunlap acknowledged
himself to be held and firmly bound unto the
said plaintiff by the name and discription of

1865-3

2d

Declaration

Bond.

Thomas Ford Governor of the State of Illinois and his Successors in Office, for the use of the People of the State of Illinois, and all other persons interested, in the penal sum of Fifty Thousand dollars which well and truly to be paid, and for the payment of which, the said parties bound themselves, their heirs Executors and Administrators, jointly Severally and firmly by the: presents aforesaid, which Bond was on the Second day of April Eighteen hundred and forty five approved by the said Thomas Ford, then Governor of the State of Illinois and was filed in the office of the Secretary of State as required by law, a copy of which is here now to the Court shown to Prove the debt aforesaid, the Original being filed as aforesaid cannot be procured, in Court- to which Bond there is a Condition annexed in Substance as follows. The Conditions of the above obligation is such that whereas the said Ebanezer Zane Ryan has been by an act of the Legislature of the State of Illinois 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" appointed one of the assignees to Close up the business of the said Bank of Illinois. Now if the said Ebanezer Zane Ryan as assignee as aforesaid

Condition of Bond

shall faithfully discharge the duties enjoined upon him by the provisions of said act of the Legislature aforesaid, then this obligation to be void, otherwise to remain in full force and virtue," a copy of which said condition is here also to the Court shown— And now the plaintiff avers that the said Ebenezer Gano Ryan did not faithfully discharge the duties Enjoined upon him by the provisions of the act of the Legislature, by which he was appointed Assignee as aforesaid, but wholly failed and refused so to do And the said plaintiff according to the provisions of the statute here sets down and assigns the following breaches of the conditions of said Bond To wit. First, the said Ryan in the collection of debts due to the said Bank of Illinois during the year Eighteen hundred and forty five received the sum of Fifteen Thousand dollars of the Bills and Certificates of said Bank; during the year Eighteen hundred and fifty six he received in like manner Fifteen Thousand dollars of the Bills and Certificates of said Bank of Illinois, and during the year Eighteen hundred and forty seven he received in like manner the sum of Thirty Thousand dollars of the Bills and Certificates of said

Breaches of Condition

First Breach

Bank of Illinois, and it was the duty of said Ryan to have met with the other assignees of said Bank on the first Monday of December in each of said years Eighteen hundred and forty five, Eighteen hundred and forty Six & Eighteen hundred and forty seven for the purpose of cancelling and Burning all notes and certificates redeemed, and of making a full report to the Governor of the amounts of assets in his hands, and of the notes and certificates redeemed and cancelled— yet the Plaintiff avers that the said Ryan did not meet with the other assignees of said Bank on the first monday of December in either of the years aforesaid at Shawneetown and cancel and Burn the notes and certificates received by him as aforesaid, nor did he at either of said periods make a full Report to the Governor of the amount of assets in his hands and of the notes and certificates redeemed and cancelled; but to faithfully discharge his duties in these Reports, he the said Ryan wholly failed.

1 Breach continued.

Second. That at the December Term A.D. Eighteen hundred and fifty of the Circuit Court of the United States for the District of Illinois the said Court made and entered a decree

Second Breach of Condition

in a cause therein pending, between the Bank of the State of Missouri as Complainant and Albert G. Caldwell, Ebenezer Ryan, David A. Smith and Royal A. Dunlap as Assignees of the Bank of Illinois as Defendants in substance as follows; "And now at this day this cause came on to be heard upon the complainants motion for the appointment of a Receiver to take charge of the property and assets real and personal of the Bank of Illinois or for the appointment of new Trustees in place of defendants to take charge of the estates and property real and personal of the said Bank, and to carry out and execute the trusts enacted by and existing under the provisions of three acts of the Legislature of the State of Illinois; One of said acts being an act entitled "An act to reduce the public Debt one Million of Dollars and to put the Bank of Illinois into Liquidation" in force on the twenty fifth of February Eighteen hundred and forty three and another of said acts being 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.

[P. 55-A]

2nd Bond continued

liquidation in force the twenty Eighth day of February Eighteen hundred and forty five, and the other act being 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, in force on the tenth day of February Eighteen hundred and forty nine; and the said defendants having appeared to said Motion and affidavits and Exhibits being submitted to the Court, as well on the part of the complainant as the defendants and the Motion having been argued by Counsel on the part of the respective parties, and the Court having fully considered of the said Motion and being now sufficiently aware of and concerning the premises, doth find and adjudge that other Trustees be appointed to take charge of and to execute the trusts vested and existing under and by virtue of the acts aforesaid, in the place and stead of the said defendants. And the said Court by the decree aforesaid, appointed Joseph Gillaspie William Brown and Albert G. Caldwell as Trustees in the place and stead of the said defendants, to take charge of and execute the trusts existing under the said

2 Brands continued

acts which yet remain to be executed under the provisions thereof and the said defendants were thereby directed and required on being served with a copy of said Decree to make an Assignment within sixty days after such service of all the effects remaining of said Bank of Illinois and the several branches thereof both real & personal of any kind and discription and all the Rights Credits and Choses in action thereof unto the said Trustees so appointed. And afterwards at the June Term Eighteen hundred and fifty and of the said Circuit Court the said William Thomas was appointed Sole Trustee of the said Bank as the Successor of those appointed as aforesaid. And afterwards at the December term Eighteen hundred and fifty nine of the Circuit of the United States for the Northern District of Illinois, in which Court the said cause was continued by operation of Law the said Court made and entered an additional decree in said cause in substance as follows. "This day came again the said complainant by her Solicitor Burgess who presents the Report of William B. Warren appointed Auditor to settle and state the accounts of the defendant Ebenezer Z. Ryan as assignee of the Bank of Illinois with

[illegible]

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2nd Brief continued.

an Endorsement of approval thereon by the said Ryan which is ordered to be filed, And it appearing from said Report that on the thirteenth of January Eighteen hundred and fifty One, there was due from said Ryan as assignee on account of his receipts of the trust fund, the sum of ~~twenty~~ nine Thousand four hundred and twenty nine dollars forty one cents. It is ordered and decreed by the Court that the said Ryan pay over to William Thomas the Trustee herein the sum of forty five Thousand four hundred and sixty seven dollars twenty nine cents the amount found to be due from him as aforesaid including interest to the date of this decree (the Court being of opinion in the absence of any explanation or account of said balance by said Ryan that he shall pay interest from the 13th of January 1851) and the Costs chargeable against him, and that execution issue against said Ryan as upon a Judgement at Common law of which decree the said defendants have had notice, To wit, on &c at &c— and which decree the Plaintiff avers, remains in full force, not reversed, set aside, or satisfied— Yet the said Plaintiff avers that neither the said Ryan or the

defendant, has paid over to the said William Thomas, Trustee as aforesaid, the said sum of Forty five Thousand four hundred and Sixty seven dollars twenty nine Cents or any part thereof, but to pay the same the said defendant as well as said Ryan has hitherto wholly failed and refused, and yet fails and refuses. Third, That during the time which elapsed between the date of the Bond aforesaid, and the first day of January Eighteen hundred and forty seven, the said Ebenezer Z. Ryan received of the Notes and Certificates of said Bank of Illinois in the Collection of debts and to said Bank the sum of fifty Thousand dollars, which it was his duty to have Cancelled and Burned as so much of the indebtedness of said Bank Redeemed by the Collections aforesaid; and at the June term Eighteen hundred and fifty one of the Circuit Court of the United States for the District of Illinois, in a suit pending upon said Court, the object of which was to compel the said Ryan to account for and pay over the amounts collected by him, as aforesaid,— between the Bank of the State of Missouri as complainant and Albert

Vision Branch
7
Condition

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3 Breach continued

G. Caldwell, Ebenezer Z. Ryan, David A. Smith and George A. Dunlap Assignees of the Bank of Illinois as Defendants, the said Court made and Entered an order appointing William Thomas for whose use this Suit is brought Trustee of said Bank to execute and perform the duties required of said Assignee and it was thereby and then the duty of said Ryan to deliver over to said Thomas the notes and certificates collected by him as aforesaid— Yet the plaintiff avers that said Ryan has not paid over to the said Trustee the notes and certificates so collected by him as aforesaid, although so to do he has been often requested— Wherefore the plaintiff says that by reason of the foregoing breaches of the conditions of said Bond, the said Defendant has become liable to pay to the plaintiff the said debt above described— Yet the plaintiff avers that neither the said Ryan or the Defendant, has paid the said debt or any part thereof, but to pay the same, he the Defendant has hitherto neglected and refused and still so neglects & refuses. To the damage of the plaintiff Fifty Thousand Dollars therefore She Sues &c

Concluding Breach.

Wm Thomas
Trustee &c

11th

copy of Bond endorsed on.

Copy of Bond & condition endorsed on.

Know all men by these presents that we Ebenezer Zane Ryan and Samuel H. Clubb. Algernon S. Badollet. James M. McLean, Jesse K. Dubois, Joseph B. Bowman, Abner Gove Samuel Dunlap, Wilson Lagow and held and firmly bound unto Thomas Ford Governor of the State of Illinois, and his Successor in office for the use of the People of the State of Illinois and all other persons interested, in the penal sum of Fifty Thousand Dollars, which well and truly to be paid we bind our hirs Executors, Administrators jointly severally and firmly by these presents, as Witness our hands and seals this 27th day of March A.D 1845. 1845. The condition of the above obligation is such, that whereas the said Ebenezer Zane Ryan has been by an act of the Legislature of the State of Illinois, 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" appointed one of the Assignees to close up the business of said Bank of Illinois. Now if the said Ebenezer Zane Ryan as assigne as aforesaid shall faithfully discharge the duties enjoined

[81.50.]

12th

upon him by the Provisions of said act of the Legislature aforesaid then this obligation to be void otherwise to remain in full force and virtue

E. G. Ryan (Seal)
L. H. Webb (Seal)
A. D. Sadorlett (Seal)
J. M. McLean (Seal)
Jesse K. Dubois (Seal)
J. J. Bowman (Seal)
A. Greer (Seal)
Samuel Dunlap (Seal)
Wilson Vagow (Seal)
Jas Nabb (Seal)

Witness
Samuel Thomas
A. W. Cull

Approved April 2, 1845
Thomas Ford

State of Illinois } ss.
County }

In the Circuit Court of said County.

Precipe for process.

The Governor of the State of Illinois who sues for the use of William Thomas trustee of the Bank of Illinois. In a plea of Debt $50 000

against

Joseph G. Bowman.

on a final Bond

Damage $50.000.

The Clerk will issue Summons in this Case returnable to the next term of the Court, the declaration, Copy of Bond & Bond for Costs being filed

Wm Thomas
Trustee B.K. of Illinois

Filed Nov 13. 1845 E. W. Cullen Clerk

~~upon the filing of which a Summons was issued to the Sheriff of said County, return-~~

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Bond for costs Impressory copies

Bond

State of Illinois Richland County SS.
In the Circuit Court of said County
The Governor of the State of Illinois who sues for the use of William Thomas Trustee of the Bank of Illinois

against } Debt $60,000.
Joseph G. Bowman } on Penal Bond
Damage $60,000.

I do hereby enter myself as Security for costs in the above entitled cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the Officers of the Court pursuant to the Laws of the State, dated this 27th day of April 1865.

James Dunlap (Seal)

Filed Nov. 13th 1865
C. Mullen Clerk

Original Summons impressory copies,

upon the filing of which a Summons was issued to the Sheriff of said County returnable to the June term 1866, as follows—

State of Illinois } SS.
Richland County }

The People of the State of Illinois, to the Sheriff of said County—
Greeting: We command you to Summon Joseph G. Bowman if he shall be found in your County personally to be and

L9155-B

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 Olney in said Richland County, on the second Monday of June 1866, to answer unto the Governor of the State of Illinois, who sues for the use of William Thomas, Trustee of the Bank of Illinois, in a plea that he renders to the said plaintiff the sum of Fifty Thousand Dollars debt, which to him said Defendant owes, and from him detains to the damage of said Plaintiff as he says in the sum of Fifty Thousand Dollars. And have you then and there this Writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness Charles W. Cullen Clerk of our said Court and the Seal thereof at his Office in Olney in said Richland County this 15th day of November A. D. 1865

(Seal) (Stamps 50c)

C. W. Cullen, Clerk

Sheriffs Return on Summons.

State of Illinois } ss.
Richland County }

I have duly served the within by reading the same to the within named Joseph S. Bowman November the 14 A. D. 1865 as I am thereon commanded.

Wm Coventry Sheriff R. C.

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Fees, - Service 75 20 Mileage Travel 100
Return, 10 = 185 — Filed in Circuit Court,
this 14 day of Nov A. D. 1865, C. W. Cullen
Clerk. ~~Rec Shffs fees by Pltff 1.85 J Wolf Attorney~~

order for Continuance June 1866.

And afterwards at the said June term 1866
the parties appeared, and the cause was contin-
ued at the cost of the plaintiff. And after-
wards at the November term 1866 of said Court,
the following order and Judgement was entered.
(Copy of Order of Court)

November term 1866 Judgement appealed from

"The Governor of the State of Illinois, who
sues for the use of William Thomas Trustee of
the Bank of Illinois, against In debt—
Joseph S. Bowman. On the
second day of the present term of the
Court, came the said William Thomas and
Joseph S. Bowman in person, and said
Bowman filed his pleas Numbered One,
two, three, four, five, six, seven, and Eight,
and on the next day, the said Thomas
filed his Joinder to the first plea - general
and special demurrs to the second, third,
and fourth, demurrers to the fifth and
sixth and replications to the seventh and
Eighth pleas, and on this fourth day of the
term, the said Bowman, joined the said
several demurres, and replications, And

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the Questions of Law arising upon the pleadings aforesaid being argued the Court on this fifth day of the term decides and adjudges as follows— First, that the demurres to the second, third and fourth pleas be and the same are hereby sustained, that the demurres to the fifth and sixth pleas be and the same are hereby overruled and the said pleas are adjudged sufficient in Law— And the said plaintiff not further answering either of said pleas, it is ordered by the Court, that the plaintiff be bound of his action aforesaid and that defendant go thence of hence without day and recover of the said Relator his costs herein expended. And on motion of the said William Thomas an appeal is allowed him from this judgement to the Supreme Court, upon his executing an appeal bond to the defendant and filing the same with the Clerk of this Court in the penalty of $200 conditioned according to Law within ten days, the defendant consenting that the appeal may be prosecuted without giving security on the appeal bond— The pleadings referred to in said order are the following— State of Illinois Richland Circuit Court November term A.D. 1866—

Judgment.

Appeal allowed to Supreme Court.

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Joseph G. Bowman
ats
The Governor of the State of Illinois who sues for use of William Thomas Trustee &c } Plea

pleas No 1. And the said Defendant in his own proper person comes & defends the wrong & injury when &c and for plea says actio because he says that the said supposed bond in the said Plaintiffs declaration mentioned is not his deed and this he prays may be enquired of by the County. Bowman Propria persona

And the plff doth the like
Thomas;

And for further plea in this behalf the Defendand says actio non because he says that
No 2 on the 27th day of March 1845 at &c the said supposed bond in the Plaintiffs declaration mentioned was signed and sealed by the Defendant and Ebenezer Z. Ryan Saml H. Clubb Algenon S. Badolett James M. McLean Jesse K. Dubois Abner Greer Samuel Dunlap and Wilson Lagow and was then and there delivered to the said Plaintiff, and while the said bond was in the custody and keeping of the said Plaintiff the said writing obligatory by the consent of the said Plaintiff and by his directions was altered in a material part, in this to wit that the signature and seal of one James Nabb

[9155-19]

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was added thereto and therein as an additional obligor or maker of said bond and without the consent license permission and knowledge of the said Defendant to wit on &c at &c whereby the said writing obligatory was of no force or effect whatever as the joint bond of them the said Defendant and the said Ebenezer Z. Ryan Samuel H. Clubb Algernon S. Badollett James M. McLean Jesse K. Dubois Abner Greer Samuel Dunlap Wilson Lagow and James Babb and &c the said Defendant says that the said bond is not their joint deed and this he is ready to verify whereupon he prays judgement if the said Plaintiff ought thereto have and maintain his action aforesaid

Bowman for Dept

No 3

And for a further plea in this behalf the said Defendant says actio non because he says that on the 27th day of March 1845 at &c the said bond in the said Plaintiffs declaration mention was signed and sealed by the Defendant and Ebenezer Z. Ryan Samuel H. Clubb Algernon S. Badollett James M. McLean Jesse K. Dubois Abner Greer Samuel Dunlap and Wilson Lagow and was then and there delivered to the said Ebenezer Z. Ryan to be by him delivered to the said Plaintiff, and while the said bond was in

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the custody and keeping of the said Ryan for the purpose aforesaid the said bond by the ~~Contract~~ Consent and direction of the said Ryan was materially altered and changed in this to wit that the signature of one James Babb was added thereto and thereon as an additional obligor or maker of said bond and this without the knowledge license permission or consent of the said defendant to wit on &c at &c whereby the said bond was of no force or effect whatever as the joint bond of them the said Defendant the said Ryan, Clubb, Baddolett, McLean, Dubois, Greer, Dunlap, Lagow and Babb, and so the said Defendant says that the said bond is not their joint deed and this he is ready to verify wherupon he prays judgement &c,

J Bowman for Defts

804 And the said Defendant for further plea in this behalf says actio non Because he say that on the 27th day of March 1845 at &c, the said Defendant and Ebenezer G. Ryan Samuel H. Clubb Algernon S. Baddolett James McLean Jesse K Dubois Abner Greer and Samuel Dunlap signed and sealed the said bond in the Plaintiffs declaration mentioned and them and there delivered the said bond to the said Ebenezer G. Ryan to procure the sig-

[PLSS-11].

=nature and seal of one Wilson Lagow to the said bond as a joint obligor & maker of said bond with the said Defendants & the said Ryan, Clubb, Badollett, McLean, Dubois Greer and Dunlap, and after having procured the signature and seal of the said Wilson Lagow as aforesaid the said Ebenezer Z. Ryan was to deliver the said bond to the said Plaintiff as the joint and several deed of the said Defendant Clubb Ryan Badollett McLean Dubois Greer Dunlap & Lagow, and the said Defendant says that the said Ryan did procure the signature and seal of the said Wilson Lagow, and after having procured the same to wit on &c at &c the said Bond was altered and changed in a material part thereof by the direction permission and consent of the said Ryan in this to wit the signature and seal of one James Robb was added to said bond as a joint obligor with the said obligor or maker aforesaid and without the license permission authority or knowledge of the said Defendant, and was then and there delivered to the said Plaintiff. And the said Defendant avers that the said alteration was not in consection of any mistake made at the time of the making of

said bond aforesaid or to further the intention of said Defendants existing at the time of the making of said bond and the delivery of the same by him to the said Ryan as aforesaid whereby the said bond by reason of the alteration aforesaid was of no force or effect whatever as against the said Defendant and the said Ryan Clubb, Badollet, McLean, Dubois, Greer, Dunlap, Lagow & Nabb and so the said Defendant says that the said bond is not the joint bond of the said Defendant Ryan, Clubb Badollet, McLean, Dubois, Greer, Dunlap, Lagow and Nabb as by the said Plff in his said declaration alledged and this he is ready to verify Wherefore &c. Bowman for Dft,

No 5

And for a further plea in this behalf as to the second breach of the condition of the said bond in the plaintiffs declaration mentioned the said Defendant says actio non Because he says that by the act of the Legislature of the State of Illinois 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 Feb. 28 1845 the said assignees appointed by

said act to close up the business of said bank were by the provisions of said act allowed the time and space of four years from the passage of said act and no longer to close up ~~the~~ said business and pay the liabilities of said bank, and after the passage of said act, the said Ebanezer Z. Ryan made his official bond as required by said act and the defendant signed & sealed said bond as one of the sureties of said Ryan on his official bond aforesaid and which is the same bond in the Pltffs declaration mentioned and after the making of the said bond to wit on the 10th day of February 1849 by an act of the Legislature of the said State of Illinois, 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 approved on the day and year aforesaid the time for making settlement paying the liabilities and closing up the business of said Bank aforesaid by the said assignees aforesaid was extended to the first day of January A.D. 1857, and by virtue of that act of the Legislature last above referred to, the said Ebanezer Z. Ryan was relieved of the duty imposed by the provisions of the first above mentioned acts of the legislature from

making a final Settlement and closing up the business of the said Bank and the time for his making such final Settlement and making payment of the liabilities of said Bank and closing up the business thereof was extended until the first day of January A.D. 1851. a period of more than twenty months longer than the said Defendant had by Signing & Sealing said official bond of the said Ryan obligated himself to be held and bound for the faithful performance by the said Ryan of his duties as agresaid of the Bank of Illinois as required of him by the first of the above mentioned acts of the legislature. And the defendant avers that the supposed breach of the condition of the said bond as alleged by the Plff in his declaration was committed after the lapse of the four years allowed by the act of the legislature first above mentioned, and after the expiration of the time for which the said Defendant was bound by the said bond in the Plaintiffs declaration mentioned for the faithful performance by the said Ryan of the duties so prescribed by the said act of the legislature first above mentioned. And this the said Defendant is ready to verify wherefore &c

Bowman for Dft

[2056-13]

2d Plea

And for a further plea in this behalf as to the third breach of the condition of the said bond in the Plaintiffs declaration mention mentioned assigned by the said Plaintiff, the said Defendant says actio non because he says that by an act of the legislature of the State of Illinois entitled "an act Supplemental to an act to reduce the public debt One Million of Dollers and to put the Bank of Illinois into liquidation" approved Feb 28 1845 the said Ebanezer Z. Ryan was appointed one of the assignees of the said Bank of Illinois, and as such there was enjoined upon him by the said act of the legislature aforesaid in connection with other assignees in said act of the legislature aforesaid named the duty of collecting the debts due the said Bank of Illinois, paying the liabilities and closing up the business of said bank and making his final settlement as assignee of the said Bank of Illinois and for the performance of this duty so enjoined upon him as aforesaid he the said Ryan was allowed the term of four years from the said 28th day of February A.D. 1845, and no longer, and after the passage of said act of the legislature aforesaid the said Ebanezer Z. Ryan as assignee as

aforesaid to wit on the 27th day of March 1845, & he made his official bond which is the same bond in the Plaintiffs declaration mentioned and which bond the said Defendant then and there signed & sealed as a security for said Ryan on said bond. And after the making of said bond aforesaid and before the time allowed to the said Ryan for the performance of the duties enjoined upon him by the act of the Legislature aforesaid, to wit on the 10th day of February 1849 by an act of the Legislature aforesaid 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" in force on the day & year aforesaid, the time allowed to the said Ryan for the performance of the duties injoined upon the said Ryan, by the said act of the Legislature first above mentioned was without the consent or permission of the Defendant extended to the first day of January 1851, a period of more than one year beyond the time allowed to him for the performance of his duties aforesaid and for the time for which the Defendant had bound himself for upon said official bond of the said Ryan aforesaid for

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the faithful discharge of said duties by the said Ryan as aforesaid. And the said Defendant avers, that the said supposed breach of the said bond, as by the said Plaintiff in his third assignment mentioned to wit that said Ryan had not paid to the said trustee the notes and certificates collected by him, was committed as alleged after the lapse of the four years allowed by the act of the Legislature first above mentioned and after the term for which the Defendant was bound by the said bond in the Plaintiffs declaration mentioned for the faithful performance by the said Ryan of the duties prescribed and enjoined by the first of the above mentioned acts of the legislature. And this the said Defendant is ready to verify Wherupon &c

Brooman for Dft

No 7. And for a further plea in this behalf as to the first breach of the condition of the bond in the Plaintiffs declaration assigned the Deft says actio non Because he says that the supposed cause of action by reason of said alledged breach of the said condition of said bond in manner and form as the said Plaintiff hath alleged did not occur within sixteen years next before the commence-
ment

2d Plea

of this Suit and this the said Defendant is ready to verify Wherefore &c.

Bowman for Dft

No. 3. And for a further plea in this behalf as to the third breach in the condition of the bond in the Plaintiffs declaration assigned the Defendant says actio Because he says that the said supposed cause of action by reason of the said alledged breach of the condition of said bond, in manner & form as the said Plaintiff hath alledged did not accrue within Sixteen years next before the commencement of this Suit and this the Defendant is ready to Verify Wherefore &c.

Bowman for Dft.

Filed Nov. 15th 1866 — C. W. Cullen Clerk

State of Illinois, In Richland Circuit Court
The Governor of the State of Illinois
who sues for the use of William Thomas &c.
against In a Plea of Debt &c
Joseph G. Bowman

And the said Plaintiff for answer to the second plea of said Defendant above pleaded says, that the matters and things contained in said plea are not sufficient in Law to bar the action aforesaid

Demurrer to 2nd plea.

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causes of demurrer to 2 plea

and this &c wherefore he prays Judgement &c and he here sets down as Special causes of demurrer to said plea the following First; The said defendant has already filed his plea of nonest factum and the said second plea puts in issue no more nor no other Question than the said first plea, and the Court will not allow its Records to be incumbered with, and complicated by special pleas which in fact amount to nothing more than the general issue. Second; the said plea puts in issue the question of fact whether or not the Bond declared on is the act and deed of Ebanezer G. Ryan & others who are not parties to this Record and for whom the defendant has no right to answer in this suit. Third; the said plea is double, in this; that it alledges that said Bond is not the act and deed of said defendant and also that it is not the joint bond of said defendant Ebanezer G. Ryan, Samuel H. Clubb Algernon S. Badolett, James M. McLean, Jesse K. Dubois Abner Greer, Samuel Dunlap, Wilson Lagow, and James Nabb. 4th said plea concluding with a justification whereas it should conclude to the country all of which &c Wherefore &c Thomas pq^n

And the Deft comes and joins in demurrer ~ Allen for Deft

And the said plaintiff for answer to the third Plea in that

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Demurrer to 3rd plea

behalf pleaded says, that the matters and things stated and contained in said plea are not sufficient in Law to bar the action aforesaid, and this &c wherefore he prays judgement &c. And the said plaintiff here sets down for causes of demurrer to said plea the following. First, The facts stated in said plea, makes it simply and only a plea of nonest factum and said defendant had already filed that plea, — Secondly the said plea is double in alleging first that the bond declared on is not the act and deed of the defendant and second that it is not the joint bond of the said defendant, and said Ryan, Clubb, Ludolett, McLean, Dubois, Greer, Dunlap Sagwand Crabb. Thirdly the said plea does not allege that any change or alterations of said bond was authorized or consented to by the plaintiff or that any alteration or change was made in the said bond after it was delivered. Thomas for Deft. — Fourthly the said plea concludes with a verification, whereas it should conclude to the country. And the Deft comes join in Demurrer. Allen for Deft

Special grounds of demurrer to 3rd plea

This seems to be a copy of a demurrer inserted here by mistake. [8155-4]

And the said plaintiff for answer to the third plea in that behalf pleaded, says precludi non, because he says that matter

and things contained in said plea are not sufficient in Law to bar the action aforesaid, and this he whereof he the said Plaintiff hath set down for causes of demurrer to said plea the following, First: The Statements contained in said plea, make it only a Special plea of Non est factum, and make no other issue than that formed by the plea of Non est factum already filed in the cause. Secondly: The said plea puts in issue the question of fact, whether or not the said Bond is the deed of defendant, and Ebenezer Z. Ryan, Samuel H. Clubb, Algernon S. Sadoleir, ~~and~~ James M. McLean, Joseph R. Dubois, Abner Gore, Samuel Dunlap, and Wilson Lagow when the defendant is the only party to this suit. Thirdly: The said plea states conclusions and not facts, and thus from this conclusions alledges that the bond is not the joint deed of the persons whose names are thereto signed and concludes with a verification whereas it should conclude to the country. Thomas p.q.r. And the Deft in comes and joins in Demurrer Allen for Deft. And the said Plaintiff for answer to the fourth plea in that behalf pleaded Says, precludinon

Demurrer to 4th plea

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Demurrer to 3rd plea

behalf pleaded says, that the matters and things stated and contained in said plea are not sufficient in Law to bar the action aforesaid, and this &c wherefore he prays judgment &c.—And the said plaintiff here sets down for causes of demurrer to said plea the following, First, The facts stated in said plea, makes it simply and only a plea of Nonest factum and said defendant had already filed that plea,— Secondly the said plea is double in alleging first that the bond declared on is not the act and deed of the defendant and second that it is not the joint bond of the said defendant, and said Ryan, Clubb, Ludelett, McLean, Dubois, Greer, Dunlap Sagner and Babb. Thirdly the said plea does not allege that any change or alterations of said bond was authorized or consented to by the plaintiff or that any alteration or change was made in the said bond after it was delivered. Thomas for Deft.— Fourthly the said plea concludes with a verification, whereas it should conclude to the country. And the Deft comes joins in Demurrer. Allen for Deft

Special grounds of demurrer to 3rd plea

This seems to be a copy of a demurrer inserted here by mistake. [BLSmith]

And the said plaintiff for answer to the third plea in that behalf pleaded, says precludi non, because he says that matter

and things contained in said plea are not sufficient in Law to bar the action aforesaid, and this he whereof he the Plaintiff hath set down for causes of demurrer to said plea the following, First: The Statements contained in said plea, make it only a Special plea of Non est factum, and make no other issue than that formed by the plea of Non est factum already filed in the cause. Secondly The said plea puts in issue the question of fact, whether or not the said Bond is the deed of defendant, and Ebenezer Z. Ryan, Samuel H. Clubb, Algernon S. Sadoliff, ~~Sam~~ James M. McLean Jesse K. Dubois, Abner Eddy, Samuel Dunlap, and Wilson Laguy when the defendant is the only party to this suit. Thirdly The said plea states conclusions and not facts, and thus from this conclusions alledges that the bond is not the joint deed of the persons whose names are thereto signed and concludes with a verification whereas it should conclude to the country. Thomas pro. And the Defts in comes and joins in Demurrer Allen for Defts. And the said Plaintiff for answer to the fourth plea in that behalf pleaded Says precludinon

Demurrer to 4th plea

31st

because he says the matters and things contained in said plea are not sufficient in Law to bar the action aforesaid, and of this &c whereof &c and the said plaintiff here sets down for causes of demurrer to said plea the following—

Specific grounds of demurrer to 4th plea

First; The facts returned in said plea, so far as they constitute any defense to the action, amount only to the general plea of non est factum, and that plea being filed, the Court will not permit the Record to be incumbered with, and complicated by special pleas. Second;— The said plea attempts to put in issue the question of fact, whether or not, the bond declared on is the Bond of Defendant, and Ebanezer G. Ryan, Samuel H. Clubb, Algernon S. Badollet, James McLean, Jesse K. Dubois, Abner Greer and Samuel Whereas this action is against the defendant alone,— Third; It is not alledged in said plea that the plaintiff had any knowledge of the alledged acts of said Ryan and procuring an alteration of the Bank,— nor that the makers of the Bond, never authorized its delivery after said alterations Fourth— This plea being nothing more than a plea of Non est factum, should conclude to the Country &

[illegible]

nat with a verification— Thomas pqr
And the Deft comes & joins demurrer
Allen for Deft

Demurrer to 5th plea

And the said plaintiff for answer to the fifth plea of the defendant above pleaded says preludinon,— because he says the matters and things contained in said plea are not sufficient to bar the action aforesaid,— And this &c Whereupon &c. Thomas pqr. And the Deft comes and joins in Demurrer. Allen for Deft.

Demurrer to 6th plea

And the said plaintiff for answer to the sixth plea in that behalf pleaded says preludinon because he says, the matters and things contained in said plea are not sufficient in Law to bar the action aforesaid, and this &c Whereupon &c
Thomas pqr. And Deft comes and joins in demurrer— Allen for Deft—

Replication to 7th plea

And the said plaintiff for replication to the defendants Seventh plea in that behalf pleaded says preludinon because he says, that the cause of Action set out in the first breach of the condition of the bond declared on did occure within sixteen years next before the commencement of this suit and of this he prays an Enquiry by the Country.
Thomas pqr

55. Replication to 8th plea.

And the said plaintiff for replication to the Defendants Eighth plea in that behalf pleaded says that the right of action on account of the third Breach of the condition of the bond declared on, did accrue within sixteen years next before the commencement of this suit, and of this he puts himself on the country.

Thomas pqr

~~[illegible]~~

Copy of Bond.

Appeal Bond.

Know all men by these presents that I William Thomas as Trustee of the Bank of Illinois and in my own right, am held and firmly bound unto Joseph G. Bowman in the penal sum of two hundred dollars lawful money, for the true payment whereof. I bind myself my heirs &c firmly by these presents, sealed with my seal and dated this 16th day of November A.D. Eighteen hundred and Sixty Six. The condition of the above obligation is such, that whereas in a suit pending in the Circuit Court of Richland County Illinois, in the name of the Governor of the State of Illinois for the use of said William Thomas as Trustee of the Bank of Illinois upon a penal Bond, against said Joseph G. Bowman, the said Court at the November term Eighteen hundred and Sixty Six, a Judgement was entered against the plaintiff in bar of the action, and against said Thomas for costs. From which judgement and appeal has been allowed to the said Thomas to the Supreme Court, upon his executing an approved bond as required by said Court. Now if the said Thomas shall prosecute the said appeal

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with effect, and in case the Judgement aforesaid is affirmed, shall pay the costs recovered against him as aforesaid, and also all costs that may be adjudged against him by the Supreme Court, then this bond to be void otherwise to remain in full force and effect.—

Wm Thomas (Seal)
Trustee B.K. of Ills
Wm Thomas (Seal)

Revenue Stamp 10¢

Approved and filed this 16th day of Nov. 1866.
C. W Cullen Clerk
By John Wolf Dept.

State of Illinois } ss.
Richland County }

I Charles W. Cullen Clerk of the Circuit Court within and for the County of Richland and State aforesaid do certify that the foregoing is a true complete and perfect copy of the proceedings and order of this Court in the foregoing entitled cause, as appears of record in my office.

Given under my hand, with the Seal of said Court hereto affixed at Olney Richland County Illinois, this 20th day of May A.D. 1867

Charles. W Cullen. Clerk

44

The Governor of the
State of Illinois
Saving for use of
W. Thomas Trustee of
Bank of Illinois
vs 3 Appeal from
3 Bill of Exceptions
3 Record.

Joseph G Bowman.
Appellee

~~Paid by Judge Thomas $5.00~~

Filed June 4. 1867.
A. Johnston Clk

Paid by Judge Thomas
$5.00

Dykes

Beasley Ch. J. Most of the questions presented by this record were considered and decided in the case of the Governor for the use of Thomas against Lagow, which was an action against one of the Sureties in this same bond. No points are made here, that were not made in that case.

As we held in that case so we hold in this, that the Sureties in this bond are responsible for all defalcations of Ryan which occured prior to the act of 1849, and that act did not suspend the right of action on the bond which might have been brought upon it at any time notwithstanding the extension of time after Ryan failed to come and count the notes in his hands and report to the Governor. For this reason the liability of the Sureties had attached, and it was in no degree enlarged by that act. For breaches occuring after the extension of time the Sureties are not liable.

The defendant had put in issue on demurrer in law of the action, whilst it appears, the first breach in the declaration was not answered. The 4th. and 5th. pleas only purported to answer the second and third breaches. The first breach that the notes and certificates were not burnt and cancelled and a report thereof made to the Governor and the moneys in Ryan's hands, not

[PLEAS-20]

having been waived by plea, the plaintiff was entitled to a judgment on that breach and to have his damages assessed, for that breach is alleged to have occurred prior to the act of 1869. Now damages were the value of those notes and certificates and such damage as was occasioned by the neglect to report, and the failure to pay over the moneys in the Register's possession.

Without going over the ground traversed in the case referred to, the judgment in this case must be reversed and the cause remanded with leave to either party to amend their pleadings, and for further proceedings consistent with this opinion.

44 — 3

The Governor
for the use &c
vs
J. Brown and
opinion by
Reese Ch. J.

O. K.

R. & R.

In Supreme Court of Illinois.

JUNE TERM, 1867.

THE GOVERNOR OF THE STATE OF ILLINOIS, for the use of W. THOMAS, Trustee of the Bank of Illinois,
against
JOSEPH G. BOWMAN.

Action of Debt on Penal Bond.
Appeal from Richland.

By an act, passed 28th of February, 1845, entitled "An act supplemental to an act to reduce the public debt one million of dollars and put the Bank of Illinois into liquidation," the Bank of Illinois was required within thirty days after the acceptance of the provisions of said act, to make an assignment of all her effects, both real and personal of every kind and description, to Albert G. Cadwell, of Shawneetown, and E. Z. Ryan, of Lawrenceville, and John J. Hardin and Samuel Dunlap, of Jacksonville, as follows: All the real estate of said Bank to all of said assignees jointly, and all the personal estate, rights and credits and debts of every kind due to said Bank at Shawneetown and branch at Lawrenceville to be assigned to said Cadwell and Ryan, and all due to said Bank at Jacksonville, Alton and Pekin branches to be assigned to said Hardin and Dunlap. They were required to give bonds jointly and severally, or any two together, as they might elect and the Governor require, with security to be approved by the Governor in the penal sum of $50,000 for each assignee, conditioned for the faithful discharge of the duties of such assignees, and to faithfully account for and pay over all the monies and evidence of indebtedness which should come to his hands as such assignee under to the provisions of said act. See acts of 1844–5, page 246.

On the 27th of March, 1845, Ryan executed a bond, with securities, which was approved by the Governor on the 2d of April, 1845, and then entered upon the duties of the trust.

The assignees were vested with full power to collect all debts due the Bank, pay all liabilities and finally wind up its affairs.

The 8th section of the act provides "that said assignees shall, on the first Monday of November of each year, meet at Shawneetown, for the purpose of canceling and burning all notes and certificates redeemed, and of making a full report to the Government of the amount of assets in their hands, and of the notes and certificates redeemed and canceled, and for this purpose three of the said assignees shall constitute a quorum."

The 9th section provides: "Said assignees 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 the 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 shall be sufficient to meet the liabilities of said bank."

The 11th section of the act of 1843 (acts of 1842–3, page 34,) provides that "The said Bank, in collecting its debts, shall not collect more than one-fifth part of the debt at any time of any debtor who will pay the said fifth part and all interest, whether the debt exists by judgment or otherwise, and renew his note or other liability with security to be paid in seven months; provided, that the Bank shall not hereafter be allowed to charge a greater rate of interest than six per cent. per annum on the renewal of any note."

The 27th section of the act provides "the assignees shall have four years from the passage of this act to make final settlement of the affairs of the Bank without hindrance, otherwise than is provided in this act. And the debtors of the Bank shall be allowed the said term of four years for the payment of all debts due to said Bank, by paying the same in four equal annual instalments, with six per cent. interest, to be secured to the Bank by four notes, with good and approved security, payable in one, two, three and four years from the date of the assignment."

By an act, passed 10th of February, 1849—acts of 1849, page 38—it is provided "That the time for the liquidation of the affairs of said Bank, pursuant to the provisions of the act before recited, be, and she same is hereby extended to the 1st day of January, 1851.

The second section of this act provides for the prosecution of suits in the name of the assignees, but confers no power, nor requires no action that was not conferred or required before.

At the December term, 1850, of the Circuit Court of the United States for the District of Illinois, the Bank of the State of Missouri, creditor of the Bank of Illinois to the amount of $100,000, exhibited her bill in chancery against the assignees of the Bank, complaining of neglect of duty and violations of law, and asking for the appointment of a receiver or trustee in the room and stead of said assignees, and that said assignees be required to render a full account of their action as assignees, and such proceedings were had thereon as that, at the June term, 1851, of said court, William Thomas was appointed trustee of said Bank, and vested with power to execute the trusts created by and existing under the several acts in relation to said Bank, and to whom the assignees were required to account.

At the December term, 1859, of the Circuit Court of the United States for the Northern District of Illinois, a decree was entered against Ryan, requiring him to pay over to said Thomas, as trustees, $45,467 27, the amount found to be due from said Ryan as such assignee on account of assets which had come to his hands.

This suit is brought against Joseph G. Bowman; one of the securities of Ryan, to recover the amount of the aforesaid decree.

The declaration, after setting out the bond, alleges,

First, "That said Ryan, in the collection of debts due to the said Bank of Illinois, during the year 1845, received the sum of $15,000 of the bills and certificates of said Bank; during the year 1846 he received, in like manner, the sum of $15,000 of the bills and certificates of the said Bank of Illinois, and during the year 1847 he received, in like manner, the sum of $30,000 of the bills and certificates of the said Bank of Illinois, and it was the duty of said Ryan to have met with the other assignees of said Bank on the first Monday of December in each of said years, (1845–'46–'47,) for the purpose of canceling and burning all notes and certificates redeemed, and of making a full report to the Governor of the amount of assets in his hands, and of the notes and certificates redeemed; yet the plaintiff avers that said Ryan did not meet with the other assignees of said Bank on the first Monday of December of either of the years aforesaid, at Shawneetown, and cancel and burn the notes and certificates received by him as aforesaid, nor did he at either of said periods, make a full report to the Governor of the amount of assets in his hands, and of the notes and certificates redeemed and canceled; but to faithfully discharge his duties in these respects, he, the said Ryan, wholly failed."

Second, That at the December term, 1850, of the Circuit Court of the United States for the District of Illinois, the said Court made and entered a decree in a cause therein pending between the Bank of the State of Missouri as complainant, and Albert G. Caldwell, Ebenezer Zane Ryan, David A. Smith and George A. Dunlap, as assignees of the Bank of Illinois as defendants, in substance as follows:

"And now at this day this cause came on to be heard, upon the complainant's motion for the appointment of a receiver to take charge of the property and assets, real and personal, of the Bank of Illinois, or for the appointment of new trustees in place of defendants, to take charge of the estate and property,, real and personal, of the said Bank, and to carry out and execute the trusts created by and existing under the three acts of the Legislature of the State of Illinois, one of those acts being an act entitled "An act to reduce the public debt $100,000, and to put the Bank of Illinois into liquidation," in force on the 25th day of February, 1843, and another of said acts being entitled "An act supplemental to an act to reduce the public debt $1000,000, and to put the Bank of Illinois into liquidation," in force on the 28th of February, 1845, and the other act being 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," in force on the 10th of February, 1849; and the said defendants having appeared to the said motion, and affidavits and exhibits being submitted to the court, as well on the part of the complainant as the defendant, and the motion having been argued by counsel on the part of the respective parties, and the Court having fully considered of said question, and being now sufficiently advised of and concerning the premises, doth find and so adjudge that other trustees be appointed to take charge of and execute the trusts vested and existing under and by virtue of the acts aforesaid, in the place and stead of the

said defendants." And the said Court, by the decree aforesaid, appointed Joseph Gillespie, William Brown and Albert G. Caldwell as trustees in the place and stead of the said defendants, to take charge of and execute the trusts existing under the said acts, which yet remain to be executed under the provisions thereof; and the said defendants were thereby directed and required, on being served with a copy of said decree, to make an assignment, within sixty days after such service, of all the effects remaining of said Bank of Illinois, and the several branches thereof, both real and personal, of every kind and description, and all the rights, credits and choses in action thereof unto the said trustees so appointed.

And afterwards, at the June term, 1851, of said Court, the said William Thomas was appointed the sole trustee of the said Bank, as the successor of those appointed as aforesaid.

And afterwards, at the December term, 1851, of the Circuit Court of the United States for the Northern District of Illinois, in which Court the same cause was continued by operation of law, the said Court made an additional decree in said cause, in substance as follows:

"This day came again the said complainant, by her solicitor, Burgess, who presents the report of Wm. B. Warren, appointed auditor to settle and state the accounts of the defendant, EebeneZer Z. Ryan, as assignee of the Bank of Illinois, with an endorsement of approval thereon by the said Ryan, which is ordered to be filed, and it appearing from the said report that, on the 13th of January, 1851, there was due from said Ryan, as assignee, on account of his receipts of the trust fund, the sum of twenty-nine thousand, four hundred and twenty-nine dollare and forty-one cents, it is ordered and deemed by the Court that the said Ryan pay over to William Thomas, the trustee herein, therein, the sum of $45,467 29, the amount ,ound to be due from him as aforesaid, including interest to the date of this decree, (the Court being of opinion, in the absence of any explanation or account of said balances by said Ryan, that he shall pay interest to the 13th day of January, 1851,) and the costs chargeable against him, and that execution issue against said Ryan, as upon a judgment at common law, of which decree the defendant has had notice, (to-wit, at &c.,) and which decree the plaintiff avers remains in full force, not reversed, set aside or satisfied; yet the plaintiff avers that neither the said Ryan or the defendant has paid over to the said William Thomas, trustee as afore said, the said sum of $45,467 29, or any part thereof, but to pay the same the said defendant, as well as the said Ryan, has hitherto wholly, failed, &c."

Third, That during the time which elapsed between the date of the bond aforesaid and the 1st of January, 1847, the said Ebenezer Z. Ryan received, of the notes and certificates of the said Bank of Illinois, in the collection of debts due to said Bank, the sum of fifty thousand dollars, which it was his duty to have canceled and burned, as so much of the indebtedness of said Bank redeemed by the collections aforesaid; and at the June term, 1851, of the Circuit Court of the United States for the District of Illinois, in a suit pending before said Court, the object of which was to compel the said Ryan to account for and pay over the amount collected by him as aforesaid,) between the Bank of the State of Missouri as complainant, and Albert G. Caldwell, Ebenezer Z. Ryan, David A. Smith and George A. Dunlap, assignees of the Bank of Illinois as defendants, the said court made and entered an order appointing William Thomas (for whose use this suit is brought) trustee of said Bank, to execute and perform the duties required of said assignees; and it was then and there the duty of said Ryan to deliver over to said Thomas the notes and certificates collected by him as aforesaid. Yet the plaintiff avers that said Ryan has not paid over to said trustee the notes and certificates so collected by him as aforesaid; wherefore by reason of the foregoing breaches of the conditions of said bond, the said defendant has become liable to pay to the plaintiff the said debt above demanded. Yet the defendant has not paid the same

To this declaration the defendant filed eight pleas.

First; ***Non est factum*** not sworn to, which was joined.

Second; That on the 27th day of March 1845, at &c.' the said supposed bond in the declaration mentioned was signed and sealed by the defendant and Ebenezer Z. Ryan, Samuel H. Clubb, Algernon S. Badolet, James M. McLean, Jesse K. Dubois, Abner Grear, Samuel Dunlap and Wilson Lagow, and then and there delivered to the said plaintiff, and while the said bond was in the custody and keeping of the said plaintiff, the said writing obligatory by the consentof said plaintiff and by his directions was altered in a material part in this to-wit: that the signature and seal of one James Nabb was added thereto and therein as an additional obligor or maker of said bond, without the consent, license, permission and knowledge

of the defendant to-wit: on, &c., at &c., whereby the said writing obligatory was of no force or effect whatever as the joint bond of the said defendant, and the said Ebenezer Z. Ryan, Samuel H. Clubb, Algernow S. Badolet, James M. McLean, Jesse K. Dubois, Abner Green, Samuel Dunlap, Wilson Lagow and James Nabb, and so the said defendant says that the said bond is not their joint deed, and this he is ready to verify, &c., wherefore, &c.

To which a general and special demurrer was filed setting down as grounds of demurrer—

1. The said defendant has already filed his plea of *Non est factum*, and the said second plea presents no new nor no other question than the said first plea, and the court will not allow its records to be encumbered with, or complicated by, special pleas, which in fact amounts to nothing more than the general issue.

2. The said plea puts in issue the question of fact, whether or not the bond declared on is the act and deed of E. Z. Ryan and others, who are not parties to the record, and for whom the defendant has no right to answer in this suit.

3. The said plea is double in this, that it alleges that the said bond is not the act and deed of said defendant, and also that it is not the joint bond of said defendants, Ebenezer Z. Ryan, S. H. Clubb, A. S. Badolet, J. M. McLean, J. K. Dubois, A. Grear, S. Dunlap, W. Lagow and J. Nabb.

4. Said plea concludes with a verification; whereas it should conclude to the country. The third plea is the same as the second, except that it alleges that after the bond was signed and sealed, &c., it was delivered to the said E. Z. Ryan, to be by him delivered to the plaintiff, and while the said bond was in the custody and keeping of said Ryan for the purposes aforesaid, the said bond, by the consent and direction of the said Ryan, was meterially altered and changed in this, that the signature of one James Nabb was added thereto and thereon, as an additional obligor or maker of said bond, and this without the knowledge, license, permission or consent of the said defendant, &c., concluding as the second plea the demurrer to this, is the same as that to the second plea—with this additfonal ground; The said plea does not allege that any change or alteration of said bond was authorized or consented to by the plaintiff, or that any change or alteration was made in said bond after it was delivered.

The fourth plea is the same as second and third, with this variation, that after the signing and sealing of the bond, &c., it was delivered to E. Z. Ryan to procure the signature and seal of William Lagow to the said bond as a joint obligor and maker of said bond with the other parties, that after procuring the signature and seal of said Lagow, the said Ryan was to deliver the said bond to the said plaintiffs as the joint and several bond of the said parties, that Ryan did procure the signature and seal of said Lagow, after which the said bond was altered and changed in a material part thereof by the direction, permission, and consent of said Ryan in this, that the signature and seal of James Nabb was added to the said bond as a joint obligor with the said obligors or makers aforesaid, without the license, permission, authority or knowledge of the said defendant, and was then and there delivered to the said plaintiff, and the said defendant avers that said alteration was not in correction of any mistake made at the time of the making of said bond, or to further the intention of said defendants, existing at the time of the making of said bond, and the delivery of the same by him to said Ryan as aforesaid, whereby the said bond by reason of the alteration aforesaid, was of no force or effect whatever, &c., concluding as the second plea.

The demurrer to this plea states the following grounds:

1. The statements contained in said plea make it only a special plea of *Non est factum*, and makes no other issue than those formed by the plea already filed.

2. The said plea puts in issue the question of fact, whether or not the said bond is the the deed of defendant, and E. Z. Ryan and others, when the defendant is the only party to this suit.

3. The said plea states conclusions and not facts, and then from these conclusions alleges that the bond is not the deed of the persons whose names are thereto signed, and concludes with a verification, whereas it should conclude to the country.

The 5th plea plea states: "As to the second breach of the conditions of the bond action on, because that by the act of the legislature of the State of Illinois, entitled an act sup-

plemental to an act to reduce the public debt $1,000,000 and to put the Bank of Illinois into liquidation, approved 28th February, 1845. The said assignees appointed by said act to close up the business of said bank, were, by the provisions of said act, allowed the time and space of four years from the passage of said act, and no longer, to close up said business and pay the liabilities of said bank, and after the passage of said act the said E. Z. Ryan made his official bond as required by said act, and the defendant signed and sealed said bond as one of the securities of the said Ryan on his official bond aforesaid, and which is the same official bond in the declaration mentioned, and after the making of said bond, to-wit: on the 10th of February, 1849, by an act of the legislature of the State of Illinois, 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, approved on the day and year aforesaid, the time for making settlement, paying the liabilities and closing up the business of said bank aforesaid was extended to the first day of January, 1851, and by virtue of that act of the legislature last above referred to, said E. Z. Ryan was relieved of the duty imposed by the provisions of the first above mentioned act of the legislature from making a final settlement and closing up the business of said bank, and the time for his making such final settlement and making payment of the liabilities, of said bank and closing up the business thereof was extended until the first day of January, 1851, a period of more than twenty months longer than the said defendant had by signing and sealing said official bond of the said Ryan, obligated himself to be held and bound for the faithful performance by the said Ryan of his duties as assignee of the Bank of Illinois, as required of him by the first of the above mentioned acts of the Legislature, and the defendant avers that the supposed breaches of the conditions of said bond, as alleged by the plaintiff in his declaration, was committed before the lapse of the four years allowed by the act of the Legislature first above mentioned, and after the expiration of the time for which the srid defendant was bound by said bond for the faithful performance by said Ryan of the duties prescribed by the act first above mentioned, and this he is ready to verify, &c.

To this 5th plea there is a general demurer.

The sixth plea is an answer to the third breach of the conditions of the bond, and states the same ground of defense as the fifth plea—except that it alleges that the breach occurred after the expiration of the four years allowed for the final settlement of the affairs of the Bank by the act of 1845.

To this there was general demurer.

The seventh plea answers the first breach of the condition of the bond, by alleging that the causes of action did not accrue within sixteen years.

The 8th plea answers the third breach, by alleging that the supposed cause of action did not accrue within sixteen years.

Replications filed to the 7th and 8th pleas and joinders.

The Court sustained the demurers to the second, third and fourth pleas, and overruled the demurers to the fifth and sixth pleas; and the plaintiff not further answering the said fifth and sixth pleas, judgment was entered in bar of the action, from which the relator, Thomas, appeals to this court.

The errors assigned are—

1. That the Court overruled the demurers to the fifth and sixth pleas.

2. The Court erred in not giving judgment for plaintiff sustaining each of the demurers to the fifth and sixth pleas.

The foregoing abstract is made with the expectation that the appellee will assign errors questioning the correctness of the judgment upon the demurers to the second, third and fourth pleas; if either of those pleas are good in substance, the relator will waive the technical objections.

The material questions presented by the record and assignment of errors arise upon the

pleas, alleging that, by the act of 1849, the securities of Ryan are released, that act providing,

First, "That the time for the liquidation of the affairs of said Bank pursuant to the provisions of an act supplemental to an act to reduce the public debt one million of dollars, and put the Bank of Illinois into liquidation, in force February 28, 1845, be, and the same is hereby extended to the first day of January, 1851.

The second section provides for the prosecution of suits in the name of the assignees.

The third section provides for maintaining pending suits in the names of the assignees.

With reference to this law, the appellant insists,

1. It does not extend the time for accounting for anything done or omitted before its passage.

2. It does not purport to release Ryan from liability for any previous act or omission.

3. If Ryan had collected and used the trust fund before the passage of this act, his liability is not changed by any of its provisions.

4. That the limitation of "four years from the passage of the act to make final settlement of the affairs of the Bank, without hindrance, other than is provided in this act," could not have been intended, and does not limit the tenure of the appointment, is evident from the use of the words "without hindrance," &c., and also from the fact that Bank debtors were allowed to pay their debts in instalments of one, two, three and four years from the date of the assignment, thereby extending the time of payment beyond the four years from the passage of the act, and leaving one fourth of the debt of those who availed themselves of the four years time uncollected.

5. It confers no additional powers, nor does it impose any additional duties. The limitation of four years in the first act was for the protection of the trust fund, to prevent the prosecution of suits affecting that fund, and the sacrifice of the property by one creditor to the exclusion of others, and this act was to continue that protection.

The 12th section of the act of 1843 provides for the appraisement of the real estate of the Bank, and for its sale at the appraised value, and prohibits any sale on execution for less than two-thirds of such value; also, that no debtor of the Bank shall be garnisheed by any holder of certificates issued under the provisions of said acts.

By an act passed March 4th, 1843, (acts of 1842–3 page 36,) it is provided that "no execution against the Bank shall be levied on any of the specie of the Bank, unless the officers refuse for an unreasonable length of time to pay out the specie, *pro rata*, according to the provisions of the act of the 25th of February, before recited."

6. The right to prosecute suits, and to maintain suits pending, existed by force of the act of 1845. The second and third sections were introduced either in ignorance of the law, or out of abundant caution, or in distrust of Circuit Courts.

7. If there could have been any question as to the right of the assignees to sue in Courts of law, there could not have been as to the right to sue in chancery. This question, however, is settled by this Court, in the cases of the assignees of the Bank against Gallatin county, 14, Ill., 78, and Leach and Thomas, 27, Ill., 457.

The appellant contends, further,

1. That the appointment of Ryan was without limit as to time, and that upon his acceptance and entering on the duties, he would continue to be assignee until the final settlement of the affairs of the Bank. Upon the question of appointments without limitation of time, see People *vs.* Mobly, Scam. 221. Field as the people, Scam. 79, &c.

Ryan v Vancamburghaus 7 Indiana 6 Porter 416

This is not a case in which the State alone is interested. The bond was executed as a

security to all parties interested as creditors of the Bank. If the State alone was the party still, the act of 1849 would not operate a release.

People *vs.* Leet, 13, Ill., 268.
The Governor *vs.* Ridgway, 12, Ill., 15.
Compher *vs.* the People, 12, Ill., 294.

The averments in the declaration show breaches of the condition of the bond, before, as well as after the expiration of the four years, and the mere delay of parties interested to sue, cannot be urged as operating a release of securities.

If the action of the Legislature operated to the prejudice of the securities, equally did it operate to the prejudice of the creditors of the Bank, who were no more parties to that action than were the securities.

Upon the questions made by the special pleas of ***non est factum*** see Cook *vs.* Scott, 1, Gilman, 338. Langly *vs.* Norvall, 1 Scam. 389.

Upon the questions presented by the pleas, alleging alterations in the bond after it was signed by part of the obligors, it is insisted,

First, That the alteration alleged could not prejudice the parties who had signed the bond. Voss v Riggs 36 Ill 100.

Second, The facts stated show that there never had been any delivery of the bond before the supposed alteration, and it it is not pretended that any alteration was made after the delivery, or that the Governor accepted the bond with knowledge of the alteration. On this point see

Fox *vs.* Blackstone, 31, Ill., 641.
Hurst *vs.* Weir, 29, Ill., 85.
Young *vs.* Ward, 21, Ill., 224.

The defense assumes, first, that the State is the only party in interest. Second, that neither the State, the securities, or any other parties in interest, could institute or maintain any proceedings against Ryan, to compel him to account after the passage of the act of 1849.

Whereas it is insisted by the appellant that that act formed no obstacle whatever to the prosecution of a suit against the assignee, and requiring him to account for his previous action. The most that can be said in respect to parties in interest is, that they slept on their rights—they delayed action when they might have acted. This delay does not operate the release of the securities.

See Flynn *vs.* Mudd and Hughs, 27, Ill., 327.

All the cases in the books in which securities have been released by agreement with principals, show action, consent and consideration on the part of parties in interest. Here nothing of the kind is pretended on the part of the creditors of the Bank.

Gorsuch v Sims 5 Howard 2 U.S. 152

Is was the right and duty of the securities of Ryan to acquaint themselves with all the facts connected with his action as trustee, and if they could not satisfy themselves otherwise, they could have applied to a Court of Equity, and not only have obtained a full disclosure of the state of his accounts, but his removal, and the appointment of some other person to execute the trust.

[illegible]

The Governor of &c
vs
Appeal
from
Richardson

Joseph G Bowman
Abstract of Rec[illegible]

Filed June 4th 1867
Brooks Johnston Clk

IN THE SUPREME COURT OF ILLINOIS.

FIRST GRAND DIVISION, MOUNT VERNON.

JUNE TERM, A. D., 1867.

THE GOVERNOR OF ILLINOIS, who sues for use of WILLIAM THOMAS, Trustee,
vs.
JOSEPH G. BOWMAN.
} Appeal from Richland.

BRIEF OF APPELLEE.

The Plaintiff in his brief prints what purports to be a copy of the Defendant's fifth plea, which is substantially correct, except that in it avers that the alleged breach was committed before the expiration of the four years allowed by the Act of the Legislature of the 28th of February, 1845, for the assignees to complete their trust. That is an error; the plea on file in the cause, alleges that the said breach was committed after the lapse of that time, "and after the time for which the said Defendant was bound by the said bond in the Plaintiff's declaration mentioned for the faithful performance by the said Ryan of the duties prescribed by the said Act of the Legislature first above mentioned."

To this plea Plaintiff filed a demurrer which the Court overruled.

The sixth plea is substantially the same as the fifth plea, and alleges the extension by the Legislature of the time without the consent or permission of the Defendant, within which the said assignees should make settlement and close up the business of the said Bank, in the manner prescribed by the Act of the Legislature of February 28, 1845, and avers that the alleged breach was committed after the lapse of the four years allowed by said Act of the Legislature aforesaid, and after the time for which the Defendant was bound by the bond in said Plaintiff's declaration mentioned, &c.

To this plea there is a general demurrer which the Court overruled.

The Plaintiff by his demurrer admits the truth of the allegations of said pleas: That the Assignees were limited to four years for the performance of the duties prescribed by the Act of the Legislature of the 28th of February, 1845, and that the Defendants were not bound for the misconduct of Ryan in relation to the trust created by said act and the execution of his official bond, after the lapse of four years from the 28th of February, 1845; and that the Legislature, on the 10th of February, 1849, passed an Act for the relief of said Assignees, and gave them further time of nearly two years to do what by the Act of 1845, they were required to do in four years; and that the breaches assigned were committed after the expiration of the four years, and after the Defendant ceased to be bound for the acts of Ryan in relation to said trust.

The sureties of Ryan can only be held liable for his failure to do what was required of him by the Act of 1845. Their liabilities cannot be extended by implication. He had the full term of four years in which to pay over and make settlement. No breach of the bond was committed by a failure to pay before the end of his term of four years from the passage of the act. This term would expire on the 28th day of February, 1849. And it is not to be presumed that he would not have completed his trust if an extension of time had not been given. It was after the lapse of the four years that the breaches complained of are alleged to have been committed. For those breaches the securities of Ryan ought not to be held liable. They never undertook to be responsible for them. This extension of time in which to do what he was required to do by the provisions of the act of 1845 in a shorter period, released the sureties of Ryan on his bond. They agreed to be bound for four years and no longer. Any acts done by him after that time were not contemplated by them when they entered into said bond.—[Miller vs. Stewart, 9 Wheaton, 763. The People vs. McHatton, 2 Gilman, 638. Davis *et al* vs. The People, 1 Gilman, 409, Watlus *et al* vs. Simpson *et al*, 2 Gilman, 570. State vs. Polk, 7 Blackford, 27.]

JAMES C. ALLEN, *for Defendant.*

[2155-29]

The Gov of Illinois who sues
for use of Wm Thomas

vs

Joseph G Bowman

Deft Brief

In Supreme Court of Illinois.

JUNE TERM, 1867.

THE GOVERNOR OF THE STATE OF ILLINOIS, for the use of W. THOMAS, Trustee of the Bank of Illinois,
against
JOSEPH G. BOWMAN.

Action of Debt on Penal Bond.
Appeal from Richland.

By an act, passed 28th of February, 1845, entitled "An act supplemental to an act to reduce the public debt one million of dollars and put the Bank of Illinois into liquidation," the Bank of Illinois was required within thirty days after the acceptance of the provisions of said act, to make an assignment of all her effects, both real and personal of every kind and description, to Albert G. Cadwell, of Shawneetown, and E. Z. Ryan, of Lawrenceville, and John J. Hardin and Samuel Dunlap, of Jacksonville, as follows: All the real estate of said Bank to all of said assignees jointly, and all the personal estate, rights and credits and debts of every kind due to said Bank at Shawneetown and branch at Lawrenceville to be assigned to said Cadwell and Ryan, and all due to said Bank at Jacksonville, Alton and Pekin branches to be assigned to said Hardin and Dunlap. They were required to give bonds jointly and severally, or any two together, as they might elect and the Governor require, with security to be approved by the Governor in the penal sum of $50,000 for each assignee, conditioned for the faithful discharge of the duties of such assignees, and to faithfully account for and pay over all the monies and evidence of indebtedness which should come to his hands as such assignee under to the provisions of said act. See acts of 1844–5, page 246.

On the 27th of March, 1845, Ryan executed a bond, with securities, which was approved by the Governor on the 2d of April, 1845, and then entered upon the duties of the trust.

The assignees were vested with full power to collect all debts due the Bank, pay all liabilities and finally wind up its affairs.

The 8th section of the act provides "that said assignees shall, on the first Monday of November of each year, meet at Shawneetown, for the purpose of canceling and burning all notes and certificates redeemed, and of making a full report to the Government of the amount of assets in their hands, and of the notes and certificates redeemed and canceled, and for this purpose three of the said assignees shall constitute a quorum."

The 9th section provides: "Said assignees 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 the 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 shall be sufficient to meet the liabilities of said bank."

The 11th section of the act of 1843 (acts of 1842–3, page 34,) provides that "The said Bank, in collecting its debts, shall not collect more than one-fifth part of the debt at any time of any debtor who will pay the said fifth part and all interest, whether the debt exists by judgment or otherwise, and renew his note or other liability with security to be paid in seven months; provided, that the Bank shall not hereafter be allowed to charge a greater rate of interest than six per cent. per annum on the renewal of any note."

The 27th section of the act provides "the assignees shall have four years from the passage of this act to make final settlement of the affairs of the Bank without hindrance, otherwise than is provided in this act. And the debtors of the Bank shall be allowed the said term of four years for the payment of all debts due to said Bank, by paying the same in four equal annual instalments, with six per cent. interest, to be secured to the Bank by four notes, with good and approved security, payable in one, two, three and four years from the date of the assignment."

By an act, passed 10th of February, 1849—acts of 1849, page 38—it is provided "That the time for the liquidation of the affairs of said Bank, pursuant to the provisions of the act before recited, be, and she same is hereby extended to the 1st day of January, 1851.

The second section of this act provides for the prosecution of suits in the name of the assignees, but confers no power, nor requires no action that was not conferred or required before.

At the December term, 1850, of the Circuit Court of the United States for the District of Illinois, the Bank of the State of Missouri, creditor of the Bank of Illinois to the amount of $100,000, exhibited her bill in chancery against the assignees of the Bank, complaining of neglect of duty and violations of law, and asking for the appointment of a receiver or trustee in the room and stead of said assignees, and that said assignees be required to render a full account of their action as assignees, and such proceedings were had thereon as that, at the June term, 1851, of said court, William Thomas was appointed trustee of said Bank, and vested with power to execute the trusts created by and existing under the several acts in relation to said Bank, and to whom the assignees were required to account.

At the December term, 1859, of the Circuit Court of the United States for the Northern District of Illinois, a decree was entered against Ryan, requiring him to pay over to said Thomas, as trustees, $45,467 27, the amount found to be due from said Ryan as such assignee on account of assets which had come to his hands.

This suit is brought against Joseph G. Bowman; one of the securities of Ryan, to recover the amount of the aforesaid decree.

The declaration, after setting out the bond, alleges,

First, "That said Ryan, in the collection of debts due to the said Bank of Illinois, during the year 1845, received the sum of $15,000 of the bills and certificates of said Bank; during the year 1846 he received, in like manner, the sum of $15,000 of the bills and certificates of the said Bank of Illinois, and during the year 1847 he received, in like manner, the sum of $30,000 of the bills and certificates of the said Bank of Illinois, and it was the duty of said Ryan to have met with the other assignees of said Bank on the first Monday of December in each of said years, (1845–'46–'47,) for the purpose of canceling and burning all notes and certificates redeemed, and of making a full report to the Governor of the amount of assets in his hands, and of the notes and certificates redeemed; yet the plaintiff avers that said Ryan did not meet with the other assignees of said Bank on the first Monday of December of either of the years aforesaid, at Shawneetown, and cancel and burn the notes and certificates received by him as aforesaid, nor did he at either of said periods, make a full report to the Governor of the amount of assets in his hands, and of the notes and certificates redeemed and canceled; but to faithfully discharge his duties in these respects, he, the said Ryan, wholly failed."

Second, That at the December term, 1850, of the Circuit Court of the United States for the District of Illinois, the said Court made and entered a decree in a cause therein pending between the Bank of the State of Missouri as complainant, and Albert G. Caldwell, Ebenezer Zane Ryan, David A. Smith and George A. Dunlap, as assignees of the Bank of Illinois as defendants, in substance as follows:

"And now at this day this cause came on to be heard, upon the complainant's motion for the appointment of a receiver to take charge of the property and assets, real and personal, of the Bank of Illinois, or for the appointment of new trustees in place of defendants, to take charge of the estate and property,, real and personal, of the said Bank, and to carry out and execute the trusts created by and existing under the three acts of the Legislature of the State of Illinois, one of those acts being an act entitled "An act to reduce the public debt $100,000, and to put the Bank of Illinois into liquidation," in force on the 25th day of February, 1843, and another of said acts being entitled "An act supplemental to an act to reduce the public debt $1000,000, and to put the Bank of Illinois into liquidation," in force on the 28th of February, 1845, and the other act being 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," in force on the 10th of February, 1849; and the said defendants having appeared to the said motion, and affidavits and exhibits being submitted to the court, as well on the part of the complainant as the defendant, and the motion having been argued by counsel on the part of the respective parties, and the Court having fully considered of said question, and being now sufficiently advised of and concerning the premises, doth find and so adjudge that other trustees be appointed to take charge of and execute the trusts vested and existing under and by virtue of the acts aforesaid, in the place and stead of the

said defendants." And the said Court, by the decree aforesaid, appointed Joseph Gillespie, William Brown and Albert G. Caldwell as trustees in the place and stead of the said defendants, to take charge of and execute the trusts existing under the said acts, which yet remain to be executed under the provisions thereof; and the said defendants were thereby directed and required, on being served with a copy of said decree, to make an assignment, within sixty days after such service, of all the effects remaining of said Bank of Illinois, and the several branches thereof, both real and personal, of every kind and description, and all the rights, credits and choses in action thereof unto the said trustees so appointed.

And afterwards, at the June term, 1851, of said Court, the said William Thomas was appointed the sole trustee of the said Bank, as the successor of those appointed as aforesaid.

And afterwards, at the December term, 1851, of the Circuit Court of the United States for the Northern District of Illinois, in which Court the same cause was continued by operation of law, the said Court made an additional decree in said cause, in substance as follows:

"This day came again the said complainant, by her solicitor, Burgess, who presents the report of Wm. B. Warren, appointed auditor to settle and state the accounts of the defendant, EebeneZer Z. Ryan, as assignee of the Bank of Illinois, with an endorsement of approval thereon by the said Ryan, which is ordered to be filed, and it appearing from the said report that, on the 13th of January, 1851, there was due from said Ryan, as assignee, on account of his receipts of the trust fund, the sum of twenty-nine thousand, four hundred and twenty-nine dollare and forty-one cents, it is ordered and deemed by the Court that the said Ryan pay over to William Thomas, the trustee herein, therein, the sum of $45,467 29, the amount ,ound to be due from him as aforesaid, including interest to the date of this decree, (the Court being of opinion, in the absence of any explanation or account of said balances by said Ryan, that he shall pay interest to the 13th day of January, 1851,) and the costs chargeable against him, and that execution issue against said Ryan, as upon a judgment at common law, of which decree the defendant has had notice, (to-wit, at &c.,) and which decree the plaintiff avers remains in full force, not reversed, set aside or satisfied; yet the plaintiff avers that neither the said Ryan or the defendant has paid over to the said William Thomas, trustee as afore said, the said sum of $45,467 29, or any part thereof, but to pay the same the said defendant, as well as the said Ryan, has hitherto wholly, failed, &c."

Third, That during the time which elapsed between the date of the bond aforesaid and the 1st of January, 1847, the said Ebenezer Z. Ryan received, of the notes and certificates of the said Bank of Illinois, in the collection of debts due to said Bank, the sum of fifty thousand dollars, which it was his duty to have canceled and burned, as so much of the indebtedness of said Bank redeemed by the collections aforesaid; and at the June term, 1851, of the Circuit Court of the United States for the District of Illinois, in a suit pending before said Court, the object of which was to compel the said Ryan to account for and pay over the amount collected by him as aforesaid,) between the Bank of the State of Missouri as complainant, and Albert G. Caldwell, Ebenezer Z. Ryan, David A. Smith and George A. Dunlap, assignees of the Bank of Illinois as defendants, the said court made and entered an order appointing William Thomas (for whose use this suit is brought) trustee of said Bank, to execute and perform the duties required of said assignees; and it was then and there the duty of said Ryan to deliver over to said Thomas the notes and certificates collected by him as aforesaid. Yet the plaintiff avers that said Ryan has not paid over to said trustee the notes and certificates so collected by him as aforesaid; wherefore by reason of the foregoing breaches of the conditions of said bond, the said defendant has become liable to pay to the plaintiff the said debt above demanded. Yet the defendant has not paid the same

To this declaration the defendant filed eight pleas.

First; *Non est factum* not sworn to, which was joined.

Second; That on the 27th day of March 1845, at &c.' the said supposed bond in the declaration mentioned was signed and sealed by the defendant and Ebenezer Z. Ryan, Samuel H. Clubb, Algernon S. Badolet, James M. McLean, Jesse K. Dubois, Abner Grear, Samuel Dunlap and Wilson Lagow, and then and there delivered to the said plaintiff, and while the said bond was in the custody and keeping of the said plaintiff, the said writing obligatory by the consentof said plaintiff and by his directions was altered in a material part in this to-wit: that the signature and seal of one James Nabb was added thereto and therein as an additional obligor or maker of said bond, without the consent, license, permission and knowledge

of the defendant to-wit: on, &c., at &c., whereby the said writing obligatory was of no force or effect whatever as the joint bond of the said defendant, and the said Ebenezer Z. Ryan, Samuel H. Clubb, Algernow S. Badolet, James M. McLean, Jesse K. Dubois, Abner Green, Samuel Dunlap, Wilson Lagow and James Nabb, and so the said defendant says that the said bond is not their joint deed, and this he is ready to verify, &c., wherefore, &c.

To which a general and special demurrer was filed setting down as grounds of demurrer—

1. The said defendant has already filed his plea of ***Non est factum***, and the said second plea presents no new nor no other question than the said first plea, and the court will not allow its records to be encumbered with, or complicated by, special pleas, which in fact amounts to nothing more than the general issue.

2. The said plea puts in issue the question of fact, whether or not the bond declared on is the act and deed of E. Z. Ryan and others, who are not parties to the record, and for whom the defendant has no right to answer in this suit.

3. The said plea is double in this, that it alleges that the said bond is not the act and deed of said defendant, and also that it is not the joint bond of said defendants, Ebenezer Z. Ryan, S. H. Clubb, A. S. Badolet, J. M. McLean, J. K. Dubois, A. Grear, S. Dunlap, W. Lagow and J. Nabb.

4. Said plea concludes with a verification; whereas it should conclude to the country. The third plea is the same as the second, except that it alleges that after the bond was signed and sealed, &c., it was delivered to the said E. Z. Ryan, to be by him delivered to the plaintiff, and while the said bond was in the custody and keeping of said Ryan for the purposes aforesaid, the said bond, by the consent and direction of the said Ryan, was meterially altered and changed in this, that the signature of one James Nabb was added thereto and thereon, as an additional obligor or maker of said bond, and this without the knowledge, license, permission or consent of the said defendant, &c., concluding as the second plea the demurrer to this, is the same as that to the second plea—with this additfonal ground; The said plea does not allege that any change or alteration of said bond was authorized or consented to by the plaintiff, or that any change or alteration was made in said bond after it was delivered.

The fourth plea is the same as second and third, with this variation, that after the signing and sealing of the bond, &c., it was delivered to E. Z. Ryan to procure the signature and seal of William Lagow to the said bond as a joint obligor and maker of said bond with the other parties, that after procuring the signature and seal of said Lagow, the said Ryan was to deliver the said bond to the said plaintiffs as the joint and several bond of the said parties, that Ryan did procure the signature and seal of said Lagow, after which the said bond was altered and changed in a material part thereof by the direction, permission, and consent of said Ryan in this, that the signature and seal of James Nabb was added to the said bond as a joint obligor with the said obligors or makers aforesaid, without the license, permission, authority or knowledge of the said defendant, and was then and there delivered to the said plaintiff, and the said defendant avers that said alteration was not in correction of any mistake made at the time of the making of said bond, or to further the intention of said defendants, existing at the time of the making of said bond, and the delivery of the same by him to said Ryan as aforesaid, whereby the said bond by reason of the alteration aforesaid, was of no force or effect whatever, &c., concluding as the second plea.

The demurrer to this plea states the following grounds:

1. The statements contained in said plea make it only a special plea of ***Non est factum***, and makes no other issue than those formed by the plea already filed.

2. The said plea puts in issue the question of fact, whether or not the said bond is the the deed of defendant, and E. Z. Ryan and others, when the defendant is the only party to this suit.

3. The said plea states conclusions and not facts, and then from these conclusions alleges that the bond is not the deed of the persons whose names are thereto signed, and concludes with a verification, whereas it should conclude to the country.

The 5th plea plea states: "As to the second breach of the conditions of the bond action on, because that by the act of the legislature of the State of Illinois, entitled an act sup-

plemental to an act to reduce the public debt $1,000,000 and to put the Bank of Illinois into liquidation, approved 28th February, 1845. The said assignees appointed by said act to close up the business of said bank, were, by the provisions of said act, allowed the time and space of four years from the passage of said act, and no longer, to close up said business and pay the liabilities of said bank, and after the passage of said act the said E. Z. Ryan made his official bond as required by said act, and the defendant signed and sealed said bond as one of the securities of the said Ryan on his official bond aforesaid, and which is the same official bond in the declaration mentioned, and after the making of said bond, to-wit: on the 10th of February, 1849, by an act of the legislature of the State of Illinois, 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, approved on the day and year aforesaid, the time for making settlement, paying the liabilities and closing up the business of said bank aforesaid was extended to the first day of January, 1851, and by virtue of that act of the legislature last above referred to, said E. Z. Ryan was relieved of the duty imposed by the provisions of the first above mentioned act of the legislature from making a final settlement and closing up the business of said bank, and the time for his making such final settlement and making payment of the liabilities, of said bank and closing up the business thereof was extended until the first day of January, 1851, a period of more than twenty months longer than the said defendant had by signing and sealing said official bond of the said Ryan, obligated himself to be held and bound for the faithful performance by the said Ryan of his duties as assignee of the Bank of Illinois, as required of him by the first of the above mentioned acts of the Legislature, and the defendant avers that the supposed breaches of the conditions of said bond, as alleged by the plaintiff in his declaration, was committed before the lapse of the four years allowed by the act of the Legislature first above mentioned, and after the expiration of the time for which the srid defendant was bound by said bond for the faithful performance by said Ryan of the duties prescribed by the act first above mentioned, and this he is ready to verify, &c.

To this 5th plea there is a general demurer.

The sixth plea is an answer to the third breach of the conditions of the bond, and states the same ground of defense as the fifth plea—except that it alleges that the breach occurred after the expiration of the four years allowed for the final settlement of the affairs of the Bank by the act of 1845.

To this there was general demurer.

The seventh plea answers the first breach of the condition of the bond, by alleging that the causes of action did not accrue within sixteen years.

The 8th plea answers the third breach, by alleging that the supposed cause of action did not accrue within sixteen years.

Replications filed to the 7th and 8th pleas and joinders.

The Court sustained the demurers to the second, third and fourth pleas, and overruled the demurers to the fifth and sixth pleas; and the plaintiff not further answering the said fifth and sixth pleas, judgment was entered in bar of the action, from which the relator, Thomas, appeals to this court.

The errors assigned are—

1. That the Court overruled the demurers to the fifth and sixth pleas.

2. The Court erred in not giving judgment for plaintiff sustaining each of the demurers to the fifth and sixth pleas.

The foregoing abstract is made with the expectation that the appellee will assign errors questioning the correctness of the judgment upon the demurers to the second, third and fourth pleas; if either of those pleas are good in substance, the relator will waive the technical objections.

The material questions presented by the record and assignment of errors arise upon the

pleas, alleging that, by the act of 1849, the securities of Ryan are released, that act providing,

First, "That the time for the liquidation of the affairs of said Bank pursuant to the provisions of an act supplemental to an act to reduce the public debt one million of dollars, and put the Bank of Illinois into liquidation, in force February 28, 1845, be, and the same is hereby extended to the first day of January, 1851.

The second section provides for the prosecution of suits in the name of the assignees.

The third section provides for maintaining pending suits in the names of the assignees.

With reference to this law, the appellant insists,

1. It does not extend the time for accounting for anything done or omitted before its passage.

2. It does not purport to release Ryan from liability for any previous act or omission.

3. If Ryan had collected and used the trust fund before the passage of this act, his liability is not changed by any of its provisions.

4. That the limitation of "four years from the passage of the act to make final settlement of the affairs of the Bank, without hindrance, other than is provided in this act," could not have been intended, and does not limit the tenure of the appointment, is evident from the use of the words "without hindrance," &c., and also from the fact that Bank debtors were allowed to pay their debts in instalments of one, two, three and four years from the date of the assignment, thereby extending the time of payment beyond the four years from the passage of the act, and leaving one fourth of the debt of those who availed themselves of the four years time uncollected.

5. It confers no additional powers, nor does it impose any additional duties. The limitation of four years in the first act was for the protection of the trust fund, to prevent the prosecution of suits affecting that fund, and the sacrifice of the property by one creditor to the exclusion of others, and this act was to continue that protection.

The 12th section of the act of 1843 provides for the appraisement of the real estate of the Bank, and for its sale at the appraised value, and prohibits any sale on execution for less than two-thirds of such value; also, that no debtor of the Bank shall be garnisheed by any holder of certificates issued under the provisions of said acts.

By an act passed March 4th, 1843, (acts of 1842–3 page 36,) it is provided that "no execution against the Bank shall be levied on any of the specie of the Bank, unless the officers refuse for an unreasonable length of time to pay out the specie, *pro rata*, according to the provisions of the act of the 25th of February, before recited."

6. The right to prosecute suits, and to maintain suits pending, existed by force of the act of 1845. The second and third sections were introduced either in ignorance of the law, or out of abundant caution, or in distrust of Circuit Courts.

7. If there could have been any question as to the right of the assignees to sue in Courts of law, there could not have been as to the right to sue in chancery. This question, however, is settled by this Court, in the cases of the assignees of the Bank against Gallatin county, 14, Ill., 78, and Leach and Thomas, 27, Ill., 457.

The appellant contends, further,

1. That the appointment of Ryan was without limit as to time, and that upon his acceptance and entering on the duties, he would continue to be assignee until the final settlement of the affairs of the Bank. Upon the question of appointments without limitation of time, see People *vs.* Mobly, Scam. 221. Field as the people, Scam. 79, &c.

Ryan v Vanlandingham 7 Indiana 4 Porter 446.

This is not a case in which the State alone is interested. The bond was executed as a

security to all parties interested as creditors of the Bank. If the State alone was the party still, the act of 1849 would not operate a release.

People *vs.* Leet, 13, Ill., 268.
The Governor *vs.* Ridgway, 12, Ill., 15.
Compher *vs.* the People, 12, Ill., 294.

The averments in the declaration show breaches of the condition of the bond, before, as well as after the expiration of the four years, and the mere delay of parties interested to sue, cannot be urged as operating a release of securities.

If the action of the Legislature operated to the prejudice of the securities, equally did it operate to the prejudice of the creditors of the Bank, who were no more parties to that action than were the securities.

Upon the questions made by the special pleas of ***non est factum*** see Cook *vs.* Scott, 1, Gilman, 338. Langly *vs.* Norvall, 1 Scam. 389.

Upon the questions presented by the pleas, alleging alterations in the bond after it was signed by part of the obligors, it is insisted,

First, That the alteration alleged could not prejudice the parties who had signed the bond. Bagley vs Ripley 34 Ills 100.

Second, The facts stated show that there never had been any delivery of the bond before the supposed alteration, and it it is not pretended that any alteration was made after the delivery, or that the Governor accepted the bond with knowledge of the alteration. On this point see

Fox *vs.* Blackstone, 31, Ill., 641. 538
Hurst *vs.* Weir, 29, Ill., 85.
Young *vs.* Ward, 21, Ill., 224.

The defense assumes, first, that the State is the only party in interest. Second, that neither the State, the securities, or any other parties in interest, could institute or maintain any proceedings against Ryan, to compel him to account after the passage of the act of 1849.

Whereas it is insisted by the appellant that that act formed no obstacle whatever to the prosecution of a suit against the assignee, and requiring him to account for his previous action. The most that can be said in respect to parties in interest is, that they slept on their rights—they delayed action when they might have acted. This delay does not operate the release of the securities.

See Flynn *vs.* Mudd and Hughs, 27, Ill., 327.

All the cases in the books in which securities have been released by agreement with principals, show action, consent and consideration on the part of parties in interest. Here nothing of the kind is pretended on the part of the creditors of the Bank.

Groathe vs Sims 5 Howard U.S. 192

Is was the right and duty of the securities of Ryan to acquaint themselves with all the facts connected with his action as trustee, and if they could not satisfy themselves otherwise, they could have applied to a Court of Equity, and not only have obtained a full disclosure of the state of his accounts, but his removal, and the appointment of some other person to execute the trust.

The Governor of NC
use of
W Thomas Trustee &c
vs
Appeal from
Richmond
Joseph G Bowman
Appellee.

Abstract & Brief

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Noah Johnston Clk