

No. 8772

Supreme Court of Illinois

Joseph Hayes, Impleaded,

vs.

Albert G. Caldwell

Proceedings in Chancery, before the
Honorable William A. Denning Associate
Justice of the Supreme Court of the State of
Illinois and Sole presiding Judge of the
Gallatin Circuit Court, at the October ^{Term} 1847.
Commenced and holden at Equality on the
25th + cont^d until the 30th of Octo 1847. —

Albert G. Caldwell and Ebenezer
Z. Ryan Assignees of the President
Directors and Company of the Bank
of Illinois. —

vs. In Chancery Bill of Discovery. —
Chas. Guard Joseph Hayes
and John Siddall. —

Be it remembered that heretofore, to wit, on the 30th day of
September 1847. the Plaintiffs filed in the Office of the Clerk of
the Circuit Court, a certain bill in Chancery, in the words
and figures following to wit:

State of Illinois, Gallatin County Jct.

Bill

In the Gallatin Circuit Court

October Term Anno Domini 1847.

To the Hon. William A. Denning Associate
Justice of the Supreme Court of the State of
Illinois and assigned to preside in the third
Judicial Circuit thereof, and in the Gallatin
Circuit ^{Court}, now sitting. —

Your
Petitors Albert G. Caldwell & Ebenezer Z. Ryan,
Assignees of the President, Directors & Company
of the Bank of Illinois, humbly complaining unto
your honor in Chancery now sitting, would

respectfully represent - That by an Act of the
General Assembly of the State of Illinois; entitled
"An act supplemental to an Act to reduce
the public debt one million of dollars &
put the Bank of Illinois into liquidation"
approved 28.th Feby. 1845. all debts due the
Bank of Illinois at Shawneetown were
required to be assigned and delivered to
your orators. which act is herewith filed
marked A. and prayed to be taken as
a part of this bill. That in pursuance of
said Act, the President, Directors & Co. of the
Bank of Illinois made and executed a Deed
of Assignment of the personal assets of
the said Bank dated the 10.th day of April
1845. a copy whereof is herewith filed, marked
B. and prayed to be taken as a part of this
Bill. That under and by virtue of said
Act and Deed of Assignment, the following
described note among other debts and credits
due said Bank at Shawneetown was deli-
vered to your orators. to wit. \$ 39,726 ⁴³/₁₀₀.

Bank of Illinois Shawneetown

20 - February 1843.

Seven months after date, we or either of us
promise to pay the President, Directors and
Company of the Bank of Illinois, Thirty nine
Thousand, seven hundred and twenty six
dollars and forty three cents, which may be
paid in Illinois State indebtedness or
Certificates of the Bank, with interest at
the rate of eight per cent per annum
from date until paid, for value received.

Signed

Sharon Guard
Joseph Hayes
John Siddall

That to the October Term 1846. of the Gallatin Circuit Court, your Orators in the name of the President, Directors & Company of the Bank of Illinois for the use of your Orators as their Apignees brought suit in an Action of Debt against the said Chalou Guard, Joseph Hayes and John Siddall, for the recovery of the above described note - That at said Term of said Court, service having been had on the said Chalou Guard and Joseph Hayes, they appeared to said Action, and the said Chalou Guard for plea, plead that the said note so sued on was not his Act and deed, as by said plea and other records in said Case still remaining in said Court will more fully appear. - That under and by virtue of said Act of General Assembly, the said Decd of Assignment, the delivery of said note, and the Act of the said General Assembly entitled "An Act to reduce the State debt one million of Dollars, and put the Bank of Illinois into liquidation" Approved February 25th 1843, which Act is also prayed to be taken as a part of this Bill. The title and legal interest in said note was and is vested in your Orators, as such Apignees as aforesaid.

Now may it please your Honor, your Orators charge that the said John Siddall was Cashier of said Bank of Illinois, at the time of the execution & discount of said note and the same appears to be in his hand writing: that the name of

Chalon Guard as signed thereto, seems to be in the hand writing of the said Joseph Hayes. That the said note was executed in renewal and payment of certain notes of said Chalon Guard, and other items as will more fully appear by an abstract of the settlement, made at the time of the execution of said note, herewith filed, marked document C. and prayed to be taken as part of this bill; and your orators also charge that although the said settlement, seems to have been made, by the said Joseph Hayes and John Siddall and the name of the said Chalon Guard, appears to be in the hand writing of the said Joseph Hayes, yet your orators believe that the said settlement was so made and the said note was so signed in the name, and by the authority and consent of the said ~~Chalon~~ Guard and that he has since sanctioned the same; all of which your orators are satisfied would fully appear if the said Chalon Guard, Joseph Hayes and John Siddall, were to discover upon their oaths respectively all the facts attending the execution of the said note, and the disposition of the said notes described in Document C. and cancelled in the manner aforesaid; and in as much as your orators, are unable to procure the testimony of the said parties in said cause against each other and compel them or either of them to testify, and as

Your Orators cannot have a discovery, or make complete proof of this transaction which appears to have been private & limited to said parties, without the aid of a Court of Equity, where such things are only cognisable. To the end therefore that the said Chalou Guard, Joseph Hayes and John Siddall, may respectively true and perfect answers make, to the matters and things in this bill contained as fully as if the same were specially interrogated and more particularly, whether the said parties, were partners, or in any wise jointly or individually interested in the notes and items mentioned in Document C. and in what manner and to what extent. Whether the said note herein set forth was in any manner executed for the benefit of or in discharge of the liabilities of the said parties as partners in any business & more especially under the firm of C Guard & Co. in a certain Iron Furnace. Whether the said note was written by the said John Siddall, and the name of the said Chalou Guard signed thereto by the said Joseph Hayes, either or both acting as partners of said Chalou Guard in any firm and so signing and executing said note, for the benefit of such firm. Whether the name of the said Chalou Guard was signed by the said Joseph Hayes, and by the request, direction, permission or consent or authority of the said Chalou

Guard. Whether the said note was given in renewal and payment of the several notes and debits designated in Document C. Whether any statement was given by the officers of the Bank of such settlement and what disposition was made of such statement and was the same exhibited to the said Chalou Guard. Whether the said notes mentioned in Document C. or any or either of them were ever handed to or received by the said Chalou Guard. Whether the notes of Joseph Hayes mentioned in Document C. as having been taken up was ever accounted for in any settlement or other arrangement or understanding between the said parties or any of them and when and by and between whom. Whether the amount passed to the Credit of William Hick, by such settlement, has ever been settled, arranged, understood, or in any way accounted for in ^{any} settlement by or between the said parties or either of them and the said Hick or his Estate or representatives; Whether the notes of the said Chalou Guard, designated in Document C. were ever embraced, arranged or in any way recognized in any settlement, by and between the said parties and any third persons or persons; Whether the said notes of Chalou Guard, mentioned in Document C. have in any way passed to the Credit or debit of Chalou Guard either as an individual or as a member

of any firm in any accounts between the said parties individually or as a firm with him or any other person.

Whether the said Chalon Guard was apprised after the execution of the said note of the manner in which the same was signed, and whether he consented to the same. Whether the said Chalon Guard has ever said he would settle, take up or in any way account for the said note or any part thereof. Whether the said Chalon Guard asked of the ^{said} Bank of Illinois or of Albert G Lealdwell, as assignee of said Bank to delay any suit on said note, and stated he and the other parties thereto would renew said note or in some way secure to the assignee the payment of said note. Whether the said Chalon Guard, requested the said John Siddall, to ask the said Albert G Lealdwell to delay suit on said note and stated to said John Siddall that some arrangement, should be made for the payment or security of said note. Whether any correspondence by letter, or any conversation by and between the said Chalon Guard and the other parties, to said note or either of them ever took place respecting the payment, renewal or security of said note to the Bank of Illinois, or to the assignee thereof, if so; when & what was the effect of such corres-

pondence or conversation? And that the said Chalou Guard, Joseph Hayes and John Siddall, may make a full, true & perfect disclosure and discovery of the several matters aforesaid, to the end that your orators may be better enabled to prosecute their said action at law against them, may it please your Honor to grant your orators the peoples most gracious writs of Subpoena and Summons to be directed to the said Chalou Guard, Joseph Hayes and John Siddall, commanding them to answers make to all and singular the premises and further to perform, and abide the further order and direction of the Court, also to grant to your orators an order of publication of notice in said Cause, to John Siddall who is a non resident of this State, to make him a party thereto and such other and further order as to your Honor may seem meet; and your orator as in duty bound, will ever pray &c.

A. G. Caldwell

Sol for Complts.

Oath State of Illinois Gallatin County 1st.

Be it remembered that before me the undersigned, a justice of the Peace in and for said County, this day personally appeared Albert G Caldwell, who being first duly sworn deposes and says that so much of said bill, as recites the title of said complainants, the suit

at law and the other facts, charged as matters of belief, are substantially true as charged, and further saith not. -
Sworn & Subscribed A. G. Caldwell
this 28th day of Sept. 1847.

J. M. Norton. J. P.

And afterwards to wit, on the day and year aforesaid, a summons was issued in the words and figures as follows, to wit.

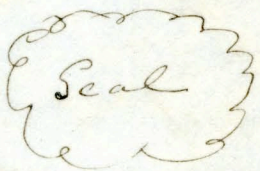
Summons

State of Illinois }
Gallatin County } Jct.

The people of the State of Illinois, To the Sheriff of said County greeting. -

We command you to summon Chalou Guard, Joseph Hayes & John Siddall, if to be found in your County, to appear before the Circuit Court of said County on the first day of the next term thereof, to be holden on the fourth Monday in the month of October next, to answer to a bill of complaint, filed in ^{our} said Circuit Court, on the Chancery side thereof, against them by Albert G Caldwell and Ebenezer J Ryan, assignees of the President, Directors & Company of the Bank of Illinois. -

And hereof make due return to our said Court, as the law directs. -



Witness D. P. Wilbanks, Clerk of our said Court, and the Judicial Seal thereof, at Equality this 30th day of September A. D. 1847. D. P. Wilbanks, Clerk.

Return

which said summons was returned, with the following endorsement thereon, to wit:

Served by giving copies to Joseph Hayes on the 4th and Chalon Guard on the 19th Oct. 1847. John Siddall not found. -

J. E. Hall. Shff. S. C.

And afterwards to wit, on the 28th day of October of the year last aforesaid, the plaintiffs filed the following Statement marked C. to wit.

Doc. C. Statement of settlement upon note of Chalou Guard to the Bank of Illinois, made 25 Feb 1843.

	D Notes of	Date of	When due	Amount	
6470	Chalou Guard, J. Guard & J. Siddall	17. Mch 41.	20 Oct 41.	7.000	"
6599	" " " " " "	14. Apr. 41.	17 Nov 41	5.500	"
6754	" " Mortgage	26 May 41.	20 Dec. 41	3.000	"
7064	" " J. Guard & J. Siddall	1 Sept. 41.	17 Mar. 42	.125	"
7063	" " J. Guard, J. Siddall Hayes	1 Sept 41.	13. Dec. 41	.400	"
7062	" " J. Guard & J. Siddall	1 Sept 41	24 Jan 42	1.300	"
7061	" " J. Guard, J. Siddall	1 Sept 41	24 Jan 42	3.000	"
7059	" " J. Guard, J. Siddall W. Wick	1 Sept 41	27 Feby 42	6.000	"
7286	" " J. Guard, J. Hayes	27 Oct 41	30 May 42	.600	"
7126	" " J. Hayes J. Siddall	22 Sept 41	16. Apr. 42	.456	"
7965	" " J. Hayes J. Siddall	1 June 42	8 Oct. 42	1.280	27
8275	Joseph Hayes, Guard J. Siddall	9 Nov 42	12 June 43	.735	"
Bills of Exchange					
433	Chalou Guard, J. Hayes on J. Guard	26 Jan 42	29 July 42	4.000	"
447	" " J. Guard on J. Guard	4 Augt. 41	5 Mar 42	3.000	"
	Amot of Credit to W. Wick			.278	75
	Interest on the above			3.057	41
	Making in all			39.726	43
C. Note of					
	Chalou Guard, Joseph Hayes				
	and John Siddall	20. Feb. 43	20 Sept. 43	39.726	43

And on the day and year last aforesaid, the defendant Hayes filed his demurrer, in words and figures following, to wit. -

So. Hayes impleaded with
G. Guard & John Siddall

ad.

Bank of Illinois.

Chancery - Bill of
Discovery - Oct. term 1847.

Demurrer

This dft. by protestation not confessing
or acknowledging all or any of the matters & things
in the said Complainants bill, to be true in
such manner and form as the same are therein
set forth & alledged, doth demur thereto, and for
cause of demurrer sheweth (the Causes of
demurrer below) Wherefore ^{the} this defendant,
demands the Judgment of this Court, whether
he shall be compelled to make any further
or other answer to the s^d bill or any of the
matters and things therein contained, and
prays to be hence dismissed with his reasonable
costs in this behalf sustained, &c.

Eddy & Posey. Sols
for dft.

Causes of Demurrer.

- Causes
- 1st That the discovery is immaterial.
 - 2nd That the situation of this defendant, renders
it improper, for a Court of Equity to compel
a discovery. -
 - 3rd That the case made by the bill is not such
in which a Court of Equity assumes a jurisdic-
tion to compel a discovery.
 - 4th That Bill is not properly sworn to. -

On the 27th Oct. 1847. The following order was had,
to wit.

Order of
Court

Ordered that in the last named Cause the
defendants be ruled to answer the complai-
nants bill by tomorrow morning at nine
O'Clock. On motion of complainants Atty. it is
further ordered that notice to John Siddall, of
the pendency of this suit be published in the
public newspaper, according to law. —

And afterwards, to wit. On the 29th day of the month
and year last aforesaid, the following order
was had, to wit.

On this day came the parties by
their attorneys, whereupon defendant Hayes,
demurred to the bill herein, and argument
being heard and mature deliberation thereupon
had, said demurrer was overuled, and it is
ordered that a deodimus issue to take the answer
of defendant Siddall.

And afterwards, to wit. On the 30th day of the month
& year last aforesaid, the following order was had, to wit.

Continuance Ordered that this Cause be continued until the
next term of this Court. —

Certificate }
State of Illinois }
Gallatin County } Set.

I J. P. Wilbanks, Clerk of the
Circuit Court, in and for said County, do hereby
certify that the foregoing 12 pages are truly taken
and copied from the records of the proceedings
of the foregoing Cause. —

In testimony whereof I hereunto set my
hand and affix the seal of said Court, at
Equality, this 3^d day of December 1847.

J. P. Wilbanks

Supreme Court December Term 1848

Joseph Hayes

A. G. Caldwell and

E. F. Ryan Attorneys

And the said Hayes by W. B. Teates his Counsel comes and says that in the record and proceedings and in the rendition of judgment manifest error hath intervened in this viz:

First That the Court overruled the said plaintiff in error's Demurrer to the Bill of Discovery filed against him and others in the Circuit Court. And That the Court below rendered judgment against the said plaintiff in error and in favor of the Defendants in error. Wherefore he prays judgment that the judgment of the Circuit Court be reversed, annulled & for nothing returned and that he recover his costs &c. Walter B. Teates for plff

Chalton Guard & Joseph Hayes
vs.
John Suddall
peffs in error -

A. G. Caldwell, & E. F. Ryan
vs.
E. F. Ryan, assignee of the
President, Directors & Co. of the
Bank of Allegheny, Defendants
in error -

Writ of error -

W. B. Teates for 1848

E. F. Ryan assignee
vs. E. F. Ryan, D.C.

Teates

and assigns. to
Messrs. J. S. Lawrence & Co.

State of Illinois
Supreme Court
Southern Division

Sh.

The People of the State of Illinois
to the Clerk of the Circuit Court of Gallatin County, Kentucky:

Because in the record and proceedings,
and also in the rendition of the judgment in a suit which was
pending in the Circuit Court of Gallatin County, before the judge
thereof, between Albert S. Caldwell and Cheever T. Ryan Assignees
of the President Directors and Company of the Bank of Illinois
Plaintiffs, and Joseph Hays impleaded with Chas. Seward &
John Siddall Defendants, in Chancery, manifest error hath
intervened as it is said to the great injury of the said Defendant
as by his Complaint we are informed, and we being willing that
said error if any there be, should in due manner be corrected,
and full and speedy justice done to the parties aforesaid, in their
behalf; do commend you, that you send to the justices of our
Supreme Court at Mount Vernon with all convenient dispatch,
a transcript of the record and proceedings of the suit aforesaid,
with all things concerning the same, distinctly and openly,
under the seal of your Court, together with this writ; so that
the said justices may have them at the place of holding the
said Supreme Court in Mount Vernon on the first Monday
in the month of December next; that the records and
proceedings aforesaid being inspected, they may cause to be done,
thereupon, for correcting that error what of right and according
to law, and the rules of this Court ought to be done.

Witness the Hon. William Wilson Chief Justice of
the Supreme Court and the judicial seal of the
Circuit Court of Gallatin County at Mt. Vernon
this 6th day of November A.D. 1845

J. H. K. Ex. of. Ct. S. C.
J. H. K. C. C. J. C.

Supreme Court S. D.

Joseph Hoag vs
Chas. Guard &
John Siddall

vs 3rd Div. of Error

Albert G. Caldwell &
Chas. L. Ryan vs

To Dec. Term 1848

Filed Nov. 6th 1848

A. Ridgway Esq. Clk
do

8772

A. G. Caldwell &
 E. L. Ryan assignees } Error to Gallatin
 vs }
 Joseph Hayes imp'd &

The defendants in Error move
 to dismiss the above entitled
 Cause for the following reasons
 1st That the writ of Error is
 sued out upon a final interlocu-
 tory judgment of the Gallatin
 Circuit Court, against one of
 the parties therein
 2^d That there was no final
judgment by the Gallatin Circuit
 Court in the said cause
 3^d That the proceeding was other-
 wise irregular

A. G. Caldwell
 for the depts in Er.

Authorities
 4 Sears Rep 327.
 1 Root 151. 181. 290.
 Minor 147. 184.
 2 Meap 445.

(Nos.)

Wages, &c. v. Caldwell

Motion to dismiss.

Filed Dec 9. 1848.

John M. Babcock. Esq. Clerk of the Court
p Lewis F. Leary D.C.

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8772

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