Griffith, Thomas
Collier, Thomas W.

US
McClelland, Elisha

Pres & Direct. +Co of the Bank of the Commonw. of Kentucky

1835 | StD | Callaway Co

121/13

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Opinion same as 4 Mo Rep. 59

Bank notes are Bills of Credit

K4

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Preamble

State of Missouri County of Callaway ss.

Pleas before the Honourable David Todd Judge of the first Judicial Circuit of the State of Missouri and Judge of the Callaway Circuit Court in said State, At a Circuit Court continued and held for the said County of Callaway at the Court House in the Town of Fulton the place appointed for the holding of said Court in and for said County on Friday the 10th day of October A D 1834.—

The President & Directors of the Bank of the Commwlth of Ky. vs Thomas Griffith & Others

Be it remembered that heretofore towit, On the sixth day of May in the year of our Lord One thousand eight hundred and thirty four, The President and Directors of the Bank of the Commonwealth of Kentucky by their Attornies Rupell & Leonard, filed in the Clerks Office of the said Circuit Court of this County aforesaid their Petition

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against Thomas Griffith, Thomas W. Collier and Elisha McClelland, which is in the words and figures following Towit, "Callaway circuit Set.

Petition

The President and Directors of the Bank of the Commonwealth of Kentucky Plaintiffs State that they hold a Note on the defendants Thomas Griffith, Thomas W. Collier and Elisha McClell= =and in substance as followeth

"$550 Nicht. County Feby 18. 1827

One hundred and twenty days after date we jointly and severally promise to pay the President and Directors of the the Bank of the Commonwealth of Kentucky or Order five hundred and fifty Dollars Negotiable and payable at their Branch Bank at Flemingsburg for Value received, witness our hands

Thomas Griffith
Thos. W. Collier
Elisha McClelland"

Yet the said debt remains unpaid wherefore they pray Judgment for their Debt and damages for

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the detention of the same together with costs

Bupell & Leonard Attornies
for plaintiff"

Endorsmt upon Petition

upon the foregoing petition the following endorsement is made to=wit, "No 1 "Callaway Cir: Court"
"The President and directors of the Bank of the
"Commonwealth of Kentucky
vs No Petition in Debt
"Thomas Greffith, Thomas W. Collier, Elesha McClelland.
This is a petition in Debt, together with the Note
Sued On - The Clerk will file them and issue a Summons
to Montgomery for Thomas Greffith, to Pecharles for Elisha
McClelland, & to Callaway for Thomas W. Collier. -
Bupell & Leonard for plaintiff"

Note Sued On. -

The Note Sued On, & which was attached to & filed with
the foregoing petition, is in the words & figures following
to=wit, "$550 Nich^s County July 15. 1827
"One Hundred and twenty days after date, we Jointly and

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and Severally, promise to pay the President and Directors of the Bank of the Commonwealth of Kentucky or Order five hundred & fifty Dollars, Negotiable and payable at their Branch Bank at Flemingsburg for Value received. - Witness our hands Thos. Griffith
Thos. W. Collier
Elisha McClelland"

upon the back of a true and attested Copy of the foregoing Petition, a Summons issued on the said 6th day of May AD 1834 against the defendant Thos. W. Collier directed to the Sheriff of Callaway County, which is in the Words and figures following Towit,

Summons To Callaway Ct vs Thos. W. Collier

"State of Missouri County of Callaway
First Judicial Circuit of said State - &c
The State of Missouri to the Sheriff of Callaway County Greeting: You are hereby Commanded to Summon Thomas W. Collier that he be and appear before the Judge of our circuit Court for the Circuit and County aforesaid at the Courthouse in the Town of Fulton

5 the place appointed for the holding of Courts in and for the County of Callaway aforesaid On the Second day of our next June Term of said Circuit Court, which Term will Commence On the first Monday in the said Month of June Next, Then & there to Answer to the demand of the President & Directors of the Bank of the Commonwealth of Kentucky Plaintiffs, as Set forth and exhibited in the within Copy of their petition filed in said Court against him the said Thos. M. Collier Thos. Griffith and Elisha McClelland, and this you shall in No wise Omit, and have you then there this writ. — Witness Irwin O. Rockaday Clerk of our L.S. said Court at Office this 6th day of May A.D. 1834 and in the 14th year of the State

Irwin O. Rockaday Clerk"

Sheriff's Return

Upon the Foregoing the Sheriff Made the following Return to-wit, "The within Petition & Summons was Executed On the within Named Thomas M. Collier On the 10th day of May 1834 by delivering him a Copy thereof in Callaway

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Callaway County Missouri
fee $1.00 Jas Bassett Sheriff of Callaway County "

On the said 6th day of May AD 1834, an other Summons, "A Counterpart," issued upon the back of an other true and attested Copy of said Original Petition, directed to the Sheriff of Montgomery County against the defendant Thomas Griffith, which is in the words and figures following, Towit,

Summons to Montgomery vs Thos Griffith "Counterpart"

"State of Missouri County of Callaway
first Judicial Circuit of said State - ss

The State of Missouri to the Sheriff of Montgomery County, Greeting: You are hereby Commanded to Summon Thomas Griffith that he be and appear before the Judge of our Circuit Court for the Circuit and County of Callaway aforesaid at the Courthouse in the Town of Fulton the place appointed for the holding of Courts in and for the County of Callaway aforesaid on the Second day of our next June Term of said Circuit Court, which Term will Commence on the

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first Monday in the said Month of June next, then and there to answer to the demand of the President and Directors of the Bank of the Commonwealth of Kentucky Plaintiffs as set forth and exhibited in the within Copy of their petition filed in said Court against him the said Thomas Griffith & Thos W. Collier and Elisha McClelland and this you shall in no wise omit, and have you then there this Writ.—

L.S. Witness Irvine O. Hockaday Clerk of our said Court at Office this 6th day of May A.D 1834 & in the 14th year of the State

Irvine O. Hockaday Clerk"

"State of Missouri County of Callaway } ss
first Judicial Circuit of said State —

The above and foregoing Summons is a Counter-part of the Summons which issued on the same day in the same Case against Thomas W. Collier, directed to the Sheriff of Callaway County in an action upon

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upon petition & Summons in Debt Commenced in the Callaway Circuit Court, in favour of "The President and Directors of the Bank of the Commonwealth of Kentucky Plaintiffs against Thomas Gresfith, Thomas W. Collier and Elisha McClelland Defendants.—

Attest Irvine O. Rochaday Clerk of the Callaway Circuit Court"

Upon the foregoing Summons the Sheriff Made the following return. towit,

Sheriffs return

"Served the within writ by delivering to the within Named Thomas Gresfith a true Copy of the Summons and petion on the 15th day of May 1834 in the County of Montgomery

A. Dryden Sheriff of Montgomery Cty Mo."—

And on the said 6th day of May A.D 1834, An Alias Summons, a Counterpart, issued & was attached to a third true and attested Copy of said Original Petition directed to the Sheriff of saint Charles County against the defendant Elisha McClelland, returnable

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to the Second day of the then next Succeeding June Term of the said Circuit Court; which said Summons was never returned to the Clerks office by the Sheriff, and is not now upon file. —

At the time and on the day (towit, On the 6th Day of May A D 1834) of the filing of the Original Summons aforesaid, the following Bond for Costs was filed in this Case towit,

Bond for Costs

"I William Henry Rupell acknowledge myself bound to pay or Cause to be paid all Costs which have or may accrue in an action of Debt by petition and Summons brought by the President & Directors of the Bank of the Commonwealth of Kentucky against Thomas Griffith, Thomas M. Collier & Elisha McClelland in the Callaway Circuit, returnable to the June term of said Court 1834 — Given under my hand & Seal this 6th of May 1834

Wm Henry Rupell Lead"

And afterwards towit, At a Circuit Court began and held in and for the County of Callaway aforesaid

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June Court 1834

at the Courthouse in the Town of Fulton in said County On the first Monday of June, it being the 2d. day of said Month in the year of our Lord One Thousand eight hundred and thirty four, present the Hon.ble David Todd Judge of said Court, in the record and proceedings of said Court, On the third day of said Term, to wit, (On Wednesday the 4th. day of said Month of June A.D. 1834) appear the following, to wit,

"The President and Directors of the Bank of the Commonwealth of Kentucky Plaintiffs

against } upon petition & Summons. —

Thomas Griffith, Thomas W. Collier & Elisha McClelland Defendants

This day Came the defendants Thomas Griffith and Thomas W. Collier by their Attorney and produced and filed herein three pleas, And also produced a Special Demurrer to the plaintiffs petition which is also filed." —

three pleas filed. Special Demr. filed

after being amended by a subsequent Order of this Court which will appear in its Order

The pleas alluded to in the foregoing entry are in the words and figures following, to wit,

1st plea

"Thos. Griffith, Thos. W. Collier &

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Elisha McClelland
ads
The President and Directors of the
Bank of the Commonwealth of
Kentucky — — — —

In the Callaway
Circuit Court
June Term 1834. —

And the said Thos. Griffith, Thos. W. Collier & Elisha McClelland said defendants Come and defend the wrong and injury when &c and Say that they do not owe the said Sum of Money above demanded or any part thereof in manner and form as the said Plaintiffs have above thereof Complained against them, and of this they the said two Defendants put themselves upon the Country &c Tinsley & Jamerson attys for Defts.

2d plea is

2d And for a further plea in this behalf the said two defendants say that they did make and Execute the said note in said petition mentioned as the said Plaintiffs alleged, yet the said defendants aver that the said note was made given and Executed by them to the said Plaintiffs without any good and valuable Consideration Whatever, wherefore they say the said note is null and void in law. Iowit. at the County of Callaway aforesaid and this the said defendants are ready to verify. Wherefore they pray

12 Judgment if the said plaintiffs ought to have or maintain their aforesaid action against them — Kirtley & Jameson Attys for Defts —

3rd plea 3rd And for a further plea in this behalf the said Defendants say that the President and Directors of the Bank of the Commonwealth of Kentucky at their Branch Bank at Flemingsburg before the 15th day of February 1827. Towit. On the first day of February 1827 towit at the County of Callaway loaned the said Thos. Griffith Bank paper or Notes of the said Bank of the Commonwealth of Kentucky signed by the President and Countersigned by the Cashier of said Bank, and which Bank paper or Notes were issued and loaned by said Bank as aforesaid, towit. at the County of Callaway aforesaid by authority and in pursuance of an act of the Legislature of Kentucky entitled. An act to establish the Bank of the Commonwealth of Kentucky and which said Bank paper or Bank Notes were then and there towit, on the said 1st day of February 1827 at the said Branch Bank at Flemingsburg towit. at the County of Callaway aforesaid transfered by the said plaintiffs to said Thos. Griffith by delivery and were then and there Bottomed upon the Credit issued in behalf of the State of Kentucky and were Bills of Credit within the meaning and prohibition of the Constitution

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of the United States. and the said Defendants aver that the said Note in the said petition mentioned was then and there at Flemingsburg towit at the County of Callaway aforesaid on the said 15th day of February 1827 made and Executed in Consideration of said Illegal loan of said Illegal Bank paper as aforesaid, and for no other or different Consideration whatever, wherefore they the said Defendants say that the said Note in ~~the~~ said petition mentioned was at the time of its Execution, ever since has been and now is null and void Towit at the County of Callaway aforesaid and this they the said Defendants are ready to verify, wherefore they pray judgement if ~~the~~ said Plaintiffs ought to have or maintain their action aforesaid ~~action~~ against them—

Kirtley & James on Attys for deft.

The Special Demurer also mentioned in the foregoing entry as being filed, (being also amended under a subsequent Order of the Court which will appear in due Course) is in the words and figures following Towit, "Thos. Griffith, Thos. Collier & Elisha McClell=and Ats The President and Directors of the Bank of the Commonwealth of Kentucky.— } In the Callaway Circuit Court June Term 1834.—

Special Demr.

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"And the said Thos. Griffith and Thos. Collier & Elisha McClelland said defendants by their attorney come and defend the wrong and injury when &c and Crave Oyer of the said supposed Note in the said petition Mentioned and it is read to them in these words, to wit,

"$550 Nichs County Feby 15. 1827

"One hundred and twenty days after date, we jointly and "severally promise to pay the President and Directors "of the Bank of the Commonwealth of Kentucky, or order "five hundred & fifty Dollars, Negotiable and payable "at their branch Bank at Flemingsburg for Value received "Witness our hands

Thos. Griffith
Thos. W. Collier
Elisha McClelland

which being read and heard the said two defendants say that the said petition and the Matters therein Contained in Manner and form as the same are above stated & set forth are not sufficient in law for the said plaintiffs to have or Maintain their aforesaid thereof against them the said two defendants and that the said two

15 defendants are Not bound by the law of the land to answer the same, and this they are ready to Verify, Wherefore for want of a Sufficient petition in this behalf the said two defendants pray Judgement and that the said plaintiffs may be barred from having Or Maintaining their aforesaid action thereof against them, and the said two defendants state and show to the Court here the following Causes of demurrer to the said petition, that is to say 1st that there is No Venue laid either in the body Or Caption of said petition - 2d that there is No term of the Court Specified Or Set forth in said petition Or in the Caption thereof to which the said petition Or Writ is brought And 3rd that there is a Material Variance between the Note Set out in the said petition and the Note read upon Oyer Craved as aforesaid in this towit, that the first person Set out in said petition and also the first person Set down in said petition as having Signed & executed said Note is Thomas Griffith whereas the first person whose name is first Signed to said Note

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read here upon Oyer Craved as aforesaid as having executed the Same is Thos. Griffith And also that the said petition is in Other respects uncertain, informal and insufficient &c Kerby & Jamison Attys for Defts"

Joinder in Demr.

"The Plaintiff by his Attorney Joins in demurrer

Wells Atty. for Pltff"

Afterwards to wit, At the Same Circuit Court Continued & held at the Same place, On the day and year last aforesaid, in the Record and proceedings of said day, appears the following to wit,

"The President and Directors of the Bank of the Commonwealth of Kentucky Plaintiffs

against

Thomas Griffith, Thos. W. Collier & Elisha McClelland Defendants

Upon petition & Summons. —

issue to Demr.

This day Came the parties aforesaid by their Attorneys and thereupon the plaintiffs aforesaid by their Attorney Joined issue to the Special Demurrer of the defendants Griffith & Collier to the said plaintiffs petition: Whereupon

Demr. argued

the said Demurrer was heard and argued on the part

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Overrule

of both parties, and Mature deliberation being thereupon had, it is Considered by the Court that the Same be Overruled".—

And afterwards, at the Same Circuit Court Continued and held at the Same place on the Same day & year aforesaid, the following proceedings were had, Towit,

"The President and Directors of the Bank of the Commonwealth of Kentucky Plaintiffs

against upon petition and Summons

Thomas Griffith, Thos. W. Collier and Elisha McClelland Defendants

This day Came the parties aforesaid by their Attornies and thereupon the Plaintiffs by their Attorney Join issue to the first plea of the defendants Griffith & Collier filed herein. The said plaintiffs also produced and filed their Seperate Replications to the Second and third pleas of said defendants, to which said Replications the said defendants Griffith and Collier by their Attorney joined Seperate issues".—

issue to 1. plea filed

Replns to 2. & 3. pleas filed & issues thereto

The issue Joined, the Replications and Joinders thereto, refered after being amended under a Subsequent Order of the Court which will appear in its place to in the foregoing entry are in the Words and figures following Towit.—

Joinder to 1st plea

"The President & Directors of the Bank of the Commonwealth of Kentucky vs Thomas Griffith, Thomas W. Collier Elisha McClelland.— And the said plaintiffs as to the plea of the said defendants Thomas Griffith, Elisha McClelland and Thomas W. Collier by them first above pleaded, and wherein the said defendants have put themselves upon the Country doth the like

Wells, Leonard & Russell Attys for pltffs"

Repln to 2d Plea

"And the said plaintiffs as to the plea of the said defendants Thomas Griffith, Elisha McClelland & Thomas W. Collier Secondly by them pleaded say that they the said plaintiffs ought Not by reason of any thing by the said defendant in that plea alledged to be barred or precluded from having and Maintaining there aforesaid action thereof against them the said defendants, because they Say that the said Note in the plaintiffs said petition Mentioned was Made

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given and executed by the said defendants to the said plaintiffs upon & for a good and Valuable Consideration given by the said plaintiffs to the said defendants, to wit, on the said fefteenth day of February in the year eighteen hundred and twenty seven, to wit, at the County of Callaway aforesaid, And of this they the said plaintiffs put themselves upon the Country

Joinder

Wells, Leonard & Rupell Attys for pltffs"

"And the said defendants doth the like

Hartley & Jamison"

Repln to 3d plea

"And the said plaintiffs as to the plea of the said defendants Thomas Griffith, Elisha McClelland and Thomas W. Collier by them thirdly above pleaded say that they ought not by reason of any thing in that plea by the said defendants alledged to be barred or precluded from having and maintaining their aforesaid action thereof against them the said defendants, because they say that the said bank paper or bank Notes in the said plea mentioned

were Not bottomed upon the Credit of the said State of Kentucky, and were Not issued in behalf of the said State, and were Not bills of Credit, within the Meaning and prohibition of the Constitution of the United States in Manner and form as the said defendants have in their said plea alledged, and of this they put themselves upon the Country.- Wells, Leonard & Rupell Attys for pltffs"

Joinder to Repls to 3d plea

"And the said defendants doth the like
Jamison & Hartley"

And afterwards at the Same Circuit Court Continued and held at the Same place on Thursday the fifth day of June AD 1834 (being the fourth day of the Term) the following entry was Made towit,

"The President and Directors of the Bank of the Commonwealth of Kentucky Plaintiffs
against
Upon petition and Summons
Thos Griffith, Thos W. Collier and Elisha McClelland Defts

Alias Summons

This day Came the plaintiffs aforesaid by their

21 Attorney, And On his Motion, it is Ordered that an
awarded Alias Summons issue herein against the said Defendant
vs Elisha Elisha McClelland to be directed to the Sheriff of
McClelland. & St Charles County, returnable here &c. - And the
Cause Cause is Continued until the Next Term of this Court." -
Cont.d

And in Obedience to the foregoing Order, an Alias
Summons issued on the 11th. Day of June A.D 1834 against
the said defendant Elisha McClelland, directed to the
Sheriff of said St Charles County, which was attached to
a true and attested Copy of the aforesaid Original petition
and is in the words and figures following to-wit,

Alias "State of Missouri County of Callaway } ss
Summ.s First Judicial Circuit of said State }
vs The State of Missouri to the Sheriff of said
Elisha St Charles County, Greeting: You are hereby again Commanded
McClelland to Summon Elisha McClelland that he be and appear
before the Judge of our Circuit Court for the Circuit and
County of Callaway aforesaid at the Courthouse in the
Town of Fulton, the place appointed for the holding of

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Courts in and for the County of Callaway aforesaid On the
Second day of our next October Term of said Circuit Court
which Term will Commence on the first Monday in the
said Month of October Next; Then and there to Answer
to the demand of the President and Directors of the Bank
of the Commonwealth of Kentucky Plaintiffs, as Set forth
and exhibited in the written Copy of their petition filed in
said Court against Thomas Griffith, Thomas W. Collier
and him the said Elesha McClelland: And this you
Shall in No wise Omit, and have you then there this
Writ.— Witness Irvine C. Stockaday Clerk of our said
L.S. Court at Office this 14th day of June A.D 1834 and
in the 14th year of the State

Irvine C. Stockaday Clerk"

Alias
upon the foregoing Summons the Sheriff Made the following
return, to-wit, "By Virtue of the within writ to me
directed I Summoned the within Named Elesha McClelland
to be and appear at Court as by this writ is required
this 1st day of September A.D 1834 by delivering him a true
and attested Copy of the within petition and Summons

Sheriffs return

Correctly to date

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in the Town and County of Saint Charles Missouri

Shffs fees
1 Service $1.00 } 3

Wm. M. Christy Sheriff of
St Charles County "

And afterwards, towit, At a Circuit Court began & held in and for the County of Callaway aforesaid at the Court House in the Town of Fulton in said County on the first Monday of October, it being the Sixth day of said Month in the year of our Lord One thousand eight hundred and thirty four, present the Honorable David Todd Judge of said Court, in the Record and proceedings of said Court, On the third day of said Term (towit, On Wednesday the 8th day of said Month of October A.D 1834) appears the following towit,

"The President and Directors of the Bank of the Commonwealth of Kentucky Plaintiffs

against } upon petition and Summons. —

Leave to Am? Pleadings of both parties

Thomas Griffith, Thomas W. Collier and Elisha McClelland Defendants

Now at this day Comes the parties aforesaid by their Attornies And by Consent of the said parties it is

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Ordered by the Court that the pleas of the defendants Thomas Griffith and Thomas W. Collier filed herein at the last Term of this Court be so amended by inserting the name of the defendant Elisha McClelland that they may thereby be made the joint pleas of all the defendants in this Case, And on Motion of the Plaintiffs and by Consent of the Defendants, the same leave is given them to amend their Replications filed herein to said pleas of the Defendants, all of which Amendments are accordingly Made."—

And afterwards at the same Circuit Court Continued & held for the Circuit County aforesaid, at the same place, on Thursday the Ninth day of October A.D. 1834, being the fourth day of the said Term, And before the same Judge, the following proceedings were had, Towit,

"The President and Directors of the Bank of the Common=
=wealth of Kentucky Plaintiffs
against Upon petition and Summons. —
Thos. Griffith, Thos. W. Collier and Elisha McClelland Defendants.

Submission

This

25 This day Came the parties aforesaid by their Attornies, And Neither requiring a Jury, by Consent all and Singular the premises in this Case were by the said parties Submitted to the Court upon trial, which together with the arguments of the Attornies On the part of both parties was Seen and heard by the Court, but the Court Not being Sufficiently advised of and Concerning the Same, took time to Consider thereof."—

Trial

Court took time

And afterwards, At the Same Circuit Court Continued and held for the Circuit County aforesaid befor the Same Judge And at the Same place, on Friday the tenth day of October AD 1834, being the fifth day of the said October Term of said Court, the following proceedings were had Towit,

"The President and Directors of the Bank of the Common=wealth of Kentucky Plaintiffs against. upon petition and Summons.—

finding for the Pefts

Thomas Griffith, Elisha McClelland and Thomas W. Collier Defendants

This day Came the parties aforesaid by their

Attornies and thereupon the Court Letting as a Jury being
Now Sufficiently advised of and Concerning the Case
doth find upon the issue Joined between the parties
aforesaid upon the plea of the defendants by them first
above pleaded that the said defendants do owe the
said Sum of Money above demanded in Manner and
form as the said plaintiffs have above thereof Complained
against them: And as to the issue Joined between the
said parties upon the plea of the said defendants Secondly
by them pleaded, the Court Letting as a Jury finds that
the said Plaintiffs Ought not by reason of anything by the
said Defendants in that plea alledged to be barred or precluded
from having and maintaining their aforesaid action thereof against
them the said defendants, because the Court finds that the said note
in the Plaintiffs said petition mentioned Was made given and
Executed by the said Defendants to the said plaintiffs upon
and for a good and Valuable Consideration given by the said plaintiffs
to the said Defendants, Towit on the said fifteenth day of February
Eighteen Hundred and Twenty Seven Towit, at the County of Callaway

aforesaid, and as to the issue joined between the parties aforesaid upon the plea of the said defendants by them thirdly above pleaded the Court finds that the said Plaintiffs Ought not by reason of any thing in that plea by said Defendants alledged to be barred or precluded from having and maintaining their aforesaid action thereof against the said Defendants because the Court finds that the said Bank paper or Bank Notes in the said plea mentioned were not bottomed upon the Credit of the said State of Kentucky, and were not issued in behalf of said State, and were not Bills of Credit within the meaning and prohibition of the Constitution of the United States in manner and form as the said defendants have in their said third and last plea alledged, And thereupon the Court finds that the said Plaintiffs Ought to recover against the said Defendants the said Sum of five Hundred and fifty dollars the debt in their petition mentioned and such damages as they may have sustained by reason of the detention of said debt, which with the assent of the parties aforesaid, the Court sitting as a jury as aforesaid doth assess at the Sum of five Hundred and forty one dollars and fifty four Cents. Therefore it is

28 Judgt. Considered by the Court that the Plaintiffs aforesaid recover against the said defendants the said Sum of five Hundred and fifty dollars the debt aforesaid in their said petition mentioned and the said Sum of two Hundred and forty one dollars and fifty four Cents the damages aforesaid by the Court assessed as aforesaid for the detention of said debt, and also their Costs and Charges by them about their suit in this behalf laid out and Expended and that they have thereof Execution."—

And afterwards, at the same Circuit Court Continued and held at the same place, On the day and year last aforesaid, before the same Judge, the following proceedings were had Towit,

"The President and Directors of the Bank of the Common=
=wealth of Kentucky Plaintiffs
against } Upon Petition and Summons.
Thomas Griffith, Elisha McClelland and Thomas W. Collier Defendants

Defts Mo. for New trial This day Came the defendants aforesaid by their Attorneis and entered their Motion herein for a new trial in this Case and produced and filed their reasons therefor,"

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which are as follows Towit,
"Thomas Griffith & Others
adv
President & Directors of the
Bank of the Commonwealth
of Kentucky — — —

In the Callaway Circuit Court
October Term 1834

Reasons for New Trial

And the said defendants Moves the Court here to Set aside the Judgment in the above Cause and grant them a New trial for the following reasons Towit, because the finding of the Court Setting as a Jury is against law and against the evidence produced in this Cause, because the finding of the Court Setting as a Jury aforesaid is against the defendants whereas it should have been for the defendants, because the Judgment rendered in this Cause is against law

Jamison & Hartley Attys for Defts"

Mo for New trial Overruled

"which Motion being heard and Maturely deliberated upon it is Considered by the Court that the Same be Overruled, to which Opinion and decision of the Court the defendants by their Attornies except, and produce

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Bill of Exceptions filed

here their Bill of exceptions, which were examined, Signed and Sealed by the Court and Ordered to be filed and entered as a part of the record in this Case as follows Towit,"

Bill of Exceptions

"The President & Directors of the Bank of the Commonwealth of Kentucky
vs
Thomas Griffith, Thomas Collier & Elisha McClelland — —

October Term Callaway Circuit Court 1831. —

Be it remembered that at this Term of the Court on the trial of the above Cause neither party requiring a Jury the Court tried the issues between the parties sitting as a Jury & upon said trial the plaintiffs offered in evidence the following acts of the General assembly of the Commonwealth of Kentucky towit, An act entitled "An act to establish the Bank of the Commonwealth of Kentucky" (here insert it from page 55 to 65 inclusive) and it is as follows towit, those pages towit,

"(55)"

Kentucky Statute

"Chap. XLIX"

"An act to establish the Bank of the Commonwealth of Kentucky.

Approved, November 29, 1820. — Whereas

"Whereas it is deemed expedient and beneficial to the State and the Citizens thereof, to establish a Bank on the funds of the State, for the purpose of discounting paper and making loans for longer periods than has been customary, and for the relief of the distresses of the Community: Therefore Sec 1. Be it enacted by the general Assembly of the Commonwealth of Kentucky, that a Bank shall be and the same is hereby established, in the Name and on behalf of the Commonwealth of Kentucky, in the Town of Frankfort under the direction of a President and twelve directors to be Chosen by Joint ballot of both houses of the General Assembly, who shall Continue in office until the next Stated Session of the general Assembly, and until their Successors chosen in like Manner are appointed to act; and the said President and directors shall appoint a Cashier Clerks and other persons Necessary to aid in Conducting the Same, and they shall take from the said Cashier, annually, bond with Sufficient Security, in the penalty of Not less than One hundred thousand Dollars, payable to the Commonwealth for his good behaviour, and for the faithful discharge of the duties of his Office.—

"Sec: 2. The President and directors of the said Bank, elected in the Manner aforesaid, and their Successors in office, shall be, and are hereby made a Corporation and body politic in Law and in fact by the name and style of the President and Directors of the Bank of the Commonwealth of Kentucky, and shall so Continue until the first day of January, One Thousand eight hundred and forty one, and by the name and style aforesaid, they shall be, and are hereby made able and Capable in law, to have, purchase, receive, possess enjoy and retain to themselves, and their Successors, Lands, rents, tenements, hereditaments, goods and Chattles, of what Kind, nature or quality soever, and the same to sell, grant, alien, demise and dispose of, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended in Courts of Record or any other place whatsoever, and also to make have and use a common seal, and the same to break alter and renew at pleasure, and also to ordain, establish and put in Execution, such by laws ordinances and regulations as shall seem necessary and Convenient, for the government of the said Corporation, not being Contrary to the law or constitution hereby established, and generally to do and Execute all and singular, such acts matters and things which to them it shall ~~seem~~ and may appertain to do, subject nevertheless to the rules, regulations, restrictions and provisions in this act.

Sec 3. The whole Capital Stock of said Bank, shall be Exclusively the property of the Commonwealth of Kentucky, and no individual or Corporation shall be permitted to own, or pay for any part of the Capital of said Bank

Sec 4. That the said President and directors shall have power to issue Notes, signed by the President and Countersigned by the Cashier, not under the denomination of one dollar, nor over One Hundred dollar, on behalf of said Corporation, for such sums and with such devices as they may deem most Expedient and safe. They shall also be capable of Exercising such other powers and authorities as may be necessary for the well governing and Ordering the affairs of said Corporation and of promoting its interest and Credit.

Sec 5. That the Capital Stock of said Bank shall be two millions of dollar, to be raised and paid in the following manner, to wit. All monies hereafter paid into the Treasury for the Purchase of the vacant land of the Commonwealth, all monies hereafter paid into the Treasury, for the purchase of land Warrants, all monies which may hereafter be raised for the sale of the vacant Lands West of the Tennessee River, and so much of the Capital Stock owned by the State in the Bank of Kentucky, as may belong to the State after the affairs of said Bank shall be settled up with the profits thereof not heretofore pledged or appropriated by law, shall be Exclusively appropriated to the making up the Capital Stock of said Bank, and the Treasurer of this Commonwealth shall, and he is hereby required,

from time to time, as he may receive monies on all or any of the accounts aforesaid, to pay the same over to the said Bank, and take the Cashiers receipt therefor, and file the said receipt with the auditor of Public Account, who shall thereupon pass a quietus to the Treasurer.

Sec 6. That in case of the death, resignation, removal or refusal to act, of the said President or either of the Directors, a majority of those remaining in office, shall fill up such vacancy; and the persons so appointed shall hold their office during the remainder of the Term for which the President or director so dying, resigning, removing or refusing to act had been duly elected.

Sec 7. That none of the said Officers shall become security, or be bound for any debt Contracted for, or on behalf of the said Bank, except his or their own accommodation, and each and every Officer concerned, in the said Bank, shall, before he enter on the duties of his said Office, take the following Oath before some Circuit Judge or Justice of the Peace. I. A. B. do solemnly swear (or affirm as the case may be) that I will faithfully discharge the duties assigned me, according to the best of skill and abilities, and that I will (not directly, nor indirectly, for myself or other, loan the funds of the said Bank at a greater interest than is allowed by law, during my Continuance in Office. So help me God.

Sec 8. That the said Bank shall receive money on deposit, and

pay away the same to the order, free of Expense, discount Bills of Exchange Current money, and Notes with two or more good securities, who shall be jointly and severally bound, at a rate of Interest not Exceeding one per Cent. for sixty days; and shall have power to make loans to Citizens of the State in the nature of discounts on real estate secured by Mortgage with power to make sale of said estate in default of payment, Provided, That the sum so loaned shall never Exceed one half of the real unincumbered value of the property so mortgaged, Provided further, that the loans shall never be for a longer period than one year, nor draw a greater interest than at the rate of six per cent. per annum, which shall always be payable in advance, And provided further, that no loan shall in any case be renewed unless the Interest for such ~~loan~~ loan shall be paid in advance, And provided further that the directors for the time being, shall not call in more than one tenth of each loan at the time the same shall become due without giving sixty days notice thereof, and all and every person or persons, failing to make payment, shall be deprived in future of Credit in said Bank, and shall be liable to suit immediatly for the amount due.—

Sec 9. And be it further enacted, That the total amount of debts which the said Bank shall at any time owe, whether by Bond Bill, Note or Contract, shall not Exceed double the amount of the Capital Stock of said Bank, and in case of Excess, the Directors

under whose administration it shall happen, shall be liable for the same, in their private and individual capacities, and an action of debt may, in such case, be brought against them or any of them, their or any of their heir, Executor or administrator, in any Court in this State having jurisdiction by any creditor or creditor of said Corporation, and may be prosecuted to Judgment and Execution any Condition Covenant or agreement to the contrary notwithstanding but this shall not be construed to Exempt the said Bank, or the land, Tenements, goods or chattles of the same, from being also liable for, and being chargeable with said Excess

Sec 10. That not less than seven Directors shall constitute a board to do business, of whom the President shall always be one, Except in case of sickness or necessary absence, in which case his place may be supplied by any other Director who may be selected by the director or a majority of them.

Sec 11. And be it further enacted, That it shall be the duty of the President and Directors of said Bank, to make such arrangements and regulations as will secure to the Citizens of each County in this State, a just proportion of the Capital aforesaid to be loaned, which proportion shall be ascertained agreeably to the Taxes to be paid by each County into the public Treasury for the year one Thousand Eight Hundred and Twenty, and when any Payment shall be made into the Bank hereby established it shall be the duty of the President and Directors thereof

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so to conduct the proceedings as not to re loan to Citizens of any County, the Same or any part thereof, originally intended for another County, but the Sum or Sums thus paid in, may from time to time, be re loaned to Citizens of the Same County, so long as may be consistent with the Interest and Safety of the institution thereby established and the said President and Director shall not receive in discharge of loans made by them, any thing but the Notes hereby Created, Specie or the Notes of such Banks as shall be at par at the time such loans are payable—

Sec 12. That no person who may be a President or Director of any other Bank or a Stock Holder of the United States Bank, shall be eligible to the office of President or Director of the Bank hereby Created—

Sec 13. That it shall be the duty of the President of said Bank to cause an accurate and detailed report of their proceedings and situation to be made to each Session of the General Assembly, and during the first week thereof, setting forth in said report the names of the persons borrowing money, and the amount so Borrowed, and the manner in which the same is secured—

Sec 14. That the President of said Bank shall be allowed the sum of fifteen Hundred dollars per annum Payable half yearly, and the Cashier of said Bank shall be allowed the sum of Twelve Hundred dollars per annum payable as aforesaid, And the President and Director shall make such allowance to their clerks

as they may think right, not Exceeding the amount to be paid the Cashier payable as aforesaid.—

Sec: 15. That no loan to any individual, shall exceed the sum of One thousand dollars, except to the directors and the President of the principal bank and any branch thereof, who may severally borrow from said bank any sum not exceeding two thousand dollars, upon the same terms and Conditions as other individuals.

Sec. 16. The President and directors shall keep fair and regular entries (in a book or books to be kept for that purpose) of their pro=ceedings, and on any question where two directors shall require it, the yeas and nays of the directors shall be duly inserted on their Minutes, and those Minutes be at all times, on demand produced to the legislature or any Committee thereof, who may be legally authorized to receive the same.—

Sec. 17. That the bills or Notes of the said bank, shall be receivable at the treasury of the State, and by all the Tax gatherers and other public officers in all payments for taxes or other Moneys Now due or to become due to the State, and by all Collectors of the County levy; and all the Notes issued by said bank shall be payable and redeemable in gold and Silver.—

Sec. 18. That the Value of the property Mortgaged under this act shall be ascertained to the satisfaction of the President and directors.— and in Order to secure the President and

Counted to here

directors more effectually from imposition any person or persons who shall apply to them for Moneys on loan, shall produce to the board for their inspection, a clear and valid title, in fee simple, to the property proposed to be Mortgaged which said property shall be Valued upon Oath by Commissioners appointed for that purpose; and such person or persons, so apply-ing to borrow Money of said bank during the year One thousand eight hundred and twenty One, shall also declare on Oath the use for which said Money is intended: Provided Nevertheless that said bank shall not loan any Money to any individual or individuals, during the said year One thousand eight hundred and twenty One, except for the purpose of paying his her or their just Debts, or for the purpose of purchasing the live Stock or produce of the Country for exportation.—

Sec. 19. Be it further enacted that the Mortgage to be taken as Security in this bank, may be taken in the following form in substance to wit,: I. A. B. do assign over and transfer to the president and directors of the Bank of the Commonwealth of Kentucky, (here describe the lands particularly) which land I declare to be in Mortgage for the payment of _____ Dollars with legal interest at Six per cent per annum from the ____ day of _____; and I do agree that the same may be exposed to Sale, if I do not pay the principal and interest, at the

time when the same may become due and payable. Witness my hand and seal, this — day of ——— 18—, which Mortgage shall be accompanied with a Note or bond for the sum so borrowed and shall be valid to all intents and purposes.—

Sec. 20. That all Mortgages taken for loans of Money under this act shall be considered as being of record from the date thereof and shall have priority of any Mortgages or Conveyances of the same property not previously recorded in the County in which the land lies. And the person or persons applying for a loan of money shall produce a Certificate from the Clerk of said County in which the land lies, that there is no Conveyance or incumbrance upon said land in his office; and shall moreover make oath before the Cashier of said bank or branches, before he shall be entitled to receive the Money or amount of the discount which he may obtain on the Mortgage of said land, that there is no incumbrance or better claim in law or equity, that he knows of or believes, on the said land: Provided however, that the Mortgage so taken by the bank shall be recorded within thirty days after the execution thereof, in the County in which the land so Mortgaged lies.—

Sec. 21. That the President and directors of said bank, shall establish one branch thereof, and no more, in each Judicial district in this Commonwealth existing at the end of the present Session of the general assembly, except the Judicial district in which

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the principal bank may be located, in which Judicial District no branch shall be located for the purpose of discount, and deposit and shall annually appoint a President and eight Directors and other Officers of such Branches, and fix their Sallaries and prescribe their duties, and shall allott to the said Branches a due proportion of the active Capital of said Bank, according to the eleventh section of this act.-

Sec 22. That the Bills and Notes under the seal of said Corporation, which shall be made to any person or persons, shall be assignable by endorsement thereupon, under the hand or hands of such person or persons of his her or their assignee or assignees, and so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively, and to enable such assignee or assignees, to bring and maintain an action thereupon, in his her or their own name or names, and Bills or Notes which may be issued by order of the said Corporation, signed by the President and Countersigned by the principal Cashier, promising the payment of money to any person or persons, his her or their Order, or to Bearer, though not under the seal of said Corporation, shall be binding and obligatory upon the same in the like manner, and with the like effect as upon any private person, or persons, if issued by him, her or them, in his her or their private or natural Capacity or capacities, and

shall be assignable and negotiable in like manner as if they were so issued by such private person or persons, that is to say, those which are or shall be payable to any person or persons, his her or their order shall be assignable by endorsement in like manner, and with the like effect as foreign Bills of Exchange now are, and those which are, or shall be payable to Bearer shall be negotiable and assignable by delivery only.—

Sec 23. That no President Director, or officer, or servant of the said Corporation, shall be concerned either directly or indirectly, in the practice of advancing or loaning out the funds of the institution at an illegal rate of interest whether the same be done or effected under the form or color of a purchase or Exchange of Notes, acceptances or due Bills, Checks on Banks, acknowledgments or any other way or manner whatsoever, and all and every such President, Director, officer clerk or servant of said Bank, who shall be concerned as aforesaid in any such practices, shall forfeit and pay for each offence, one thousand dollars, to be recovered by an action of debt in any Court of Record having jurisdiction of the offence, one half to the use of the informer the other half to the use of the State—

Sec 24. That all the interest arising from the loans and discounts which may be made by the said Bank after the payment of the necessary Expenses, shall Constitute and be Considered as a part of the annual Revenue of the State, and subject to the

disposition of the Legislature.-

Sec 25. That in all cases where the amount loaned shall be in arrear or due, the President and Directors of the said Bank, shall be, and they are hereby authorized and empowered (if they shall think fit) to advertise the mortgaged property for sixty days, in one or more of the Newspapers printed in this State, and make sale of so much of the mortgaged premises to the highest bidder, for Cash or Notes of said Bank, as will pay the amount due, and the President and Directors are fully authorized and empowered to make Conveyances for the same to the purchasers thereof, or buy the same in, if they shall think fit, for the benefit of the institution.-

Sec 26. That the President and Directors of the said Bank, shall have power to appoint five Commissioners in each County, to value and appraise the lands which may be offered in Mortgage to the Bank, and every valuation of land in any County, shall be signed by three of the Commissioners, and the President and Directors, shall have power to fill up all vacancies, or to remove any such Commissioners at pleasure.

Sec 27. That the assessors appointed by the President and Directors of the said Bank, to value Lands to be mortgaged to said Bank, shall receive each for their services, not exceeding one dollar per day to be paid by those who borrow money from said Bank.-

Sec 28. That the Treasurer of this Commonwealth be, and he is hereby authorised and required to furnish the President and Directors of the said Bank, with such sum or sums of money as may be sufficient to procure plates and other things necessary to carry the said Bank into full and Complete operation, not exceeding seven thousand Dollars.

Sec 29. The General Assembly shall, and may, from time to time, make such Changes and alterations in the Constitution of said Bank as may be deemed proper and Expedient.

Sec 30. No loan shall be made by said Corporation to any Government or State, Except the Commonwealth of Kentucky, nor to any person or persons residing in any other Government State or Territory, or to any corporation or body Politic, Chartered or incorporated by this or any other government.

Sec 31. The President and Directors of the principal Bank, shall prescribe the form of the Notes to be Executed by the persons borrowing money of said Bank or the Branches thereof, and whenever a loan may be made to any person or persons, the person whose name is first subscribed to the Note of hand shall have the right to control the amount loaned by his Check or otherwise, and the notes so Executed may be put in suit by the said Bank at any time they may think proper after they become due, and all such Notes of hand

shall be debts of superior dignity, and shall be paid first by Executors and administrators.—

Sec 32. The Cashiers of the Branches respectively, shall annually Execute Bond to the Commonwealth in the penalty of not less than fifty thousand dollars, with two or more securities to be approved of by the President and Directors of the Bank to which he may belong, Conditioned for the faithful discharge of the duties of his office, and the President Directors and all other officers of the Branches, shall possess the same qualifications, and take the same oath which is required to be taken by the officers of the principal Bank.—

Sec 33. The President and directors of the said Bank shall cause the said Bank and Branches to be put into full and Complete operation on or before the first day of May next or otherwise as soon as practicable.

Sec 34. Be it further enacted, That the several Branches established agreeably to the provisions of this act, shall immediately after the first day of October in each year (and oftener if required by the President and Directors of the principal Bank) report the amount of all loans, and the names of the individual Borrowers, and how the same is secured.—

Sec 35. That the Notes of the ~~principal~~ Bank of Kentucky, shall be receivable in payment of all debts due the Bank hereby established and the Revenue of this Commonwealth unappropriated at the

Close of the present Session of the General assembly, also the Revenue hereafter Collected which may remain in the Treasury unappropriated annually, shall Constitute a part of the Capital Stock of said institution, and shall be paid over to the Cashier of the Bank by the Treasurer, subject to such appropriations as may be made from time to time by law.-

Sec 36 Be it further enacted, That the total amount of Notes issued and debts contracted by the institution, shall not Exceed two millions of dollars, previous to the next Session of the Legislature.-

Sec 37 Be it further enacted, That no person who shall be a member of the present Legislature at the passage of this Bill, shall be eligible to the Office of President, Director, Cashier or Clerk of the said Bank or any of its Branches, until twelve months after his Term of Service shall have Expired, and when any officer in said Bank, shall be elected to either Branch of the Legislature, he shall thereby vacate his office in said Corporation."-

End of the Ky Statute

Bill of Exceptions Continued

"Also an act entitled "An act supplementary to an act to establish the Bank of the Commonwealth of Kentucky" (here insert it from page 165 to 170 inclusive") and between those pages it is as follows towit,

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"Chap. CXXXVIII"

Supplementary Statute of Ky.

An act Supplementary to "an act to establish the Bank of the Commonwealth of Kentucky."

Approved December 22, 1820.

Sec. 1. Be it enacted by the General Assembly of the Commonwealth of Kentucky, that a branch of the "Bank of the Commonwealth of Kentucky" shall be, and is hereby established and located for the first judicial district in the Town of Flemingsburg; for the second, in the Town of Falmouth; for the third, in the Town of Lexington; for the fifth in the Town of Louisville; for the sixth in the Town of Hartford; for the seventh, in the Town of Princeton; for the eighth in the Town of Greensburgh; for the ninth in the Town of Harrodsburg; for the tenth in the Town of Winchester; for the Eleventh in the Town of Mountsterling; and for the twelfth in the Town of Somerset; and each of said branches shall be styled the branch of the Bank of the Commonwealth of Kentucky at _____ (here add to the style of the branch the name of the Town in which the same may be located.) ____

Sec 2. And be it further Enacted, That the General Assembly shall at their present Session, and each subsequent annual Session, Elect a President and Eight suitable persons as Directors, to manage and superintend each of the said Branch Banks, any four of whom, together with the President, or in the event of his absence, any five of whom shall have power to transact the business of the said Branch Bank. The President and Directors and other Officers of each Branch, shall at the time of Election, reside within the district in which the Branch over which they preside belongs, and in the event of a vacancy happening by the death, resignation, removal, refusal to act or otherwise of the President or either of the Directors of any of the said Branch Banks a majority of those remaining in Office, shall fill up such vacancy, and the person or persons so appointed, shall hold their Office during the remainder of the Term for which the President or Director so dying, resigning, removing or neglecting to act or otherwise vacating his office, had to serve, The President Directors and Officers of the said Branch Banks, shall, each and every of them, be subject to the same conditions, restrictions, limitations and penalties as are imposed on the President, Directors and Officers of the principal Bank, Provided the salaries of any of the Officers of the said Branch Banks which may be allowed under the provisions of this act, or the act to which

this is a Supplement, shall not commence until the Branch of which they are officers, shall have Commenced Banking. And provided also That the Board of Directors of any of the Branch Banks, shall not allow their Cashier more than Eight Hundred Dollars per annum, nor their Clerk more than six Hundred dollars per annum.

Sec 3. And be it further enacted, That the President and Directors of each Branch Bank, are hereby authorized to appoint a Cashier to their respective Branches, and a Clerk, should the business of the institution require the appointment of a Clerk, and the person so appointed Cashier or Clerk, shall hold their respective offices, during good behavior, subject however to be removed by Joint resolution of both Branches of the Legislature, or by the President and Directors of the Branch to which they belong, two thirds of the board of Directors Concurring in such removal, Every Cashier and Clerk so appointed shall (before entering upon the duties of their respective offices) take the same Oath which is required by the act to which this is a supplement.

Sec 4. And be it further enacted, That neither the Cashiers nor Clerks of the principal Bank or Branches, shall have any individual or private account current, with the institutions to which they may respectively belong. Except in relation to the Salaries of such officers.

Sec 5 And be it further enacted, That nothing in the Ninth Section of the act to which this is a Supplement, shall be so construed as to change

or render liable in his individual capacity, any President or Director of the principal Bank, or any Branch thereof, if such President or Director was necessarily absent, or being present at the board, dissented from, and protested against the acts prohibited by said Section—

Sec 6. And be it further enacted, That the President and Directors of the principal Bank, may issue notes to a larger amount than is provided by the thirty sixth Section of the act to which this is a supplement before the next Session of the Legislature, Provided, a majority of the Directors elected concur therein, And provided, that the amount issued before the next Session shall not, on any pretence, exceed the amount of three millions of dollars and if the amount reserved in the principal Bank or any Branch for loan, shall not be loaned in four months after said Bank or branch shall have been put in operation, then and in that case, the President and Directors of such Bank or branch, may loan to individuals larger sums than is provided by the fifteenth Section of the act to which this is a supplement, but shall not loan to any individual a larger sum than two thousand dollars, and no individual shall have more on loan than the sum aforesaid at one time.—

Sec 7. And be it further enacted, That whosoever shall alter, forge or counterfeit any Bill or note of the Bank of the Commonwealth of Kentucky, or shall erase or alter the same, or any endorsement thereon, or shall tender in payment, utter, vend, Exchange or barter, any such altered, forged or

counterfeited Bill or Note, or the endorsement thereon, knowing it to be such or shall knowingly demand to have the same Exchanged with intention to defraud, and all and every person who shall be accessary to any of the aforesaid Offences, shall undergo a Confinement in the Jail and Penitentiary, for any period not less than two years nor more than ten years.—

Sec 8. And be it further enacted, That any property which may be sold under the Twenty fifth section of the act to which this is a supplement whether the same may be purchased by an individual or by the corporation, shall be redeemable by the former owner at any time within two year, upon his paying into the principal Bank, or the branch Bank in which the debt may have been created, the amount for which the said property may have been sold, with an interest thereon at the rate of ten per cent per annum from the time of sale to the day of redemption, and it shall be the duty of the Cashier to receive the amount from the former owner, and give him a Certificate of the redemption thereof, and shall on application, pay the amount of money received on such redemption to the purchaser, his heirs Executor administrator or Assigns, or lawful agent, and the President and Director under whose order any such property may be sold, shall not make any conveyance thereof to any purchaser untill after the Expiration of two year from the time of sale—

Sec 9. And be it further enacted, That where any new County or Counties

have, or may be formed, and no list and valuation of Taxable property for said County or Counties, may be returned, so as to show the amount of taxes to be paid in such County or Counties for the year One thousand Eight Hundred and twenty, it shall, and may be lawful for the President and Directors for the principal Bank, in appropriating the amount of active Capital to be employed in said County or Counties, to take for their guide the list which may be made out under the Revenue laws in the year One Thousand Eight Hundred and twenty one.—

Sec 10. And be it further enacted, That neither the President nor any director or other officer of the principal Bank or any Branch thereof, shall be bound as security for any debt contracted with said principal Bank or any Branch thereof.—

Sec 11 Be it further enacted, That whenever the President and Directors of the Mother bank, or any of its Branches, shall think it Expedient to loan larger sums than one Thousand Dollars as provided in the sixth section of this act, they shall not loan any money which belongs to any one County agreeable to the apportionment in the original Bill, Except to the Citizens of said County.—

Sec 12 And be it further enacted, That when a Director either for or of the principal Bank or any of its Branches, shall be chosen from a County in which the principal or Branch is not located, said Directors accommodation shall be deducted from the sum allotted to be

loaned in the County from which such Director is taken.

Sec 13. Be it further enacted, That so much of the Eighteenth Section of the act to which this is a Supplement, as requires the applicant to make Oath for what purpose he wishes to obtain a loan of money from said Bank or its Branches, shall be, and the same is hereby repealed.

Sec 14. And be it further enacted, That it shall be the duty of the President and Directors of the principal Bank and its Branches, to regulate the calls to be made on Notes under discount by the dates of the loans, calling first upon the loans which shall have been first made, in such a manner as to afford to each individual as near as may be, the same indulgence in regard to time, unless it shall appear at any time, necessary to a Majority of the board, to adopt a different Course, for the safety and security of any particular debt or debts which may be due.

Sec 15. Be it further enacted, That no Bill of Exchange or Note, shall be discounted or purchased in the said Bank or either of its Branches, whereby to obtain therefrom a greater loan or accommodation than the person or persons offering the same might obtain agreeably to law in ordinary transactions upon Notes of accommodation, unless the person or persons offering the same, shall file therewith, his, her or their affidavit with the President, Cashier or Clerk of the Bank or Branch in which the application shall be made, that he, she or they, either have,

Or verily believe will have funds to meet and discharge the said Bill or Note at the time and place agreeably to the tenor and import thereof, or that he she or they intend and Expect to apply the money or accommodation desired in the purchase of the products or stock of the Country, for the Exportation thereof, And either of the said officers of the Bank or branch in which the application shall be made, or any Justice of the peace may administer the said oath, and the affidavit, when made, shall be lodged with and safely kept by the Cashier or Clerk thereof, until duly called on for the same by some officer of the Government, for the purpose of administering the laws.-

Sec 16. Be it further enacted, That the said Corporation may issue Notes of a less denomination than one dollar, and the board of Directors of the principal Bank may, if they deem it Expedient, authorise the issue of Notes of less denominations than one dollar at the Branches, to be signed by the President, and Countersigned by the Cashier of the Branch issuing them. Provided, that the amount authorised to be issued by the Branches in small change, shall be deducted from the principal furnished the said Branches respectively.-

Sec 17. Be it further enacted, That it shall be lawful for the President and Directors for the time being of the parent or principal Bank aforesaid, if they shall deem it necessary for the more Convenient and Speedy operation of said Corporation, to appoint from time to time, some officer of the said Bank

or other suitable person, to sign under their direction and superintendance any Notes that may be issued by the order of said Corporation, of the denomination of one dollar, and all such smaller denominations as it may at any time be lawful for said Corporation to issue, and all such Notes signed by the person appointed as aforesaid, and issued by said Corporation at the principal Bank or any of its Branches, shall have the same force and effect, and be in all respects upon the same footing as if signed by the President of said Corporation, and Countersigned by the Cashier of the parent or principal Bank."

Bill of Exceptions Cont'd

"Also an act entitled An act to attach the County of Nicholas to the first district of the Bank of the Commonwealth of Kentucky" ("here insert it") ("Manuscript act,") and the same is as follows Viz't

Manuscript act of Ky. Legislature

"An act to attach the County of Nicholas to the first district of the Bank of the Commonwealth of Kentucky.

Sec. 1. Be it enacted by the General Assembly of the Commonwealth of Kentucky that the County of Nicholas shall hereafter be attached to, and Compose a part of the first District of the Bank of the Commonwealth of Kentucky.

Sec 2. It shall be the duty of the Cashier of the Branch Bank at Falmouth to Certify and send to the President and Directors of the Branch Bank at Flemingsburg, the Notes under discount for the Citizens of

Nicholas County, in said Branch at ~~Flemingsburg~~ Falmouth, when this act shall take effect, and thereafter all said Notes may be received in the Branch Bank at Flemingsburg in the same manner as if the original loan or loans had been made there, and the same lien shall attach in favor of the Branch Bank at Flemingsburg upon any real estate which may have been mortgaged to the Branch Bank at ~~Flemingsburg~~ Falmouth as if said Mortgage had been given to the Branch at Flemingsburg, and the like proceedings had in case of default. and the Branch Bank at ~~Flemingsburg~~ Falmouth shall hereafter cease to renew or discount Notes for the Citizens of Nicholas County.—

Sec 3. The Cashier of the Branch Bank at ~~Flemingsburg~~ Falmouth shall upon the production of the Checks from the Cashier of the Branch Bank at Flemingsburg for the amount of Notes discounted in the Branch Bank at ~~Flemingsburg~~ Falmouth and which may have been renewed in the Branch Bank at Flemingsburg under this act, Cancel such Notes by carrying to the credit of Notes discounted the amount thereof, and Charging the same in an account Current, to the Branch Bank at Flemingsburg.—

Sec 4.— That the Branch Bank for said first district shall hereafter be intitled to, and have one additional Director from the County of Nicholas.—

57 Sec 5. This act shall take effect from and after the first day of January and all Laws Contravening the provisions of this act shall be repealed. Approved January 3d 1825

State of Kentucky
Office of Secretary of State
Frankfort } Sct.

I Lewis Sanders Jur Secretary of the State aforesaid do hereby certify that the annexed Book entitled "Acts passed at the first Session of the Twenty Ninth General Assembly for the Commonwealth of Kentucky begun and held in the Town of Frankfort on Monday the Sixteenth day of October 1820. and the Commonwealth the Twenty Ninth, and particularly an Act entitled "An act to establish the Bank of the Commonwealth of Kentucky" approved November 29th 1820. Contained in said Book Commencing at page 55 and Concluded on page 65 thereof also an act entitled "An act Supplementary to an act to establish the Bank of the Commonwealth of Kentucky" approved December 22d 1820 Commencing at page 165 in said Book and Concluded on page 170 thereof, and also the annexed Manuscript Copy of an act

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entitled "An act to attach the County of Nicholas to the first District of the Bank of the Commonwealth of Kentucky approved January 3rd 1825 are severally full true and Complete Copys of the acts they purport to be, as fully truly and amply as the same remain on the Original Enrollments in my office, and the said Book was printed and published by and with the authority of the State aforesaid

In Testimony whereof I have hereunto set my hand and caused the Seal of the said State to be affixed hereto at Frankfort this Twenty eighth day of November 1832 and in the 41st year of the Commonwealth

L. S.

L. Sanders Jur
Secretary of State"

Tax for Seal $1.00

Bill of Exceptions Continued

"And this was all the testimony in the Cause, And thereupon the Court Setting as aforesaid found all the issues for the Plaintiffs & gave Judgment accordingly, and thereupon the Defendants filed their Motion for a new trial as follows (here insert it") See pages 28 & 29 of this Record, said Motion being there entered; "which Motion the Court overruled to which finding by the Court of the issues as aforesaid

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& the said decision overruling the said Motion for a new trial the said defendants except & pray this their Bill of exceptions to be Signed, Sealed & Made a part of the record in this Cause, which is done &c

David Todd (Seal) "

Costs

Amount of the Plaintiffs Costs in the above Case, Taxed as having accrued at their instance, & for which the Defendants are bound, Amounts as per bill filed with the papers, to the Sum of — $15.32½

Amount of Costs which accrued at the instance of the Defendants and which have been paid by them, Amounts as per bill thereof Taxed & filed as aforesaid, to the Sum of — — — — — 2.08¾

Total Costs in the Case $17.41¼

Exn

On the 18th day of February A D 1835 an execution issued upon the Judgment rendered in this Case, in favour of the Plaintiffs against the Defendants aforesaid, directed to the Sheriff of St Charles County for the Sum of five hundred and

and fifty Dollars Debt, two hundred and forty one Dollars and fifty four Cents Damages and fifteen Dollars thirty two and a half Cents Costs, returnable on the first Monday of June next; which Execution has not yet been returned.—

State of Missouri County of Callaway ss.

I Irvine O. Hockaday Clerk of the Circuit Court within and for the County aforesaid do Certify that the foregoing Sixty pages Contains a true, perfect and Complete transcript of the Record and proceedings in the Case therein Named of The President and Directors of the Bank of the Common=wealth of Kentucky Plaintiffs against Thomas Griffith, Thomas W. Collier and Elisha McClelland Defendants, upon petition and Summons, as fully and Amply as the Same Now Remains in My Office:

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which transcript, is made out in obedience to the Command of the Writ of error, ipued by the Clerk of the Supreme Court of the first Judicial District of Missouri, which is hereto attached. —

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court at office this 21st day of April A D 1835 and in the 15th year of the State. —

Irvine O. Rockaday Clerk

Clerks Fee's
For Making Out this Transcript
Containing 12500 words & figures — $12.50
granting Certificate thereto under
Seal of Office — — — — 50
State Tax on Certificate & Seal — — 62½
Charged to Defendants $13.62½

Attest Irvine O. Rockaday Clerk

State of Missouri
First Judicial District } ss. The State of Missouri To
the Judge of the Circuit Court for the County of
Callaway Greeting.

Whereas it hath been suggested to us that in the
Record and proceedings and also in the rendition
of the Judgment in a certain cause lately pending
before you wherein The president and directors
of the Bank of the Commonwealth of Kentucky
were plaintiffs and Thomas Griffith Thomas M.
Collier and Elisha M. McClelland were defendants,
Manifest error hath occured and we being willing
that such error if any there be should be corrected,
do Command you that the Record and proceedings
of the said cause you send certified as fully and
amply as the same now remains before you to our
Supreme Court of said State to be held at the
town of Fayette in the County of Howard within
and for the first Judicial District on the first
Monday after the fourth Monday of April
instant, so that our Judges of our said Supreme
Court, on inspecting the same may proceed to
do therein that which to law doth appertain
and to them seem meet and proper. And
have you then and there this writ.

Witness Gray Bynum clerk of
our said Supreme Court at office
this 18th day of April A. D.
1835.

Gray Bynum clerk

Came to hand this
20th day of April AD
1835
J. O. Hockaday Clerk

Writ 1.50
Tax 62½
Paid 7.12½

State of Missouri County of Callaway Sct.

In Obedience to the Command of the within Writ of Error, I herewith forward to the Supreme Court of the first Judicial District of Missouri, a true and perfect transcript of the record and proceedings in the Case therein Named of The President and Directors of the Bank of the Commonwealth of Kentucky Plaintiffs against Thomas Griffith, Thomas W. Collier and Elisha McClelland Defendants upon Petition and Summons, as fully and amply as the Same now remains in My Office, this 21st day of April AD 1835. —

Irvine O. Hockaday Clerk
of the Callaway Circuit Court
in the first Judicial Circuit of
Missouri —

(29)

1835

[illegible] President &
Directors of the Bank
of the Commonwealth
of Kentucky

vs { Transcript of
the Record for
Defendants

Thos. Griffith
Thos. W. Collier &
Elisha McClelland

Examined
fee for Record $12.50
Certificate — 50
Tax — 62½
$13.62½

J. O. Hockaday Clerk

Filed May 4th 1835
G. Bynum Clk

In the Supreme Court
1st Judicial circuit
May term 1835

Thomas Griffith,
Thomas W. Collier &
Elisha M. Clelland
Plaintiffs in error

vs

The President and Directors of
the Bank of the Commonwealth
of Kentucky Deft in error.

And now at this day comes the said Plaintiffs in error (by their attorney and say that in the record and proceeding in the above cause, and in giving the judgment therein there is manifest error in this, to wit; that by the record aforsaid it appears that the special demurrer filed by the plaintiffs in error in the circuit court was overruled whereas by the laws of the land it should have been sustained.

There is also error in this, that by the record aforsaid it appears that judgment was given for the Defendants in error, whereas by the laws of the land, the judgment aforsaid ought to have been given for the said Thomas Griffith, Thomas W. Collier & Elisha M. Clelland.

There is also manifest error in this that the motion of said Plaintiffs in error made in the circuit court to set aside the said judgment was overruled, whereas by the

laws of the land said motion ought to have been sustained.

Wherefore for the errors aforsaid and for divers others errors in the record & proceedings aforsaid & in the judgment aforsaid the said Plaintiffs in error pray that said judgment may be reversed and held for nought & that they may in all things be restored to what they have lost thereby

S. Kirtley Attorney
for Plaintiffs in error.

Griffith, Collier and
McClelland Pltffs.
Assignment of Error.
The President & directors of
the Bank of the common
wealth of Kentucky

Filed May
5th 1835
G Bynum clk

Mr. William Henry Russell

Sir

You are hereby notified that we have sued out a writ of error from the Supreme court of the second judicial district of the state of Missouri to the circuit court of Callaway County returnable to the next term of said supreme court in the case lately pending in said Callaway circuit court & determined at the October term thereof wherein "The President and directors of the Bank of the Commonwealth of Kentucky" were plaintiffs and we were defendants

April 20th 1835

Thomas Griffith
Thomas O. Collier
Elisha M. Clelland

Joinder in Error — In nothing is there error.

Leonard & Wells
attys for defts.

The within notice was executed by the under=signed, on the within William Henry Russell on the 20th day of April 1835 by delivering him a written attested copy thereof in Callaway County Missouri

Jas. Baskett Sheriff of Callaway County

fee 50 cents

The President and Directors of the Bank of Kentucky
Sir Notice of
Dr. Wm. Forrer
Thomas Griffith
Thomas W. Collier
Elisha M. Clelland

Filed May 7th 1835
Lt Bynum Mb

Thomas Griffith, Thomas
W. Collier & Elisha McClelland
Plaintiffs in error.
vs } From the Callaway circuit court
The President & directors of
the Bank of the Commonwealth of Kentucky

In the Supreme court
May Term
1835

It is hereby mutually agreed by the attorneys in the above cause that the same shall be continued until the next term of the supreme court, & that the execution now out shall be returned & not reissued until the final decission of this cause

Jamison & Kirtley Attorneys
for Plaintiffs in error
Wm Henry Russell Atto for
Deft in error

Griffith Tolliver Pltf

vs Agreement

The President & Directors of the Bank of Kentucky

Filed 7th May 1835

G Bryan Clk

The President & Directors of the Bank of the Commonwealth of Kentucky - Defendants in Error - ads T. Griffith - T. W. Collier and E. Mc Clelland - Plaintiffs in Error

Supreme court - First Judicial District - September Term 1838.

The defendant in Error by her attorney, moves the court to correct the entry of the judgement entered in this cause at the May Term 18[illegible]'36. by entering an order remanding the cause to the circuit court for further proceedings.

Leonard Atty
for Deft in Error

The said defendants by their attorney come here into court ~~tt~~ and ~~moves the court here~~ files their motion to ~~remand this cause to the circuit court~~ correct the entry of the Judgment made in this cause by this court at the May Term 1836, by entering an order remanding this cause to the circuit court for further proceedings, which motion is continued until ~~until~~ the next Term of this court.

Supreme Court

President &c of the Commonwealth Bank of Kentucky Defts in Error

ads E Motion

Griffith, Collier & McClelland

filed 12th September 1838

Robt Alcorn Clk

United States of America, ss:

THE PRESIDENT OF THE UNITED STATES,

To the HONORABLE the Judges of the Supreme Court of the State of Missouri, holden at the Town of Fayette in the County of Howard, in and for the first Judicial District of said State—

greeting:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Missouri in and for the first Judicial District

before you, or some of you, being the highest Court of Law or Equity of the said State in which a decision could be had in the said suit between Thomas Griffith, Thomas W. Collier and Elisha M'Clelland plaintiffs in Error and the President, Directors and Company of the Bank of the Commonwealth of Kentucky defendant in Error

wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was

drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said *President, Directors and Company of the Bank of the Commonwealth of Kentucky*

as by *their* complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the **Supreme Court of the United States,** together with this writ, so that you have the same at Washington, on the *Second* Monday of *January* next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

WITNESS, the Honorable *Roger B. Taney* Chief Justice of the said Supreme Court, this *Second Monday* of *January* in the year of our Lord one thousand eight hundred and *thirty nine*

W. T. Carroll
Clerk of the Supreme Court of the United States.

ALLOWED BY

John McLean
Justice Supreme Court U. States
2. March 1839

Copy L

Writ of Error

Griffith Collier &
Mc Clelland

against

Kentucky Bank.

filed 8th day of April
1839 Robt. P. Clark
clk

The United States of America,

TO

Thomas Griffith, Thomas W. Collier

and Elisha McClelland

greeting:

YOU are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the Second Monday of January next, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Mississippi holden at the Town of Fayette in the County of Howard, in and for the first Judicial District of said State wherein The President, Directors and Company of the Bank of the Commonwealth of Kentucky are plaintiffs in Error

~~plaintiff in error~~,

and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable John McLean one of the Associate Justices of the Supreme Court of the United States this Second Mon day of January in the year of our Lord one thousand eight hundred and thirty nine.

/Signed/ John McLean

Copy
of
Citation

Griffith & others
vs
Bank of Kentucky

Know all Men by these Presents, That ~~we,~~ I, John J. Crittenden am ~~are~~ held and firmly bound unto Thomas Griffith, Thomas W. Collier and Elisha McClelland

in the full and just sum of Five hundred dollars to be paid to the said Thomas Griffith, Thomas W. Collier and Elisha McClelland their

certain attorney, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this Second day of March in the year of our Lord one thousand eight hundred and thirty nine —

WHEREAS lately at a Supreme Court of the State of Missouri holden at the town of Fayette in the County of Howard in and for the first Judicial district of said State in a suit depending in said Court, between Thomas Griffith, Thomas W. Collier and Elisha McClelland plaintiffs in Error and the President, Directors & Company of the Bank of the Commonwealth of Kentucky, a judgment

—— was rendered against the said President, Directors & Company of the Bank of the Commonwealth of Kentucky

and the said President, Directors & Company of the Bank of the Commonwealth of Kentucky

having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Thomas Griffith, Thomas W. Collier & Elisha McClelland

citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the Second Monday of January next.

NOW THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said President, Directors & Company of the Bank of the Commonwealth of Kentucky ——— shall prosecute their said writ of Error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

Wm Thos Carrole

[SEAL.]

J J Crittenden [SEAL.]

[SEAL.]

APPROVED BY

John McLean
Justice Sup Court U States

Appeal bond

Griffith & others

vs

Bank of Kentucky

Statement of the case and opinion of the Court by Tompkins

Thomas Griffith
Thomas W. Collier
Elisha McClelland
v
The President and directors of the Bank of the Commonwealth of Kentucky

Error to the Circuit Court of Callaway County

Statement. The president and directors of the bank brought their action against the defendants The defendants pleaded several pleas, that which alone is material to be noticed here is that the note sued on, was made by the defendants to the plaintiffs in consideration of paper of said bank of the commonwealth of Kentucky, and that the said paper was bills of credit, within the meaning of the Constitution of the United States, issued on the credit of the state. The replication to this plea denies that the said Bank paper or the notes of said Bank were issued on the credit of the State or that they are bills of credit. The charter of the Bank was read in evidence.

Opinion. The same question arises in this case, that did in the case of the Bank of the Commonwealth of Ky vs David Clark decided by this court at its April term in the second district in the year 1835. There the

the Charter of the bank was set out in the plea; here it was read in evidence to support the issue made up, and is preserved in the bill of exceptions. The court being satisfied with the opinion given on the former occasion will do nothing more than refer to it. It may be found on the 59th page of the ~~semi annual~~ first semi annual part of the 4th vol. of Missouri decisions

The Judgment of the Circuit Court for the reasons given in ~~that decision will be reversed~~ the opinion delivered in that case is reversed

M. McGirk

G. Tompkins

R. Wash

+
+
+

B. of Comm^th of Ky
vs ξ opinion
Griffith and others

The Commonwealth's Bank of Kentucky
Deft in error

ad

Thomas Griffith & others
Plaintiff in error

Supreme Court -
Spring Term 1836

In Error to the
Calloway Circt -

This was an action of debt by the Commonwealth's Bank of Kentucky against the plaintiff in error on a promissory note made by them to the Bank -

The defendants pleaded three pleas -

1st Nil debet

2d That there was no legal consideration for the note -

3d That the note was given in consideration of a loan by the Bank to the defendants of the notes of the corporation - and that these notes were borrowed manufactured and issued on behalf of the State of Kentucky and were bills of credit within the prohibitions of the federal constitution -

On the first and second pleas the plaintiff joined issue - To the third plea the plaintiff replied -

that the bank notes were not bottomed on the credit of the State of Kentucky nor issued on behalf of that State nor were they bills of credit within the prohibition of the Federal Constitution -

On these facts the defendants joined issue upon the trial the plaintiff gave in evidence the note sued on and the charter of incorporation and rested his case -

The defendants introduced no evidence

The issues were found for the plaintiff - and thereupon the defendants moved for a new trial on the ground that the verdict was against law & evidence - This motion was overruled & the plaintiff had judgment -

The cause was argued at the last term of this court and it was then marked for judgment of the judgment -

1st That the only question on the record was whether on the evidence given the issues ought to have been found for the defendants and -

2d That there was no evidence given in support of the issues on the part of the defendants in the 1st and 2d pleas - and

3d That the third plea was bad in substance because - 1st Because the note alleged in the plea to have constituted the consideration of the note sued upon were not bills of credit within the meaning of the federal constitution - and -

2d Because Instead of setting out the charter and referring it to the court to determine whether the law was unconstitutional or not the plea formed matter of law and referred the trial of it to a jury — and

4th That the plea being bad in substance the court ought not to have granted a new trial

money because the finding of the jury on that plea was against the weight of evidence

Upon this argument this court at the last term intimated its opinion that the 2d and 3d pleas were not to be considered and that the only question was upon the finding on the first plea - and directed a reargument on the question -

Whether from the charter of the Bank that institution had authority to take the note in controversy or any consideration other than a loan of its own bills -

I thus subject the attention of the counsel for the plaintiff below will now be confined - and it will be insisted -

That the Bank may have lawfully acquired the note sued on in a manner other than upon a loan of its own bills

Every corporation possesses

1. Certain powers which are incident of common right to all corporations

2. Kents com. 277 - 1. Kyd on corporations

13. 69-70 — 1. Blac. com. 475-476

2.° Such powers as are specifically granted by the act of incorporation together with such as are necessary for the purpose of carrying in to effect the powers expressly granted -
2. Kents com. 298. Head & Amory vs Provi dence Insurance company 2. Gauch 127.

The present corporation has the power of acquiring, holding and disposing of property of every description, without limitation

1st of common right -
2. Kents. com. 281. 6. & H. 44 a. 3006
The Mayor & commonalty of Colchester vs Lowten
1. Ves & Beams 226-237-240-244-

2. By the express terms of its charter -
Act of 1820. Sec. 2 - (page 32 of the record)

It is a bank of deposit - discount - and circulation -

It has power to receive money on deposit - Act of 1820. Sec. 8 - (page 34-35 of the record)

It has power to loan money
Act of 1820. Sec. 8- (page 34-35. of the record)

It has power to issue and put in circulation its own notes-
act of 1820- Sec. 4- (page 33 of the record)

And by implication all the powers necessary and proper to carry these expressly delegated powers into execution-

It will therefore be insisted that the Bank may have lawfully taken the note now in litigation

1st As a gift or

2d on a sale of any of its property real or personal- or

3d on a loan of current money of the United States- or

4

4th upon a loan opts own bills –

Supreme Court -

Bank of the
Commonwealth
of Kentucky

ad Eg in Error

T. Griffith
and others

Brief for Defend
ant in Error -

Wells & Leonard
counsel for
Deft in Error

Griffith & others } Brief of defds. in Error
vs
Bank of the Commonwealth of Ky. }

This was a petition & summons, brought by the Bank against defds below on a promissory note given by them to the Bank.

The defds. pleaded — 1st Nil debit — issue — 2nd That there was no legal consideration for the note — issue — 3rd That the note sued on was given for notes of the Bank (& for nothing else) which notes of the Bank, were bottomed upon the credit, issued on behalf of the State of Kenty. & were bills of credit with the Constitution of the U.S. To this plea there was a Repn. stating that the notes of the Bank were not bottomed on the credit of the State of Kenty. & were not issued on behalf of the said State, & were not bills of credit &c. issue

There was a special demurrer to the declaration but as it was not relied on by defds. but pleas filed & issues taken & tried, it is thought to be unnecessary to notice it.

The cause came on to be tried — the Court sitting as a Jury — Certain evidence was given & all the issues found by the Court as a Jury for plff. — New trial moved for & overruled. & Bill of exceptions.

There is not a particle of evidence to support the 1st or 2nd issues — and we think it equally clear that the Circuit Court ought not to have

set aside the verdict — The only question here is did the evidence which was given, support the issues on the part of defds. — and was a jury bound to find from that evidence, for the defds. the facts in issue — Then were two facts and an inference — 1st were the notes bottomed on the credit of the State? 2nd were they issued on behalf of the State? — Whether they were bills of credit seems to be a question of law. The evidence does not prove the affirmative of the issues — 1 Tuck. Com. (last Ed.) 407. 8. — 2 Mc. Cord Rep. 12 — S.C. 3 Wheat. Dig 554 — 2 Litt. 300 The 3d plea is bad, because it does not set out the act of the Genl. assembly, & attempts to plead a matter of law & refer it to a jury

Leonard Wells
Atty. for defds
in Error.

Greffith & others

vs.

Bank of Kentucky

Brief of defts.

in Error.

The President & Directors of the Bank of the Commonwealth of Kentucky Deft. in Error
vs
Thomas Griffith, Thomas W. Collier, & Elisha McClelland Plaintiffs in error.

Plff's Brief

This was an action brought by the President & Directors of the Bank of the Commonwealth of Kentucky against the plaintiffs in error, by petition, on a note, in these words

"Nicht. County Feby 15. 1827

$550 One hundred and twenty days after date we jointly & severally promise to pay the President and directors of the Bank of the Commonwealth of Kentucky or order five hundred and fifty Dollars negotiable & payable at their Branch Bank at Flemmingsburgh for value received witness our hands, & signed by Plffs in error.

The plaintiffs in error plead first, nil debit, 2ndly That the note sued on was executed by them to the Bank without any good and valuable consideration & that therefore the note is void.

11.12 3rdly That the President & Directors &c loaned to Thomas Griffith the first obligor of the note Bank paper or notes of the said Bank & that said notes were issued by the Bank by ~~virtue~~ authority of the act chartering the Bank that said Bank notes were ~~[illegible]~~ on the ~~credit of the~~ & issued in behalf credit of the State of Ky

& were Bills of credit within the meaning
and prohibition of the constitution of the United
States & that the note sued on was executed
by Plff in error in consideration of said
illegal loan of said illegal Bank paper
& was therefore null and void. There was
also filed at the same time by Plaintiff in
error a special demurrer, after craveing
oyer of the note sued on, & setting it out
as before written.
There was a similiter to first plea
replication & issue to second & third
19.20 & a joinder to the demurrer.
The replication to the third plea ad-
mitted the loan of the Bank notes & the
consideration of the note sued on as pleaded
& insisted that these Bank Notes were not
Bills of credit within the meaning of
the constitution of the United States
& that point issue was taken.
The court overruled the special de-
murrer & the cause was submitted;
without the intervention of a jury.
31 & 64 On the trial the plaintiffs below offered
in evidence the act of Ky chartering
the Bank & an act supplementary to it
4 76 54 establishing the Branch at Flemings-
burg. & also an act to attach the county of
Nicholas to the 1st district of the Bank

58 of the commonwealth of Kentucky all which is spread on the record from page 31 to 58 by bill of exceptions.

On this evidence the court found ~~[illegible]~~ the issue for the plaintiffs below

The Plaintiffs in error then filed a motion to set aside the finding of the court and for a new trial ~~which motion~~ for the usual reasons which motion was overruled & a Bill of exceptions taken spreading the above facts on the record & the case is now brought here by writ of error.

The errors assigned are

1st. The decission of the circuit court in overruling the demurrer of the plaintiffs below error

2ndly. That judgment was given for the defendants in error when it should have been for Plaintiffs in error

3rdly. The decission of the circuit court in overruling the motion for a new trial

4th. The general assignment of error.

I understand that the principle matter in controversy in this cause has been solemnly decided by this court in a ~~recent~~ case in the second judicial district, & having given a history of this cause I ought perhaps to stop here. Not having had an opportunity of seeing the decission of

~~of this court~~ I will briefly state the points on which I rely for a reversal of the judgment of the circuit court.

And first as to the correctness of the decission of the circuit court in overruling the demurrer. This purports to be an action by a corporation not by a natural person. Our courts cannot judicially know that there is such a corporation for existance is not given to such a corporation by any law of ours, and we cannot take notice of the statutes of sister States unless they be specially ~~introduced~~ in the pleadings or offered in evidence. Admitting then that this corporation could sue by petition & summons in Kentucky it does not follow that they can so sue here. It can be no answer to this objection to say as has been said that it should have been pleaded in abatement. That is a delatory plea and admits that there may be a cause of action in some one, ~~if there was no~~ but that the right party has not sued. The objection here goes to the whole action for if there were no such corporation there could be no liability to any other person or corporation. That statutes of sister State cannot be noticed by our courts unless specially pleaded. See 1 Haskie No. 2-163 referring to 2 Mass Rep 84. 8th SB 99 & 1 SB 104 - See also 1 Chitty 218 1 Bla Com 86

But be this as it may it is sufficient for the Plaintiffs in error that this court has already decided that the charter of the Bank of Kentucky is unconstitutional & void, & that its Bills or notes are bills of credit within the meaning & prohibition of the constitution declaring that "no State shall emit Bills of credit." Now the proofs in the cause are the acts before specified. They show that the notes of the Bank of the Commonwealth were bottomed on the credit issued in behalf of the State of Kentucky & were bills of credit. The loan of these illegal Bank bills are admitted to form the only consideration of the note sued on & this court have said it is not a sufficient consideration. If it be at all necessary to moot this matter further I shall rely upon the prohibition in the constitution of Craig against the State of Missouri. Linn against the State Bank of Illenois, and as argument a decission of Judge Bridges of Kentucky in the case of the Commtts Bank against Nelson Mayes & the authorities cited in the above cases. Also the Federlist p 242

S. Kertley attd for Plffs in error

1st Point
1st Starkie N 82 p 163
2. Mas Re — 84
8 ib — 99
1 ib. 104
1st Chit. P. 218
1 1 Bl. Con 86

Record 32
To buy & sell land & goods
General power to do any thing in that act not prohibited —
33 All that may be necessary &c —
34 Loan the funds of the Bank
35 Discount notes — Bills & current money —

Griffith & others
Plaintiffs in error

vs
The President & Directors of the Commonwealths Bank of Kentucky

2nd Point

Authorities
The decission of this court in the 2nd judicial destrict
Sec 10th 1st Article W. S. Cons.
Craig vs State of Missouri
4th Peters R 410
Linn ads Bank Illinois
—
Maypads Commonwealths Bank of Kyly Bridges.
Federlist 242.

Pl ffs Brief