No. 8786

Supreme Court of Illinois

A. C. Caldwell, et al,

---

vs.

County of Gallatin,

State of Illinois }
Gallatin County } Oct.

The People of the State of Illinois
To the Sheriff of Gallatin County Greeting:
We command you to summon Albert G. Caldwell & Ebenezer L. Ryan Assignees of the President Directors & Company of the Bank of Illinois, if to be found in your County, to appear before the Circuit Court of said County, on the first day of the next term thereof to be holden at the Court-house in Shawnetown on the third Monday in the Month of June next to answer ~~to answer~~ the County of Gallatin in a plea of Debt of $1000.00 to its damage of One thousand Dollars as is alleged; and hereof make due return to our said Court as the law directs.

Witness J. E. Hall Clerk of our said Court and the Judicial Seal thereof at Shawnetown this 31st day of May A.D. 1849.

L.S.

J. E. Hall Clerk

(Endorsed)

Executed by reading the within summons to A.G. Caldwell, Ryan not found June the second 1849.

John T. Watts S.G.C.

State of Illinois }
Gallatin County } s.s.

The People of the State of Illinois,
To the Sheriff of Lawrence County, Greeting:
We command you to summon Albert G. Caldwell & Ebenezer Z. Ryan assignees of the President Directors & company of the Bank of Illinois, if to be found in your County to appear before the Circuit Court of said County on the first day of the next Term thereof, to be holden at the Court-house in Shawnetown on the third Monday in the month of June next to answer the County of Gallatin in a plea of Debt of $1000.00 to its Damage of One thousand dollars as is alleged; and hereof make due return to our said Court as the law directs.

Witness J. E. Hall Clerk of our said Court, and the Judicial Seal thereof at Shawnetown this 31st day of May A.D. 1849.

(S.S.)

J. E. Hall Clerk

Endorsed

Served the within Summons on the within named Ebenezer Z. Ryan, one of the assignees of the Bank of Illinois by reading the same to him on the 6th day of June A.D. 1849. & Albert G. Caldwell not found in this County.

J. Young S.L.C.

Of the June Term of the Gallatin Circuit Court A.D. 1849.

The County of Gallatin the Plaintiff in this suit complain of Albert G. Caldwell and Ebenezer L. Ryan Assignees of the President Directors & Company of the Bank of Illinois, summoned &c of a a plea that they render unto the said Plaintiffs the sum of ten thousand Dollars lawful money of the United States which they owe to and unjustly detain from the said Plaintiffs. For that whereas the said Defendants heretofore to wit: On the first day of April 1849 were indebted to the said Plaintiffs for the taxes due to the said County of Gallatin levied, assessed & regulated, according to the Revenue laws of the State of Illinois in the sum of ten thousand dollars, being the amount of taxes, so ascertained on $280000.00/100 of money loaned in the years 1845, 1846 and 1847, and on a portion of the Real Estate held by said Defendants, to be paid by the said Defendants to the said Plaintiffs. *Whereby and by reason of the said sum of ten thousand Dollars being and remaining wholly unpaid an action hath accrued to the said Plaintiffs to demand and have of and from the said Defendants the sum of $10,000.00/100 aforesaid to the Damage of the said Plaintiffs of one thousand Dollars.

And whereas also the County Commissioners Court of the said County of Gallatin at a special Term of said Court in the year 1846 did impose and levy a tax of four mills on the Dollar of all the taxable property in said County,

*Said Plaintiffs further aver that the said taxes were demanded of said Defendants, they further aver that said Defendants had no personal property whereof to levy said Taxes.

[8784-2]

for the year 1845 and the said Plaintiffs further say that the assessor of said County for the year 1845 aforesaid assessed and entered the amount of money loaned by the said Defendants in said County in the year 1845 as aforesaid at the sum of $280,000 00/100 and the said Plaintiffs further say that the rateable amount of Tax due thereon to the said plaintiffs as aforesaid is the sum of $1120 00/100 for the year 1845 aforesaid, And the said plaintiffs further say that thereafter at the Special Term of the County Commissioners Court of the County of Gallatin aforesaid in January 1847 said Court did levy and affix the tax on the taxable property in said County for the year 1846 at four mills on the Dollar, and at their March Term thereafter said Court levied an additional tax of two mills on the Dollar for the same year of 1846 as the pauper tax to build a poor house in said County and the said plaintiffs further say that the assessor of said County for the year 1846 aforesaid assessed & reported the amount of Money loaned by the said Defendants in said County in the said year of 1846 at the sum of $280,000 00/100 and the said plaintiffs further say that the rateable amount of tax due thereon to the said County of Gallatin as aforesaid is the sum of 1680,00 for the tax of the year 1846 and the said Plaintiffs further say that thereafter at the March Term of the County Commissioners Court

of the County of ~~the Co~~ Gallatin aforesaid in the year 1847 said Court did impose and levy a tax on the taxable property in said County of four mills on the Dollar, exclusive of the pauper tax, for the year 1847 and the said plaintiffs further say that the assessor of said County, for the year 1847 aforesaid assessed & reported the amount of money loaned by the said Defendants in said County in the said year of 1847 at the sum of $2 60 000 ⁄ 100 And the said Plaintiffs further say that the amount of tax due thereon to the said County of Gallatin as aforesaid is the sum of $1040.00 for the year 1847 aforesaid — And the said Plaintiffs further say that the said several sums of money so due and owing unto them by the said Defendants as aforesaid amount in the aggregate to $3840.00 being part and parcel of the sum above demanded by means whereof they the said Defendants became liable to pay the plaintiffs the said sum of money when they the said Defendants should be thereunto afterwards requested. * Yet the said Defendants although often requested so to do hath not as yet paid the said last mentioned sum of $3840.00 part & parcel of the said sum above demanded nor any part thereof unto the said County of Gallatin the Plaintiffs nor to the Collector of said County of Gallatin nor to any person for them but though often requested so to do, hath hitherto wholly neglected

* Said Plffs further aver that afterwards viz: on the 4th day of April 1848 said sums so due for taxes were demanded of said Defendants by said Plffs. further aver that said Defendants have no property, whereof to levy said sums so due for taxes as aforesaid.

28783-3

& refused and still wholly neglect & refuse
to wit at the County aforesaid to the damage
of the said Plaintiffs of One thousand Dollars.
And whereof also the said Defendants
afterwards, to wit: on the 1st day of April 1849
at the County of Gallatin aforesaid, accounted
with the said Plaintiffs of and concerning
divers other sums of Money before that time
& then due & owing & in arrears and unpaid
from the said Defendants to the said Plaintiffs
and thereby then & there admitted a balance
due the said Plaintiffs of $5000.00 the same
being the taxes due the County of Gallatin
aforesaid on the taxable property in possession
of the said Defendants in said County for the
years 1845, 1846 & 1847 to be paid by the
said Defendants to the said Plaintiffs when
they the said Defendants should be thereunto
afterwards requested * Whereby & by reason
of the said last mentioned sum of money
being & remaining wholly unpaid an action hath
accrued to the said Plaintiffs to Demand &
have of & from the said Defendants the said
last mentioned sum of $5000.00 residue of the said
sum above demanded, yet the said Defendants
although often requested so to do have not as
yet paid the said sum of $5000/00 above
demanded or any part thereof to the said Plaintiffs, nor
any person for them, but they to do this hitherto wholly
refused & still do refuse to the damage of the said
Plaintiffs of One thousand Dollars & therefore they bring this
suit.

Wm H Stickey & S.S. Marshall for the
Plaintiffs

* Said Plaintiffs further aver that afterwards, on &c. at &c. aforesaid, said sums of money were duly demanded of said Defendants for the taxes aforesaid. Said Plaintiffs further aver that said Defts have no personal property whereof to buy and collect said sums for the taxes due aforesaid.

Copy of Account sued on

Albert G. Caldwell & Ebenezer Z. Ry an assignees of the President Directors & Company of the Bank of Illinois

To the County of Gallatin Dr.

1849 To Amount of Taxes assessed and due The County of Gallatin on the Real Estate of said Assignees in said County $1000.00

1846 To Amount of Taxes due on personal Property for the year 1845 $1120.00

1847 To Amount of Taxes due on Personal Property for the year 1846. $1680.00

1848 To Amount of Taxes due on Personal property ~~for~~ the year 1847. $1040.00

$4840.00

(copy of order)

Saturday 2d. February 1850

The County of Gallatin v
The Assignees of the Bank of Illinois } Debt

On this day came the Plaintiff by atty. and asked leave to amend the declaration herein which is by the Court allowed, and the facts being agreed upon this cause is submitted as an agreed Case to the Court and taken under Advisement

[3786-4]

A. G. Caldwell & E. Z. Ryan Assignees &c

vs.

County of Gallatin

And the Defendants come and defend the wrong & injury when &c and as to the said Writ Declaration and the case made by agreement herein do demur thereto and for causes of Demurrer assign

1st That this Court hath no Jurisdiction of the matters aforesaid because the same is within the exclusive Jurisdiction of the County Court of said County

2d That the County of Gallatin hath no right of action in this Court upon the supposed Cause of action sued on

3 That the Defendants are sued without a Joinder of their Co Assignees David A Smith & Samuel Dunlap

4th That the Demand sued for is not properly charged to these Defendants for the following reasons.

1st That the money assessed as money loaned was loaned prior to the year 1843.

2. That the Revenue law under which the assessment was made did not go into operation until 1st Septr. 1845.

3 That the application of the said Revenue law to the assessment of money so loaned prior ~~prior~~ to its passage is unconstitutional and contrary to law.

4th That the assets of the Bank were exempt from taxation under the acts.

relating to the same, and the payment of the Bonus to 1843.

5th That the State was a Stockholder in said Bank, and under the several Statutes in such case provided placed the assets of said Bank in the hands of receivers, with all the exemptions which attached to the same, under the several laws referred to.

6th That liability for taxes is a unit and cannot be divided & sued on in the manner aforesaid.

5th That the Amount assessed is exorbitant and oppressive for the reason that the debt is shown to have been at the time of assessment worth not more than 50 cents on the Dollar, and that the paper or issues of the Bank in which the said was payable was & is not worth more than 50 cents on the dollar

6th That the Record in other and important points is insufficient in law to authorize the Plaintiff to recover the said sum above demanded or any part thereof and this Defendants are ready to verify.

Wherefore they pray judgment of the said case &c.

Hays & Caldwell
for Defts.

Joinder in this Demurrer.

Marshall & Scates
for Plaintiffs

[8786-5]

The County of Gallatin
vs
Assignees of Bank of Illinois } Agreement

It is agreed between the Attorney for the Plaintiff and Defendants that the following facts be received in the argument of this Case as if the same were plead & proven

First. The assessor of Gallatin County for the year 1846 returned his assessment for the year 1845 which had been omitted by the assessor for that year, also the assessment for the year 1846, against the Bank of Illinois at the sum of $260,000 for each year as money loaned by the said Bank.

At a special Term held in January 1846 of the County Commissioners Court of Gallatin County, said Court made the levy rate of taxation at 4 mills on each Dollar's worth of Property assessed for the year 1845.

At the March Term 1846 the County Commissioners Court proceeded to levy a ~~pauper~~ pauper tax for said year of 1846 of twenty cents on each $100. worth of Property, and 40 cents on each $100. for County purposes, and 15 cents on each $100. worth of property as a road tax for road purposes all for 1846.

At a Special Term of said County Commissioners Court held on the 6th of January

1847 the said Court proceeded to levy and did levy the rate of Taxes, for said year of 1847 at 4 Mills on the Dollar worth of property for County purposes, and the assessor of said County returned his assessment for the year 1847 of the sum of $260,000 00/100, as money owned by said Bank of Illinois and assigned to Defendants, loaned at Interest for that year.

Second = That the Collector of Gallatin County for the years 1845 1846 & 1847 demanded of the said Defendants the said Taxes.

Third = That the Defendants refused to pay the said Taxes, denying their liability for such taxes, & still refuse to pay.

Fourth = That the Defendants have not since the assignment to them on the 10th of April 1845 paid into the State Treasury any bonus under the law of 1835, although such bonus was paid to 1843.

Fifth = That the Defendants waive any demand by the Collector for personal property.

Sixth = That the assets of the Bank of Illinois passed into liquidation under the act of twenty fifth February 1843.

Seventh = That the Assets of the said Bank were subsequently on the 10th of April 1845 assigned to Albert G. Caldwell Ebenezer L. Ryan John J. Hardin (who has since deceased and has been succeeded by David A. Smith) and Samuel Dunlap, under Act of ~~twenty fifth~~ 28th of February 1845.

Eighth = That the Amounts assessed as money loaned in the assessments above mentioned were at the times mentioned the balances of

[D781-6]

outstanding debts due said Bank of Illinois at Shawneetown for money loaned prior to the year 1843. and were assigned to these defendants

Ninth = That the said debts proven before the County Court, at the said times to have been not worth more than fifty cents on the dollar.

Tenth = That the State under an act amendatory of the Charter of said Bank hath been a Stock-holder in said Bank to the amount of $. 100000, and still is a Stock-holder to the amount of $

Eleventh = That said outstanding debt of said Bank was and is payable in the paper of said Bank, and such paper was at the said times and still is not worth more than fifty cents on the dollar.

It is also further agreed that all the acts public or private of this State in relation to the County of Gallatin, the power of the County Commissioners' Court of said County and the revenue of this State and of the said County, also all laws public or private in relation to the Bank of Illinois the liquidation or assignment thereof, applicable to any question of law or fact which may arise in this case shall be taken and received as if specially plead & proven before the Court.

It is also further agreed that the foregoing facts shall be considered, in connection with the writ declaration and issue joined herein as one record and be submitted to the Court,

as an agreed case, with liberty to the Defendant to make any question which go to the Jurisdiction of the Court, the parties to this suit the right of action in the Plaintiff, the Cause of action sued on, the adjustment of the liability of the Defendants and all other questions which the Defendants may choose to make upon this Record, not of a merely technical Character.

The same liberty is likewise reserved by the Plaintiff

It is also further agreed that either party dissatisfied with the decision of this Court may prosecute an Appeal or writ of Error to the Supreme Court, without giving Bond and security

Scates & S. S. Marshall
for the Plaintiff
Hays & Caldwell
for the Defts.

(Copy of final order)

Saturday 30th November 1850.

Gallatin County v
Albert G. Caldwell & Ebenezer
Le Ryan Assignees of the
President Directors Company
of the Bank of Illinois } Debt

This Cause having been taken under advisement at a former Term of this Court, It is now Considered by the Court,

that the Demurrer to the Declaration herein which was filed at a former Term be overruled, whereupon came the parties by their Attorneys and by agreement this cause is submitted to the Court, and the Court being now fully advised in the premises It is considered that the plaintiff recover of the Defendants the sum of $2015.00/100 Debt and $362.00/100 Damages, in all Debt and Damages $2377.00/100, Therefore ordered and adjudged that the plaintiff recover of the Defendants the aforesaid sum of two thousand, three hundred and seventy seven Dollars, as also their cost in this behalf expended and that they have execution therefore.

State of Illinois
Fulton County } ss.

I John E Wall Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is true & complete record of the above entitled Cause as appears from the books & papers on file in my office.

In Witness whereof I have hereunto set my hand & affixed the seal of Office at Lewistown this 26th day of December 1850.

J. E. Wall Clerk

The writ of error to issue in this cause will operate as a supersedeas, on the pltff. in error, A. G. Caldwell, entering into bond to the deft. in error, in the penalty of five thousand dollars, with James Dunlap, or Alexander Kirkpatrick, as surety, conditioned as the law directs. Feby. 20th 1851.

S. H. Treat. C. J. Sup. Court.

[9781-B]

Gallatin County v.
A. G. Caldwell &
E. L. Ryan assignees
of the Bank of Ills.

(Copy of Record)

State of Illinois, Supreme Court.
First Grand Division

Albert G Caldwell & Ebenezer Z Ryan
Assignees of the Bank of Illinois
against
vs Error from Gallatin.
The County of Gallatin

And now at this day comes the said Ebenezer Z Ryan as surviving plaintiff in this cause, — the said Caldwell having departed this life, since the suing out the Writ of Error herein, And says, — that in the Judgment and proceedings of the said circuit court, divers Errors, have intervened, to the prejudice of said plaintiffs in Error and he now sets down the following.

First; It appears from said Record that the court Entered a Judgment for the said County of Gallatin, whereas the Judgment should have been Entered for the said Caldwell & Ryan.

Second; — It appears by the Record, that the said circuit court, Entered Judgment against said Caldwell and Ryan in person, — whereas, if the plaintiff was Entitled to any Judgment, it was against said Caldwell & Ryan in their right or character as Assignees of the Bank of Illinois, — Wherefore the said plaintiff in Error prays that the Judgment aforesaid be Reversed, set aside, and annulled &c

N. Thomas for plff in Error

[8786-D]

And the said defendant comes & says that in the record and proceedings aforesaid there is no such error as complained of — Wherefore &c.

S. S. Marshall & Scates for Deft

No 16.

A. G. Caldwell &
E. F. Reynes
Assignees of Blair & Co
vs } Rocca
} Hennessee

The County of Gallatin

8786

State of Illinois
Supreme Court } Sct.
Southern Division

The People of the State of Illinois to the Sheriff of Lawrence County, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a suit which was lately in the Circuit Court of Gallatin County before the Judge thereof between Albert G Caldwell and Ebenezer L Ryan Assignees of the President Directors and Company of the Bank of Illinois Complainants and Joseph Hays impleaded with Charles Guard and John Siddall Defendants, manifest error hath intervened, as it is said, to the great injury of the said Joseph Hays as by his Complaint we are informed; a transcript of the record and proceedings, of which said judgment we have caused to be brought into our Supreme Court for the Southern District of the State of Illinois, before the Justices thereof, to correct the error in the same, if any there be, in due form and manner according to law:

We therefore command you, to summon the said Albert G Caldwell and Ebenezer L Ryan Assignees of the President Directors and Company of the Bank of Illinois to be and appear before the Justices of our said Supreme Court, at the next term thereof to be commenced and holden at Mount Vernon on the first Monday in the month of December next, to hear the record and proceedings and the errors assigned, if they shall think fit, and to show cause if any they can, why the said judgment shall not be reversed, for the causes aforesaid; and further to do and receive what our said Court shall order and adjudge in this behalf. And have you then there this writ, and make return thereof in what manner you execute the same.

Witness the Hon. William Wilson Chief Justice of our Supreme Court and the judicial Seal of the Circuit Court of Jefferson County at Mount Vernon this 6th day of Nov. 1848

L. W. Ridgway Cl. of Clk. S.C.
& Clk. C.C. J.C.

[5786-11]

Served the within Summons on Ebenezer Z. Ryan on the 23rd day of November A.D. 1846 by his reading the same & accepting the service without the Sheriff reading reading the summons to him & the within named Albert B. Caldwell not found in this County

L. Young S.L.G.

Supreme Court. Oct.

Caleb Mayo initiated with Charles Ricard & Mac Caldwell

vs

Albert G. Caldwell & Ebenezer L. Ryan Garnishees

Fees Oct. Term 1846

Serving Sum. $0.50
Returning Sum. 12½c
.62½c
Postage paid by Sheriff Lawrence G.P. .5
.67½c

3011

State of Illinois }
Supreme Court } Sct.
Southern District }

The People of the State of Illinois to the Sheriff of Gallatin County Greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a suit which was lately in the Circuit Court of Gallatin County, before the judge thereof, between Albert G. Caldwell and Ebenezer Z. Ryan, assignees of the President Directors & Co. of the Bank of Illinois Complainants and Chelton Grant & Joseph Hays impleaded with John Siddall Defendants in Chancery manifest error hath intervened as it is said to the great injury of the said Defendants as by their Complaint we are informed; a transcript of the record and proceedings of which said judgment we have caused to be brought into our Supreme Court for the Southern District of the State of Illinois before the justices thereof, to correct the error in the same, if any there be, in due form and manner, according to law and the usage of this Court.

We therefore command you to summon the said Albert G. Caldwell and Ebenezer Z. Ryan assignees of the President Directors & Company of the Bank of Illinois, to be and appear before the justices of our said Supreme Court, at the next term thereof to be commenced and holden at Mount Vernon on the first Monday in the month of December next, to hear the record and proceedings and errors assigned, if they shall think fit, and to show cause, if any they can, why the said judgment shall not be reversed, for the causes aforesaid; and further to do & receive what our said Court shall order and adjudge in this behalf. And have then there this writ, and make return thereon in what manner you execute the same.

Witness the Honorable William Wilson Chief Justice of our said Supreme Court & the seal of the Circuit Court of Jefferson County at Mt. Vernon this sixteen day of November A.D. 1848

C. H. Ridgeway Ex. of. Clk S.C.
V. Elk C.C.J.C.

[8786-12]

3011

Supreme Court S.D.

8786

~~Stephen Grant~~
Joseph Hays impleaded
Chalyn Edwards
with John Siddall

vs

Albert G. Caldwell &
Ebenezer L. Ryan
Plaintiffs &c.

To Dec. Term 1848

Executed by reading
to Caldwell only
this 20th day of
November 1848
John J. Walters
Sheriff of Gallatin
County Serving 50
Mileage 12½

State of Illinois, }
SUPREME COURT. } ss.

The People of the State of Illinois,

To the Sheriff of Gallatin County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Gallatin County, before the judge thereof, between Gallatin County Plaintiff and Albert G. Caldwell & Ebenezer B. Ryan Cashiers President & Directors of the Bank of Illinois defendant, it is said that manifest error hath intervened to the injury of said defendants as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at ~~Springfield~~ Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said James Davenport, Charles Vinson, John I Kennady Justices of the county Court of said County of Gallatin

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at ~~Springfield~~ Mt Vernon, in said State, on the 2d Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Plaintiff, notice together with this writ.

Witness, the Hon. Samuel H. Treat Chief Justice of our said Court, and the seal thereof, at ~~Spring-~~ Mt. Vernon~~field~~, this 22d day October in the year of our Lord, one thousand eight hundred and ~~forty-~~ fifty one

Perry D. Paddock
Clerk of the Supreme Court.

[8786-13]

Supreme Court.

A. G. Caldwell
et al —
Plaintiffs in error,

vs.

Gallatin County
Defendant in error,

Opa in Error
~~Scire Facias~~

Serving — 1.50
33 Miles — 1.65
Returning — 10
$3.25

Filed. Barger C.C.

Issued 1 Ap 6

Executed by reading the within to Charles Unseen & Colon Plumcady, Jr Colton & to Samo McCunghart & Francis A.D. 1857 in the presence of John Stanard & Robert Ross and Cashell Union of Gallatin County

Lorenzo Barger Sheff. G.C.

Attorneys

Shawneetown Ills
18 Octo 1851.

To the Clk of Supreme court at Mt Vernon,

I send by Mr Baugh $5 to pay the fee required in the case of Caldwell & Ryan agst Gallatin County, and Want a Summons issued agst the County & enclosed to Mr Joseph Bonds of this place. –

I also Want a summons issued in the case of Caldwell & Ryan agst $2Dy dollars in which some of the parties have appeared, I am very sorry the Clk has not forwarded this Summons as requested Some Weeks since. – his failure may produce a continuance of the cause, – In the first case, no Supersedeas will issue of course there being no bond, but the Summons cause issues without the Supersedeas. I hope there will be no further delay

W M Thomas
Trustee of B B of Ills

[8781-14]

Clk of S Court
Mt. Vernon.

$5 Sent.

Mr Bamphill
Please attend
to this without
delay. —

Bank
of
Gallatin Co

In Supreme Court

Ebenezer Ryan surviving
assignee of the Bank of Illinois
vs. Error to Gallatin
The County of Gallatin

Action of Debt by the County of Gallatin against Defendants assignees of the President Directors &c of the Bank of Illinois. for the purpose of recovering taxes due the County on property and money loaned assessed against the Defendants.

The declaration contains three counts.
First. That Defendants were indebted to the Plaintiff $10.000 &c. for taxes due the County on money loaned in 1845. 1846 & 1847 and on portion of real Estate held by defendants. That said taxes have been demanded and not paid, and that Defendants had no personal property whereof to levy said taxes.

Second. Sets out. 1st the levying taxes for 1845 and the assessment of property.
2. The levying taxes for 1846. and the assessment
3. The levying taxes for 1847 and the assessment
4 The value of property &c assessed against Defendants, and the amount of taxes payable thereon.
And avers 1st The demand of said Taxes and refusal to pay.
2 That Defendants had no personal property out of which to make said Taxes

[8786-14]

Third Count

1. That on 1 April 1849 the Defendants accounted with Plaintiff of and concerning divers other sums of money before that time due and owing and in arrear, and that defendants admitted a balance due Plaintiff of $5000 — the same being the taxes due the County of Gallatin on taxable property in possession of defendants for the year 1845, 1846, & 1847 to be paid &c

2. That payment was demanded.

3 That defendants have no property whereon to levy and make the taxes

The Parties make an agreement of fact upon which the Court should decide the Questions involved,

The defendants then file a Demurrer, and the said defendants come and defend the wrong and injury when &c. and as to the said writ, declaration, and the case made by agreement herein do demur thereto and for cause of demurrer assign.

The Agreement referred to is as follows

It is agreed between the attorneys for the Plaintiff and Defendants that the foregoing facts be received in the argument of this cause as if the same were pleaded & proven.

Point: That assessor of Gallatin County for the year 1846 returned his assessment for the year 1845, which

had been omitted by the assessor for that year. also the assessment for the year 1846. against the Bank of Illinois at the sum of $260.000 00/100 for each year as money loaned by said Bank.

At a Special Term held in January 1846 of the County Commissioners Court of Gallatin County said Court made the levy rate of taxation at 4 mills on each dollar's worth of property assessed for the year 1845.

At the March Term 1846. the County Commissioner's court proceeded to levy a pauper tax for said year of 1846. of 20 cents on each $100 worth of property and 40 cents on each $100 ~~worth~~ for county purposes, and 15 cents on each $100 - worth of property as a road tax for road purposes all for 1846.

At a Special Term of said County Commissioner's Court held on the 5 January 1847 the said Court proceeded to levy and did levy the rate of taxes for said year 1847 at 4 mills on the dollar's worth of property for County purposes. and the assessor of said County returned his assessment for the year 1847 of the sum of $260.000 00/100 as money owned ~~and~~ by said Bank of Illinois and assignees to defendants, loaned at interest for that year.

Second. That the Collector of Gallatin County for the year 1845. 1846 & 1847 demanded of the said Defendants the said Taxes.

Third. That Defendants refused to pay the said taxes denying their liability for such taxes and still refuse to pay.

[8786-17]

Fourth. That the Defendants have not since the assignment to them on the 10 April 1845 paid into the State Treasury any bonus under the law of 1835 altthough such bonus was paid to 1843.

Fifth. That the Defendants waive any demand by the Collector for personal property.

Sixth. That the assets of the Bank of Illinois passed into liquidation under the act of twenty fifth February 1843.

Seventh. That the assets of said Bank were subsequently on the 10 April 1845 assigned to Albert G. Caldwell, Ebenezer Z Ryan, John J Hardin (who has since deceased and has been succeeded by David A Smith and Samuel Dunlap) under act 28 February 1845.

Eighth. That the amount assessed as money loaned in the assessment above mentioned were at the times mentioned the balances of outstanding debts due said Bank of Illinois at Shawneetown for money loaned prior to the year 1843. and were assigned to these Defendants.

Ninth. That the said debts proven before the County Court at the said times to have been not worth more than fifty cents on the dollar.

Tenth. That the State under an act amendatory of the Charter of Said Bank hath been a Stock-holder in said Bank to the amount of $ 1.000000. and still is a Stock holder to the amount of $

Eleventh. That said outstanding debt of said Bank was and is payable in the paper

of said Bank, and such paper was at the said times and still is not worth more than fifty cents on the dollar.

It is also further agreed that all the acts public or private of this State in relation to the County of Gallatin, the powers of the County Commissioner's Court of said County and the revenue of this State and of the said County, also all the laws public or private in relation to the Bank of Illinois the liquidation or assignment thereof, applicable to any question of law or fact which may arise in this case shall be taken and received as if specially pleaded & proven before the Court.

It is also agreed that the foregoing facts shall be considered in connection with the writ declaration and issue joined herein as one record and be submitted to the Court as an agreed case, with liberty to the Defendants to make any questions which go to the jurisdiction of the Court, the parties to this suit, the right of action sued on, the adjustment of the liability of the Defendants, and all other questions which the Defendants may choose to make upon this record, not of a merely technical character.

The same liberty is likewise reserved by the Plaintiff.

It is also further agreed that either party dissatisfied with the decision of this Court may prosecute an appeal or writ of Error to the Supreme Court without giving bond and security.

[8786-18]

Ryan & Spence

v

Gallatin Co

Albert G Caldwell
for
Elbridge Z Ryan Assignee of
the President Directors &c
the Bank of Illinois

against

Error from judgment of Gallatin circuit court.

The County of Gallatin

~~[illegible]~~. It appearing to the court, that the plaintiff Albert G Caldwell has departed this life, It is ordered, that the suit stand, and be prosecuted in the name of said Elbridge Z Ryan assuming plaintiff in Error.—

Whereupon the said G Williams Ryan, filed the Assignment of Error herein, and the defendant by M. B. Scates & S. S. Marshall ~~[illegible]~~ filed their pleas,

~~[illegible]~~

The cause was then argued by Williams for plaintiff in Error, and M. B. Scates and S. S. Marshall for defendant,—and the court not being sufficiently advised in the premises takes time to consider thereof.—

[8786-19]

Ryan v
vs
Gallatin County