THE COMMERCIAL BANK OF KENTUCKY v BARKSDALE, WILLIAM H.
TOMBLINSON, HENRY T.
TOMPKINS, CORNELIUS AND
DARBY, JOHN F.
(W.H. BARKSDALE & CO.)

1865 ST LOUIS COUNTY 563/5

OLD 643/21

AFFIRMED

THIS WAS ON A BILL OF EXCHANGE, FOR $10.000. ENDORSED BY DARBY. BILL NOT PAID AT MATURITY AS PARK BANK OF NEW YORK HAD NO FUNDS FOR W.H. BARKSDALE & CO. IT STATED DARBY KNEW THIS AT AND BEFORE THE MATURITY OF THE BILL.

W.H BARKSDALE & CO. DENIED THAT BILL WAS DULY PRESENTED TO THE BANK, OR THAT PAYMENT WAS REFUSED, NOR BILL WAS DULY PROTESTED FOR NON-PAYMENT AND NO LEGAL NOTICE OF SUCH FACTS

The State of Missouri, ss.

The State of Missouri, to the Honorable the St Louis Court of Common Pleas **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the St Louis Court of Common Pleas in & for St Louis County

wherein The Commercial Bank of Kentucky is plaintiff and William H Parksdale & others are Defendants

in a Civil action manifest error hath intervened, to the great damage of said Plaintiff as by his complaint we are informed.

NOW, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of St. Louis, in the County of St. Louis, in said State, on the Third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

WITNESS, ~~WILLIAM S. GLANVILLE~~ Andrew W. Mead, Clerk of our said Supreme Court, at office in the City of Saint Louis, the 22nd day of July in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty three

Andrew W. Mead
CLERK.

$10 paid by B Duke Esq

State of Missouri }
County of St Louis } I, Leon J. Papin Clerk of the St Louis Court of Common Pleas, within and for the County aforesaid, in obedience to the command of the within writ, herewith transmit a full true and complete transcript of the records and proceedings in the within named cause as fully as the same remains in my office ~

In Testimony whereof I hereto set my hand and affix the seal of said Court at office in the City of St Louis this Tenth day of August A D 1883

Leon J. Papin
Clerk

1

State of Missouri } ss.
County of St Louis

Be it Remembered

that heretofore to wit on the Thirteenth day of March 1861 there was filed in the office of the Clerk of the St Louis Court of Common Pleas within and for the County aforesaid a Petition which is in words and figures following to wit:

The Commercial Bank of Kentucky vs. Wm H Barksdale Henry T Tomlinson & Cornelius Tompkins & John F. Darby Defendants.	In the St Louis Court of Common Pleas April Term 1861 St Louis County ss.

Petition

Plaintiff a corporation states that Defendants Barksdale Tomlinson & Tompkins the composing the firm of W. H Barksdale & Co made their Bill of Exchange herewith filed dated at St [illegible] in this State the the fourth day of Septemb[illegible] and directed the same to the Park Ban[illegible] New York (in the State of New York) and thereby [illegible]ested the said Park Bank in four months af[illegible] date to pay to the order of Defendant John F. D[illegible] by acceptance waived, the sum of Ten Thousand Dollars for Value

received, which bill the said defendant Darby then & there endorsed in Blank & the same was then delivered to Plaintiff

Plaintiff states that at the maturity of said Bill of Exchange the same was duly presented to said Park Bank for payment and payment thereof was duly demanded but was refused and the said Bill of Exchange was thereupon duly protested for non-payment of all which defendants had due legal notice

Plaintiff avers that at the maturity of said Bill of Exchange said firm of W H Banksdale & Co had no funds at said Park Bank to meet said Bill nor had they had any funds there for some time previous. Nor had said firm any reason to beleive the same would be paid. And Plaintiff avers that Defendant Darby was fully aware at & before the maturity of said Bill of Exchange that said Defendants composing the firm of W. H Banksdale & Co had no funds at the said Park Bank to meet the same, that they had made no provision to meet it & had no reason to suppose the said Bill of Exchange would be paid at Maturity

Plaintiff states that said Bill of Exchange is still due & wholly unpaid wherefore Plaintiff asks judgment for the amount of the same with statutory damages & Interest.

3

B. Duke & Wood & Hamilton for Pltff

Basil Duke - atty for Pltff makes oath & says he believes the above petition & the matters therein as stated are true

Basil Duke

Sworn to and subscribed before me this 12 Mch 1861

Leon J Papin Clk

And thereupon the following Summons was issued

Summons. County of St Louis ss

The State of Missouri - To the Sheriff of St Louis County - Greeting -

We Command you to Summon Wm H Backsdale, Henry T Tomlinson, Cornelius Tompkins & John F. Darby to appear before the judge of our Court of Common Pleas on the first day of the next term thereof to be held in the City of St Louis within and for the County of St Louis, on the First Monday of April 1861 then and there to answer the Complaint of the Commercial Bank of Kentucky as set forth in the annexed petition and have you then and there this writ

Seal

Witness Leon J Papin Clerk of our said Court with the seal thereof hereto affixed at office in the City of St Louis

this 13th day of March in the Year of our Lord eighteen hundred and Sixty one

Leon J Papin Clerk.

To the foregoing Summons the Sheriff made the following return to Wit:

Sheriff's Return

Executed this writ in the County of St Louis on the 14th day of March 1861 by delivering a Copy of Writ and Petition as furnished by Clerk to William H Barksdale. Executed further same day by delivering a Copy of Writ as furnished by Clerk to Henry T. Tomlinson & Cornelius Tompkins, Executed finally on the 15th day of March 1861 by delivering a Copy of Writ as furnished by Clerk to John F Darby

John H G Andrews Shff

by Ed J Castetts Dfty.

And on the First day of April 1861 the following Answer of Wm H Barksdale & Co was filed in words and figures as follows to Wit.

Answer of Defts Barksdale & Co

Defendants Barksdale Tomlinson & Tompkins answering Say, that they do not Know nor have they knowledge or information thereof sufficient to form a belief whether Plaintiff is a Corporation as alleged in Said Petition, Defendants admit the making of the Bill Sued on but deny that they are liable thereon They do not Know nor have they any Knowledge or information thereof sufficient to form a belief whether

Defendant Darby endorsed and delivered said bill to Plaintiff. They admit that said Darby endorsed the Bill in Blank

They deny that at the maturity of said bill of Exchange it was duly presented to said Park Bank for payment and deny that payment thereof was duly demanded or refused and they deny that said bill was duly protested for non-payment or that these defendants had any due or legal notice of any such facts. They State that each and all of said allegations are untrue

These defendants further answering say that at the Maturity of said draft they had assets and effects in the hands of said Park Bank, that they had had Money and funds in the hands of said Park Bank very shortly previous to a large amount and it is not true that Defendants had not reason to believe said bill would be paid, said averment is wholly and utterly Untrue. They State that between the date and the Maturity of said bill they had in said Park Bank more than Six Hundred Thousand Dollars & their bills Drafts and paper were honored and in good Credit at said Park Bank, and when said bill matured these Defendants had deposited and in the hands of said Park Bank bonds and other monied securities against which they Could draw & on which money Could be realized to the amount of more than Seventy Five Thousand dollars, and against which they from time to time drew their drafts, and ever since the Maturity

of said bill these defendants have had large sums of Money in hands of said Park Bank

These Defendants State that they are not liable on said bill of Exchange for any sum or amount whatever and ask to be discharged with their Costs &c

Sharp & Broadhead
Attys for Defts

Wm C Barksdale one of said Defendants on his Oath says that the foregoing answer and the matters therein as stated he believes to be true

W C Barksdale

Subscribed and Sworn to before me this 29th day of March AD 1861 as Witness my hand & Notarial Seal, (Seal) C. S Harden
Notary Public

And afterwards there was filed on the second day of April 1861 the following Answer of John F Darby one of the Defendants named in the foregoing Summons. Said Answer is in words and figures as follows to Wit:

Answer of Deft Jno F Darby

The Separate answer of John F Darby one of the Defendants to the Petition of the Plaintiff in the above entitled Case, the said defendant John F Darby answering for himself only, for answer to the said Plaintiffs petition filed in this Case, States, that the said Bill of Exchange endorsed in Blank by this Defendant and which was done by this Defendant writing his name across the back of the Same was done without Consideration and for the

sole accomodation of the drawers of said Bill of Exchange and which said Bill of Exchange is attached to the Petition filed in this Case and the same was not delivered by this Defendant to the said Plaintiff nor does this defendant know when, how or from whom said Plaintiff obtained or received said Bill of Exchange

This defendant John F. Daly denies positively that at the maturity of said Bill of Exchange the same was duly presented to the said Park Bank in New York for Payment, or that payment thereof was ever legally duly demanded and refused or that the said Bill of Exchange was therefor ever duly protested for Non payment or that he this defendant ever had any due legal notice thereof. This Defendant further says that from the time he endorsed said Bill of Exchange until its Maturity he had no reason to believe that the said Bill of Exchange would not be paid at Maturity nor did he Know that said Bill of Exchange had not been paid at maturity until a long time afterwards to Wit: on the Sixteenth day of February 1861, when he was so informed by a letter received that day from the Commercial Bank of Kentucky and when this defendant then and on that occasion instantly, expressly and promptly denied any liability on his part for or on account of the said Bill of Exchange

This Defendant further denies that he ever had any notice or Knowledge whatever from the date of the said Bill of Exchange to its Maturity that the

drawers had not provided funds for its payment at Maturity or that the Same would not be promptly paid at the Park Bank on presentation at Maturity On the Contrary this Defendant States that when the said Bill of Exchange which had been so drawn and was endorsed by him and from that time up to the date of the Maturity of said Bill of Exchange he had every reason in the World to believe and did believe and suppose the drawers of said bill had and would provide funds for the payment of said Bill of Exchange at its Maturity and that the same would be paid promptly at its Maturity at said Park Bank Wherefore said defendant asks for judgment with Costs

State of Missouri } ss
County of St Louis }

John F Darby

The said Defendant John F Darby being duly sworn makes Oath and Says, that he believes the facts as stated in foregoing answer by him subscribed are true

John F. Darby

Subscribed and Sworn to before me this 2nd day April 1861

L J Papin Clk

And at the November Term 1862 the following further proceedings were had in this Cause to Wit

Saturday January 24 1863.

Trial

Now at this day come the parties by their attorneys and waiving a Jury submit this cause to the Court and the Court after hearing the evidence herein being fully advised in the Premises finds the issues herein joined in favor of the Defendants Therefore it is considered by the Court

Judgment

that the Plaintiff take nothing by its Suit herein, that the Defendants go thereof without day and recover of said Plaintiff their Costs and Charges herein expended and have execution therefor. The Plaintiff files a motion

Mo for new Trial overruled

for a new trial herein which having been heard and fully considered by the Court is overruled

And on the Twenty Sixth day of January 1863 there was filed a "Bill of Exceptions" in words and figures as follows to Wit

"Bill of Exceptions"

The Commercial Bank of Kentucky vs Wm H Barksdale John F. Darby and others	In St Louis Court of Common Pleas

Be it Remembered

that on the trial of this Case Plaintiff read in

Bill of Exceptions

evidence the Bill of Exchange sued on which with the endorsements thereon is as follows.

10

Bill of Exchange

$10.000 W H Barksdale & Co No

Bankers 7986

Vignette

St Louis Mo Septem 4th 1860

Four Months after date Pay to the Order of John F Darby - acceptance Waived Ten Thousand # ——— Dollars

Vignette

for Value received

To Park Bank
5 Jany 4 New York

Vignette

W H Barksdale & Co.

Commercial Bank of Ky
No 23444
Dec Jany 4

And on the Back of the above Bill of Exchange is the following endorsement to Wit

Endorsement

"John F Darby" 23444

Plaintiff then read in evidence a copy of the Charter of the Commercial Bank of Kentucky, which is as follows.

Charter of Commercial Bank of Ky.

An act to incorporate the Commercial Bank of Paducah

Sec 1 Be it enacted by the General Assembly of the Commonwealth of Kentucky

That there shall be & is hereby established a bank by the name of "the Commercial Bank of Paducah" with a Capital of Five hundred thousand dollars to be divided into Shares of one hundred dollars each and to be Subscribed and paid for by individuals, Companies & Corporations in the manner hereinafter Specified which Subscribers

11

and Stockholders their Successors and assigns are hereby Created a body Politic and Corporate by the name and Style of "the Commercial Bank of Paducah" and shall so Continue a body politic and Corporate until the first day of May 1880.: and by that name under the restrictions hereinafter named shall be Competent to Contract and be Contracted with to Sue and be Sued plead and be impleaded, answer and be answered, defend and be defended in all Courts or places in all matters whatsoever as natural persons with full power to acquire hold possess use occupy and enjoy and the same to sell Convey and dispose of all such real estate goods effects and chattels as shall be Convenient for the transaction of its business or which may be Conveyed to said Bank as Surety for any debt or purchased in Satisfaction of any judgment or decree in favor of the bank or in the purchase of any property on which said bank may have a lien, And said bank may have and use a Common Seal, Change alter and renew the same at pleasure, and it may ordain & put in execution such by-laws rules and regulations for the good government of said Bank and the prudent and efficient management of its affairs as may be thought most proper. Provided that they be not Contrary to the Constitution and laws of this State or of the United States.

§ 2 The said bank shall have and keep its

principal office of discount and deposite in the town of Paducah; and it shall have one other office of discount and deposit in the town of Harrodsburg, Mercer County and one other at Versailles in Woodford County - the business shall be to loan Money, discount promissory notes and bills and deal in exchange; and it may issue bills and bank notes payable to bearer on demand at either of its offices of discount and deposit, but not of less denomination than one dollar; and it shall not issue any notes bills checks or orders payable to bearer other than such as are made payable on demand. The promissory notes made payable to any person or persons and payable and Negotiable at the principal office of discount and deposit or branches of said bank or at any other bank and endorsed to and discounted by said bank shall be and they are hereby put on the same footing as foreign bills of Exchange and remedy may be had jointly or sever=ally against the drawer and endorser and with like effect except as to damages and except that in regular course of administration they shall have no other or greater dignity or priority of payment than other Notes and the said bank shall not directly or indirectly deal or trade in any thing except in loaning Money and exchange and in Gold and Silver, Coin and bullion or in the sale of goods chattels rights, Credits really and truly pledged for Money lent.

and not redeemed in time or goods which shall be the proceeds of its lands

§ 3. The Bank notes to be issued by said bank shall be signed by the President of the principal Bank and Countersigned by the Cashier thereof and said bank shall be restrained from issuing checks or orders payable at either of its offices or elsewhere to any person or order or to any person or bearer with the intent that the said checks or orders shall circulate as bank Notes

§ 4. Said bank shall not at any time owe whether by bond bill note or other Contract an amount exceeding twice the amount of the Capital Stock actually paid in exclusive of sums due on deposit, and in Cases of excess the President and directors under whose administration it shall have taken place shall be liable for any and all the debts of said bank in their individual Capacities by joint or several actions or modes of proceedings usual in the Courts of this Commonwealth against them or any of them their heirs executors or administrators in any Court having jurisdiction thereof by any Creditor or Creditors of said bank and shall be prosecuted to judgment and execution, any Condition or agreement to the Contrary notwithstanding. Provided that if the President or any of the directors may be absent when the excess may be Contracted or Created or being present shall dissent from the act by which the excess is about to be Contracted or Created he or they shall not be liable under this

section if he or they shall within ten days from the creation of such excess or discovery thereof make affidavit of their absence or dissent and file the same for record with the recording officer of the County; and shall moreover within ten days give notice thereof in one of the public newspapers printed in this State and transmit a copy thereof to the Governor of this State for the time being and shall in said notice call a meeting of the shareholders which they are hereby authorized to do.

§ 5 Said bank shall not at any time suspend fail or refuse payment in gold or silver of any of its notes, bills or other obligations due and payable or any moneys on deposit, and in such case the officers in the usual banking hours at the office of discount and deposit where the same shall be payable shall refuse payment in gold or silver of the amount of any note then demanded and presented for payment, or the payment of any money previously deposited at such office and then and there demandable, by any person or persons entitled to receive payment of the same said bank shall be liable to pay damages at the rate of six per centum per annum on the amount thereof from the time of such failure or refusal until payment thereof, and for such failure or refusal or for any violation of this charter the same may be forfeited; and a scire facias may be sued out in the name of the Commonwealth by the Attorney General by order of the Governor for the time being and such proceedings may be had as to declare such forfeiture by the judgment of a Court and from and after the judgment of forfeiture said corporation shall cease to

exercise any of the powers and privileges hereby granted Provided said forfeiture shall not be construed to prevent said bank from suing and being sued and continuing its operations for the purpose of closing its concerns nor from making any contract that may be convenient and proper for that purpose

§ 6 The real and personal estate business property funds and prudential concerns of said bank and the administration of its affairs shall be under the direction management and control of five directors chosen as hereinafter directed, they shall be stockholders and after the first election shall have been stockholders at least three months previous to their election they shall be residents of this State and citizens of the United States, and after the first election they shall be elected annually on the first Monday in may in each year Each director shall be a stockholder in his own right, they shall hold their offices for one year and until their successors shall be chosen, the Directors shall be chosen by the shareholders who shall meet at the annual elections in the town of Paducah at such time and place as the directors for the time being shall direct, and notice of the time and place of holding the annual election shall be published in at least two authorized newspapers thirty days next preceeding the election The Election shall be by plurality of votes to be counted and read in public after all the votes are taken, the

election shall be Conducted under the direction of three Shareholders acting under Oath and previously Chosen by the directory, and not of their own body. No person who is a director or officer of another bank shall be elligible as a director of this bank. and any director or officer in another bank or while under protest in this bank for the non payment of debts shall be held to have vacated the office of director of this bank: nor shall two partners in trade be elligible as directors in this bank at one and the same time; and if the President Cashier or any director shall fail or become insolvent after his election or appointment he shall become incapable to serve as an officer in this bank and shall be held to have vacated his office or place; nor shall he be appointed to serve in this bank until his debts are paid and obtains a full discharge from the same If from any Cause an election shall not take place on the day fixed by this Charter the Corporation for that Cause shall not be dissolved but the stockholders may hold an election on any day the by-laws shall direct

§. 7. At all meetings of the Stock holders and at all elections under this Charter each and every Shareholder whether individuals, Companies or corporations shall be entitled to one Vote for each share held in their own right up to fifty shares and every five shares over fifty up to one hundred one Vote. After the first election no share shall entitle

the holder to a vote unless the same has been held by the person claiming to vote on the same at least three months prior to that time and so appear on the books of the bank. Any Stockholder entitled to vote may do so in person or by proxy, such proxy being granted to a Stockholder who is not the President or a director, the Clerk, Cashier, or Teller of the Bank, and any Stockholder who is not a resident of the United States shall not be entitled to vote on his Stock

§ 8. The Directors Chosen for the principal bank under the provisions of this Charter shall as soon as may be after the first and every annual election or other election of directors elect a President from their own body who shall preside at the board until the next election; and in case of the death absence or resignation or vacation of the office of President the residue of the directors shall choose a President pro tempore. They shall fill all vacancies which may occur in their own body during the time for which they were chosen, and appoint a Cashier, Clerk, Agents or Servants of the Principal bank, fix their Compensation define their powers and prescribe their duties and shall require of them such bonds and in such penalties as they may deem right, which bonds shall be laid monthly before the directory and entry made thereof on record and the directory may from time to time require such additional bonds and sureties with such penalties and Conditions as in their opinion will

secure the bank from loss or damage and all such officers shall hold their places during the pleasure of the President and directors

§ 9 The President and directors of the principal bank (any three of whom shall form a quorum for the transaction of business) may from time to time make such by-laws, rules and regulations for their own government and for the management and disposition of the property estate fund & business of the bank and all matters appertaining thereto which they may deem expedient not contrary to the provisions of this Charter or the by-laws rules and regulations which the stockholders at their annual or other meetings may from time to time prescribe

Provided however that a concurrence of a majority of all the directors shall be necessary in the adoption of any of the bylaws of the institution

§ 10. The President and Directors shall hold stated Meetings at least once a week on such days and at such hour of the day as they may from time to time appoint and at such other times as they may agree upon, and they shall attend called meetings at any time the President shall direct; and all questions before the board shall be decided Viva Voce; and on the request of any two members the Yeas & Nays on any proposition submitted shall be entered or recorded on the Journal of their proceedings

and no Vote shall be reconsidered when a less number are present than when the Vote was given

§ 11 The President and directors of the principal bank shall establish one branch viz at Harrodsburg in the County of Mercer and one other branch at Versailles in the County of Woodford which branch shall go into operation upon the same terms and Conditions as those herein prescribed for the branch at Harrodsburg. The Amount of Capital Stock which shall be employed at the principal Bank shall be two hundred and fifty thousand dollars, at Harrodsburg One hundred and fifty thousand dollars and at Versailles one Hundred thousand dollars.

Provided that when the Bank goes into operation if with less than the whole stock taken or whole amount paid in the Capital stock at any one of the points where such principal bank or branch may be located shall be applied to such bank or branch at such point

§ 12 There shall be five directors for the branches of said bank to be Chosen at the same time and Manner of the directors of the principal bank and to possess the same qualifications, one of whom shall be appointed President by the directors of the principal bank. The directors of the principal bank shall prescribe such rules and regulations for the govern=ment of its branches as they may deem right and

shall have power to enforce the same. The President and directors of the principal bank shall have power to fill any vacancy in the directory of the branches.

§ 13. The Directors of the principal bank shall appoint a Cashier of the principal bank and a Cashier of its branches. The President and Directors of its branches shall appoint a clerk and such other officers as the President & Directors of the principal Bank shall direct Not less than a Majority of the directors of said branches respectively including the President shall form a Quorum for the transaction of business

§ 14 No Dividends of the profits of said bank shall be declared until there shall be a Surplus of One thousand dollars for each, One hundred thousand dollars of the Capital Stock actually paid in and the Surplus or Contingent fund thus caused shall never be reduced below that ratio on all Stock paid for and it shall be the duty of the President and Directors of the principal bank on the first Monday in January and July of each year to declare a dividend of the profits over and above the Contingent fund aforesaid among the Stockholders payable to them on demand of which dividend and the time and place of payment notice shall be given and if at any time said President and Directors shall declare a dividend lessening the Capital Stock or lessening the Contingent Fund afs.d or by any Mismanagement

or neglect of duty shall cause any loss or deficiency of or in the Capital Stock of said bank the directors Consenting thereto or guilty of such mismanagement or neglect of duty shall be jointly and severally liable to the Stockholders or any Creditor of said bank who may be injured thereby. And the President and each Director shall be deemed guilty of such mis= =management or neglect or to have consented to such dividends unless he forthwith give notice of his dissent thereto or his absence from the institution in like manner as provided in the fourth Section of this Charter, and call a Meeting of the Stockholders as herein provided

§ 15 It shall be the duty of the Cashier of the principal bank on the first day of July after said bank shall have gone into operation and on the first day of July in each succeeding year during the Continuance of this Charter to pay to the Treasurer of this Commonwealth fifty Cents on each one hundred dollars of Stock held and paid for in said bank which shall be in full of all tax or bonus

Provided that the tax or bonus hereby proposed to be imposed on each share of stock in this bank is hereby set apart and forever dedicated to the cause of education on the Common School System and whenever the same or any part thereof shall be diverted otherwise by legislative enactment said Bank shall then be exonerated from the payment of any tax

or bonus whatever

§ 16 The Board of Directors of the principal Bank shall allow to the President thereof and to the President of the branches such reasonable Compensation for their services as they may from time to time deem just: but no Compensation shall be allowed any director of the Principal bank or branches unless the same be voted by the Stockholders at some regular meeting

§ 17. It shall be the duty of the President and Directors of the Principal Bank and they are hereby required as often as once in three months to cause a strict examination to be made of the accounts of the Cashier and a full and complete statement to be made & entered on the journal of the proceedings of the Board, and they shall cause the President and Directors of the branches to make a like examination and statement of the accounts of the Cashier once every three Months to be made and entered on the journals of their proceedings

§ 18. That it shall not be lawful for the Cashier Clerk, Teller or other subordinate officer of the principal bank or branches either directly or indirectly to engage in or carry on any other business than that of said Bank without the special license of the president and directors of the principal Bank nor shall any of them either directly or indirectly become indebted to said Bank either as borrower

endorser Surety or otherwise

§ 19. If the Cashier Clerk, Teller Agent or other officer of the principal bank or branches shall without the authority of the President and directors of the bank or branches as the case may be, appropriate any of the funds of said Corporation to his own use or to that of any other person or shall wilfully fail to make correct entries or shall knowingly make false entries on the books of the bank with intent to cheat or defraud the Corporation or any person, to hide or conceal any improper appropriation of the funds of the Corporation the officer so offending shall be deemed guilty of Felony and shall upon conviction thereof be sentenced to confinement in the jail and penitentiary of this State for a period of not less than five nor more than twenty years.

§ 20 The President and Directors of the principal Bank shall keep a record or journal of all their proceedings which they shall produce to the stockholders when by them demanded at any regular meeting, and they shall be open to inspection to any Committee appointed by the Legislature and the President and Directors of the principal bank shall cause the President and Directors of the branches to keep a record or journal of all their proceedings which they shall produce to the President and Directors of the principal Bank at all times or to any person or persons authorized by them to inspect

the Same, and which shall be open to the inspection of the Stockholders at any general Meeting or to a Committee appointed by the Legislature

§ 21. It shall be the duty of the President and Directors of the principal bank during the first week of the Session of the Legislature in each year to transmit to the Secretary of State an accurate and just State=ment of the Condition of the principal Bank and branches as it existed on the first day of the preceding month. Which Statement shall specify the amount of Capital Stock actually paid in and the amount not paid in and the value of the real Estate be=longing to the Bank and its Costs, the total amount of debts due to & from the Bank, the amount of Gold and Silver and other Coined Metal & bullion on hand, the amount deposited, the amount of bills in Circulation and the amount of bills on hand of other incorporated banks. the amount of Notes in Circulation of each denomination issued by the bank, the rate and amount of dividend and profits made by the bank with the amount of the Surplus profits or Contingent fund which Statement the Governor of the Commonwealth shall cause to be laid before the legislature of Kentucky and they shall when required by the Legislature report all bad and doubtful debts

§ 22 The President directors, Cashiers, Clerks Tellers and other officers of the Principal Bank and

branches previous to entering on the discharge of their duties, shall take an Oath before some Justice of the peace of this State faithfully honestly impartially and to the best of their Skill and judgment to discharge all the duties of their respective offices and Stations under this Charter or which may be required of them by the by-laws rules and regulations of the Corporation

§ 23 Said Bank shall not contract for or receive greater rate of interest than at the rate of Six per Cent per annum for the loan or forbearance of Money and interest in promissory notes negotiable and payable at said bank and their discount shall be calculated on the true time such notes have to run including three days of grace and shall be paid in advance and on Banking principles in Conformity with Rowletts tables of discount and interest

§ 24. That the President and Directors shall issue Certificates of Stock to the holders thereof for so much as shall be paid for, and the Shares of the Capital Stock of said Bank shall be Con=sidered and held in law as personal property and assignable and transferable only in such manner and at such place or places as the President and Directors of the principal Bank shall by their by-laws prescribe

§ 25 The Certificate of Deposit, Bank bills or Notes, bills of Exchange, post notes, or orders issued by said bank shall be signed by the President and

countersigned by the Cashier promising or requesting the payment of money to any person or persons and to order or bearer as the case may be, shall be obligatory on said bank altho' not under its Seal and such of said Notes or bills as shall be payable to order shall be transferable by assignment and those made payable to bearer by delivery

§ 26. That the General meeting of the stockholders shall be held annually on the first Monday in May in each year in the town of Paducah at the time of the annual elections, to which meetings the President and Directors of the principal Bank shall present an accurate statement of the Condition & affairs of the bank and general meetings of the stockholders shall be called as provided in the Charter or by the president & directors of the principal bank when they esteem it desirable or by any number of stockholders the by-laws of the Corporation shall require

§ 27 The Legislature shall have the right to investigate the situation and affairs of said Bank by any Committee they may appoint for that purpose from time to time

§ 28 The Circuit Court of the County where said bank shall be located shall have jurisdiction to try the forfeiture of this Charter for the violation of any of the provisions of the same, The proceedings shall be by Scire facias alleging and specifying the acts of

forfeiture relied on, and shall only be sued out at the instance of the Attorney General when directed to do so by order of the legislature or the Governor for the time being from the decision of which Court appeals may be taken as in other cases

§ 29. That William F. Norton, R. S. Ratcliffe L. S. Trimble, John W. Crockett Jr. J. C. Calhoun G. J. Morrow, H. S. Lewis, D. Watts, and Jesse H. Gardner of the town of Paducah, James Taylor Isaac N. Thompson, Christopher Graham Sanford McBrayer, Christopher Chenn, Elijah Hutch=
=inson, William Thompson of the town of Harrod=
=sburg and County of Mercer, David Thornton Richard Shipp Jr. Medley Shelton James C. Shouse and Geo W. Carter of the town of Versailles Woodford County are hereby appointed and Constituted Commissioners to open books and receive Subscriptions for the Stock of said bank at their respective places; and any three of them shall superintend the election of the first board of Directors

§ 30 The said Commissioners or a majority of them shall have power and they are authorized and required at such time as they may deem it expedient after giving twenty days notice thereof in some of the newspapers printed in this State to open books for the subscription of Capital Stock of said bank at Paducah Harrodsburg and

Versailles and such other places as the Commissioners may deem advisable and cause the books to be kept open until at least seven hundred and fifty shares of stock shall have been subscribed for the Bank at Paducah and seven hundred and fifty shares of stock shall have been subscribed for the branch of said bank at Hanod=-burg and seven hundred shares of stock shall have been subscribed for the branch at Versailles when the same may be closed, the Commissioners at Paducah may appoint Commissioners in any town or City in the United States to receive subscriptions of stock

§ 31 The Commissioners or President and Directors of the Mother Bank may cause the books for the subscription of stock to be re-opened whenever and wherever they may be requested to do so by the Commissioners or a majority of them at the place where the branch is established as aforesaid or by the President and Directors of said branch which may have been organized with less than the whole of the Capital Stock herein before allotted to them; and the said books may be kept open or if closed may from time to time be re-opened upon request as aforesaid until the whole amount of Capital Stock of said bank shall be taken

§ 32 If the whole five thousand shares of Capi=-tal Stock shall not be taken when the books of subscription shall first be opened by the Commissioners the President and Directors may

cause the books to be opened from time to time and at such times and places as they may direct and cause them to be kept open if they choose until the whole balance shall be taken, and the President and directors may require such premium on the stock sold at the re-opening of books as they shall deem right and such premium shall be the property of the Bank.

§ 33 When not less than twenty two hundred shares of the Capital Stock shall have been taken and the Commissioners shall have closed the books, it shall be their duty to give notice in some public newspaper printed in this State and appoint a day and place in the town of Paducah for the election of the first board of directors for said bank who shall hold their offices until the next succeeding annual election and not less than thirty nor more than sixty days notice shall be given of the time & place of electing the said board of Directors and some three of the Commissioners shall act as inspectors of the election and shall take the proper Oaths and perform all duties of inspectors of elections in like Cases

§ 34 The payment of the shares of the Capital Stock held by individuals companies and Corporations shall be in Gold and Silver and at the times and in the manner following to Wit: Five Dollars on each share to the Commissioners at the time of subscribing: and Five Dollars on each share within

ten days after the election of the first Board of Directors and twenty dollars on each share within sixty days thereafter; and the residue shall be paid in such instalments as the President and Directors of the Principal Bank shall require

Provided that no more than twenty dollars shall be called at any one time on each share nor shall the time between the calls be less than one hundred and twenty days.

§ 35 Should any of the subscribers to the Capital Stock of said bank fail or refuse to pay for their stock as herein provided the President and Directors first giving public notice in at least two newspapers printed in this State for the space of thirty days by a resolution entered on the records may forfeit such stock and proceed at such time as they may deem expedient to re-sell the same and all partial payments made on any stock which shall be forfeited shall be held for the benefit of the bank.

§ 36. So soon as sixty thousand dollars of Capital Stock shall have been paid in by individuals Corporations and Companies in Gold or Silver the President and directors shall cause the Governor of this Commonwealth to be notified thereof who is hereby authorized to appoint some suitable person to count the money so paid in as Capital stock and to take the Oath of the President and not less than two of the Directors that the same has been paid in as stock

bona fide and make due return thereof to him, and on such appearing to be the fact the Governor is authorized to issue his proclamation that the amount hereby required to be paid in and in the funds required has been done and the said bank is authorized to commence operations as a banking institution and from and after the first proclamation it shall be lawful for said bank to commence business

§ 37. If any stockholder or stockholders in said bank who shall not be a resident or residents of the United States shall vote or authorize any person to vote at the election of Directors for said Bank upon stock held by such person or persons not a resident or residents of the United States or which may be held by others for his and their use and benefit, that such stock so held and may have been voted upon or authorized to be voted upon at any of the elections for directors of said bank shall be forfeited by such stockholder or stockholders to and for the use of said bank.

§ 38. The Bills or Notes of said Corporation originally made payable to bearer shall be receivable in all payments to the State and on account of County levies so long as it shall redeem its notes in gold or Silver on demand unless otherwise directed by law.

§ 39 No Person shall be elligible to the office of Director in the principal bank or branches who is not the owner of stock in his own right at the time

of his election or appointment

§40 It shall not be lawful for the President or any Director of the principal Bank or branches to become bound as Surety or accomodation endorser on any note or bill discounted in said Bank: and a violation of any of the provisions of this Section shall subject the person violating the same to the penalty of two thousand dollars to be recovered by action or petition in the name of the Corporation and for their use and benefit

§41 Said Bank shall not make any loan of money or discount any note or bill on the pledge of the stock of said bank whatever: and no Stockholder shall be allowed to pay any debt he may owe the Bank by the Surrender of the Stock of the Bank until all the notes of the Bank shall have been redeemed and all the debts of the Bank paid and Stockholders who shall become indebted to the Bank shall be compelled to pay their debts in all respects as other persons dealing with the Bank: nor shall any Stockholder be allowed to make payment of the shares of Stock held by him by means of a loan or loans obtained from said Bank

§42 The President and Directors of the principal bank shall cause their Cashier to make semi-annual reports on the first day of January and July in each year in alphabetical order of all the debts due said bank setting out the amount

due by each individual with the names of the endorsers or Securities and a note of the other Securities the date of the notes or bills and when payable and they shall Cause the Cashiers of the branches to make a like Complete memorandum in alphabetical order of all the debts due at the branches by each individual with the names of the endorsers or other Security, and the date of the notes and bills and when payable: one Copy of which shall be retained at the branch: another Copy shall be transmitted to the principal Bank: and these memorandums shall at all times be open to the examination of the President and Directors of the principal Bank and branches.

§ 43. The President and Directors of the principal Bank shall have power and authority to purchase and to transfer any Scrip or bonds which may be issued by the State. Provided not more than one half of the Capital Stock of said bank paid in be held in such Scrip or bonds at the same time

§ 44. Notes to be issued by the Bank of a denomination less than five dollars may be signed by the President or Cashier of said bank without being Countersigned by any other officer

§ 45 The President and Directors of the principal bank may under the direction of such agent or agents as they may think proper to appoint and keep open books for the transfer of the stock of

said bank at such places and under such rules and regulations as they may deem proper

§ 46 Nothing in this Charter or act of incorporation shall be construed so as to prevent the Bank to be established at Paducah from going into operation whenever seventy five thousand dollars of Stock shall be subscribed and taken and the sum of twenty two thousand five hundred dollars shall have been paid in as required in sections thirty three and thirty six and the branch at Hartsville shall go into operation whenever seventy five thousand dollars of Stock shall have been subscribed and taken for said branch and the amount of twenty two thousand five hundred dollars shall have been paid in; and the branch at Versailles shall go into operation whenever the seventy thousand dollars of stock shall have been subscribed and taken for said branch and the amount of twenty thousand dollars shall have been paid in

G Robertson Speaker of the
House of Representatives
J B Thompson Speaker
of the Senate

Approved Jany 3. 1852
By the Governor — L W Powell
D Meriwether Secretary of State

.95.

An act Supplemental to an act incorporating the Commercial Bank of Paducah.

Be it Enacted by the General Assembly of the Commonwealth of Kentucky

That the act passed at the present Session entitled "An Act to incorporate the Commercial Bank of Paducah" be so amended as to change the name and Style of said bank to that of "The Commercial Bank of Kentucky" and that all the right and privileges granted by said Charter to the "Commercial Bank of Paducah" is granted to the "Commercial Bank of Kentucky"

G Robertson Speaker of House Representatives
J B Thompson Speaker Senate

Approved Jany 2nd 1852
By the Governor. L W Powell
D. Merriwether Secretary of State

Commonwealth of Kentucky
Office of the Secretary of State

I Mason Brown Secretary of State for the Comlth, aforesaid and Keeper of the Archives thereof do hereby Certify that the foregoing and annexed pages Contain a true Copy from the enrolled Bills now on file and of Record in my office

Seal

In Testimony Whereof I have hereunto set my hand & affixed the seal of my office this 28th day of August 1857

Mason Brown Sey.

36.

Commonwealth of Kentucky
Executive Department

I Charles S Morehead Governor of the Commonwealth aforesaid do hereby certify that Mason Brown is Secretary of State for said Comlth duly commissioned according to law; that his signature is genuine and his certificate hereto annexed is in due form and that full and credit is due to his official acts

In Testimony whereof I have hereunto set my hand & caused the seal of the Commonwealth to be hereunto affixed this 28th day of August A D 1857 and in the 66th year of the Commonwealth

(Seal)

C S Morehead

By the Governor

Mason Brown
Secretary of State

Plaintiff then read in evidence so much of the following depositions not excluded with exhibits & papers attached to the same to wit

Deposition of Pascal H Turney
" " E W L Boyce
" " Charles A Macey
" " S K Camp
" " Joseph B Vamam two depositions
" " Mathew W. Cole
" " James M Dallam

37.

" " Francis W. Myers.

These depositions are in words and figures as follows: to wit.

P. W. Turney

Paschal W Turney of the age of 35 years or thereabouts being first duly sworn to testify the truth the whole truth and nothing but the truth, deposes and says -

That he is a Notary Public of the State of New York for said City & has been such for several years last past Joseph B Varnum Jr. my partner & myself are the Notaries for the Metropolitan Bank in said City. On the fifth day of January 1861 We received from the said Bank for presentment & protest a draft for ten thousand dollars drawn by W H Barksdale & Co upon the Park Bank of New York a copy of which is hereto annexed Marked "A" I presented this draft in the afternoon of said 5th January 1861 at the Park Bank in this City to the Cashier of said Bank. I demanded payment of the same which was refused and on the same day said draft was protested for non payment in the name of the said Joseph B Varnum Jr as Notary Public he being at that time & ever since has continued to be a Notary Public of the County of New York. the fourth day of January 1861 was a public fast day appointed as such by the President of the United States & the Governor of the State of New York & on that day all the Banks of the City of New York & public offices were closed & No business transacted by them

Cross. Examn.

(Being Cross Examined by Mr Knox he says.)

That the said draft was held by the Metropolitan Bank whether for Collection or not I don't Know of my own Knowledge but beleive it was held for Collection

The last clause (as to Witnesses belief) being objected to by Mr Knox as incompetent evidence. Witness says that said draft after its protest was returned to the Metropolitan Bank on Monday the 7th January 1861. I never made a presentment of this draft on any other day than the 5th of January 1861 I have no other Knowledge of the 4th of January 1861 being a fast day than from the Proclamation of the President & Governor & its being observed as such

Re. Examn.

(Being re-examined by Mr Brinsmade he says that notices of the Protest of this draft for the Drawer & Endorser were prepared by one of our Clerks & the same were examined by me & placed in envelopes one of such Notices being directed to W H C Barksdale & Co St Louis Missouri & a like notice for the same parties with notices for both endorsers were enclosed in an envelope directed to L W Flournoy Pa Paducah Ky. these notices were all delivered to Mr Vanum for the purpose of being mailed by him they were respec=tively dated January 5th 1861 & described the draft by its date, amount, name of the Drawer and Draw=ees. & stated that the same had been that evening protested for non payment & the demand & refusal of

39.

payment thereof & that the holders looked to the persons to whom such notices respectively were directed for payment thereof, these notices were given in the name of J B Vanum Jr. as Notary Public.

On Re Cross, by Mr Knox he says –

Re-Cross. Exn

That said draft was was presented to the Park Bank some time after three o'clock of said 5th Jany 1861. the business hours of Banks in New York are from 10 o'clock A M to 3 o'clock P M for the transaction of their ordinary business but for the presentation of Commercial paper by Notaries their business hours are deemed extended so long as the Banks remain open, the Notaries do not get their notes till after three o'clock – The latter clause as to Notaries is objected to by Mr Knox – Witness adds – That the Park Bank was open on the 5th January 1861 & the Cashier was there when I presented the Draft the Clerks were there writing up their books & all the operations of the Bank were going on except the receiving & paying Money over the Counter. I have often received payment of Monies on drafts on presenting the same after three o'clock of the day, both in Checks & Certificates of Notes & drafts payable at Banks in this City. I mean that daily I have notes & drafts certified by Banks on presentation by me as Notary for payment after three o'clock on the

.40.

day of Maturity. I have some time had them paid in money, sometimes in Bills, the usual practice is to Certify in Case of payment, the 5th Jany 1861 we had a large number of bills & notes to protest the presentation by me was made some time between 3 & 5 P.M of that day the notice of protest for W. H. Barksdale & Co. was directed to St Louis this was the only one directed there all the others were endorsed to L M Flournoy Pt Paducah Ky and inside were directed to the respective parties without the addition of their address if any other notice directed to any other party in St Louis had been mailed I should have known it I saw the notices in the hands of Mr Varnum on the Morning of the 7th January 1861 I am sure no notices were mailed before the morning of the 7th Jany 1861 Mr J B Varnam my partner is now at Washington where he has been for a month past & is not expected to return here before Friday night next

P W Turney

Exhibit "A." referred to in the annexed deposition

Exhibit A. $10.000 W H Barksdale & Co No 7986

Bankers

St Louis Mo Septem 4. 1860

Four Months after date pay to the order of John F Darby acceptance Waived Ten thousand dollars for value received

Commercial Bk of Ky No 6355 Due Jan 4/7 1861

.41. W H Barksdale } B Davidson }, W H Barksdale & Co

To Park Bank New York

endorsed 23444 John F Darby

Pay to order of G J Seney Cash

P W Turney L M Flowmoy Presb.

Chas. A. Macy

Charles A Macy of lawful age being duly affirmed & examined on the part of the Plaintiff deposeth and Saith.

That he resides in Said City & is Cashier of the Park Bank - Have been such for the last five years & upwards, that is an Institution Created by the laws of the State of New York authorizing the business of banking.

The evidence in regard to the Creation of the Bank objected to by Mr Knox. -

W H Barksdale & Co had no funds in Said Bank on the 3rd 4th or 5th of January 1861 they made no provision for the payment of any draft of $10.000 falling due on any of those days Said Bank was Closed on the 4th of Jany 1861 the whole day on account of its being a holiday, a fast day authorized by the President of the United States under a proclamation

Cross Exn

Being Cross Examined by Mr Knox he says - He Knows it was such holiday by the fact that it was noted as such on our books & Seeing the proclamation in the papers, The

Banking hours of the New York Banks are from ten A M to 3 P M. there is no general business done in the Bank after 3 P M other than closing up the business of the day. but if a man comes in after that hour to do business & we are there we do it - it is not the custom to pay money after that hour but we some times certify checks or drafts after that hour for the four months preceding the closing up of our business with W H Barksdale & Co they did considerable business with our Bank, my impression is that in the fall of 1860 there was a large amount of collaterals in our Bank belong=ing to W H Barksdale & Co. I think he had some Missouri Bonds whether of the State or County or both I don't recollect a memorandum of all which is to be hereto annexed marked B & signed with my name

Charles A Macy

The following is the exhibit referred to in words and figures as follows to Wit

The Park Bank

Exhibit B

New York May 27. 1861

It appears that this Bank received from and paid to William H Barksdale & Co from the 1st of Sept 1860 to the 5th of January 1861 Six Hundred & fifty nine thousand three Hundred & Six 31 Dollars. the account of W H B & Co.

43.

was closed with this Bank in Feby 1861 and on the 14th Feby 1861. the Notes owing to this Bank by W H Barksdale & Co were paid amtg. to thirty five thousand five hundred & Eighteen Dollars and the securities were delivered to the Continental Bank of New York but I have no record of the amount or what they consisted of.

Charles A Macy Cashr

S. K. Camp.

Samuel K. Camp of lawful age being duly sworn & examined on the part of the Plaintiff deposeth & saith.

That he resides in Brooklyn & is the Collection clerk of the Metropolitan Bank of New York there was in said Bank a draft for $10.000 drawn on the Park Bank becoming due on the 5th of January 1861 that was the only one of that denomination in our Bank on the 3d 4th or 5th Jany 1861 the 4th January 1861 was a "Fast day" & said draft would have been due on that day but for its being a "fast day"

Cross Examined by Mr Knox.

Cross Examn. I know that there was but one draft for 10.000 at the time spoken of, by the fact of its being on record of the Bank. I had no recollection of the fact other than the Record. I examined the record to day to support this affidavit. I

did it for my own satisfaction, when I made that examination I knew that I was to be examined in this Case. the record spoken of was kept by me & correctly kept

Saml K Camp.

J. B Varnum Jr on the part of the Deft.

Joseph B. Varnum Jr being first duly sworn says that he is the notary Public whose deposition has heretofore been taken in this Case, I was a Notary Public in January 1861, I mailed the notice of the dishonor & protest of the note mentioned in that deposition in the morning before the close of the mail which departed on that day for the places to which the said notices were addressed respectively and during my business hours on that day which commenced about that time at 9 o'clock A M these notices were mailed between the hours of 10 & 11 o'clock A M of that day. I always had the Post office advertisements of the arrival & departure of the Mails posted up in my office & these were corrected from time to time as changes took place at the Post office which was the only knowledge I had of such arrivals and departures I was acting at the time as Notary for the Metropolitan Bank of this City

Joseph B Varnum Jr.

J. B Varnum Jr for Plaintiff

Joseph B. Varnum Jr being first duly sworn

45.

Says,

That he is a lawyer of twenty years standing in this State. he has been a lawyer for the last fifteen years. On the 7th day of January 1861 the 6th being Sunday. I deposited in the Post office of the City of New York notices of Protest of a Draft a Copy of which is hereto annexed marked "A" directed as follows. One directed to W H Barksdale & Co St Louis Mo and one directed to L M Flournoy Pres. Paducah Ky enclosing therein a duplicate of the above notice to W H Barksdale & Co and also a notice to John F Darby an endorser on said Draft with whose place of Residence I was unacquainted the Postage on said notice was prepaid & they were deposited before the departure or closing of the Western Mail of that day. There notices were signed by me as notary Public which Office I held at the time. By a law of this State drafts drawn upon Banks are not entitled to Grace and by the law as decided by the Courts of this State a draft not entitled to grace matures on the day after the Sunday or any fast day appointed by the President or Governor upon which the day of payment would otherwise fall

Jos B Varnum

F M. Myers. Francis M Myers. being duly sworn Says—

That he is a clerk in the Metropolitan Bank of said City & has been such for nearly five years last past my duty in that Bank is presenting notes at Banks for payment & keeping an entry of all drafts presented

by myself and others. On the fifth of January 1861 I made entries of drafts presented on that day by the Metropolitan Bank on the Park Bank of this City and on that day a draft for $10.000 was pre= =sented to the Park Bank for payment & was not paid, I know that it was not paid by a private mark in red pencil opposite the 10.000, the amount of said Draft made in the book of notices of the Metropolitan Bank in my own handwriting and now before me, On the fifth of January 1861 there was eight notes and two drafts presented for pay= =ment by the Metropolitan Bank to the Park Bank one of said drafts was for 2.500 and the other for $10.000 all of which were entered in the said memorandum book in my handwriting, either on the evenning of the 3d or the Morning of the 5th of January 1861. I also know that payment of said draft was refused by the initial "B" on the back of said $10.000 draft in the handwriting of Boyle a Clerk in said Metropolitan Bank on the fifth of January last, which is now shown to me, said Boyle was named Edward H. L. Boyle he is now dead & died about three weeks ago it was a part of said Boyle's duty in our Bank to present drafts & notes to the Park Bank, I am well acquainted with the handwriting of said Boyle having often seen him write & the initial letter B on the back of the draft now shown me is his genuine handwriting

47. a copy of said draft is hereto annexed marked "A" & signed by me F M Myers.

Exhibit "A" $10.000 W H Barksdale & Co No 7986.

Bankers.

St Louis Mo Septem 4th 1860

Four months after date pay to the order of John F Darby acceptance Waived Ten Thousand Dollars for value received

W H Barksdale & Co

To Park Bank

New York

5 Jany #

W H Barksdale
B Davidson

(Endorsed as follows)

John F Darby 23444

Pay to order of G J Seacy Cashr
L M Flournoy Prest
J B Warnum Jr. F M Myers

Commercial Bk of Ky No 6259 Dec 4/7 1861

Mathew W. Cole, of lawful age being sworn and examined on the part of the plaintiff deposeth and saith as follows viz-

M W Cole.

Questions by Plffs. Attorney.

1st = Please state your residence and occupation

Answer = My residence is Paducah Ky and my occupation is and has been for the last seven years the first Clerk in the Commercial Bank of Kentucky at Paducah Kentucky

2nd Please State what you may know in

regard to a Bill of Exchange for $10.000 drawn by Wm H Barksdale & Co upon Park Bank in New York City dated Septr 4th 1860 and owned by the Commercial Bank of Ky

Answer – on the 22nd day of September 1860 the Commercial Bank of Kentucky at Paducah discounted a Bill drawn by Wm H Barksdale & Co of St Louis mo on Park Bank New York (acceptance waived) Endorsed by John F Darby said Bill dated the 4th day of September 1860 and drawn at 4 months after date for the sum of Ten Thousand Dollars and entered by me on the Bill Book of said Bank.

3rd Q. State what you may know if any thing with regard to said bill having been paid or if not paid having been protested for non payment

Answer: On the 14th day of January 1861 the Commercial Bank of Kentucky at Paducah received a Notice directed to L W Flournoy Pres from Joseph B Varnum Jr Notary Public Metropolitan Bank Building 110 Broadway New York Dated New York Jan 5. 1861 setting forth the non payment of a Bill drawn by Wm H Barksdale & Co upon Park Bank for Ten Thousand Dollars dated Sept 4. 1860.

4th Q. – Please file said notice with your deposition and mark it Exhibit "A"

Answer – The paper marked Exhibit "A"

is the notice referred to by me and the Memorandum on the Back of said notice was made by me on the said 14th day of January 1861.

5th Was or not the paper referred to the only notice received by the Bank?

Answer - The Commercial Bank of Kentucky Paducah also received a notice directed to John F Darby of the same purport of the one as above stated directed to L M. Flournoy President

6th Please State what was done with the notice directed to Darby

Answer - On the 14th day of January 1861 when said Notices directed to John F Darby and L M Flournoy Prest was received I placed said notice of Jno F Darby in an Envelope and directed the same to said John F Darby St Louis Mo and placed in the Post office at Paducah on same day Postage pre paid

7th By whom was the notice to Darby signed and what were its Contents?

Answer = It was signed by Joseph B Vanum Jr Notary Public and the Contents were the same as the notice herewith filed Exhibit (A) except the address, part was written and part was printed

Cross Examination by Defendants Counsel

Cross Exam^n Question = How do you know that the Bill of Exchange spoken of by you was discounted by the Bank for Wm Y C Barksdale & Co.

Answer= By the face of the Bill itself
By same= How do you know that Barksdale & Co received the money from the Bank for said Bill?
Answer= It was placed to the Credit of W H Barksdale & Co on the Books of said Bank
By Same= Is this all that you know about it?
Answer= On reference to the Books of said Commercial Bank of Ky a package of Bank Notes for the nett proceeds of said Bill was sent by Steamer Thos Scott to Cairo Ills & thence to go by Express directed to Messrs Wm H Barksdale & Co St Louis Mo
By Same= Is this all you know about it?
Answer= It is.

How do you know that the notice referred to & filed as Exhibit "A" was received by the Commercial Bank the Plaintiff on the 14th day of January 1857?
Answer= It is and has been the Custom of the Cashier and President of the Commercial Bank of Kentucky when every morning after receiving the Mail from the Post office to hand over to me all the Letters and other matters which Entries were to be made from, also notices of Protest &c When I on examining said Letters & Notices would make the necessary Entries and when notices of Protests were received would Envelope them and direct them to the respective persons and Endorse on the Back of the Notice directed to the Bank, when received, and

51.

for whom & when & where directed and placed in the Post office Postage Prepaid, and from reference to the Memo. made on back of Exhibit (A) said Notice was received on the 14th January 1861

By Same= Is this is the only means of Knowledge that you have that said notice was received on the 14th of January 1861?

Answer= It is.

By Same= Was the notice directed to Deft Darby received by the Bank on the 14th January 1861?

Answer= The notice to Jno F Darby was received at the same time and with the notice directed to L M Flournoy Prest and must have been received on the 14th January 1861 from the Memo. made on the back of Notice L L Flournoy Prest made by me on the 14th Janry 1861

By Same= Did you take the notices out of the Post office on that day 14th Jan 1861?

Answer= I was not in the habit of taking the letters out of the Post office for the Bank as the Cashier or President generally brought the letters from the Post office

By Same= Did or did you not take this letter containing these notices referred to out of the Post office

Answer= I do not know as I very seldom rec'd any letters from the Post office for the Bank and do not now know particularly anything about

who took the letter out of the Post office all I know is that said letter was handed to me either from the Cashier or President

By Same- Do you know of your own knowledge who received said letter or on what day it was received

Answer= I do not.

By Same= Don't you remember that other notices or notice was handed to you at the same time with these referred to?

Answer I do not now recollect whether any other notices were handed me on that day or not

Q. By Same= Don't you remember that you also received a Notice directed to William H Barksdale & Co.?

Answer= There was no notice received by the Bank for Wm H Barksdale & Co but by reference to the notice to L W Flournoy Pest it was endorsed on the head of the notice, Mailed to Drawers St Louis Missouri

Question by Same= Are you positive that you did not direct a notice to Wm H Barksdale & Co St Louis Mo? relating to the non payment of this Bill

Answer= I am as none was received by me to be sent him

Question by Same= Did you not enclose a notice

to Barksdale & Co. and mail it to him at St Louis Mo?

Answer= No.

Question by Same= Are you certain that you placed the notice to Jno F Darby in the Post office on the 14th day of January 1861?

Answer= I am.

By Same= At what time of the day did you place the said Notice in the Post office?

Answer= I do not now recollect whether it was in the forenoon or afternoon but if I was not very busy I generally went to the Post office in the forenoon when I had notices to send off and sometimes waited untill after the Bank closed at 2 o'clock P M I am not certain now at what hour the notice was placed in the Post office

By Same- Do you remember at what time the mail for St Louis closed on the 14th day of January or what was the usual hour of closing at that time

Answer= I do not know certainly I only know that the mail for St Louis is carried from Paducah to Cairo by the Steamer Thos Scott and said Steamer generally leaves Paducah every morning at 8 or 9 o'ck A M.

Q. by Same= At what Hour does the Bank of which you are clerk open for business & at what hour do you go there in the morning?

54

Answer= The Bank opens at 10 o'clk A M and I generally go there a short time before 10. o'clk A M

Re. Examined by Plff's Atty.

Re. Examd. 1st Do you or not know when the mail taken by the Thos Scott was usually made up whether on the morning of her departure or the night before at the time you speak of Jan 14th 1861?

Answer= I do not-

2nd At what time of day did the Steamer Thos Scott leave Paducah on that day?

Answer I do not know-

3rd What was her usual hour of departure at that time

About 9 o'clk A M

4th State again distinctly upon what day the notice sent to Darby was received by you?

Answer. On the 14th day of January 1861.

M H Cole

For Exhibit ("A") attached to this deposition See page 5 of.

James L. Dallam of lawful age being sworn and examined on the part of the Plaintiffs deposeth and saith -

J. L. Dallam. Questions by Plaintiffs' attorney.

1st State your residence and occupation

Ans. Paducah Ky. & am Cashier of the Commercial Bank of Kentucky

2nd How long have you been Cashier of said Bank?

Answer= Since its organization in 1852.

3rd Q. State all you may know concerning the reception by the Said Bank of the notices of Protest referred to and described in the foregoing deposition of W W Cole which you will please read.

Answer= I have read Mr Coles answer on this point and affirm what he has said, I took 1st letter or notices of Protest for the President L M Flournoy & Darby out of the Post office in Paducah myself on the 14th January 1861 & handed them to Mr Cole the 1st Clerk to notice & make his Entries by

4th Q. Please examine the paper marked Exhibit ("A") and State whether or not it is the notice which was received by you on that day

Answer= it is the Same

5th Q. – State whether the notice directed to Darby was or not Similar to the paper marked Exhibit ("A") in its Contents

Answer= Yes. Sir.!

6th Q. At what time of day were the Said notices received by you?

Answer= Between 9 & 10 O'clock A M.

Cross Examination by Defts Atty

Cross. Examn. Question= Did not you receive a notice directed to Wm H Barksdale or Wm H Barksdale & Co regarding the non-payment of the draft

Answer= I did not!

Quest.= Did you or any officer of the Bank to

your Knowledge send a notice of the dishonor of the Bill to Barksdale & Co.?

Answer= I have no Knowledge of any officer of the Bank having done so & no recollection that I did so, but I may have written to them on this Subject

Quest.n How do you Know whether the Notice sent to Darby was a Copy of Exhibit "A"

Answer: It was a Similar one to Exhibit "A" the same handwriting as well as my recollection serves me & instead of being addressed to Hounroy Rest was address.d to Darby,

Quest.n Did you read the notice directed to Darby?

Answer.= I did

Re=Examined by Plaintiffs attorney

Re=Examn.n 1st.n = State whether the notices referred to were in printing or in writing?

Answer= It is as you see printing & Writing tis partly printing & partly writing

2nd.n Explain what you mean by saying that the notice to Darby was in the same handwriting as the one marked Exhibit ("A")

Answer It was Similar when in writing & Similar when printed

Jas L Dallam

The following is Exhibit "A" attached to M.W. Coles deposition and is in words and figures

Exhibit "A" attached to Cole's deposition

following to Wit.

Mailed to Drawer St Louis Missouri

New York Jan 5. 1861

Please to take notice that a Bill of Exchange for $10.000 dated Sept 4. 1860 No 7986 drawn by W H Bankedale & Co upon Park Bank endorsed by you was this Evening protested for non payment after demand and refusal of Payment and that the holders look to you for Payment thereof

Your Ob't Serv't

Joseph B Varnum Jr

Notary Public

Metropolitan Bank Building 110 Broadway

Always put place of residence after signature of the Drawer Drawee or maker and Endorser of Draft and Note

L M Blossney Pt.

Endorsed on Back of said Exhibit "A" is the following

Commercial Bank of Kentucky

Paducah Ky Janry 14. 1861

The Within notice recd this day also notice recd for Jno F Darby which I put in an Envelope and directed him at St Louis & mailed this day postage prepaid

(Exhibit "A") W W Cole.

The following deposition of Edward H S Boyle which was excluded by the Court but which by stipulation of parties is here inserted is as follows to Wit.

38.

Edward H. S. Boyle of lawful age being sworn & examined on the part of the Plaintiff deposeth & saith –

E H S Boyle

That he is & has been for the last two years a Clerk in the Metropolitan Bank of said City, that as such he did to the best of his knowledge on the 5th of January 1861 present a draft for 10.000 to the Park Bank in this City. Have not the slightest doubt about it said Draft was drawn on said Park Bank I cannot say positively by whom it was drawn there was but one draft for $10.000 presented by the Metropolitan Bank on the Park Bank on the 5th Jany 1861 that was presented by me before three o'clock of that day and payment of the same refused

Cross Examination by Mr Knox.

Cross Examn.

The Commercial Bank of Kentucky on the 5th January last & for some time previously kept an account with the Metropolitan Bank. I recollect of the presentation of said draft from the fact that we keep a book in which all such matters are entered, & there is an entry of this matter in that Book, that is the only circumstance by which I recollect it, the book spoken of was kept by two Clerks in the Bank one – our Clerks made the entry of this $10.000 draft. I did not make it myself I referred to this entry to day at the request of Mr Tarney the Notary Public, without reference to that book I could not tell within a week of any

59. draft which I have presented within the last year

(Direct by Mr Brinsmade Waived)

Edward H. S. Boyle.

Plaintiff then read in evidence Stipulations in writing by the Parties.

These Stipulations are in words and figures following to wit

Stipulations

Commercial Bank of Kentucky against William H Barksdale & others. } No 429, St Louis Court. Common Pleas.

In this Case it is agreed that all depositions taken on behalf of Plaintiff now on file be read without objection except as to Competency & Relevancy & it is admitted that the 4th day of January 1861 was set apart appointed and recommended by the Proclamation of the President of the United States as a day of Fast

Knox & Smith attys for Darby

Feb 3 1862 Sharp & Broadhead attys for Barksdale

Plaintiff then also read in evidence Certified Copies of the Statutes and laws of New York as follows.

Statutes and Laws of New York

Chap. 416.= An act in relation to Commercial Paper

Passed April 14. 1857

The People of the State of New York represented in Senate and Assembly do enact as follows.

Section 1. all bills of exchange or drafts drawn payable at sight, at any place within this State, shall be deemed due and payable on presentation without any days of grace being allowed thereon

§ 2. All checks bills of Exchange or drafts appearing on their face to have been drawn upon any bank or upon any banking association or individual banker carrying on banking business under the act to authorise the business of banking which are on their face payable on any specified day or in any number of days after the date or sight thereof, shall be deemed due and payable on the day mentioned for the payment of the same without any days of grace being allowed and it shall not be necessary to protest the same for non acceptance

§ 3. Whenever the residence or place of business of the endorser of a promissory note or of the drawer or endorser of a check draft or bill of Exchange shall be in the City or town or whenever the City or town indicated under the endorsement or signature of such endorser or drawer, as his or her place of residence or whenever in the absence of such indication the City or town where such endorser or drawer from the best information obtained by diligent inquiry is reputed to reside or have a place of business shall be the same City or town where such promissory note check draft or bill of Exchange is payable or legally presented for payment or acceptance all notices of non=

payment and of non-acceptance of such promissory note check, draft or bill of Exchange may be served by depositing them with the postage thereon prepaid in the Post Office of the City or Town where such promissory note check draft or bill of exchange was payable or legally presented for payment or acceptance directed to the endorser or drawer at such City or town

§ 4. This act shall take effect on the first day of July next but shall not apply to any bills of exchange checks, drafts or promissory notes bearing date prior to that time

State of New York } ss.
Office of the Secy of State } I have compared the preceding with the original thereof on file in this office and hereby certify the same to be a correct transcript therefrom and of the whole of such original law

(Seal)

Given under my hand and the seal of office of the Secretary of State at the City of Albany this thirteenth day of March 1861

Henry P Willcox
Dep Secy of State.

Chap 261.

An act to designate the holidays to be observed in the acceptance and payment of bills of Exchange and promissory Notes

Passed April 7. 1849

The People of the State of New York represented in Senate and Assembly do enact as follows.

§. 1 The following days viz- The first day of January Commonly Called New Year's day, The fourth day of July, the twenty fifth day of December Commonly Called Christmas Day and any day appointed or recommended by the Governor of this State or the President of the United States as a day of fast or thanksgiving shall for all purposes whatsoever as regards the presenting for payment or acceptance and of the protesting and giving notice of the dishonor of bills of Exchange, bank Checks and promissory notes made after the passage of this act be treated and Considered as is the first day of the Week Com=-monly Called Sunday

State of New York }
Office of the Secretary of State } I have Compared the pre=ceding with the original thereof on file in this office and hereby Certify the same to be a Correct transcript therefrom and of the whole of said original law

(Seal) Given under my hand and the Seal of Office of the Secretary of State at the City of Albany this thirteenth day of March 1861

Henry P Willcox
Dep Sec of State

United States of America

By Edwin D Morgan Governor of the State of New York

It is hereby Certified that Henry P Willcox was on the day of the date of the annexed Certificate

Deputy Secretary of State of the State of New York and duly Authorized to grant the Same, that the Same is in due form and executed by the proper officer; that the Seal affixed to said Certificate is the Seal of the Secretary of State of said State that the signature thereto of the said Deputy Secretary of State is in his handwriting and is genuine and that full faith and Credit may and ought to be given to his official acts

Seal

In Testimony Whereof the Great Seal of the State is hereunto affixed, Witness my hand at the City of Albany the Sixteenth day of March in the Year of our Lord One thousand Eight hundred and Sixty one

E D Morgan.

Passed the Secretary's office the 16th day of March 1861 Henry P Willcox Dep Sec State.

Agreement. It was then agreed that the Case of Salter vs Burt and the decision therein reported in 20th Wandall's Rep. P. 205 might be used in the argument as if read in evidence, and it is agreed that the same may be used in the Supreme Court with the Same effect as if Copied into the record.

Plaintiff then read in evidence the following Certificate of Protest by Pascal H. Torney Said, Certificate is in words & figures as follows to Wit

,64,

Cert. Protest of P. W. Turney

United States of America

State of New York } ss. On the fifth day of January in the year of our Lord one thousand eight hundred and sixty one - at the request of the Metropolitan Bank I. Pascal W Turney, a Notary Public, duly commissioned and sworn. dwelling in the City of New York. did present the original Bill of Exchange a copy of which is hereunto annexed to the Cashier at the Park Bank. in the City of New York (being the place where said Bill of Exchange is payable) and demanded payment thereof which was refused (the fourth day of ~~May~~ the same month being a day appointed by the president of the United States as a day of fast)

Whereupon. I the said Notary at the request aforesaid did protest and by these presents do publicly and solemnly protest as well against the Drawer and Endorsers of the said Bill of Exchange as against all others whom it doth or may concern, for exchange re-exchange and all costs, damages and interest already incurred and to be hereafter incurred for want of payment of said Bill of Exchange

In Testimony whereof I have hereunto set my hand and affixed my seal at the City of New-York aforesaid

Seal

P W Turney.
Notary Public
110 Broadway

W. H. Barksdale & Co.

$10.000 Bankers No 7986

St Louis Mo. September 4th 1860

Four Months after date pay to the order of John F Darby acceptance waived. Ten Thousand dollars for value received

W. H Barksdale & Co

To Park Bank, New York

Commercial Bank of City N 6205 due Jan 7/7 1861

W H Barksdale
B. Davidson

23444
John F Darby
Pay to order of G. I. Jenny Cash
L M. Flournoy pt

Defty objected to the reding of the certificate of protest by Pascal W Turney for the reason that the protest of Joseph P Varnum was attached to the bill and on and originally filed with said bill as evidence in the case I doubt admitted protest & deft excepted

*

*

Plaintiff then also read in evidence the following Certi=
=ficate of Protest by Joseph B Varnum.

Cert. Protest, by J. B Varnum Jr

United States of America } ss
State of New York } On the fifth day of January in the year of Our Lord one thousand eight hundred and Sixty one at the request of the Metropolitan Bank I Joseph B. Varnum Jr a Notary Public duly Commissioned and Sworn dwelling in the City of New York did present the Original Bill of Exchange hereunto annex=ed to the Cashier at the Park Bank in the City of New York (being the place where the said Bill of Exchange is payable) and demanded payment which was refused Whereupon I the said Notary at the request aforesaid did Protest and by these presents do publicly and solemnly Protest as well against the Drawer and Endorsers of the said Bill of Exchange as against all others whom it doth or may Concern for exchange - re-exchange and all Costs damages and interest already incurred and to be hereafter incurred for want of payment of the said Bill of Exchange

(Seal) In Testimony Whereof I have hereunto set my hand and affixed my seal at the City of New York aforesaid

J B Varnum Jr
Notary Public 110 Broadway

Here Plaintiff Rested.

Defence

Defendant then read in evidence the Deposition

66.

of Charles C. Reuss parts of which being objected to were excluded by the Court, said deposition except the parts thereof and Exhibit marked excluded is as follows.

Charles C. Reuss = of the free City of Frankfort on the Main in Germany which is his present residence and home - of lawful age being produced and Sworn as a witness on behalf of said John F. Darby one of the defendants + Says

C A Reuss

that he is twenty seven years of age and that he is now a resident of the free City of Frankfort on the Main in Germany and has been residing there for the space of twelve months past and is now engaged as Clerk in the said banking office of John Goll and Sons doing business in said free City of Frankfort on the Main. The deponent saith that he was formerly a resident of the City of St Louis in the State of Missouri United States of America that he went there in the month of November in the year one thousand eight hundred and fifty four and lived there most of the time up to March one thousand eight hundred and sixty one except for a period of seven or eight months in the year one thousand eight hundred and fifty seven and one thousand eight hundred and fifty eight when the deponent was temporarily absent from said City of St Louis and was travelling in various parts of the United States, that he was a

67.

Clerk in the banking house of William H Barksdale and Company of said City of St Louis from April in the year one thousand, eight hundred and fifty nine up to the month of March in the year one thousand eight hundred and Sixty one and while acting as such Clerk was having confidential business relations with said banking house and business of said William H Barksdale and Company and was very familiar and conversant with all their business matters and relations

And deponent further saith that he was the general book keeper of said William H Barksdale and Company during the whole month of January in the year one thousand eight hundred and Sixty one and as such book keeper was well acquainted with the business of said firm during said month of January in the year last aforesaid and for six months or more preceding that date

Deponent further saith according to the best of his recollection and belief in or about the eighteenth or nineteenth day of January in the year one thousand eight hundred and Sixty one the said firm of William H Barksdale and Company of said City of St Louis did receive some notice of Protest of a draft drawn for the sum of ten thousand dollars by said William H Barksdale and Company at said City of St Louis and payable four months after the date thereof

at the Park Bank in the City of New York and which said draft was endorsed by said John T. Darby and acceptance of said draft was waived by a writing to that effect on the face of said draft and according to the best of his recollection and belief it was dated at St Louis on the fourth of September One thousand Eight Hundred and Sixty and matured the fourth and Seventh (including grace) of January in the Year One thousand Eight hundred and Sixty one, The said firm of William H Barksdale and Company might have received a copy of the notice of protest direct from the City of New-York from the Notary Public who protested the same, but Deponent does not recollect of their receiving any such but may have likely received it, but no particular attention paid to it at the time, as very many notices of Protest were received about that time by said firm of William H Barksdale and Company, said firm of William H Barksdale and Company did also receive a notice of protest of the same draft from the Commercial Bank of Kentucky at Paducah and in the same envelope so sealed and directed to them the said William H Barksdale and Company containing the notice of protest of this ten thousand dollar draft from the said Commercial Bank of Kentucky was a

69.

like notice of protest to John F Darby which came sealed and enclosed in the same envelope directed to William H Barksdale and Company

Deponents attention was directed to this at the time because Mr William H Barksdale directed him to turn to the books which he did for the purpose of examining to see if Mr John F Darby had endorsed any such draft as that for which the said Banking house of William H Barksdale and Company had received a notice of Protest for the said John F Darby

Deponent further saith according to the best of his recollection and belief the books shewed no such draft as the one purporting to have been endorsed by John F Darby the Draft of Ten thousand dollars and endorsed as aforesaid by said Darby and for which this Notice of Protest had been received by William H Barksdale and Company from the Commercial Bank of Kentucky at Paducah in the State of Kentucky appeared from his private memorandum as being entered on the books as having been endorsed by John I Anderson and Company but according to his recollection and belief as it appeared some time afterwards had been endorsed by John F Darby

Ten or three days after the notice of protest had been received by the said firm of William H Barksdale and Company for John

F Darby, from the Commercial Bank of Kentucky at Paducah as above stated, the said John F Darby one of the Defendants named in this Suit happened to come into the office of William H Barksdale and Company and sat down by the Stove, Mr. Barksdale now mentioned to Mr Darby that this notice of protest had been received by the Commercial Bank of Kentucky at Paducah including the one enclosed to William H Barksdale and Company for John F Darby, and deponent was requested at the time to examine the books by Mr Barksdale and to show Mr Darby that the books did not shew him as endorser on any such draft which he did do, but it afterwards appeared - but of this deponent saith he cannot be positive - that it was a mistake in having been wrongly endorsed from his memorandum on the name of John J Anderson and Company as he believes as explained above

Deponent further saith that they were not he thinks in the habit of entering generally the endorsers names in their books, meaning the Ledger and Journal, He sometimes did make such entries in the back parts of the books of the persons who endorsed the bills, they were private memorandums, generally made by himself and he is strongly of the impression that John F Darby did not get the notice of protest on

71.

the draft in the right time and not until three or four days after it had been received by William H Barksdale and Company as the notices of protest of the draft were inclosed in one envelope mailed to and directed to William H Barksdale and Company St Louis Missouri and the letter containing these notices of protest was taken out by said William H Barksdale and Company and which deponent remembers to have seen in their banking office and this was mentioned to Mr Darby when he casually stepped into the office The draft of these ten thousand dollars deponent speaks of was he believes due in the month of January one thousand eight hundred and sixty one, the said firm of William H Barksdale and Company transacted business with the Park Bank in the City of New York to a very large amount between the months of September in the year One thousand Eight hundred and Sixty and January One thousand eight hundred and Sixty one, Deponent thinks perhaps in amount altogether to Six hundred thousand dollars and upwards and when the said firm of William H Barksdale and Company ceased to do business in the City of St Louis Missouri which deponent thinks was some time in the month of January or February in the year

72. One thousand Eight hundred and Sixty one they had Still a large amount of Securities and bonds and such like deposited in the Said Park Bank New York and deponent clearly recollects among other Securities they had there were Eighty thousand dollars and upwards of Missouri State bonds

Chs. C Reuss

Wm T Wood

William T Wood one of Plaintiffs attorneys was then Sworn as a Witness and testified as follows on Examination — That he first saw the Certificate of Protest by Pascal W Turney read in evidence, some months after this Suit was brought that it was made out & Sent here to St Louis by request of Plaintiffs' Counsel after the Suit was brought. Does not remember the date or time when sent — That during the last three or four years, Mails leaving New York generally arrive in St Louis in from three to four days.

Letter from Flournoy to Darby.

Defendant then read in evidence the letter from Flournoy to Defendant Darby dated Feby 9th 1861, which is as follows

Isaac T. Wise a Witness for Defendants then testified as follows. A Paper being Shown Witness dated Feby 16 1861. Says. He saw Norton sign the Paper in Defendant Darby's Office, Norton & McPherson were there at the time - that Norton proposed to act for the Commercial Bank. having Come for that purpose, Norton asked Darby to pay or provide for the Bill, Darby said he repeated what he had said before that he was not liable and never intended to pay it, Darby demanded a Copy of the bill in reply to this demand Norton either showed him the bill or gave a copy.

I. T. Wise.

A letter of Darby purporting to be in reply to one from the Bank Officer being shown to Witness,

thinks he had seen this letter does not recollect that Norton was present, the letter was referred to in the Conversation,

This letter was offered and excluded The Paper spoken of by Witness dated Feby 16 1861 was read as evidence and is as follows.

William H Barksdale one of the defendants was then Sworn as a witness for Defendant Darby and testified as follows.

W H Barksdale.

That he received a protest of the $10.000 Bill from the Bank at Paducah about January 18th 1861 enclosing also one for Darby. nothing as to who the letter came from, only post marked Paducah One Notice was addressed to Barksdale & Co and the other to John F Darby and two or three days afterwards. he witness gave notice to Darby or at least made him aware of it, Soon after 18th or 19th January I went to Sharp and he told me that neither Darby or I were liable, but Darby was liable for other endorsements for me and I made a Deed of Trust to Secure all the paper on which Darby was liable for me including the bill Sued on in this Suit

*

* Barksdale swore that Darby knew nothing of his having made a deed of trust to secure this bill, That he made this deed of trust under the advice of Mr. Sharp and this bill was included without the knowledge or consent of Darby and the property conveyed was not sufficient to the indebtedness secured by the deed of trust exclusive of the bill sued on

Darby was only an accomodation endorser - Does not think he received any notice of Protest from New York - He first Communicated to Darby the protest. The Deed of trust was to Secure $28.000 besides this $10.000 for all which Darby was liable for Witness *

Plaintiffs' Counsel objected to the admission of Said W H C Barksdale as a Witness and to his evidence as given because Said Barksdale was Drawer of the Bill Sued on and a Party to the Suit.

Objection overruled and the ruling of the Court excepted by Plaintiff

Defendant then read the deposition of W A B Clements as follows. to Wit

W.A.B. Clement. William A. B. Clement being duly Sworn Says that he was Superintendant of the letter distribution in the New York Post Office between the first & middle of January 1861. There were two daily Mails between New York & Kentucky, at that time those mails respectively were closed at five o'clock A M & 3.30 P M - on the 7th January last they left at 6-30 A M. & 4-30 P M. letters for Paducah Kentucky were mailed for Louisville Ky to be re-mailed from Louisville to Paducah. I have been connected with the New York Post office 16 years

W. A. B. Clement

* The Court decided that Barksdale was a competent witness to prove a defence of Darby and that only 75

76.

This was all the evidence given on the trial of this action and thereupon the plaintiff prayed of the Court the following instructions to Wit:

Plaintiff's Instructions Given.

The Plaintiff moves the Court to instruct as follows

Given

I That as the Draft sued on was payable in New York it is governed by the laws of that State as to presentment demand and Protest

Given

II That the Draft sued on was not entitled to any days of grace

Given

III That inasmuch as it matured on the 4th day of January 1861 which was a day set apart by the President as a day of Fast it was properly presentable on the 5th day of January 1861.

Given

IV That if the 6th day of January 1861 was Sunday the notice of Protest could be properly given on the 7th January 1861 and if the jury find from the evidence that the notice to Barksdale & Co were sent on that day by Mail postage pre paid to Barksdale & Co at St Louis and to Commercial Bank of Kentucky at Paducah then the said notices were duly given

Given

V If the Court find from the evidence that the Commercial Bank at Paducah sent on the day or even the day after the said notice of Protest were received the same to Jno F Darby at St Louis by Mail postage prepaid the said notice

77

was sufficient

VI That it is not material that Durby even should have received the notice of the protest if the notice was in fact regularly and duly enclosed to him by Mail directed to St Louis Mo.

Given

VIII If the Metropolitan Bank New York held the bill for Collection and had the possession of it as such holders when it matured and so holding and having possession of the bill they delivered it to the Witnesses Varnum & Turney whose depositions were read in evidence to be presented for payment with instructions if not paid to protest the bill for non payment and give notice thereof to the parties to the Bill and if further the said Varnum and Turney were then Attorneys at law and as such doing the business of the Metropolitan Bank and were both Notaries Public then in such case they were agents of the Metropolitan Bank and a notice given to the parties by either of them of the Dishonor of the Bill by non payment on presentation was legally proper and sufficient & altho the Court may find that demand was made by the attorney & Notary Turney it was competent and sufficient for his partner the attorney & Notary Varnum to give notice to the parties, and the mere fact that his name and official character is in print in the notice given and that he does not on the face of the notice claim to be agent, does not invalidate the notice.

Given

If in fact under the Circumstance herein

stated the notice was given by said Yamum on the request of said Metropolitan Bank then in such case the notice came from said Bank and is from a party in interest authorized to give notice of protest

Given

X The fact that the Notary Yamum drew up and attached his Certificate to the bill sued on under the circumstances as explained by the evidence of said Yamum and Kerney does not render Kerney's Certificate invalid, simply and merely because subsequently drawn up by said Kerney.

The following instructions for Plaintiff were refused by the Court.

Plaintiff's Instructions Refused

VII A Copy of the protest need not accompany the notice of dishonor of a bill.

If a bill be properly presented for payment and the payment refused and notice thereof be properly given stating in addition the protest of the bill the formal documentary protest may be drawn up afterwards before the trial & if so drawn up the same will constitute a legal protest of the bill tho not made out at the time of the dishonor of the bill nor previous to giving notice of protest.

Refused

The above instruction is refused because it is necessary to the validity of "the formal documentary protest" drawn up afterwards as stated in said instruction that the Bill should have been noted for protest on the day payment was refused or as soon as practicable thereafter, and if it had been so noted

79

the protest might have been drawn up at any time afterwards

Refused

IX It is not necessary to the validity of a Certificate of protest that it be drawn up on the day of demand and refusal of payment nor is it necessary that such certificate or a copy thereof should be sent with the notice

It may be drawn up when called for or at any time before trial provided the bill was properly presented for payment by a Notary Public at the request of the holder and payment demanded & refused and a proper notice of the protest is given and in due time

Of which said instructions so asked and prayed by Plaintiff, the Court gave the 1st 2nd 3rd 4th 5th 6th 8th & 10th and refused the 7th & 9th and to the refusal of which Plaintiff excepted

Defendants Instructions Given.

Defendant then prayed of the Court the following instructions

Given

1st In order to entitle the plaintiff to recover against the defendant Darby in this case it is necessary for it to satisfy the jury by evidence that the Bill of Exchange sued on was at its maturity presented at the place where payable for payment that payment was then and there demanded and

was refused. that said bill was duly protested for non payment and that the defendant had due notice of such demand refusal and protest.

Given

3 To make a valid presentment by a Notary it is necessary that such Notary make a personal presentment and demand and a protest of a bill by a Notary who did not make such presentment and demand is insufficient to hold the endorser

Given

8 If the Jury believe from the evidence that the only Notice of the dishonor of the bill sued on was furnished from Paducah to St Louis in an envelope addressed to W H Barksdale & Co St Louis and was never delivered to or received by said Darby within two days after said notice reached St Louis then the defendant Darby is not liable in this Case and the Jury will find for said defendant Darby.

Given

9 If the Court believe from the evidence that the bill of Exchange sued on was not protested for non payment by Tarney until after this suit was instituted such protest is not sufficient to render the endorser liable

Given

10 If the Court believe from the evidence that J B Varnum never presented the bill sued on for payment then his protest is of no effect or

81

Given

13 Unless the bill sued was legally protested at Maturity plaintiff cannot recover

If Yannum protested the bill upon the presentation made by Turney this is indefficient in law.

Given

15. If the notary who protested the bill in New York made out notices thereof for the Cashier of the plaintiff and defts Darby & Barksdale & Co and inclosed the notices to Plaintiff and Said Darby with a Copy of the notice to Barksdale & Co in one envelope and package mailed the same addressed to the Cashier of pltff Paducah Kentucky and that Plaintiff by its agent enclosed the Copy of the notice to Barksdale & Co and the notice to Said Darby in one package and envelope and deposited it in the Mail addressed to William H Barksdale & Co St Louis these facts do not Constitute sufficient notice to Charge the Deft Darby

Given

19 Unless the Witness Turney as a Notary noted the bill for protest or actually protested the bill on the day of its Maturity, the protest of Said Turney is not sufficient in law.

Defendant's Instructions Refused

The following instructions for Defendant were refused by the Court

2nd To Constitute a due presentment for payment the Notary presenting the Bill must present

182

it if payable at a Bank, at the place where it is payable within the usual banking hours and any other presentment is not sufficient to hold the endorser on such bill

Refused

Refused, for if the drawer had no funds in the hands of the Drawee and no provision was made for the payment of the bill it was sufficient to present it after bank hours if there was some officer there to give an answer to the demand

4th In order to make the Statute of New York changing the rule of the Law Merchant as to the days of grace on a certain Class of bills of Exchange competent evidence in a suit on a protested bill such Statute must be pleaded

Refused

5th The Statute of the State of New York read in evidence by the Plaintiff does not at all change the Character of the Bill of Exchange sued on nor the time of its maturity

Refused.

6 The Bill of Exchange sued on came due on the 7th day of January 1861

Refused

7 If the Jury believe from the evidence that the only notice received by the Defendant Darby was the notice signed by J B Varnum that said notice was forwarded from Paducah as stated in the deposition of the Cashier of Plaintiff such notice is insufficient to enable the Plaintiff to recover against Darby in this suit and the jury will find for said Darby

83.

11 If the Court further find that the only protest of the Bill sued on in existence when this suit was instituted was the protest signed by Varnum then there was no sufficient protest of said Bill to hold Darby as endorser thereon

Refused

12. If the Court find from the evidence that the only presentment of the bill sued on for payment was made by the Witness Turney and that the only notices mailed or sent to the endorser Darby were made signed and sent by Varnum then Darby is not liable in this suit.

Refused

14 The protest purporting to have been made by Turney is not sufficient in law unless it was made on the 5th day of January 1861 or at the date of Maturity of the bill

Refused

16 If the Witness Turney was a Notary and protested the bill and notice of protest was signed by the Witness Varnum and no notice was signed by the said Turney then plaintiff cannot recover in this case

Refused

17. A Notice signed by the Witness Varnum as a Notary Public is not sufficient to charge the defendants unless he protested the bill himself or had some pecuniary interest therein or was the agent of some one having such interest

Refused

18 If Varnum was a Notary Public and

84.

Refused

Tarney was a Notary Public and Tarney protested the Bill and notice of such protest was signed by Tarney in his own name and such notice were the only notices of the dishonor of the bill plaintiff Can't recover

Of which instructions asked by Defendant the Court gave the following to Wit. the first third Eighth. Ninth, 10th, thirteenth. fifteenth and Nineteenth and refused the Second. fourth, fifth Sixth, Seventh, Eleventh, twelfth fourteenth - Sixteenth. Seventeenth, and Eighteenth, and to the giving of which said 1st 3rd 8th 9th, 10th, 13th, 15th & 19th instructions so prayed and asked by Defendants Plaintiffs excepted.

And in the further progress of this Cause the Court having made its finding for the Defendants Plaintiffs on the same day thereof filed its Motion in writing to set aside the finding and for a New trial.

Which Motion is as follows —

Motion for a New Trial

The Commercial Bank of Kentucky
vs
William H Barksdale, Henry T Tomlinson, Cornelius Tompkins & John F Darby

In St Louis Court of Common Pleas.

Plaintiff moves the Court to set aside the finding

and verdict of the Court sitting as a Jury herein and assigns for Cause

1 The Court erred in the giving of instructions and in declaring and deciding the law of this Case on the trial thereof

2 The Court erred in refusing instructions and declaring the law as asked by Plaintiff and in giving instructions and declaring the law as asked by Defendant and as given by the Court and declared on its own motion

3 The Court erred in giving the instructions asked by Defendants

4 The finding and Verdict of the Court is Contrary to the evidence

5 The finding & Verdict of the Court is Contrary to the law & the evidence

Glover & Shepley &
Wood for Plff.

Which motion the Court overruled and refused to set aside the finding and Verdict of the Court and grant a new trial, and to which opinions and ruling of the Court in refusing to set aside said finding & Verdict and grant a new trial Plaintiff excepted, And prays that this its bill of Exceptions may be Signed Sealed & allowed and made a part of the Record which is done according by

Saml Reber (Seal)
Judge &c

6.

State of Missouri } ss
County of St Louis } I Leon J Papin Clerk of the St Louis Court of Common Pleas within and for the County aforesaid Certify the above and foregoing to be a full true and Complete Transcript of the record and proceedings in the above entitled Cause as fully as the Same remain in my office

In Testimony Whereof I hereto set my hand and affix the Seal of Said Court at office in the City of St Louis this 21st. day of February A.D. 1863.

Leon J Papin.
Clerk C.

Index

	Page
Petition	1
Summons	3
Sheriff's Return	4
Answer of Defts Barksdale & Co	"
" " " John F Darby	6.
Trial & Judgment	9
Motion for new Trial overruled	"
Bill of Exceptions	"

87

Bill of Exchange	10
Endorsement " " "	"
Charter of Commercial Bank of Sy	"
Deposition of P W Turney	37
Cross Examination " " "	38
Re " " " "	"
Re Cross " " " "	39
Exhibit A attached to " " "	40
Charles A Macey's Deposition	41
" " " Cross Examination	"
" " " Exhibit "B"	42
S. K Camp's Deposition	43
" " " Cross Examn	"
I. B. Vamum Jr Deposition on part of Deft	44
" " " " " " " " Pltff	"
J M Myers " "	45
" " " Exhibit "A"	47
M W Cole's Deposition	"
" " " Cross Examn	49
" " " Re "	54
"I L" Dallam's Deposition	"
" " " Cross Examn	55
" " " Re "	56
Exhibit "A" to Coles Deposition	57
E. H. S. Boyle's "	58
" " " " Cross Examn	"
Stipulations	59.
Statutes and Laws of New York	59.

88,

	Page
Agreement	63.
Cert of Protest of P. W. Tarney	64
" " " " J B Vannum Jr	65
Defence	"
Deposition of C. A Reuss	66
Witness Wm T Wood	72
Letter from Flournoy to Darby	"
Witness J. T. Wise	73.
" W H Barksdale	74
" W. A B. Clement. Deposition	75
Instructions for Plaintiff Given	76
" " " Refused	78
" " Defendant Given	79
" " " Refused	81
Motion for a new trial	84
Clerks Certificate	86.

O. A. T. 1865

(21)

No. 72

The Commercial Bank of Kentucky

Plaintiffs in Error

vs

Transcript

William H. Barksdale and Henry T. Tomlinson, Cornelius Tompkins, & John F. Darby

Defendants in Error

Error to St. Louis Court of Com. Pleas

Filed August 10, 1863

Duke & Wood & Hanton Lawrence

Glover & Shepley

Attys for Plaintiff

Sharp & Broadhead Knox & Smith

Attys for Deft

$25 00/100 paid by [illegible]

$10.50 "

Abt of Errors 1865. June 16th Contd by Court

by Instructions for D.E. $3.50

P.E. 3.50

The Commercial Bank
Ky pltffs in error
Bankdale & ve
Defts in Error

IN SUPREME COURT,
TERM, 1863
Oct

AND now come the said pltffs in E. and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said errors assign the following, to wit:

1. That said Court admitted improper and illegal testimony offered by defts in E
2. That said Court rejected proper and legal testimony offered by pltffs
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by pltffs
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the defts when it should have been rendered for the pltffs
10. That said Court overruled the motion for a new trial, made by pltffs

Geover & Shepley
Wood & Duke
for pltffs

And now come the said Defendants in error and for joinder in error say, that there is no error in the record and proceedings of said Court of Common Pleas of St Louis in said cause, as assigned by said plaintiffs in error

Gantt with
Messrs Sharp Broadhead Knox & Smith
for defendants in error

Cond. Bank
ky Peffin E
a
Banks Dale
Sal

Aggregate
of [illegible]

Filed Nov 6, 1863
A.W. Meal
Clerk

Commercial Bank of Kentucky, p.e.
vs
John F. Darby
William H. Barksdale
and others, defendants in error.

Error to the St Louis Court of C. P.

This was an action on a bill of exchange, dated at St Louis Mo. Sept 4. 1860. made by Wm H Barksdale & Co (Wm H. B. Henry J. Tomlinson, and Cornelius Dempsey) in favor of Jno F. Darby (acceptance waived) on the Park Bank, New York City, for $10.000 at four months, endorsed by Darby. The petition averred due ~~notice~~ protest & notice. Also that Wm H. Barksdale & Co had no funds at the Park Bank and that Darby knew this ~~when~~ at & before the maturity of said bill.

Defendants deny that the bill was duly presented at maturity to the Park Bank for payment, or that such payment was refused, or that the bill was duly protested for non payment or that defendants had any due or legal notice of any such fact. They aver that they had assets in the hands of the Park Bank at the maturity of said draft, and that it is untrue that they had no reason to believe that the bill would be paid. That between the date of said bill and its maturity they had $600.000 in that Bank, and when it matured had bonds and securities exceeding in amount $75.000 and have had large sums there ever since. This was the answer of Wm H Barksdale & Co.

Darby answered that he was accommodation endorser of the bill. Denies that the same was duly presented for payment, payment demanded & refused & notice given to him. Denies that he had no reason to believe that the bill would be paid. Was not aware that it had not been paid until the 16 ~~January~~ February 1861. when he was so informed by a letter received from the Commercial Bank of Kentucky. That from the date to the maturity of said bill he had every reason to believe that it would be paid at maturity and did so believe.

The case was tried before the Court sitting as a jury.

~~and~~ on the 24th January 1863. and judgment was given for the defendant.

By the Bill of exceptions it appears that the plaintiff gave in evidence the bill of exchange and the Charter of the Commercial Bank. and the testimony of Turney. Barnum Macy. Myers, Cole. Dallam & Boyle.

By these it appeared that the bill was protested on the 5th January 1861. That payment was demanded by Turney a notary. That the protest was made by Barnum. N. P. and that after the commencement of this Suit Mr Turney made out a notarial act of Protest, dating it back to January 5. 1861. That notice of protest was sent to Wm Banksdale & Co. at St Louis, Mo. on the 7th January 1861 after 10 o'clock A. M. and that the notices for Daly & the commercial Bank were sent to Mr Flournoy, President. on the same day That the 4th day of January 1861 was a day of fast & prayer so ordered by ~~Direction~~ the President of the United States and the Governor of the State of New York: By the Statutes of New York, read in evidence it appears that no days of grace are allowed on Drafts or Checks on Banks and that all bills falling due on a fast day are to be taken as due in the same manner as if the fast day &c were a Sunday. The fifth day of January 1861. was Saturday and the Seventh therefore Monday.

By the testimony of Cole & Dallam, Officers of the Commercial Bank of Kentucky, it was made to appear that they received on the 4th January 1861 the notices of protest, and that they sent the notice directed to Mr Daly to him by depositing it in the mail that same day postpaid. They denied having sent any notice to Messrs Banksdale & Co.

Defendant read the evidence of C. C. Reuss taken at Frankfort on the Main whence it appeared that he was confidential Clerk for Banksdale & Co from 4th September 1860. to March 1861 - in fact from

the Spring of 1859 to March 1861. That about the 18th or 19th January 1861 Barksdale & Co received notice of the protest of a draft for $10.000 of which Darby was indorser. This came from Paducah, Kentucky. In the same envelop was a notice directed to John T. Darby. The Books of Barksdale & Co showed no such draft. The books were wrong. They showed J. J. Anderson to be the indorser of this draft. Two or three days thereafter Mr Darby came to the office (Counting room) of Barksdale & Co. Mr Barksdale mentioned the arrival of the notice. The books were examined and shown to Mr Darby in corroboration of the assurance that he was not the indorser of this draft.

That Barksdale & Co had transactions with the Park Bank amounting towards of $600.000 between the month of September 1860 and the 5 January 1861. They withdrew their aid in February 1861. It was then upwards of $80.000 chiefly in Missouri Bonds.

Judge Wood was examined to show that Turney's protest had been made since the commencement of this suit. Suit was commenced March 13. 1861.

Mr Wise testified that when an agent of the Commercial Bank of Kentucky called on Darby and asked him to pay this bill, he flatly and explicitly declared that he was not liable on it, and did not mean to pay it.

Mr Barksdale testified that he received from Paducah about 18 January 1861. a protest for this bill of $10.000 enclosing also one for Daly. He gave to Darby the one intended for him two or three days afterwards or else made him aware of it. Soon after this Mr Sharp, his lawyer, told him that both the drawer and indorser were discharged. By Mr Sharp's advice he made a deed of trust to secure Mr Darby for other endorsements. Without Darby's knowledge he included in this deed this draft as one indorsed by Daly and against the consequences of which he desired to indemnify him. Daly was merely an

accommodation indorser. The deed of trust was to secure $28000 of liability of Dail's as indorser bender, this bill of $10000. and the deed of trust was not enough to secure the $28000

The Plaintiff objected to Barksdale's testifying as he was a party to the suit. The Court admitted him only so far forth as he testified in respect of matter tending to the exoneration of Dail only. Plaintiff excepted.

McClement, an employé of the New York Post office testified that during the first half of January 1861 there were two daily mails from New York to Kentucky. one of which was closed at 5. A. M. and the other at 3.30 P.M.

This was all the evidence except an admission that the 4th January 1861 was a regular fast day. and that the case of 20th Wendall p. 205 might be read in the Supreme Court from the printed volume. the same having been read in evidence to the Court below.

At the instance of the Plaintiff the Court declared the law to be as follows. ~~which~~

1. That as the draft sued on was payable in New York, it is governed by the laws of that State as to presentment demand and notice.

2. That the draft sued on was not entitled to any days of grace.

3. That inasmuch as it matured on the 4th day of January 1861 which was a day set apart by the President as a day of Fast, it was properly presentable on the 5th day of January 1861.

4. That if the 4th day of January 1861 was Sunday the notice of protest could be properly given on the 7 January 1861. and if the jury find from the evidence that the notice to Barksdale & Co was sent on that day by mail. postage paid to Barksdale & Co at St Louis and to Commercial Bank of Kentucky at Pa-

ducah, then the said notices were duly given

5. If the Court find from the evidence that the Commercial Bank at Paducah sent on the day, or even the day after the said notices of protest were received, the same to John F. Darby at St Louis by mail, postage prepaid, the said notice was sufficient.

6. That it is not material that Darby even should have received the notice of the protest, if the notice was, in fact, regularly and duly enclosed to him by mail directed to St Louis Mo.

7. If the Metropolitan Bank, New York, held the bill for collection and had the possession of it as such holder when it matured and to holding and having possession of the bill they delivered it to the witnesses Barnum & Tinney, whose depositions were read in evidence, to be presented for payment, with instructions if not paid to protest the bill for non payment and give notice thereof to the parties to the bill, and if further the said ~~bill~~ Barnum & Tinney were then attorneys at law, and as such doing the business of the Metropolitan Bank, & were both notaries Public, then in such case they were agents of the Metropolitan Bank, and a notice given to the parties by either of them of the dishonor of the bill by non payment on presentation, was legally proper and sufficient; and altho the Court may find that demand was made by the attorney and notary Tinney it was competent and sufficient for his partner the attorney & notary Barnum to give notice to the parties and the mere fact that his name and official character is in print in the notice given and that he does not on the face of the notice claim to be agent, does not invalidate the notice.

If in fact under the circumstances herein stated, the notice was given by said Barnum on the request of said Metropolitan Bank then in such case the notice

came from said Bank and is from a party in interest authorized to give notice of protest

10. The fact that the notary Varnum drew up and attached his certificate to the bill sued on under the circumstances as explained by the evidence of said Varnum & Turney does not render Turney's certificate invalid simply and merely because subsequently drawn up by said Turney.

The following instructions for plaintiff were refused by the Court

A copy of the protest need not accompany the notice of dishonor of a bill

If a bill be properly presented for payment, and the payment refused, and notice thereof be properly given, stating in addition, the protest of the bill, the formal documentary protest may be drawn up afterwards before the trial and if so drawn up, the same will constitute a legal protest of the bill not made out at the time of the dishonor of the bill, nor previous to giving notice of protest.

(The above instruction is refused because it is necessary to the validity of the "formal documentary protest" drawn up afterwards as stated in this instruction, that the bill should have been noted for protest on the day payment was refused, or as soon as practicable thereafter; and if it had been so noted, the protest might have been drawn up at any time afterwards.)

It is not necessary to the validity of a certificate of protest that it be drawn up on the day of demand and refusal of payment nor is it necessary that such certificate or a copy thereof should be sent with the notice.

It may be drawn up when called for or at any time before trial provided the bill was

properly presented for payment by a notary public at the request of the holder and payment demanded refused, and a proper notice of the protest is given, and in due time.

The Plaintiff excepts to the refusal of these two instructions.

Defendants asked the following instructions which the Court gave the plaintiff excepting.

1. In order to entitle the plaintiff to recover against the defendant Darby in this case it is necessary for it to satisfy the jury by evidence that the bill of exchange sued on was at its maturity presented ~~to~~ at the place where payable for payment, that payment was then and there demanded and was refused, that said bill was duly protested for non payment and that the defendant had due notice of such demand refusal and protest.

2° To make a valid presentment by a notary it is necessary that such notary make a personal presentment and demand, and a protest of a bill by a notary who did not make such presentment and demand is insufficient to hold the endorser.

8° If the jury believe from the evidence that the only notice of the dishonor of the bill sued on, was furnished from Paducah to St Louis in an envelop addressed to Wm H Parkdale & Co. St Louis and was never delivered to ~~Darby~~ or received by said Darby within two days after said notice reached St Louis, then said Darby is not liable in this case and the jury will find for the defendant Darby

9. If the jury believe from the evidence that the bill of exchange sued on was not protested for non payment by Turney until after this suit was instituted, such protest is not sufficient to render the endorser liable.

10. If the court believe from the evidence that J. B. Barnum never presented the bill sued on for payment then his protest is of no effect or.

13. Unless the bill sued on was legally protested at maturity, plaintiff cannot recover.

If Barnum protested the bill upon the presentation made by Turney, this is insufficient in law.

15 If the notary who protested the bill in New York made out notices thereof for the Cashier of the plaintiff and defts Darby & Barksdale & Co and ~~included~~ inclosed the notices to plaintiff and said Darby with a copy of the notice to Barksdale & Co in one envelope and package mailed the same addressed to the cashier of pltff Paducah Kentucky and that plaintiff by its agent inclosed a copy of the notice to Barksdale & Co and the notice to Darby in one package and envelope, and deposited it in the mail addressed to William A Barksdale & Co St Louis, these facts do not constitute sufficient notice to charge the deft Darby

19. Unless the witness Turney as a notary noted the bill for protest or actually protested the bill on the day of its maturity, the protest of said Turney is not sufficient in law.

The court refused eleven instructions asked by defendants. These instructions are found on pages 81, 82, 83 & 84 of the record. As no exception was taken; as none could be taken, to this refusal it is not perceived with what propriety the record shows them at all.

After a finding and judgment for defendants, the plaintiff in due time filed the usual motion for a new trial, which being overruled this writ of error was sued out

The main inquiry here is respecting the validity of the protest. The man who made the presentment neither noted the bill for protest, nor did any thing towards protesting it, until after the commencement of this suit. The man who drew up the protest had nothing to do with the presentment. Was there then a valid protest?

The plaintiffs in error hold the affirmative, Defendants in error the negative of this question. And the issue is to be tried by a reference to the action of Courts of authority.

1st Defendants in error contend that by its very terms the protest can only be made by the person, being a notary, who made presentment and demand: Byles on Bills 146. Story on Bills of Exchange §§276 & 278. Bayley on Bills 255-6. Chitty on Bills p. 489-490. 492.

2d That the noting at least, or "incipient protest" should be made on the day on which payment is refused.

Buller Nisi Prius p. 272 quoted by Byles on Bills p. 146. Chitty on Bills p. 492. Leffly v Mills 4 Term Rep. 174 (Buller J.) 1 Selwyns N.P. 302

3d. No question can arise here whether a notarial act of protest may be made upon a presentment for payment by the notary's clerk and his (the clerk's) mem. or noting of the refusal. As to the law on this subject see Note (C). to page 493 of Chitty on Bills. But in this case no such facts existed & no such question can arise.

4th. It is conceived that in this case the testimony on the subject of the giving of notice to Mr Darby is ample for his exoneration without reference to the question of the regularity of the protest. But as it may be said that the case was made to turn on the regularity of the protest: as that question, if decided for the defendants, precludes all others: and as its determination in favor of plaintiffs would leave the other matter open for trial; it is deemed improper to say anything on any point but that which is already presented.

Respectfully Submitted
Jno. T. Gantt
Counsel for Jno. F. Darby.

No 144. O.T. 1864

Commercial Bank of Kentucky. P.E.

vs

John F. Darby. Wm H. Barksdale & al. D.E.

Statement. points and authorities. for Defendants in error. By Thos T. Gantt of Counsel

Filed Dec 5th 1865
J A Willis
clerk

Commercial Bank In the Supreme Court
of Kentucky Appellant
vs No 117 Oct Term 1865
John F. Darby Res.

The Respondent Darby contends

1st That there was no legal presentment of the Bill of Exchange sued on. That the Statute of New York relied on by the appellant does not apply to Bills of Exchange which are payable a certain number of Months after date. If this were the effect of the law to make all Bills drawn on Banks or Banking Companies payable without grace, then the Statute would have so read. Laws of New York 1857. page 838 Chap. 415.

2d There was no legal protest of the Bill sued on. It was a foreign Bill and a protest was necessary to hold the Drawers and Indorsers. The Bill was presented by one Notary (Turney) for payment and was protested by another Notary (Varnum). It is true that several months after this suit was instituted, Turney tried to fix liability on Darby by sending to St Louis a certificate of protest. But it is apparent from the depositions of both Turney &

Varnum that this was an afterthought. Turney never noted the Bill for protest, and was not in a position to make his certificate available. Story on Bills Sec. 276-7-8-9. Byles on Bills page 200 & 201 ~~200~~ (Marginal) 4 Hamed Mass. 567. 3 McLean 481. 6. B. Munroe 60. 7 Humph. 548. Edmonds on Bills & Notes marginal page 466

3 Darly never received any valid and legal notice of the dishonor of said Bill. Both Varnum and Turney testify that the only notice of the dishonor of said Bill which was sent to St Louis was directed to W H. Berksdale & Co. They both testify that they sent notices signed by Varnum to the plaintiff, that the envellope ~~cont~~ directed to "L M Flournoy Pres. Paducah Ky." contained notices directed to W H Berksdale & Co and John F. Darly.

C. A. Reuss and William H. Berksdale both testify that W H Berksdale about the 18th day of January 1861, received from the plaintiff a notice directed to them and that the same envellope contained a notice directed to John F. Darly, which notice Darly never received until three or four days after it came to the hands of W. H Berksdale & Co.

It is true that two of the officers of the plaintiff testify that the plaintiff never received any notice from the Notary directed to W H. Berksdale & Co, and that the notice which the plaintiff received which was directed to John F Darly was forwarded to him at St Louis

That there subsequent in matter

is apparent from the testimony of the two Notaries who swear that the same envellope which ~~was~~ contained a notice to plaintiff contained notices for W H Berksdale & Co & John F. Darby, which envellope plaintiffs witnesses swear was received by plaintiff

The mistake of these witnesses is further apparent from the testimony of both Reass and Berksdale both of whom testify that they received from plaintiff just such notices as Turney & Varnum swear they enclosed and transmitted to plaintiff from New York.

On the notice retained by plaintiff appears the following memorandum viz. "Mailed to Drawers at St Louis Missouri" (page 52)

The testimony of Turney, Varnum, Reass and Berksdale all agrees, contradicts the testimony of the two officers of the plaintiff and is itself corroborated by the memorandum made by an officer of pltff on the notice retained by plaintiff

Knox & Smith
Attys for Darby

No 117
In the Supreme Court
Octr Term 1868

C

The Commercial
Bank of Fly Appellant
vs
John F Darby et al
Respt

Trevor G Smith
for Darby

Filed Dec 5th 1865
J A Willis
Clerk

John A Willis
Died F 9th 1866
A good man
a kind father

taken to prove Presentment and demand.

Turney's Certificate is sufficient for he was the notary who presented the Bill: and even if it were made out months afterwards it is sufficient if any note or memorandum of the presentment and demand had been made. He had the formal statement made up by his amanuensis Varnum, his partner, — the "noting" by placing initials and dates on Bills is wholly unknown in this country. In this case there was something more extended and formal.

A Protest need not accompany the notice and may be made out years afterwards.

Dennistown vs Stewart 17. Howard 606
Cayuga Bank vs Hunt 2. Hill 638
Story on Bills § 302 & note
Byles on Bills 203-4

Respectfully submitted

L. Hunter
For Pltff

of the dishonor of the Draft until two or three days after it was received by Barksdale when he Darby came casually into the Banking House of Barksdale.

We rely upon the positive and direct testimony of Cole and Dallam, the Defendants upon the uncertain recollection of Barksdale and his Clerk, who seem never to have kept memoranda of the date when such important papers were received.

It may be well to add that a verbal notice of the dishonor of a Draft is sufficient.

2° As to Protest

The protest of a Foreign Bill is necessary.

We offer the Protest of Turney the Notary who presented the Bill - it is in due form in every respect. It does not appear when it was made - the presumption is that it was made out at the proper time - it is his official act. No proof has been offered as to the particular day or time when it was formally made out - it is a mere inference that it was not made out when the Bill was dishonored because it seems that Tarrum made a Protest which also is in the Record. We insist that our case is fully made out with Turneys protest; as to the certificate of Protest made by Varnum we submit that it by no means is a nullity for the reason that he did not make the presentment and demand; but the only effect of his failure is that his certificate could not be offered as conclusive proof of that fact and for that reason the testimony of Turney was

Darby insists that he is not liable for the reason that he was not duly notified of the dishonor of the Bill and because the Bill was not regularly protested.

1st As to Notice

Varnum proves that he mailed notice on the 7th January to Norton the President of the Bank at Paducah, enclosing notice to Darby,

~~Matthew Cole~~

Dallam, the Cashier of the Commercial Bank of Kentucky proves that the notice enclosed to Darby was received at the Bank, at Paducah on the 14th January: and Matthew Cole the first Clerk of the Bank proves that he donated and mailed the notice to Darby at St Louis on the same day it was received at Paducah the 14th January. The testimony on this subject is please direct and positive, and written memorandum of it was made at the time.

The Defendant Darby proves by his co-defendant Berkdale, that he Berkdale received a notice to Darby, and he does not think Darby received any other: and that he didn't give Darby ~~any~~ the notice immediately but informed him verbally two or three days afterwards:

The Witness Reuss, Berkdale's Clerk says "to the best of his recollection" the notice was received from Paducah about the 18th or 19th January and to the best of his recollection, Darby was not informed

"Collaterals". but ~~it is not~~ no attempt was made to prove that they were to be applied to the payment of the draft sued on. How could he reasonably expect the Bill to be paid unless he advised the Bank to pay it. The ~~Bank~~ Bank were not authorized to sell the securities which they held and pay the draft without the orders of Barksdale &c. Indeed Barksdale seems to ~~be indiff~~ have been indifferent and careless as to this draft, for it is said he did ~~not~~ know that Darby was his endorser on it.

If Barksdale &c were not entitled to notice then they were not discharged by any irregularity in the Protest.

Rhett vs Poe 2 Howard 457.
Byles on Bills 204-234 (side paging)
Story on Bills § 280

We conclude that the Court erred in giving Judgment for Barksdale &c.

Now let us enquire as to Darby' liability. It appears from Barksdale's testimony that he made an assignment to protect Darby, on account of his indorsement on this very Bill. and it would indeed be a strange result if ~~Barks~~ neither Barksdale nor Darby are liable when Barksdale received from the plaintiffs the money on the Bills, failed to provide in any manner for its payment except to place Darby in funds after its dishonor, and then Darby escape from liability

The object of the law was to exclude Bankers Bills from grace — to prescribe a different rule as to grace in Bankers Bills on time, from that which obtained in the Bills of private individuals. A construction so rigid and technical would not prevail even in Criminal Cases. The Notaries and officers of the Bank in New York all concur in fixing the 5th January as the day of Maturity of the Bill — the Park Bank does not appear to have excepted to the time of presentation, and we conclude it was duly and properly presented and payment demanded.

The ordinance shows (See Varnum's Deposition) that notice of the dishonor of the Bill was mailed directed to Barksdale & Co at St Louis on the 7th January, the sixth being Sunday.

But Barksdale & Company were not entitled to notice for they had not provided for the Payment of the Bill, and had no reason to expect it would be paid. The testimony of Charles A Macy the Cashier of the Park Bank is conclusive. See Dep page 40. He says Barksdale had no funds to meet the Draft. He seems to have been operating very largely about that time: he was indebted to the Park Bank and had placed in ~~their hands~~ its possession securities. [illegible]

The Commercial Bank of Kentucky
vs
Barksdale and others } In Supreme Court

The Bill sued on, in this case was a Bankers Bill, purporting on its face to be such, drawn by Barksdale & Co, Bankers, on the Park Bank New York, and was not entitled to grace.

See Statute of New York Rev. p.

Under ordinary circumstances the Bill would have matured on the 4th day of January, but by the Proclamation of the President that day was set apart as a Fast day, and therefore the Bill matured on the 5th day of January, the day succeeding the fourth.

20 Wendell 205

The Bill was presented and payment demanded and refused on the 5th January.

~~It was~~

See Vernuns Dep. p. 44.

We have not been able to see the force of the argument that inasmuch as the Bill was payable four months after date instead of a given number of days after date that the Statute of New York does not apply. The period of maturity was as definite, certain and fixed as if the number of days had been specified. A Bill payable four months after date is payable many days after date.

Commercial Bank
of Kentucky
vs
Barkdale Forbes

Filed Dec 6th 1865
J A Willis
clerk

Commercial Bank of Kentucky
v. Pltf in Eor.
Wm H. Bachsdale et al.
Defts in Eor.

In the Supreme Court
Oct. T. 1865.

Opinion of the Court.

The decision of the case turns mainly upon the validity of the protest. The bill is to be considered as a foreign bill. (Stor. Bills, § 22, 23). In cases of foreign bills of exchange, the rule is too well settled to admit of question, that there must be a protest of the bill by a notary public, in all places where such officer is at hand. (Sto. Bills, § 276). The notarial protest is evidence of presentment, demand and refusal to pay the bill, at the time and in the manner therein stated. This rule of the law merchant is recognized by statute in this State. (Rev. Stat. 1855 p. 298, § 20); and so essential is the production of a protest, in all cases of foreign bills, that this evidence of presentment demand and refusal cannot be dispensed with, nor supplied by other evidence of the same facts, as may be done in cases of inland bills. (Sto. Bills, § 276). It is equally well established, that the presentment and demand must be made in person by the same

notary who protests the bill: it cannot be done by a clerk, nor by any other person as his agent, though he be also a notary. The protest is to be evidence of the facts stated in it, of which the notary is supposed to have personal knowledge, and credit is given to his official statements by the commercial world on the faith of his public and official character. In court, the instrument speaks as a witness. Such statements made merely upon the information of another person amount to hearsay only, if the notary were himself upon the stand as a witness. The notarial protest must state facts known to the person who makes it, and he cannot delegate his official character or his function to another. (Edwards on Bills, 466; Leffly v. Mills, 4 P.R. 174; Carmichael v. Bank of Penn., 4 How (Miss.) 567; Sarcider v. Brown, 3 McLean, 481; Onondaga Co. Bank v. Bates, 3 Hill, 53; Cunnwell v. Chamberlain, 6 B. Mon. 60. The presentment and protest are governed by the law of the place where the bill is payable, and, on this principle, it has been held that where the statute law of the state (as in Louisiana) authorizes notaries to appoint deputies, a protest made by such deputy,

duly appointed, would be recognized as sufficient. (Carter v. Brown, 7 Humph. 548). But no case seems to have gone farther than this. Such deputy may be considered as having a semi-official character and sufficient authority by force of the statute; but without some change in the general rule of law, one notary can neither delegate his functions nor impart his own official character to another. Here, two notaries were in partnership in general business, and one of them undertook to present the bill and make the demand, and the other to draw up the protest and give the notices. They were both notaries, but as such they were distinct public officers, and there can be no partnership in such matters. No law or custom was proved to have existed in the State or city of New York, which changed the general rule of the law merchant on this subject. It must follow that the protest made by Vermon can have no validity. Nor will that made by Romey any more avail. It seems to be clearly established by the general current of authority that the protest must be made on the same day with the presentment and demand,

though a noting of the protest on the bill itself may be regarded as an incipient protest, or preliminary step towards a protest, which may be completed afterwards, at any time, by drawing up the protest in form. Here, there was no noting of the bill for protest, nor any memorandum marked on the bill, by Barney; nor is there any proof of any distinct note, entry, or memorandum of protest, made by him on that day, in any other way than upon the bill itself. It would appear that he did not make the demand for the purpose of protesting the bill himself, but as the agent of his partner, the other notary. He neither protested the bill, nor noted it for protest, at the time; and his drawing up of a protest, long afterwards, must be regarded as having no basis of contemporaneous fact or present authority, and as being utterly void. (Byles on Bills, 201-203; Sto. Bills, § 283; Leffly v. Mills, 4 T.R. 174).

Under the laws of New York, we think the presentment was made, and the notice sent, on the right day (Lalled v. Burt, 20 Wend. 205); but there being no valid protest, the drawers and indorsers were discharged, so far as their liability depended

ed upon a protest and notice; and it will therefore be immaterial to inquire further concerning the notices that were sent.

It is urged on the part of the plaintiff, that the drawers were not entitled to notice, for the reason that they had no funds in the hands of the drawee, and no right to draw the bill. It appeared in evidence that there had been extensive previous dealings between the parties; that within the three or four months next preceding the drawing of this bill, there had been transactions of this kind to the amount of upwards of six hundred thousand dollars; that they had on deposit with this bank as collaterals an amount of bonds and other securities largely exceeding their indebtedness to the bank, this bill included; that a fluctuating balance remained unsettled between them; and that down to the time of the dishonor of this bill, the bills drawn upon the bank had been duly honored. These securities were soon after wards withdrawn upon a settlement of the comparatively small balance due from them to the bank. There

does not appear to have been any express agreement for a credit to any given amount; but on the footing of this previous course of dealing and the ample securities, the drawers may very reasonably have counted upon a prompt payment as usual. ~~before~~. At any rate, it cannot be said, that they had absolutely no funds in the hands of the drawee, no right to draw the bill, and no reasonable expectation that it would be paid. In such case, the drawer is entitled to notice, that he may take measures to close his account and withdraw his securities. (Edwards on Bills, 451; Blackman v. Doren, 2 Camp. 503; Orr v. Maginnis, 7 East 359; Rucker v. Hiller, 14 East 43; Campbell v. Pottinger, 7 Term. 124; French v. Bank of Columbia, 4 Cranch 141; Robinson v. Ames, 20 J.R. 146). No instructions were asked, or given, directly bearing on this subject. The case seems to have been tried upon the assumption that the drawers were entitled to a period and notice. The evidence on this head was amply sufficient to warrant the instructions which were given, so far as they rested on this basis;

and the verdict being for the defendants, we cannot say that it was, in this respect, either without evidence, or against the weight of evidence. On all other points also, the law appears to have been fairly and correctly laid down in the instructions which were given on either side; and in those refused to the plaintiff, we have not found any substantial error.

The judgment is affirmed.

Judge Wagner concurs. Judge Sanborn absent.

N. Holmes.

Filed Dec. 12th 1865

x

117

(C)

Commercial Bank of Kentucky

Deft in Err.

v

Wm H. Bachsdale et al.

Opinion.

Affirmed.

Filed Dec. 12th 1865
J. A. Willis clk
by E. T. Allen
Dy clk

Holmes,

The Commercial Bank of Kz appellant

In the Supreme Court No 117 Oct Term 1865

John F. Darby et al
Respondents

This suit was instituted on a Bill of Exchange for $10000, dated September 4th 1860 payable four months after date, the Bill was drawn by W.H. Berkdale & Co to the order of John F. Darby, on the Park Bank of New York acceptance waived.

Darby in his answer denies every material averment in the petition except the drawing and endorsing of the Bill. He states that he endorsed the Bill for the accommodation of W H Berkdale & Co and puts directly in issue the presentment, and dishonor of the Bill and denies that he ever received legal notice of such dishonor

Plaintiffs read in evidence the deposition of Paschal W. Turney to the effect that at the maturity of the Bill he was a Notary Public in the City of New York and was a partner of Joseph B. Varnum Jr who was also a Notary. That in the 5th day of January 1861 witness received from the Metropolitan Bank of New York the Bill of Exchange in suit. On the afternoon of said 5th of January after banking hours, witness presented said Bill to the Cashier of the Park Bank at said Bank for payment. That payment

was refused. On the same day said Bill was protested for non payment in the name of Joseph R. Varnum Jr. The 4th of January was a public fast day.

Witness further stated that he believed the said Metropolitan Bank held said Bill for collection. Witness never made any other presentment of said Bill than that then stated on said 5th day of January 1861. The Bill was returned to the Metropolitan Bank on the morning of the 7th of January, the sixth of January being Sunday. Notices of the protest of said Bill were prepared by one of the Clerks and the same were examined by witness and placed in envelopes "One of such notices was directed to W H Burbridge & Co. St Louis, Mo. & a like notice for the same parties with notices for both indorsers were enclosed in an envelope directed to L M. Flournoy Pres. Paducah Ky." (Page 38). These notices were all delivered to Mr Varnum for the purpose of being mailed by him and were dated January 5th 1861. The notices were in the name of J. R. Varnum Jr as Notary Public. The only notice directed to St Louis was directed to W H Burbridge & Co, the other notices were all directed to Paducah Ky. and inside were directed to the respective parties without the addition of the address. If any other notice had been directed to any other party in St Louis witness stated he should have known it. No notice was mailed before the 7th of January 1861

Charles A Moez testified that he was cashier of the Park Bank in January 1861 and that on the 24, 25, & 27 of January W H Burbridge had no

funding said Bank for the payment of the Bill in suit and did not provide for the payment of said Bill. Witness further stated that W. H. Berkshire & Co had large amounts of collateral in said Bank in the Autumn of the year 1860. That said Bank from September 5th 1860 to January 5th 1861 paid to W. H. Berkshire & Co $659306 31/100. that the account of W. H. Berkshire & Co with said Bank Bank was closed in February 1861. On the 14th of February 1861 the notes owing by W. H. Berkshire & Co to the Bank Banking amounting to $35518.00 were paid and the securities were delivered to the Continental Bank of New York

Joseph B. Varnum Jr testified in substance as his father James. He further stated that he mailed the notices on the morning of the 7th of January before the closing of the mail. Witness further stated that he was unacquainted with the residence of the defendant Darby, and enclosed a notice for him to L. M. Flournoy. That the notice was signed by witness. The language of witness (on page 45) is "Sealed notices directed as follows: One directed to W. H. Berkshire & Co St Louis Mo. and one directed to L. M. Flournoy Pres. Paducah. Ky. enclosing therein a duplicate of ~~notice~~ the above notice to W. H. Berkshire & Co and also a notice to John F. Darby, an endorser on said Draft"

It appears that after the notice addressed to L. M. Flournoy was received by the plaintiff, there were endorsed on said notice the following words, viz.

"Marked to Drawers at St Louis Missouri" (page 52.)

J. S. Dallam testified that notice was received at Rochester on the 14th of January 1861 and the same day notices were forwarded to St Louis

Two witnesses of Rochester employees of plaintiff testify that no notice was received by the plaintiff addressed to W. H. Berksdale & Co.

Plaintiff read in evidence one of the Statutes of the State of New York passed April 14th 1857 Chapter 416,

Plaintiff read in evidence the following certificates of protest one signed by P. W. Turney and one signed by Joseph B. Varnum jr. which were in the usual form

This was all of the evidence introduced on behalf of plaintiff

Defendants read in evidence the Deposition of E. A. Roop who testified that he was Clerk in the banking house of W. H. Berksdale & Co from April 1859 to March 1861, that he was the confidential Clerk of said House and was also general bookkeeper during the whole of the month of January 1861, that on or about the 18th or 19th day of January 1861 said

firm received a notice of the protest of the draft now in suit, from plaintiff, that the same envelope which contained said notice to W H Berksdale & Co from plaintiff also contained a notice to John F Darly. The attention of witness was particularly called to this fact at the time (page 69) by Mr Berksdale who did not think that Darly was endorser on this draft but that the same was endorsed by John F Anderson. The books of W H Berksdale & Co did not show that the draft in suit was endorsed by said Darly, witness thinks that Darly did not receive the notice directed to him as aforesaid until three or four days after W H Berksdale & Co received it.

W J. Wood testified that he first saw the certificate of Porchel W Turner some months after this suit was instituted, that it was made out and sent to St Louis at the request of plaintiffs counsel after the suit was brought.

W H Berksdale testified to the same fact sworn to by the witness Reuf, that Darly never received the notice until three or four days after the same was received by W H Berksdale & Co G & S.

The court then on motion of plaintiff gave the following instructions

No 117
In the Supreme Court
Oct Term 1868

The Commercial Bank
of Ky. vs
John F. Darbyelds
Statement of Cons

Vinod & Smith
Attys for Darby