Fox, Sarah A et al vs. Mechanic's Bank of Missouri 1863 Platte Co. 261/6

Old 93/11

Affirmed : Bank's request

F & H made note to C who gave to Bank; bank called for payment
B unlawfully discounted bill; interest improperly charged

The Mechanics' Bank, Respondent
Against.
Sarah A. Fox
Saml M. Hays and
Patrick O. Coots, Appellants.

Appeal from the Platte Circuit Court.

The Respondent comes now into this Court and Moves the same to affirm the judgment of the Court below in the above entitled cause and thereto shows:

1. That the appeal in this Cause was taken thirty days before the present term of this Court, and appellants have not filed herein a record of said Cause

2. That the respondent now here exhibits to this Court a Certified Record of said Cause and shows that the same does not contain any error against the appellants

Barnes, Merryman & Wolf
For Respondents

The Mechanics Bank
Respondent
Agt.

Sarah A. Fox & als
Appellants.

Motion to affirm
the judgment of the
Court below
Burnes, Merryman & Hoff
for Respondents

Filed Jany 22d 1863

The Mechanics' Bank

573 vs

Sarah A. Fox, et ux alia

Platte Circuit Court,
Nov Term 1862

Bill of Exceptions filed in case No 604 Farmers Bank of Mo vs E. H. Spencer, et ux applied to this Cause
(Bill of Exchange originally)

State of Missouri
County of Platte } Sct:

Page 1.

Pleas, at a regular term of the Circuit Court within and for the County of Platte, and State of Missouri, begun and held at the Courthouse in Platte City, County and State aforesaid, on Monday the 24th day of November, A.D. 1862, before the Hon. Silas Woodson, Judge of the 12th Judicial Circuit of the State of Missouri, and Ex Officio Judge of the Platte Circuit Court aforesaid.

Title of Cause.

Mechanics' Bank of Missouri, Plff.
No 573 Petition
Sarah Ann Fox, Samuel M. Hays and Patrick S. Coots, Defendants.

Be it Remembered, that heretofore, to wit: on the 26th day of April, A.D. 1862. the Mechanics Bank, plaintiff, by attorney, filed in the Clerks office of the Circuit Court of Platte County, aforesaid, in vacation - a certain petition against the said defendants Sarah Ann Fox, Samuel M. Hays and Patrick S. Coots, which said petition, so filed as aforesaid,

Page 2.

is in the words and figures following. To wit:

"State of Missouri

"County of Platte Sct."

Petition.

"In the Platte Circuit Court to May T. A. D. 1862, Coram Woodson, J."

"The Mechanics' Bank, Pff

against

Sarah Ann Fox, Samuel M. Hays, and Patrick S. Coots, Defts.

Platte County Sct.;

The plaintiff says that it is a corporation, created by the laws of the State of Missouri for Banking purposes

Plaintiff further states that the defendants, Sarah Ann Fox and Samuel M. Hays, made their negotiable promissory note, on 9th day of December 1861., which is herewith filed, as part of this petition and dated December 9th 1861. whereby they promised for value received to pay to the order of the defendant Patrick S. Coots, at the Branch of the Mechanics Bank Weston, four months after date the sum of four hundred and fifty dollars, with interest from maturity at the rate of eight per cent per annum; Plaintiff says that afterwards, to wit: on the day of the execution of said note, the defendant Coots for value received transfered by endorsement in writing on the back of said note, and delivered the same to the plaintiff. Plaintiff further says that afterwards, to wit: on the 12th day of April 1862. when said note had become

Petition Continued.

fully due and payable, the same was presented at the Branch of the Mechanics Bank at Weston, during usual banking hours, and payment thereof demanded, by L. M. Lawson, a Notary Public, for Platte County aforesaid, which was refused; the Defendants having wholly failed, refused, and neglected to have any money provided, at said branch of said Bank, wherewith to have said note paid, whereupon the said note was duly and legally protested for nonpayment by L. M. Lawson, a notary public within and for Platte County, Mo., of which the defendants had due and legal notice, all of which will appear by the protest herewith filed and made part of this petition. Plaintiff says that the whole and every part of said note is yet due and owing by the defendants to the plaintiff, and for which by its attorney, it prays judgment, together with damages at the rate of four per cent. and interest at the rate of eight per cent per annum from maturity, as allowed by law.

Mechanics' Bank,

By J. N. Burnes, Atty.

J. N. Burnes as agent and atty. for Plaintiff makes oath and says that he believes the matters and things as stated in the above and foregoing petition are True.

James N. Burnes

Sworn to and Subscribed before me this 25 Apl 1862

W. F. Yocum Mayor"

The note, and also, the notarial protest thereof filed with said petition and therein recited as a part of the same

Page 4.

Petition

Continued

Note

Patrick S. Coots 1675

are in words and figures as follows:

Note - "$450.00 Weston, Mo. December 9th 1861.

Four Months after date we promise to pay to the Order of Patrick S. Coots Four hundred and fifty 00/100 Dollars, for value received, negotiable and payable without defalcation or discount, at the Branch of the Mechanics Bank, Weston, with interest from maturity at the rate of eight per cent per annum.

Protested for nonpayment this 12th April A.D. 1862. J. M. Lawson Notary Public

Sarah Ann Fox -
Daniel M. Hays"

Protest -

"State of Missouri }
County of Platte } S.S. Recorded Vol - Fol.

Be it Known, that on the day of the date hereof, at the request of Mechanics Bank, the holder, I. L. M. Lawson Notary Public, within and for the County of Platte, State of Missouri, duly commissioned and qualified, dwelling in the City of Weston, did Present the original Note hereunto attached, a copy of which is written on the reverse, which I presented at the Branch of the Mechanics Bank in Weston, during Banking hours, and demanded payment which was refused. Whereupon I, the said Notary Public at the request aforesaid, did protest, and by these presents do solemnly and publicly protest, as well against the Makers and Endorsers of the said note, as against all others whom it doth or may concern, for Exchange, Reexchange and all costs, damages, charges and interest already incurred, and to be hereafter incurred for want

Page 5.

Petition

Continued

of payment of the same - Of all which I have given due notice to the parties concerned.

Thus done and presented at the City of Weston aforesaid, this 12th day of April 1862.

In Witness whereof, I the said Notary, have hereunto set my hand, and affixed my Notarial Seal, the day and year above written.

L. M. Lawson.,

Notary Public.

Seal

$450.00 Weston, Mo., December 9th 1861.

Four months after date we promise to pay to the order of Patrick S. Coots Four hundred and fifty Two Dollars for value received negotiable and payable without defalcation or discounts, at the Branch of the Mechanics' Bank, Weston, with interests from maturity at the rate of eight per cent per annum.

Patrick S. Coots.

Protested for non payment this 12th April 1862. L. M. Lawson Notary Public.

Sarah Ann Fox

Same M. Hays.

I L. M. Lawson, Notary Public, within and for the County of Platte, State of Mo., dwelling in the City of Weston, duly Commissioned and qualified, do certify that on the day of the date of this protest, I Notified the Makers and endorsers of the said Note, of which the above is a copy, of the within Protest, by notices in writing and print, by me signed, of the same date with the said protest, and which I addressed to Sarah Ann Fox, and Same M. Hays Platte City; and Patrick S. Coots, care of W. M. Paxton, Platte City - and deposited the same in the Post office, in the said City of Weston, on the day and year aforesaid.

In Witnes whereof, I have hereunto set my hand, and affixed my Notarial Seal, at Office in the City of Weston, aforesaid.

(Seal)

L. M Lawson,
Notary Public"

Upon the filing of said petition, there issued from the Clerks office of said Court, on the 2nd day of May, A.D. 1862 a writ of summons against the said Defendants - directed to the Coroner of Platte County, there being no Sheriff, which summons is in words and figures as follows to wit:

Summons.

" State of Missouri, County of Platte, — Sct:

The State of Missouri, to the Coroner of Platte County, there being no Sheriff, Greeting:

You are hereby commanded to summon Sarah Ann Fox, Samuel W. Hays and Patrick S. Cook, that they be and appear before the Judge of our Platte Circuit Court, in and for said County, on the first day of the next term thereof, to be holden at the Court house in Platte City, on Monday the 26th day of May next, then and there to answer to the petition of The Mechanics Bank, wherein fail not, and have you then and there this writ.

Witnes, Geo. W. Belch, Clerk of said Circuit Court, with the Seal thereof affixed, at Platte City, this 2nd day of May, A. D. 1862.

(Seal.)

Geo. W. Belch, Clerk
By A. E. Vogles, D.C. "

Which said Summons was duly returned by the officer in whose hands the same was placed, bearing on the reverse thereof the following returns - viz:

Return on Summons.

"Served this writ by delivering to the within named defendants, Sarah Ann Fox, Samuel M. Hays a true copy of the within writ and petition in Platte County, Missouri, this 2 day of May A.D. 1862.

G.W. Hood, Coroner of Platte County Mo
By John Fennier, Dpty."

Return on Summons.

"Served this writ by delivering to the within named defendant, Patrick S. Cook by leaving at his usual place of abode a true copy of the within petition writ to a white member of his family over the age of sixteen years old in Platte County, Missouri this the 2 day of May, A.D. 1862.

G.W. Hood Cor
By John Fennier, Dpty."

And afterwards, to wit: on the 26th day of November A.D. 1862 during the sitting of said Circuit Court at a regular November Term, the following proceedings were had in this cause. To wit:

Record - (Leave to answer)

"The Mechanics' Bank of Mo
vs
Sarah A. Fox, et al

Now here the Defendants have leave to file answer on or before Monday next."

And afterwards, to wit: on the 1st day of December 1862 during the same November Term of said Court, the

Page 8

Record

Defts file ans.

following further proceedings were had herein, viz:

"Mechanic's Bank of Mo.

573 vs

Sarah A. Fox, et alia

Now here defendants have until to morrow to file answer"

On the 3rd day of December 1862 during the said November Term the following proceedings were entered of record in this cause, To wit:

"Mechanic's Bank of Mo

Record -

573 vs

Defts file answer

Sarah Ann Fox, et alia

Now come the Defendants, by their attorney and file Answer to the plaintiff's petition"

Which Answer, so filed as aforesaid, is in words and figures as follows;

Answer.

"State of Missouri } In the Circuit Court of Platte
County of Platte } County November Term 1862.

The Mechanics Bank, Plaintiff

vs

Sarah A. Fox
Samuel M. Hays + } Defendants
Patrick S. Coon

The said Defendants, for answer to said plaintiffs petition, say - that some time previous to the 7th day of July 1859. the said Sarah A. Fox being an

wants of money made application to plaintiff to borrow Five hundred Dollars, when said plaintiff (or some of its officers & agents) informed said Sarah A Fox that the plaintiff was not discounting notes at the present time, but that the amount she desired could be obtained from plaintiff upon a bill of Exchange on the same Bank at St Louis payable four months after date & endorsed by said Sarah A Fox to plaintiff that thereupon, and in pursuance to the said suggestion of the said plaintiff a Bill of exchange was made by said Hays & Coots to said Sarah A. Fox upon said Mechanic Bank at St Louis for the amount of Five hundred Dollars, payable four months after the date for the purpose of being presented to the said plaintiff to be by plaintiff discounted; and thereupon, on the day of the making of said Bill it was unlawfully, unconsciously & corruptly agreed, by and between the parties, that the said plaintiff should then and there discount the said Bill at a rate of interest for more than 7 per cent per annum, and for an amount unreasonable for Exchange, to wit; that said plaintiff should then & there discount the said Bill and advanced to the said Fox thereupon the sum of Four hundred and eighty Dollars and — cents, and no more; and the said defendant say that the plaintiff, on the same day, pursuant to said unlawful, unconscionable and Corrupt agreement, did then and there discount the said Bill & advance to the said Fox thereupon the sum of —

Page 10

Answer

Continued.

Four hundred & eighty Dollars — cents & no more; and thereupon the said Fox did then and there deliver to said plaintiff - and the said plaintiff did & receive the said Bill, endorsed by the said Fox, for the full amount of Five hundred Dollars, specified therein, The said plaintiff upon discounting the same, as aforesaid, having advanced therefor, as the whole and sole consideration thereof the said sum of Four hundred & Eighty Dollars — Cents, and no more, Defendants further say that the rule of plaintiff upon a loan of money in discounting Bills and not notes as aforesaid, was a device to evade the law of the land, and the provisions of the Charter of said Bank; Defendants further say that the discounting the Bill in manner aforesaid was and is a violation of the laws of the land and of the Articles of the plaintiffs Corporation and that the said bill in the hands of plaintiff was fraudulent and void in law, Defendant further say that the said bill at Maturity as was renewed by a bill drawn in the same manner for the same amount as the same discounted - by the same unlawful usurious and corrupt agreement and so continued to be renewed every four months thereafter until the 9th of December 186, she having paid thereon of the principal the sum of Fifty Dollars reducing said note to amount specified in said note - after which the renewal thereof was continued by note after the manner and form of the note sued on and the renewal thereof by such note sued on, and the renewal thereof by such note continued

Page. 11.

Answer Continued

every four months thereafter up to the date of the note sued on as aforesaid, which is the last renewal thereof and is a continuation of and in consideration of the said Original Bill of Exchange. Defendant further says that the note sued on, and each of the intermediate notes of which it a renewal, was by unlawful, usurious and corrupt agreement by and between the parties, as counted upon on loan of money by said plaintiff at the rate of interest more than eight per cent per annum, at the rate of 9 per cent per annum, and in addition to interest an unreasonable premium on exchange. to wit; 4 per cent, was charged & Received by plaintiff, in violation of the laws of the land & of the fundamental provisions of plaintiffs charter and therefore void; That all of said bills & notes was and is founded upon a corrupt and usurious Consideration against public policy, Good morals & therefore void. Whereupon Defendant asks to be discharged with his costs.

J. G. Graves.

Sarah A. Fox, Defendant makes oath and states that the foregoing answer, and the matters as therein stated she believes to be True,

Sarah Ann Fox.

Subscribed and Sworn to before me this 2nd day of Dec 1862.

Geo. W. Belch. Clerk "

And afterwards during said November Term of said Court on the 6th day of December, A. D. 1862. the following

Page 12.

Further proceedings were had in this case, viz:

Record, (To foot Docket)

"The Mechanics' Bank of Mo
573 vs
Sarah A. Fox, et ux et alia,

Now here on defendants application this cause is placed at the foot of the Docket."

And afterwards, on the same day the following proceedings were entered of Record in this cause, to wit:

Record, (Submitted to Court)

"The Mechanics Bank of Mo
573 vs
Sarah Ann Fox et ux et alia

Now come the parties hereto, by their respective attorneys, and being ready for trial submit their cause, by agreement, to the Court, who having heard the evidence adduced by the parties hereto takes the case under advisement."

And on the Eleventh day of December 1862, during the sitting of said Court at its November Term aforesaid the following was entered of Record herein, To wit:

"The Mechanics' Bank of Mo
573 vs
Sarah Ann Fox, Samuel M. Hays and Patrick S. Coots.

Record, (Judgment.)

$475.50/100 8%

Now here this cause having been heretofore submitted to the Court, at this term, and evidence heard, the Court finds for the plaintiff in the sum of Four hundred and

Page 13.

Record contd

Seventy five & 50/100 Dollars; It is therefore ordered and considered by the Court that the plaintiff have and recover from the Defendants the sum of Four hundred and Seventy five & 50/100 Dollars, with interest thereon at the rate of eight per cent per annum from the date hereof, as well as all costs herein expended and have therefor Execution."

On the 12th day of December, A. D. 1862, during the Term of said Court aforesaid, the following further proceedings were had in this cause, to wit:

"Mechanics' Bank of Mo
573 - vs
Sarah Ann Fox, et alia

Record.

(Mo. for new trial filed)

Now come the defendants, by their attorney, and file their motion to set aside the finding of the Court herein, and for a new trial of this cause; which said motion is now here taken up, argued by counsel, and overruled by the Court."

Which motion, so filed aforesaid, is in words and figures as follows. To wit:

"State of Missouri
County of Platte } Sct:

Motion for new trial.

In the Circuit Court of Platte County, Missouri

Mechanics' Bank of Missouri, Plf

vs

Sarah A. Fox, et al, Defendants

The Defendants move the Court to set aside the finding of the Court, sitting as a Jury and grant

Page 14.
Motion
cont'd.

a new trial,

1st Because the finding of the Court is contrary to the law and evidence.

2d Because the Court erred in refusing the first and second and sixth instructions asked by defendants to the Court sitting as a Jury.

3d Because the — erred in giving 3 & 4 instructions asked by the plaintiff.

Wilson, Spratt, & Smith
Attys for Defts."

And afterwards, to wit; on the 12th day of Decr 1862 during the said November Term of said Court the following was entered of record in this cause. Viz:

Record.
(Bill of Excep's and Affidavit for Appeal.)

"The Mechanics' Bank of Mo
573 vs
Sarah A. Fox, et alia

Now come the parties herein, by their respective Attorneys, and by their agreement, it is Ordered by the Court that the Bill of Exceptions heretofore, at this term, filed in case No 604 of The Farmers Bank of Mo. against Charles F. Spencer, et alia, and then and there signed, sealed, and made a part of the Record in said case, be, and the same is, hereby held to apply in this cause; and said Bill of Exceptions is now here made a part of the Record in this cause; And now come the said Defendants by their Attorneys and file their affidavit for

Page 15.

an appeal to the Supreme Court, which is now here granted by the Court."

Which said affidavit for an appeal, so filed, is in words and figures as follows. To wit:

"The Mechanics' Bank, Pfff

against

Affidavit for Appeal

Sarah Am. Fox
Samil M. Hays } Defendants.
Patrick S. Coots

In the Circuit Court of Platte County, Missouri.

Patrick S. Coots, for himself, and coappellants on application for an appeal to the Supreme Court of this State, in the above entitled cause, after being duly sworn states that this appeal is not made for vexation or delay, but because Appellants believe themselves agrieved by the Judgment or decision of the Court.

Patrick S. Coots.

Subscribed and Sworn to before me

Geo. W. Belt, Clerk
By A. S. Yogdez D.C."

The Bill of Exceptions filed in the case of the Farmers' Bank of Mo. against Charles F. Spencer et alia - and, upon agreement of parties, by the Court held to apply, and made a part of the Record in this cause, is in the words and figures following, to wit:

(See next folio)

Bill of Exceptions.

"Farmers Bank Plaintiff

against

Charles F. Spencer,
William T. Darnall } Defendants.
A. F. Payne

In the Circuit Court of Platte County, Missouri, Be it Remembered, that at a term of the Circuit Court began and held at the Court house in Platte City, in Platte County, Missouri on the day of November 1862 the above entitled cause coming on for hearing, the following proceedings were then and there had, to wit:

This cause coming on for trial upon the petition & answer & by agreement of the parties aforesaid the cause was submitted to the Court, whereupon the plaintiff introduced and read in evidence the note sued on which is in words and figures following;

note in evidence.

"$ 700.00 Liberty Mo, November 23 1861.

Four months after date we promise to pay to the order of James E. Frost Seven hundred & 00 Dollars, for value received, negotiable and payable, without defalcation or discount at the Branch of the Farmers Bank of Missouri, at Liberty, with eight per cent interest per annum from maturity until paid. Henry M. Cochran,
No 2744. Patrick S. Cools"

Plaintiff then closed its case; Whereupon the

Bill of Exceptions continued

Evidence of Cashier of Bank.

Defendant introduced the following evidence to wit: The Cashier of the Branch of the Farmers Bank, at Liberty, Missouri, on oath stated - that the defendant being in want of money made application to plaintiff, at her branch at Liberty Missouri, to Borrow Fifteen hundred Dollars, when the said plaintiff informed said Spencer that they were not loaning or discounting notes & the amount he desired could be obtained from plaintiff upon a bill of Exchange on the same bank at Lexington, payable in four months after date & drawn by the said Spencer & Darnall to said Payne - and that thereupon & in furtherance of said suggestion plaintiff, xxxx a bill of Exchange was made by the said Spencer & Darnall to the said Payne which was by the said Payne endorsed to the said plaintiffs for Fifteen hundred Dollars payable in four months from the date at the Branch of the said plaintiffs Bank at Liberty, Missouri, which was made for the purpose of being discounted thereupon, on the day aforesaid, it was discounted by the said plaintiff at a rate of interest - That at the time aforesaid they did discount said Bill and advance to the said Spencer, thereupon, the sum of One thousand four hundred & forty Dollars & no more, reserving $60.00 by way of interest and discount

The rule adopted by the Bank was to calculate interest and discount on such Bills as this at the rate of 30 days to the month - then calculate in addition

Page 18
Bill of
Exceptions
Cont'd
Cashier's
evidence
Continued.

the odd days in each month, also the day on which the Bill was given & the day on which it fell due & 3 days of grace, making generally 6 or Seven days over the time specified in the Bill of note aforesaid; which discount & premium was received by plaintiff in advance The rule was to calculate interest at the rate of 360 days to the year 180 days half year - 90 quarter of a year & 30 days to the month; That when defendant Spencer made application for the loan aforesaid they had & were discounting notes & loaning money & the reason they required a Bill of Exchange on Lexington was because we could make more profit by dealing in Bills than by discounting notes &c

The customary rate of exchange between Liberty & Lexington at the time this bill was discounted was 1/4 to 1/2 per cent - we charge Spencer 2 per cent or more we calculated the interest upon the basis aforesaid That this Bill at maturity was renewed or paid off by a new Bill drawn in the same manner for the same amount at the same discount & same premium on exchange & continued to renewed every four months thereafter until the 8th of May 1861. after after which the renewal was continued by note after the manner and form of the note sued which is the last renewal; on this note and subsequent ones we calculated interest at the rate of 8 per cent. for 360 days allowing 30 days to the month 90 days for the quarter of a year 180 for a half year and in addition

Cashier's
evidence
Continued.

we received interest in advance on all the odd days over
30 in the months the note had to run, also the day on
which the note is given and the day on which it falls
due, also 3 days of grace, making 126 or 127 days
that we received interest for on all these notes.
At the time this Bill was first made by Spencer we
knew that he had no funds in Lexington Bank to meet
it, nor did the Bank expect it to be paid there, it
was the expection that Spencer was to pay the money
or buy new bill at our branch at Lebeby, we resorted
to these "Kite" bills because we could make more
by dealing in them than by loaning or discounting
at six or seven per cents per annum: This was all
the testimony offered by the parties, plaintiff or defen-
dants: Whereupon the plaintiff asked the Court
to declare the law as follows whereupon the Court
gave the following instruction;

Plaintiff's
instructions
given.

1st That although former notes or bills of exchange
may have been effected with usurious consideration
unless the note sued on is effected with such consider-
ation the law is for Pltff- notwithstanding the proceeds
of the note sued on satisfied the former notes
4. the contract is not void ab initio and Pltff is
entitled to recover notwithstanding Pltff took a greater
rate of interest than the law authorized."
Given.
to the giving of which defendant at the time excepted.
Whereupon the said Defendant asked the Court
to declare the law as follows; (see next page)

Bill of Exceptions continued.

Defendants' instructions

C

The defendants move the Court to declare the law to the Court, sitting as a Jury, to be -

1st That if the Court believe from the testimony that the note sued, or any note or bill of which it was a renewal was discounted by the Bank at a rate of interest exceeding eight per cent. per annum, it was in violation the Charter of the Bank and void.

Refused

2d If the Court believe from the testimony that the note sued on, or any note or bill of which it was a renewal was discounted by the Bank at a rate of interest exceeding eight per cent. per annum it was done without authority and void.

Refused

3rd That the legal year is 365 days, the legal half year is 182 days, and the legal quarter 91 days; and the usage among banks to cash interest at a year for 360 days, one half a year for 180 days; one quarter of year for 90 days; one sixth of a year for sixty days; and the three days of grace at one tenth of a months, is usury, and without the authority of Law, the custom and usage of Bank to the Contrary notwithstanding

Given.

4. That the adoption of an erroneous principal in the calculation of interest, which gives more than eight per cent. per annum, and the receiving the discounts or interest according to that principle is usury, though the lender believe he has a legal right to do so

Given

5. That any mode adopted in the calculation of

Page 21.
Bill of
Exceptions
Continued

interest, in drawing the note or bill, by which the bank obtains more interest than at the rate of eight per cent per annum, renders the contract usurious, without authority, violation of the Bank Charter and void

Refused

Dfts' instructions Continued.

6. The Defendants ask the following; if the Court believe from the evidence that the note sued on or any other note or bill of which it was a renewal was discounted by the Bank at a rate of interest exceeding 6 per cent per annum, it was done without authority and void.

Refused

7. That the adoption of an erroneous principal in the calculation of Interest which gave more than 6 per cent. per annum on any bill of exchange which may have been the foundation of any of the notes sued on, and the receiving the discount or interest on that principal is usury."

Given

To the refusal of the Court to give instructions Nos 1. 2. 3. 4. 5. 6 & 7. and in refusing same defendants excepted at the time - Whereupon the Court rendered judgment for plaintiff; to the rendering of which the same Dfts at the time excepted.

Defendant then filed Motion for new trial and in arrest of Judgment —

C State of Missouri, }
County of Platte, } Sct:

In the Circuit Court of Platte County, Missouri;

Motion for new trial.

Page 22.
Bill of Exceptions continued.
motion for new trial Cont'd

"Mechanic's Bank of Missouri, Pltff

vs

Sarah A. Fox, et al, Defendants -

The Defendants move the Court to set aside the finding of the Court, sitting as a Jury - and grant a new trial.

1st Because the finding of the Court is contrary to the law and evidence.

2nd Because the Court erred in refusing the first and second & sixth instructions asked by Defendant to the Court sitting as a Jury

3 Because the - erred in giving 3 & 4 instructions asked by the plaintiff -

Wilson, Spratt & Smith
Attys for Dfts -"

(No motion in arrest was or has been filed, or acted upon by the Court - Clerk)

Whereupon the Court overruled said motions, to the opinion of the Court in overruling same defendants at the - excepted - and tenders this his Bill of Exceptions which he prays may be signed, sealed & made part of the Record in this cause.

Silas Woodson (Seal)"

State of Missouri,
County of Platte, } Sct:

I, George W. Belch, Clerk of the Circuit Court, within and for the County of Platte aforesaid, Hereby certify that the within and foregoing Twenty two (22) pages contain a full, true, and complete transcript of all the Record and proceedings had by said Circuit Court in the within entitled cause, or herein the Mechanics' Bank is plaintiff, and Sarah Ann Fox, et alia, are Defendants, as fully as the same now remain of Record and on file in my office.

Witness my hand, and the Seal of said Court, at office in Platte City, Missouri, this First day of January, A.D. 1863.

George W. Belch. Clerk,
By A. S. Vogles. Deputy.

Fee Bill

George W. Belch, Clerk			18.30
do	This Transcript	9.50	
do	Certificate & Seal	.50	10.00
Graeme H. Hood, Coroner			3.60
Washington T. Woods, Sheriff -			1.80
S. P. McCurdy, Witness;			1.20
Total			$ 34.90

I, Geo. W. Belch, Clerk of the Platte Circuit Court hereby certify the foregoing to be a true and perfect statement of the fees that have accrued in the case of Mechanics Bank vs Sarah Ann Fox, et alia, as the same remains on the Fee Book in my office.

Geo. W. Belch, Clerk

By A. S. Fogus, D. C

Index.

Petition	pages	2, 3, 4, 5, 6.
Summons	"	6
Return	"	7
Record — Time to answer	"	7.
Record — Time to answer	"	8.
Record — Answer filed	"	8
Answer —	"	8, 9, 10, 11
Record — to foot Docket	"	12.
Record — Submission to Court	"	12
Record — Judgment	"	12, 13
Record — Mo for new trial	"	13.
Motion for new trial	"	13, 14
Record — Filing of Bill of Excep-	"	14
Record — " " Aff for Appeal		14, 15
Affidavit for appeal	"	15
Bill of Exceptions	"	16, 17, 18, 19, 20, 21, 22
Fee Bill	"	24.

41. 63

Mecha Bank

Sarah A Fox et al

Affirmed

Filed Jany. 22/63

Underwood, Clk